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COLLEGE OF LAW AND GOVERNANCE STUDIES  
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**LL.M PROGRAMME IN HUMAN RIGHTS**

**Legal and practical challenges of paternity disputes under the revised Federal Family Code regarding children born outside legally recognized relationships: particular Attention on Maintenance provision Claims.**

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**Approved by Board of Examiners**

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DECLARATION

I, Mehiret Fekadu, hereby declare that this master’s thesis is original and the result of my own work and has never been submitted to any other institutions. I also confirm that any secondary sources or material used in this thesis have been duly acknowledged.

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Date: July 2023.

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## Abstract:

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Children who are born outside Legally Recognized Relationships deprived from family environment through means of rejection by their own father. And the rejection mainly violates child right to life, survival and the right to development which has a grantee under CRC, ACRWC and FDRE constitution. The study mainly identified that, despite the constitutional guarantee for all child right, the Ethiopian legislation are not adequately address the right of children to know their father in the protection of their right to grow and cared by own family. In addition, the study focuses on the practical problem at courts on insuring such rights. Due to such identified legal and practical problems, the study recommended to revise the current legislations in line with the best protection for children born out of wedlock and provide capacity building for parents and judges in order to mitigate the problems.

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## Acronyms

- ACRWC:-African Charter on the Right and Welfare of the Child
- CRC: - Convention on the Right of the Child CSA: - Central Statics Agency FDRE: - Federal Democratic
- RFC: - Revised Family Code

## Chapter One

### 1. 1 Background of the study

Children have the inherent right to know their father, a right that encompasses various aspects such as economic, educational, and health considerations, as well as the right to receive care and affection. The identification of the child's father is crucial in ensuring that all these rights are fulfilled. However, determining paternity can be a challenging undertaking, particularly in cases where it is disputed. The establishment of paternity now entails a more complex process, no longer solely reliant on traditional criteria like marriage or adoption.

Ethiopia has implemented a revised family law that governs the determination of paternity. When it comes to children born within a marriage, establishing paternity is relatively easier due to the presumption that the husband is the father<sup>1</sup>. However, determining the father of a child born out of wedlock poses a more challenging question. If the alleged father voluntarily acknowledges the child, the process becomes simpler. However, if the father contests his paternity, the available option to establish paternity is through a judicial declaration. This requires meeting certain requirements as stipulated by the law<sup>2</sup>. For instance, there should be evidence of sexual intercourse between the alleged father and the mother at the time of conception, or the mother must have been a victim of abduction, rape, seduction accompanied by abuse of authority, promise of marriage, or any other form of intentional deception at the time of conception. Additionally, there can be a written letter or other documents from the alleged father that unequivocally prove paternity. Alternatively, the mother can provide evidence that the alleged father has actively participated in the child's upbringing, care, and education, assuming the role of a father.

Establishing paternity in courts can be highly challenging for both the mother of the child and the court itself due to various reasons. There are numerous obstacles encountered in determining the

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<sup>1</sup> The EFDR Revised Family Code article 126

<sup>2</sup> Id article 143

paternity of these children, stemming from legal provisions, practical difficulties, and the circumstances faced by the mother in court.

Examining the provisions of the revised family code, Article 143 is not clearly defined, leaving room for interpretation. Additionally, there may be facts and conditions not specifically addressed in the law, making it challenging to consider such circumstances. For instance, the sub provisions listed under Article 143 do not encompass situations where a child is born from a single instance of sexual intercourse.

Furthermore, establishing paternity itself is a difficult task due to a lack of evidence. Historically, establishing the paternity of children born outside of marriage has relied on more unreliable and challenging means, as explained by Vanessa S. Browne-Barbour<sup>3</sup>. Proving facts based on witness testimonies, as mentioned in the provisions, is particularly arduous since these acts often occur in secrecy and obscurity. Moreover, the mother faces practical challenges in presenting witnesses and providing evidence in court. It requires significant effort to meet the requirements outlined in the provisions, especially considering that the mother may lack knowledge of the law or professional assistance, resulting in limited ability to prove facts. Additionally, if the relationship with the alleged father was kept hidden, the mother may be unable to present witnesses.

It is worth noting that at this point DNA testing is not considered conclusive evidence for paternity establishment in Ethiopia. The use of DNA technology is not yet prevalent, and the court may not order a DNA test unless there are compelling circumstantial factors that warrant such an examination.

Overall, in the process of proving paternity, there is often insufficient evidence available and gaps in the law. Consequently, courts are faced with the difficult decision of choosing between upholding statutory requirements or prioritizing the child's right to receive financial support.

This research paper aims to examine the significant legal and practical obstacles involved in establishing paternity concerning the child's right to receive maintenance. Specifically, it focuses on cases where a child is born outside of a legally recognized relationship between a man and a

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<sup>3</sup> Vanessa Browne-Barbour, *Mama's Baby papa's may be*, 2015

woman, with a particular emphasis on the proceedings in the Federal First Instance Court of Addis Ketema and Arada Division. The paper seeks to shed light on the challenges faced in determining paternity and ensuring that children born in such circumstances are granted their rightful maintenance rights.

## **1.2 Statement of the Problem**

The right of children to receive maintenance is a fundamental human right that encompasses essential provisions such as food, housing, education, and more. Additionally, knowing one's origin is considered a basic human right for a child<sup>4</sup>. Consequently, it is the responsibility of the legislative, executive, and judicial branches of government to establish laws that address and effectively enforce these rights. While the federal revised family code of Ethiopia provides mechanisms for establishing paternity, there are significant gaps within the legal framework. The requirements for proving paternity are stringent, limited to women who meet the specific legal criteria. However, in practice, not all women seeking paternity establishment in court fulfill these legal requirements, as their specific circumstances may not be covered by the law. Furthermore, the lack of evidence in proving paternity poses additional challenges. Moreover, the use of DNA as the sole basis for establishing paternity is not permitted for the mother. These issues create a burden for the judiciary, as they bear the responsibility of ensuring the best interests of the child. This research paper aims to examine the challenges faced by courts in establishing paternity, with a focus on the Federal First Instance Court of Addis Ketema and Arada Division.

## **1.3 Objective of the research**

The objective of this research is to explore and analyze the challenges faced by courts in establishing paternity for children born out of wedlock, considering the insufficiencies within the legal framework and the availability of evidence. The specific objectives of this study are as follows:

- Investigating the gaps within the existing legal framework and practical issues encountered when attempting to establish paternity for children born out of wedlock.

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<sup>4</sup> The EFDR constitution article 36(1) (c )

- Examining the types of evidence presented to prove paternity, with a particular focus on the adequacy and utilization of DNA evidence.
- Exploring methods and strategies to ensure the child's right to receive maintenance from the alleged father, considering the legal and practical implications involved.

By addressing these specific objectives, the research aims to provide a comprehensive understanding of the challenges faced by courts in proving paternity for children born out of wedlock and identifying potential solutions to uphold the child's right to maintenance.

#### **1.4 Research questions**

The research will address the following research questions:

1. Are there gaps within the legal framework concerning the establishment of paternity when a child is born outside a legally recognized relationship between a man and a woman?
2. What are the practical challenges faced by courts in proving paternity and ensuring the provision of child maintenance in such cases?
3. What is the awareness level among women regarding the difficulties involved in establishing paternity for children born outside of wedlock?

#### **1.5 Literature Review**

The researcher could not find the studies that deal particularly on topic of **Legal and practical challenges of paternity disputes** related to maintenance claim under Ethiopian laws. However, this paper is looking some international, others countries national studies and a national studies on Ethiopian context that are somehow relevant to this thesis.

##### ***1.5.1 International and others countries national studies***

Some of these international, others countries national studies are focused on the establishment of paternity based on modern way. Recently the technology brought biological methods like DNA test, which prove paternity almost 99% of certainty. Which was very significant change and the technology has accepted and applied in courts. The previous method of proving paternity like

steadfastness of the mother's word, the mother and alleged father's relationship, and the physical resemblance of the child to the alleged father now challenged as they are not prove paternity with certainty.

The right to know one's parentage and identity is a fundamental part of private life. Thorpe LJ said: 'first, that the interests of justice are best served by the ascertainment of the truth and secondly, that the court should be furnished with the best available science and not confined to such unsatisfactory alternatives as presumptions and inferences<sup>5</sup>. So many researchers' attentions have shifted to this technology because it becomes the main category of evidence in proving paternity. However, there are controversies regarding using the DNA test. Since the result revealed certainty, it questioned whether discovering the truth is always beneficial to children or not.<sup>6</sup> And There are also some literatures that have tried to analyze how national policy and legal framework to treat the alleged father right in litigations and child maintenance. Particularly whether courts forced the father for DNA test or not in order to maintain the right of the child for maintenance was controversial. According to the South African Children's Act it is apparently not a court's duty to ascertain scientific proof of truth. However it is duty to act in the best interests of a child which will be best achieved, it is argued, by relying on the scientific methods available.<sup>7</sup>

### ***1.5.2 Ethiopian context***

In Ethiopian context, as to best effort the researcher, the national study that found which attempts to address paternity establishment challenges at courts is Dr Mhari Reday Amharic version book of Federal Revised Family Code content and enforcement in 1920

However, my study is different from this book. Because the primary focus of this book is on the content of the law and the enforcement at courts but not focus on the court challenges on the implementation of the law, while my study is only focused the legal and practical challenges on implementation of the law. Thus, however, the book does not comprehend a full-scale analysis of and reflection on court practices and child maintenance issues.

In short this paper is different from the others in the following reasons.

- **First, content wise difference**, other studies focused at worldwide whiles my study specifically in Ethiopian context.

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<sup>5</sup> In re H and A (Children) (Paternity: Blood Tests): 21 Mar 2002)

<sup>6</sup> Vanessa Browne-Barbour, *Mama's Baby papa's may be*, 2015

<sup>7</sup> L Albertus. 2014.

- **Second, concept differences**, as we have seen in the above, some studies were focused on the use of DNA at all time or not , the findings of the researchers are far from the situation in Ethiopia since using the technology at courts is controversial and the country is still establishing paternity by more challenging and unreliable means like hearing testimony and my study is focused on how to establish paternity for child maintenance purpose and its legal and practical challenges at courts under Ethiopian laws.
- **Thirdly, participant (scope on right holder)**, this study is specifically focused on children born out of wedlock while the other have studied broader issues that includes all children.
- **Finally, the time differences**, the previous study mentioned above are not put in the context of the current world situation in general and Ethiopian in particular. Thus, as far as the researcher knowledge, this study is new and unique from the others in scope, concept and time.

## **1.6 Research methodology**

### ***1.6.1 Research approach***

Doctrinal and non-doctrinal legal research more or less was used in this thesis. Even if it is difficult to draw a sharp theoretical or pragmatic line of differentiation between these two types of legal research approach, the doctrinal legal research was more used. The Doctrinal legal research is type of legal research that has aims to study case law and statutory law, with a view to find law, consistency and certainty of law, looks into the purpose and policy of law that exists.<sup>8</sup> The aim of the study to identify key challenges, their underlying causes, and potential solutions related to establishing paternity and ensuring child maintenance. Thus, the doctrinal legal research technique was used during assessing Ethiopian legal framework. While the aims of non-doctrinal legal research is to analyses the gaps that exist between the law-in-the statute book and law-in-action and to discloses the gap between legal idealism and social reality and it helps us to find out the deficiencies in an enactment and the problem of its implementation.<sup>9</sup> This empirical legal research technique was used in case of analyzing the practice at courts.

### ***1.6.2 Research method***

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<sup>8</sup> S N Jain, Doctrinal and Non-doctrinal Legal Research, 17 JILI 516 (1975) Also reprinted in, S K Verma and M Afzal Wani (ends), Legal Research and Methodology (2nd end, 2001, Indian Law Institute, New Delhi) 68.

<sup>9</sup> Ernest M Jones, Some Current Trends in Legal Research, 15 Jr of Legal Edu 121 (1962-63).

This research thesis has adopted qualitative research method. During the time of this research, there was limited information to conduct to research since judges were not allowed to give information due to time constraint. One of the possible solutions to overcome or reduce the challenge is to employ relevant methodology since it enables the researcher flexible. The qualitative research method is, obviously, relevant methodologies in sensitive situations. Thus, the researcher adopted qualitative research methodology to achieve the intended objective.

The other reason why researcher used this method is to capture a comprehensive understanding of the subject matter, from the participating allowing for in-depth discussions and the exchange of rich knowledge and experiences through the qualitative research methods; interview, discussions, observation and other relevant methods as it is directly experienced by the subjects in the life world.<sup>10</sup>

### ***1.6.3 Data Source***

In order to conduct this research both primary and secondary data sources were employed. The data from primary sources were gathered from the participating judges. Focus group discussions were conducted with allowing for in-depth discussions and the exchange of rich knowledge and experiences. Furthermore, interviews were conducted with mothers who had sought paternity establishment and child maintenance enforcement at the Federal First Instance Court of Addis Ketema and Arada Division.

With regard to secondary sources, data basically are gathered from Court case analysis was conducted from the records of the Federal First Instance Court of Addis Ketema and Arada Division. The researcher's own observations and experiences in the field were also incorporated into the study. Additionally, relevant information from websites and other sources was employed to supplement the research findings.

#### ***1.6.3.1 Data Collection Tools***

To carry out the study, the necessary data were collected from primary and secondary data sources. To achieve this, the researcher had used data gathering instruments such as, in-depth discussions, interview, and case analysis.

#### ***1.6.3.2 Sampling type***

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<sup>10</sup> King, N. Horrocks, C. (2010). Interviews in Qualitative Research London : SAGE Publications Ltd. P. 79

This research employs the appropriate purposive sampling technique whereby key sources or persons were targeted. This technique of non-probability sampling is useful for qualitative research that is constrained by resources limitations. In applying this technique, the researcher could select relevant judges working on the family bench of the Federal First Instance Court. There are a total of 24 judges on the family bench, and the researcher selected one judge from each of the ten divisions, except for Arada Division, which has two family judges included in the study due to their relevance to the study area. The researcher, being one of the judges in Addis Ketema Division, did not participate in the survey. Additionally, the head of the federal Supreme Court children justice project, as well as two judges from the Federal Supreme Court cassation division who have expertise in family disputes, were included to provide a broader perspective and insights on the legal and practical challenges. Furthermore, interviews were conducted with mothers who had sought paternity establishment and child maintenance enforcement at the Federal First Instance Court of Addis Ketema and Arada Division. Sixteen mothers were selected for the interviews, considering factors such as age, level of education, and economic situation.

#### **1.6.3.3 Focus group discussion and In-depth Interview**

Focus group discussion and in-depth interview were conducted with selected research population.

#### **1.6.3.4 Case Analysis**

The researcher had analyzed Court case from the records of the Federal First Instance Court of Addis Ketema and Arada Division to supplement the research findings. Additionally, relevant information from websites and other sources had analyzed.

#### **1.6.3.5 Data processing and Analysis**

Combining and synthesizing the collected data into meaningful patterns and themes was the next step taken in the research process. Accordingly, qualitative data that were collected from both primary and secondary sources had been processed and analyzed by using interpretative technique were data sets are summarized, and those summaries are then further and further summarized and at the end come to compact summary and conclusion of the collected data. In supplementing the expression, simple and unsophisticated tabulations were used. Furthermore, data were interpreted with regard to the critical research approach. Hence, the whole data

collected through primary and secondary sources had incorporated into meaningful manner so that it provides a clear picture of the whole theme of the study.

#### ***1.6.3.6 Ethical consideration***

The researcher followed the ethical principles of research throughout the interaction with the people directly and indirectly participates and or affected by the study.

The researcher informed the informants of the study that their participation in the research is based on their full consent to develop an informed consent form; which were read before each interview proceeds and discussion. This was mainly done because the researcher believes that, this form acknowledges the participants' rights are protected during the data collection process.

The researcher had also informed the informants that they are free to withdraw and discontinue participation in this project at any time without prejudice. After getting the affirmation of their consent to give the interviews, once again the researcher asked them whether they are voluntary to record their voices or not.

Based on this, all of interviewee felled discomfort or unwilling to be record on. So the researcher used another option like taking notes. In case of the interpretation of the data, the researcher tries his level best to provide accurate account of the information.

### **1.7 Scope of the study**

The scope of this study is centered around the challenges faced by courts in establishing paternity for children born out of wedlock, with a particular emphasis on the child's right to maintenance as stipulated in Article 143 of the Federal Revised Family Code. The research specifically focuses on the difficulties encountered within this legal provision and does not encompass other methods of proving paternity or explore additional rights of the child beyond maintenance. The study aims to provide a detailed analysis and understanding of the challenges pertaining to paternity establishment and the child's right to maintenance within the context of Article 143.

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

The significance of this study lies in its exploration of the gaps within the legal framework and the practical challenges faced by courts in establishing paternity for children born out of wedlock. Additionally, it sheds light on the difficulties encountered in ensuring the child's right

to maintenance. While there have been some previous studies in this field, this research uniquely focuses on the practical challenges experienced by courts, providing valuable insights that can serve as a resource for relevant stakeholders and future research endeavors.

By highlighting both legal and practical issues faced by courts, this study contributes to a better understanding of the complexities surrounding paternity establishment in cases of children born out of wedlock. It emphasizes the need for reforms and actions to address the identified challenges, ultimately aiming to protect and secure the child's right to maintenance.

The findings of this study can serve as a valuable reference for policymakers, legislative bodies, judicial institutions, and other stakeholders involved in family law and child rights. It offers a comprehensive overview of the obstacles faced in court proceedings and provides recommendations for potential solutions. By addressing the gap in the legal framework and the practical challenges encountered by courts, this research adds to the existing knowledge base and facilitates informed decision-making and policy development in this critical area.

## **1.9 Organization of the study**

The organization of the study consists of five chapters as follows:

### **Chapter 1: Introduction**

The first chapter of this research paper serves as an introduction to the study, providing an overview of the research topic and its significance. It presents the statement of the problem, which focuses on the challenges faced by courts in establishing paternity for children born outside a legally recognized relationship and ensuring their right to maintenance. The chapter also outlines the objectives of the study, research questions, and the methodology employed. Furthermore, it defines the scope and limitations of the research, discusses ethical considerations, and highlights the importance of the study in addressing gaps in the current understanding. Finally, an outline of the organization of the study is provided, offering a roadmap for the subsequent chapters.

## **Chapter 2: Historical Background and Definition of Paternity**

Chapter 2 delves into the fascinating evolution of paternity, tracing its historical roots and the dynamic changes in societal attitudes and legal frameworks over time. By examining cultural practices and societal norms, this chapter offers valuable insights into the complex journey of paternity determination.

Furthermore, it provides a clear and concise definition of paternity and explores its crucial link to child maintenance. By delving into both the legal and social dimensions of establishing paternity, this chapter sheds light on the multifaceted obligations that arise, particularly in terms of ensuring financial support and the overall well-being of the child.

With a comprehensive analysis of the historical background and definition of paternity, this chapter equips readers with a nuanced understanding of the intricate complexities and far-reaching implications associated with determining paternity and the subsequent responsibilities that ensue.

## **Chapter 3: International and National Legal Frameworks on Child Rights**

Chapter 3 delves into international human rights conventions and regional instruments that safeguard the rights of the child, with a specific focus on identity, legitimacy, and maintenance. By analyzing the provisions and principles outlined in these frameworks, the research aims to grasp the global standards and perspectives on child rights. Additionally, this chapter explores the legal systems of other countries, seeking comparative insights and best practices. The goal is to identify potential solutions and shed light on challenges in establishing paternity and ensuring the child's right to maintenance. By examining these legal frameworks, the chapter contributes to a comprehensive understanding of child rights and paternity establishment, emphasizing common principles and divergences across different legal systems.

## **Chapter 4: Gaps in National Laws and Practical Challenges**

Chapter 4 investigates the gaps within the national law regarding the establishment of paternity for children born out of wedlock. It focuses on identifying areas where the existing legal framework may be inadequate or insufficient. Additionally, this chapter

examines the practical challenges faced by courts in proving paternity through an analysis of relevant cases. By exploring both the legal gaps and practical obstacles, this research provides valuable insights into the complexities and limitations associated with establishing paternity for children born outside a legally recognized relationship.

## **Chapter 5: Conclusion and Recommendations**

Chapter 5 concludes the study with a concise summary of the key findings and conclusions. It highlights the challenges in establishing paternity and ensuring the child's right to maintenance. Based on the research, practical recommendations are provided to address gaps in the legal framework and overcome the identified challenges. These recommendations offer potential solutions for policymakers and stakeholders to improve paternity establishment processes. Additionally, the chapter emphasizes the importance of further research in the field to deepen our understanding and contribute to ongoing progress in protecting child rights. In summary, Chapter 5 provides a comprehensive conclusion and actionable recommendations for enhancing paternity determination and securing the child's right to maintenance.

By organizing the study into these chapters, the research aims to provide a comprehensive and structured analysis of the topic, facilitating a clear understanding of the issues surrounding paternity establishment and child maintenance for children born out of wedlock.

### **1.10 Limitation of the study**

The limitation of this study is primarily attributed to the constraints of time, which restricted the extent to which the research could be conducted. As a result, the study may not have been able to delve into certain aspects in great detail or explore additional dimensions related to establishing paternity and the child's right to maintenance. The time limitation may have also affected the sample size and data collection process, potentially impacting the generalizability of the findings. It is important to acknowledge these limitations when interpreting the results and consider them as areas for further investigation and research.

## CHAPTER TWO

This chapter focuses on three main subheadings. It provides an explanation of the historical background of paternity establishment and the definition of paternity. Additionally, it discusses the methods of paternity establishment and the effects of judicial declaration of paternity establishment on the enjoyment of children's human rights.

### 2.1 Historical Background

In previous centuries, societal pressures compelled unwed mothers to give up their children for adoption. In other cases, non-marital children were raised by grandparents or married relatives, being referred to as "sisters," "brothers," or "cousins" of the unwed mothers. In countries such as Europe and America, children born outside of marriage were labeled as bastards, love children, natural children, or illegitimate. These societies often denied the same inheritance rights to individuals born out of wedlock as those born within marriage.

In Ethiopia, however, there has been no such discrimination in distinguishing children as legitimate or illegitimate. A child born out of wedlock holds the same status as a child born within marriage and enjoys inheritance rights. The increased number of children born out of wedlock has underscored the need for an efficient process to establish paternity for these children, aiming to protect their interests as well as those of their father, mother, and society.

In 1960, the country adopted a civil code heavily influenced by Western models, which included detailed provisions dealing with filiation. The code, in its fundamental framework, states that paternity can be established by demonstrating marriage or the existence of an irregular union between the man and the woman at the time of conception or birth. If no such relationship exists, paternity can be established through a written acknowledgement by the child's father<sup>11</sup>, unless the mother was raped or abducted by the man at the time of conception. Regrettably, this code does not extend to children born out of wedlock who have not been acknowledged by their father. Consequently, these children are deprived of their rights to know their father and receive financial support, despite these rights being fundamental for children.

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<sup>11</sup> civil code art741-761

Over time, it has become necessary to amend the existing law to prioritize the well-being, upbringing, and protection of children in accordance with the country's Constitution and international instruments ratified by Ethiopia. With this purpose in mind, the country has revised its criteria for establishing paternity and enacted the Federal Revised Family Code under Proclamation Number 213-2000. This code includes provisions (Article 143-145) that enable the establishment of paternity for children born out of wedlock. These provisions help children to identify their father and receive financial support, love, and care from him.

## **2.2 Defining Paternity**

The Federal Revised Family Code does not provide a specific definition of paternity. However, paternity can be understood as the legal acknowledgment of a man's fatherhood of a child. The dictionary defines paternity as the quality, state, or condition of being a father, particularly in a biological sense. Essentially, it involves establishing someone as the parent of a specific child<sup>12</sup>.

## **2.3 Modes of Paternity Establishment**

Children can be born either within or outside of wedlock. Regardless of their birth circumstances, it is crucial for children to have someone who will lovingly care for them, ensure their well-being, and provide them with an education, thereby molding them into responsible citizens. It is the responsibility of parents to fulfill these roles. Therefore, identifying a child's parents is of utmost importance. While motherhood is typically confirmed through childbirth<sup>13</sup>, determining the father of a child is often more complex. Despite the challenges associated with establishing paternity, every child has the right to know their father<sup>14</sup>. Moreover, establishing paternity enables the child to receive the love, care, and financial support they deserve from their father. Consequently, various methods of establishing paternity have been established in law.

In 1993, Ethiopia, through the Revised Family Code, enacted a law that outlined three modes<sup>15</sup> of paternity establishment. The primary objective of these modes is to safeguard a child's right to

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<sup>12</sup> Brayan A, Garner, *Blacks Law Dictionary*, p 515

<sup>13</sup> The Revised Family Code article 124

<sup>14</sup>The EFDR Constitution article 36(1) (c )

<sup>15</sup> The Revised Family Code article 125

have both a legal and biological father. The three modes of paternity establishment are as follows:

1. Presumption,
2. Acknowledgment, and
3. Judicial declaration of paternity

### **2.3.1 Presumption**

One mode of paternity establishment is based on the presumption that a man is considered the father of a child if there is evidence of a legally recognized relationship between the child's mother and the man at the time of conception or birth<sup>16</sup>. Marriage is one such legally recognized relationship that carries both legal and protective weight. Therefore, if a child is conceived or born within the bounds of wedlock, the law presumes that the father is the mother's husband. Another legally recognized relationship is an irregular union. Under these mode of paternity establishment, three key elements must be proven:

1. Identification of the child's mother.
2. Demonstration of a relationship between the child's mother and the alleged father that led to the birth of the child.
3. Verification that the child was conceived or born during a legally recognized relationship between the child's mother and the alleged father.

An important aspect of this model is that it considers both the economic and social needs of the child by providing them with a legal father. The parent-child relationship is accorded special attention as it serves the social objective of ensuring the safety and nurturing of children. A question may arise regarding how it is determined if a child was conceived within wedlock. A child is considered conceived within wedlock if they are born 180 days after the marriage or 300 days after the dissolution of the marriage<sup>17</sup>.

Moreover, if the legal father wishes to disown the child, it is not a simple process. There are specific requirements and exceptions for disowning a child. In the case of a child born within

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<sup>16</sup> The Revised Family Code article 126

<sup>17</sup> Id article 128

marriage or an irregular union, if the husband seeks to disown the child, the matter can only be addressed under the provisions outlined in Article 167 to Article 179. According to these provisions, an application must be submitted to the court to deny paternity<sup>18</sup>, and the court will only permit the case to proceed if there is strong evidence or substantial suspicion arising from reliable information<sup>19</sup>. For instance, if genetic testing confirms that the husband is not the father or if the mother concealed her pregnancy from her husband<sup>20</sup>. Thus, disowning a child is not a simple matter, ensuring that individuals cannot shirk their duties and responsibilities as a father.

Consequently, this model serves two significant functions. Firstly, it helps a child grow within a family, which holds great importance for their well-being. Secondly, it prevents the child from losing their legal father easily, ensuring they can receive love, care, and support from their parents. It is advisable to conceive a child within a legally recognized relationship for the benefit of the child.

### **2.3.2 Acknowledgment of paternity**

Children may not always be conceived or born within legally recognized relationships or irregular unions. There are situations where it is not possible to establish paternity through presumption. For instance, if a child is born less than 180 days after the marriage or more than 300 days after a divorce, or after the date specified as the last news in a judgment declaring the absence of the person presumed to be the father by law. Additionally, a woman may conceive or bear a child without a husband, having only a love relationship. In such cases where the father of a child cannot be determined through presumption, a second mode of establishing paternity exists—acknowledgment<sup>21</sup>.

Acknowledgment of paternity occurs when a man declares himself as the father of a specific child, either conceived or born<sup>22</sup>. However, it is crucial to execute this acknowledgment carefully since it becomes irrevocable once given. Therefore, the acknowledgment should be in writing. The writing itself does not require a specific format; it can be a public document attested by any

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<sup>18</sup> Id 164(1)

<sup>19</sup> Id 164(2)

<sup>20</sup> Id 172

<sup>21</sup> The Revised Family code article 131

<sup>22</sup> The Revised Family code article 132

competent authority or a document prepared before an office of civil status. Other documents, such as a will or similar legal documents, can also serve as evidence of accepting paternity<sup>23</sup>.

### **2.3.3 Judicial declaration of Paternity**

In cases where children are not covered by the legal presumption and do not have a father who voluntarily acknowledges them, the law provides for the third and final mode of establishing paternity<sup>24</sup>, which is a judicial declaration of paternity. This involves a court decision that compels a man to accept his paternity. A judicial declaration of paternity can be obtained under the following circumstances:

1. The mother has been a victim of abduction or rape at the time of conception<sup>25</sup>.
2. The mother has been a victim of seduction accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception at the time of conception<sup>26</sup>.
3. Letters or other documents written by the alleged father unequivocally prove paternity<sup>27</sup>.
4. Without a legally recognized relationship, the alleged father and the mother lived together in continuous sexual relations during the period of pregnancy<sup>28</sup>.
5. The alleged father has participated in the maintenance, care, and education of the child in the capacity of a father<sup>29</sup>.
6. If any of these conditions are met, the court will confirm paternity through a judicial declaration.

This provision specifically applies to children who are born out of wedlock. A child is considered to be born out of wedlock when the parents are not married or living together as husband and wife in an irregular union, which can include a love relationship or engagement.

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<sup>23</sup> Id article 133

<sup>24</sup> Id 143

<sup>25</sup> The Revised Family code article 143(a)

<sup>26</sup> Id article 143(b)

<sup>27</sup> Id article 143(c)

<sup>28</sup> Id article 143(d)

<sup>29</sup> Id article 143€

However, the law, under Article 145, provides defense mechanisms for the defendant. If the alleged father can prove that the mother had a sexual relationship with another man during the period of pregnancy, or if he can prove that he could not be the father due to absence or being a victim of an accident during the legally recognized period of pregnancy, or if he can decisively prove through blood examination or other reliable medical evidence that he is not the father of the child, paternity will not be established<sup>30</sup>.

Establishing paternity through a court declaration is the most challenging and last resort. The burden of proof, high cost, and lengthy process involved make it less preferable. Therefore, instead of solely relying on court proceedings, it would be more effective to resolve such cases through negotiation with the person who is claimed to be the father, if there is an administrative institution that handles such matters.

In conclusion, the conditions for establishing paternity must be carried out in a manner that protects the child's rights. This means that the three modes of paternity establishment are not simply applied. There are rules to apply each mode depending on the circumstances. If the child is born within a legally recognized relationship, paternity will be established only through the presumption rule, and judicial declaration will not be necessary. This is done to protect the child's rights and the integrity of the family. Similarly, if the child is born out of wedlock and the father acknowledges the child, paternity will be established through acknowledgment. However, if the father refuses to accept the child voluntarily, paternity will be established through a judicial declaration.

## **2.4 Effects of paternity establishment through judicial declaration on the enjoyment of human rights of children**

In this section, I will discuss the impact of establishing paternity on children, specifically how it affects their enjoyment of human rights.

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<sup>30</sup> Id article 144

**Effects of Paternity establishment:**

Children deserve to grow up in a nurturing environment filled with love and care, where their parents provide them with essential needs such as proper food, education, and healthcare. This ideal scenario is often best realized within the context of marriage. Children born to married parents generally experience improved economic and caregiving conditions as both parents share the responsibility of raising them.

However, when children are born out of wedlock, the burden of raising them typically falls on one individual, usually the mother, leading to inadequate love and care. Mothers who give birth outside of marriage often face economic challenges, struggling to afford rent and meet their child's basic needs such as food, education, and medical expenses with their limited income. Consequently, these children grow up without access to proper nutrition, healthcare, and education, leaving them vulnerable to malnutrition, health issues, and a substandard quality of life.

To safeguard the fundamental rights of these children, it is crucial to provide economic support to their mothers. The father of the child should be the primary source of this assistance. Regardless of whether the child was born out of wedlock, the father has a legal and moral obligation to fulfill the child's basic rights. Unfortunately, some fathers deny their paternity and refuse to support the child financially. In such cases, establishing paternity through a judicial declaration becomes essential as it compels the father to take financial responsibility for the child's well-being.

In summary, the establishment of paternity through a judicial declaration positively impacts the enjoyment of human rights for children. It ensures that both parents contribute to the child's upbringing, enabling them to receive the love, care, and support they deserve. Moreover, by holding fathers accountable for their parental responsibilities, the establishment of paternity promotes the overall well-being and rights of the child.

### **2.4.1 Effects on the right to maintenance**

The primary reason for seeking a judicial declaration of paternity is often to secure child support or child maintenance. When mothers find themselves unable to financially support their children, they may turn to the court to seek child support from the alleged father. After a thorough investigation of the case, if the court determines that the accused individual is indeed the father of the child, it will order the defendant to provide financial support, known as child maintenance.

Child maintenance entails regular monthly payments made by the father to the mother of the child until the child reaches the age of 18, as directed by the court. This financial support has a significant impact on the child's well-being, as it helps meet their basic needs, including adequate standards of living, shelter, food, education, and healthcare. Child maintenance also reinforces the obligation of parents to support their children, even if the child primarily resides with one parent.

The determination of child support takes into account the financial resources of both parents, their expenses, and, most importantly, the needs of the child. It aims to ensure that the child's well-being is prioritized and that they have the necessary financial support to thrive and develop.

By ordering child support, the court plays a crucial role in safeguarding the rights and welfare of the child. It establishes a legal obligation for parents to contribute financially to their child's upbringing, irrespective of the parents' relationship status. This ensures that the child's basic needs are met and provides a level of stability and support for their overall development.

### **2.4.2 Effects on the right to life survival and development**

These rights are fundamental and universally recognized. The right to life for children encompass their ability to live, grows, and become adults. It encompasses both survival and development. Life begins at birth, and therefore, children must be protected and provided with the necessary conditions to grow and develop favorably. In order to guarantee this right, children

require an adequate standard of living, shelter, nutrition, and access to medical services. Receiving financial support from the father contributes to children's enjoyment of these rights.

#### **2.4.3 Effects on the right to health**

The right to health is vital for children as they are more susceptible to illness. A child who receives appropriate healthcare will experience better overall health throughout childhood and have a higher likelihood of becoming a healthy adult, both physically and mentally. Economic factors influence healthcare availability. Ensuring financial support helps children access timely and appropriate health services.

#### **2.4.4 Effects on the right to Education**

Poverty poses a significant barrier to education, often forcing children to be deprived of schooling. Insufficient access to food, hunger, and a lack of necessary school materials create obstacles to learning. Moreover, children may be compelled to work alongside their mothers to cover daily expenses, leaving them physically and mentally exhausted, further impeding their ability to learn. The economic hardships faced by mothers render them unable to provide their children with essential needs. Establishing paternity and compelling fathers to provide financial support to their children also hold crucial importance in ensuring the child's access to education.

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

The judicial declaration of paternity has a significant impact on the child's right to maintain direct contact and personal relations with their father. Courts grant visitation rights to the father upon confirming his paternity. This declaration enables the father to establish contact and visitation with his child, which positively affects the child's well-being. Over time, the father can provide love, care, and actively participate in raising the child. Numerous studies have shown that positive father involvement is associated with higher academic achievement, greater school readiness, improved math and verbal skills, enhanced emotional security, higher self-esteem,

fewer behavioral problems, and greater social competence compared to children who do not have involved and caring fathers<sup>31</sup>.

All of the aforementioned benefits are what the child receives from the father in the form of child support when paternity is established. Moreover, the child has the opportunity to get to know the father and receive care and love during the visitation period. Establishing paternity in Addis Ketema and Arada sub-cities has a profound impact on the lives of children in these areas, who often live in poverty, face starvation, and experience substandard living conditions. According to Zafu and Peter (2014), Addis Ketema sub-city is characterized by aging infrastructure, central location, overcrowding, tenant houses, low-income households, and inadequate services. Child support is a matter of survival for mothers in this area.

For the purpose of this study, I spoke to some mothers who sought court enforcement after paternity was established and child maintenance was ordered. These mothers told me that their difficulties in raising children have been alleviated since the court determined child support. They shared their struggles in paying rent and meeting their child's basic needs, which they can now fulfill. One 24-year-old mother, who had completed 10th grade, mentioned that before going to court, there were individuals helping her with rent because she had stopped working after giving birth. However, three months later, they discontinued their assistance, leaving her in great hardship. She recounted the challenges she faced when her son fell ill with a cold and required medication. Unable to afford it, she resorted to begging on the streets to buy the necessary medicine. It was on that day that someone brought her to court and filed a petition for child support. Eventually, the court ordered 2000 Ethiopian birr as the child support amount. With this, she can now pay her rent and use the remaining 500 Ethiopian birr to feed her 8-month-old son. However, she is still unable to find work, and she sustains herself by begging at the church.

Another mother I spoke to, a 28-year-old with no education working as a janitor in a government office, informed me that paternity for her child was confirmed, and the father was ordered to pay

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<sup>31</sup> E.Flouri and A.Buchanan, "The Role of Father Involvement in Childrens Later Mental Health," *Journal of Adolescence* 26(2003): 63-78

3000 Birr for child support. She rents a house and uses the child support to provide food and care for her child. She expressed the difficulties she faced in raising her child, particularly in affording milk, before receiving child support.

In general, proving paternity serves to ensure a child's right to have a father and receive appropriate support and care from both parents. Due to lack of support, many children are deprived of their basic rights, especially those born out of wedlock, as the father may not acknowledge the child, leaving the mother to raise the child alone. Establishing paternity can be crucial for mothers to share the responsibilities of parenting and provides important benefits to the child, such as the right to claim child support and inheritance rights. It also helps foster an emotional bond between the child and both parents, allowing them to actively participate in the child's life.

**CHAPTER THREE**  
**INTERNATIONAL, REGIONAL AND NATIONAL LAWS RELATED TO PATERNITY**  
**ESTABLISHMENT**

Children have human and civil rights as outlined in various international human and civil rights instruments. This chapter aims to elucidate these international and regional legal instruments that are applicable to establishing the right to paternity for children.

**3.1 International human rights instruments**

In this paper, among other relevant international instruments, the Convention on the Rights of the Child is studied as crucial instruments for protecting the rights of children.

**3.1.1 Convention on the right of child**

The 1989 Convention on the Rights of the Child (CRC) is the first human rights convention that explicitly grants children the right to know their origins. Two significant articles, namely Article 7 and Article 8, address this aspect. Article 7 of the CRC establishes the child's right to immediate registration after birth, the right to a name, the right to acquire a nationality, and, to the extent possible, the right to know and be cared for by their parents. States Parties are obligated to ensure the implementation of these rights in accordance with their national laws and international instruments pertaining to statelessness. While this provision reaffirms existing rights to registration, name, nationality, and care, it introduces a new right for the child to know and be cared for by their parents. This right is broadly interpreted to include not only social or legal parents but also biological or genetic parents and birth parents<sup>32</sup>

.Additionally, Article 8 emphasizes the importance of preserving the child's family relations as an integral part of their right to identity. This provision encompasses three elements of identity: nationality, name, and family relations.

**3.2 Regional Instruments**

**3.2.1 African Charter on Human and Peoples Rights**

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<sup>32</sup> Hodgkin and Newell, 2002 : 116 – 17; Freeman, 1996 : 283 – 84; Masson and Harrison, 1996: 281 – 82

The African Charter on Human and Peoples' Rights (ACHPR)<sup>33</sup> is a significant human rights instrument in the African continent that upholds the rights of all individuals and peoples without discrimination. Article 8(2) of the ACHPR specifically addresses the rights of children who have been unlawfully deprived of certain or all elements of their identity. It mandates that the State must provide appropriate assistance and protection to such children, aiming to swiftly restore their identity. This provision signifies that States have the responsibility to rectify any violations of the right to the preservation of identity by allocating sufficient resources to address the issue effectively.

### **3.2.2 The African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of the Child safeguards a range of civil rights and liberties for children. These encompass crucial aspects such as birth registration, name, nationality, and the right to know and be cared for by parents. The Charter also emphasizes the preservation of a child's identity. Furthermore, it upholds the child's right to freedom of expression, thought, conscience, and religion, as well as their right to freedom of association and peaceful assembly. Privacy rights are protected, ensuring that children have the right to personal privacy. Additionally, the Charter guarantees their access to appropriate information and freedom from torture, as well as other cruel, inhuman, or degrading treatment or punishment.

## **3.1 National laws**

### **3.3.1 The 1995 FDRE Constitution**

The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution dedicates a significant portion of its provisions, from Article 13 to 44, to addressing "Fundamental Rights and Freedoms." This constitutional bill of rights establishes the essential legal framework for the protection of human rights in Ethiopia. It encompasses civil and political rights, economic, social, and cultural rights, as well as solidarity rights within a single comprehensive human rights document. Children, as human beings, are beneficiaries of all the human rights protections enshrined in the FDRE Constitution.

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<sup>33</sup> African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981 Entered into Force October 21, 1986

Article 36 of the constitution specifically focuses on the rights of children. It guarantees every child various fundamental rights, including the right to life, the right to a name and nationality, the right to know and be cared for by parents or legal guardians, the right to be protected from exploitative practices, and the right to be free from hazardous or harmful work that may impede education, health, or well-being. Moreover, it ensures that children are not subjected to corporal punishment or cruel and inhumane treatment in educational institutions and other establishments responsible for their care.

In addition to these rights, the FDRE Constitution recognizes the fundamental principle of the best interest of the child. This principle must be taken into consideration by public and private welfare institutions, courts of law, administrative authorities, and legislative bodies when making decisions or taking actions related to children<sup>34</sup>.

### **3.3.2 Revised Family Code**

The Ethiopian Revised Family Code comprehensively addresses the rights of children, as evident from its provisions and preamble. It places significant emphasis on the child's right to know their identity, including their father, and to receive financial support, as well as their right to be cared for by their parents. The code consistently upholds the principle of the best interest of the child throughout its various provisions. Recognizing the vital connection between children's rights and the family unit, the code places great importance on protecting and respecting the institution of the family. By safeguarding the family, it ensures that children have the opportunity to grow up in an environment characterized by love, care, and financial security.

The Revised Family Code explicitly confirms the child's right to have a legally recognized father upon marriage and in cases of irregular unions. If this is not possible, the code provides legal provisions for the child to be acknowledged by their father. In instances where the father does not voluntarily acknowledge the child, the code allows for a judicial declaration of paternity. Through such measures, the code guarantees the child's right to have both a legal and biological father, narrowing the circumstances under which the child would have a relationship solely with their mother. In cases of disputes concerning paternity, the code outlines various methods for establishing paternity.

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<sup>34</sup> FDRE Constitution, 1995: Article 36 (2)

The Revised Family Code specifically states that maternal filiation is established by the fact that the woman has given birth to the child<sup>35</sup>. On the other hand, the code provides different avenues for establishing paternal filiation. Firstly, paternal filiation can arise from an existing legally recognized relationship between the mother and a certain man at the time of conception or birth<sup>36</sup>. Secondly, it can result from an acknowledgment of paternity made by the child's father<sup>37</sup>. Thirdly, paternal filiation can also be established through a judicial declaration<sup>38</sup>. These provisions hold immense significance in protecting the rights of children to know the identity of their biological parents.

### **3.4 Other countries'- experience**

In this subtopic, a notable case from French law will be examined. French law is chosen as a reference due to its influence on Ethiopian laws. The case pertains to the establishment of paternity of a child born out of wedlock and was addressed by the European Court of Human Rights. The European Court of Human Rights referenced provisions from the Convention on the Rights of the Child, including Article 3 (best interest of the child), Article 7 (name and nationality), and Article 8 (preservation of identity). Additionally, the court referred to Article 8 of the European Convention on Human Rights, which safeguards the right to respect for private and family life. The case is documented under application number 30955/12, dated January 14, 2016<sup>39</sup>.

Furthermore, in the context of regional laws, a significant high court case from South Africa will be discussed.

#### **CaseSummary:**

##### Background:

The case involved three applicants. The first two applicants, Mr. and Mrs. Mandet, were previously married and had three children together. After their divorce, Mrs. Mandet had another child, who is the third applicant in this case. A year later, Mr. and Mrs. Mandet reconciled, and

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<sup>35</sup> The Revised Family Code, Federal Negarit Gazetta, Extra Ordinary Issue No. 1/2000, Proclamation No. 213/2000

<sup>36</sup> The Revised Family Code, article 126 Federal Negarit Gazetta, Extra Ordinary Issue No. 1/2000, Proclamation No. 213/2000

<sup>37</sup> Ibid article 131

<sup>38</sup> Ibid article 143

<sup>39</sup> < <https://hudoc.echr.coe.int/app/ECHR&id=003-5270641-6550056>>.

Mr. Mandet acknowledged the child as his own, which was recorded on the child's birth certificate.

When the child turned eight years old, Mr. Glouzmann filed an application with the Tribunal de Grande Instance (TGI) de Nanterre, seeking to invalidate Mr. Mandet's recognition of paternity and establish himself as the child's biological father. The TGI dismissed the legal presumption that Mr. Mandet was the father due to the child being born 300 days after Mr. and Mrs. Mandet separated. Witness statements confirmed Mrs. Mandet's relationship with Mr. Glouzmann during the child's conception and birth, and the child was known to others as their child. The TGI ruled that it was in the child's best interest to know their origins, and ordered the revocation of Mr. Mandet's paternity recognition and the change of the child's name on the birth certificate. The mother would exercise parental authority exclusively, and Mr. Glouzmann was granted visitation rights.

The Mandet family appealed the decision, but their appeal was unsuccessful. Throughout the legal proceedings, the child, who was nearly 12 years old when the TGI issued its judgment, expressed a desire to maintain the existing parent-child relationship. An ad hoc guardian was appointed to represent the child's interests, but due to the Mandet family relocating to Dubai, the guardian was unable to meet with the child.

The applicants lodged a complaint with the European Court of Human Rights, alleging that the revocation of paternity recognition and the granting of legitimacy to the child in response to Mr. Glouzmann's request were disproportionate measures that interfered with their right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR). They argued that maintaining the established parent-child relationship was in the child's best interest. By the time the European Court of Human Rights reached its decision, the child had already reached adulthood.

Issue and resolution:

The case centered on the recognition of biological paternity. The Court held that the French courts did not violate the ECHR by revoking the paternity recognition of the mother's husband when another man claimed to be the child's biological father, as it was deemed in the best interest of the child to know their origins.

Court reasoning:

The Court determined that only the child's complaint was admissible. While acknowledging that changing the legal father-child relationship constituted an interference with the child's right to respect for private and family life, the Court deemed this interference justifiable in order to protect the rights of the biological father. The key question was whether the measures taken by the French courts were proportionate in achieving this aim.

The Court recognized France's margin of appreciation when applying Article 8 of the ECHR to determining legal relationships between parents and children. However, in cases involving children, the Court emphasized the paramount importance of considering the best interests of the child.

The establishment of a parent-child relationship between the child and Mr. Glouzmann was based on the calculation of the child's conception period and the assessment of evidence presented in the French courts. The French courts made extensive efforts to involve the child in the decision-making process, including appointing an ad hoc guardian to represent the child's interests. The Court agreed with the French courts that the child's primary interest was in knowing the truth about their origins, despite the child's expressed wishes to maintain their existing name and legal father-child relationship. According to the European Court, the child's best interests were duly taken into consideration, even if the outcome ran counter to the child's preferences. The French courts attempted to strike a balance between the child's interests and those of the biological father.

The French court's decision did not alter the child's living arrangements, as they continued to reside with the Mandet family until reaching adulthood, in accordance with their wishes. Therefore, the French courts did not exceed their margin of appreciation in this case, and no violation of the ECHR occurred.

Judge Nußberger dissented and argued that the right to know one's origins should be a choice rather than an obligation. She contended that the measures taken by the French courts solely favored the biological father's interests, rather than those of the child. Considering the child's age, as they were close to adulthood, Judge Nußberger believed the child should have had the

opportunity to decide whether they wanted to discover the truth about their origins and maintain contact with their biological father.

From the decision, it is evident that courts play a significant role in enforcing these rights. Therefore, as children's rights to know their father and receive support and care from their family are human rights, there are fundamental principles that courts should follow to uphold these rights. The court's decision is based on three principles: non-discrimination, the best interests of the child, and the right to expression. These principles derive from the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Courts are obligated to consider the below discussed principles when determining paternity and making decisions.

The first principle is the right to freedom from discrimination. The Constitution of the Federal Democratic Republic of Ethiopia incorporates the principle of freedom from discrimination. Article 25 recognizes equality before the law and states that children born out of wedlock shall have the same rights as children born within marriage, as specified under Article 36(4). Article 2 of the Convention on the Rights of the Child and Article 3 of the African Charter on the Rights and Welfare of the Child ensure the rights outlined in these instruments without any form of discrimination, emphasizing that every child, regardless of race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status, is entitled to these rights.

The second principle is the best interests of the child. Article 36(2) of the Constitution of the Federal Democratic Republic of Ethiopia states that in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities, or legislative bodies, the primary consideration shall be the best interests of the child. Similarly, Article 3 of the Convention on the Rights of the Child and Article 4 of the African Charter on the Rights and Welfare of the Child emphasize that the best interests of the child should be a primary consideration in all actions concerning children, whether conducted by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

The third principle is the right to life and the survival and development of the child. Article 6 of the Convention on the Rights of the Child and Article 5 of the African Charter on the Rights and Welfare of the Child acknowledge that every child possesses the inherent right to life and should, to the maximum extent possible, be provided with conditions that ensure their survival and

development. Similarly, Article 14 of the Constitution of the Federal Democratic Republic of Ethiopia guarantees every person the inviolable and inalienable right to life, security of person, and liberty, and Article 36(1)(a) emphasizes that every child has the right to life.

The last principle is freedom of expression. Article 29(2) of the Constitution of the Federal Democratic Republic of Ethiopia recognizes the right to freedom of expression without any interference for every individual. Article 12(1) of the Convention on the Rights of the Child and Article 7 of the African Charter on the Rights and Welfare of the Child acknowledge that a child capable of forming their own views has the right to freely express those views in all matters affecting them, with due weight given to their views based on their age and maturity.

In practice, these principles can be observed in court cases involving declarations of paternity in various countries, including our own. In the European Court of Human Rights, cases concerning paternity suits have been addressed, and these principles have been applied in each case. However, the principle of the best interests of the child is often subject to interpretation and debate.

In this particular case, the court considered all the principles and based its decision on the principles of freedom from discrimination, the best interests of the child, and freedom of expression. The court's ability to balance the interests of the child and the biological father serves as a lesson to our own courts. When applying the best interests of the child principle, judges should exercise due care and tailor their interpretation of the principle to suit the specific circumstances of the case. For instance, while DNA testing is the most effective means of establishing paternity, it may not always be in the best interest of the child's rights.

In a 2009 case in the South African High Court, it was held that "it will most often be in the best interests of a child to have any doubts about true paternity resolved and put beyond doubt by the best available evidence." However, this decision was overturned on appeal to the Supreme Court of Appeal in 2010, on the grounds that scientific tests to determine paternity should not be ordered when paternity has already been shown on a balance of probabilities<sup>40</sup>.

In another case, *D v M and Others*<sup>41</sup> [2015] ZAGPJHC 288, the court approached the principles differently. The case involved a dispute between a grandmother, the mother of the late M.J.S., and a woman, M, over the paternity of two minor children, N.M. and J.M. The grandmother

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<sup>40</sup> LB v YD 2009 (5) SA 463(T), paragraph 23, reversed on appeal in YD(now M) v LB 2010(6)SA 338 (SCA)

<sup>41</sup> <<https://www.saflii.org/za/cases/ZAGPJHC/2015/288.html>>

sought a court order compelling M and her children to undergo DNA testing to determine if her deceased son, SD, was their biological father.

After SD's death, the grandmother discovered that a death benefit of R2 million was payable by the Pension Fund to SD's dependents or, in the absence of any dependents, to his estate. The Pension Fund determined that Z was a dependent and therefore the beneficiary of the death benefit.

The grandmother, who had questioned the children's paternity during SD's lifetime, requested the Pension Fund to subject M and Z to DNA testing. However, the Pension Fund refused the request, allowing the grandmother time to provide evidence that Z was not SD's child. M opposed the grandmother's application for a court order mandating DNA testing.

M and SD had been involved in an intimate relationship from November 2005 until the middle of 2010. The grandmother claimed that the relationship was tumultuous, with a three-month breakup after an incident of violence. Shortly after their reconciliation, M informed SD that she was pregnant. SD allegedly requested a paternity test, but M refused. As a result, SD stopped providing financial support for Z. M denied the grandmother's allegations.

The court then had to decide whether exhuming SD's body was necessary for the paternity testing. Regarding this issue, the judge stated, "If there is a will appointing the applicant as the sole heir and the Master has accepted and registered it as the deceased's will, then it means the deceased disinherited the minors, and they would not benefit from the deceased estate. The first respondent would be entitled, if desired, to lodge a claim for maintenance on behalf of the minors from the estate. The deceased's pension benefits do not form part of the deceased estate, except under certain exceptions as provided in section 37C of the Pension Benefits Act 24 of 1956. As for a court order pertaining to such benefits, whether obtained rightly or wrongly, it is established that this court shall abide by such order until lawfully set aside. Considering the evidence presented, it is not in the best interest of the children to exhume their father's remains and subject them to blood tests for paternity. Consequently, this application is dismissed." The application was ultimately dismissed with costs.

In summary, both international and national laws recognize the rights of children born out of wedlock on an equal basis with children born within marriage. Courts establish paternity by considering all necessary issues and principles.

## CHAPTER FOUR

### DISCUSSIONS AND FINDINGS

This chapter is dedicated to interpreting and analyzing data gathered from interviews, personal observations, and court cases. The data primarily focuses on synthesizing the legal and practical challenges associated with establishing paternity of children born out of wedlock in courts. Court cases are also utilized as evidence to demonstrate these challenges.

#### **4.1 Legal and practical challenges on judicial declaration of paternity**

Children born without a legally recognized relationship have the right to know their father and receive financial support. To exercise this right, a judicial declaration of paternity is required. However, in practice, this is not a straightforward task, as there are numerous challenges involved in establishing paternity for these children. These challenges arise from legal provisions, practical obstacles, or the circumstances faced by mothers appearing in court.

Upon thorough examination of the relevant provision (Article 143 of the Family Code), it becomes apparent that it lacks clear definition, leaving room for interpretation. Secondly, there are instances that occur outside the scope of the law, making it challenging to address those facts and conditions since they are not explicitly covered. For example, a child born from a single act of sexual intercourse is not accounted for in the provisions listed under Article 143.

Thirdly, proving facts based on witnesses, as mentioned in the provisions, is exceedingly difficult due to the secretive nature of such acts. Additionally, the law does not accept DNA evidence as conclusive proof for the mother. Therefore, in the absence of witnesses, there is a challenge in ordering DNA tests to establish paternity. Furthermore, in practical terms, mothers face difficulties in presenting facts in court, as they may lack knowledge and understanding of the law or lack access to professional assistance, thus diminishing their ability to substantiate their claims. Moreover, if the relationship with the alleged father was kept hidden, the mother may struggle to present witnesses.

Fourthly, the law does not allow the mother to prove paternity solely based on DNA when she lacks witnesses and documentary evidence. Even if such tests were allowed, the mother might

not afford the associated costs due to economic constraints. Additionally, it would be a challenge if the alleged father refuses to undergo the test.

Fifthly, the primary reason mothers seek court intervention to establish paternity is to obtain financial support. They approach the court in times of great need, often requesting child support until paternity is confirmed. Striking a balance between the child's right to maintenance and the defendant's right to privacy poses a significant challenge.

This chapter will extensively address each of these points. It will analyze cases pertaining to each issue and present the perspectives of judges who specialize in family law in the Federal First Instance Courts. Moreover, the experiences of mothers who have sought court assistance in establishing paternity will be discussed in detail.

#### **4.1.1 Legal Challenges**

##### **4.1.1.1 Challenges on Absence of Evidence vis-à-vis the Best Interest of the Child Principle**

Paternity accusations are easily made but challenging to prove or disprove, involving acts of darkness and secrecy. When paternity is disputed, efforts may be made to establish fatherhood through court proceedings. The mother initiating the case must present all necessary evidence for reliable identification of the biological father, including witnesses and documents. However, the chances of finding evidence can be low, particularly in cases where the child is conceived through rape or in a clandestine relationship, making it difficult to prove paternity.

Under the revised Family Code, one condition for establishing paternity through judicial declaration is the act of abduction or rape, which is committed without the woman's consent and may involve force, trickery, or deception<sup>42</sup>. Such acts are considered crimes under Article 620 of the Ethiopian Criminal Code. To establish paternity under these conditions, the woman must prove that she was abducted or raped, and that the pregnancy resulted from the act<sup>43</sup>. In paternity cases brought to court, the burden of proof is generally based on a preponderance of the evidence, without requiring proof beyond reasonable doubt.

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<sup>42</sup> The Revised Family Code, article 143(a)

<sup>43</sup> The Revised Family Code, article 143(a)

In cases of rape, the mother seeking paternity establishment may lack evidence to prove that she was raped by the alleged father during the period of conception, resulting in the birth of the child. However, to declare paternity, the trial requires corroborating circumstantial evidence and credible witnesses. Sometimes, even when witnesses are presented, they may not possess the ability to prove the facts, as they only know what the applicant has told them. In such situations, the court faces a serious challenge in ensuring the basic rights of the child, particularly child maintenance. The only reliable way to prove paternity is through DNA testing; however, DNA tests cannot be ordered solely for the purpose of establishing paternity without corroborating evidence<sup>44</sup>. Although the admissibility of DNA evidence to establish paternity has been recently challenged in courts, there is inconsistency in court decisions regarding this rule of law.

For example, in File No. 97063 on 13/12/2021, the plaintiff filed an application to establish paternity and child support. She stated that she worked as a domestic worker and the respondent was a neighbor of the people she worked for. The respondent used to visit the house and took advantage of the absence of others to rape her for two days. She did not disclose the matter to anyone and later left the house, raising the child alone for seven years without informing the respondent that he was the child's father. The respondent denied his paternity, and although the plaintiff produced witnesses, their credibility was questioned. The Federal Court of First Instance, Addis Ketema Division, ordered a DNA test based on the best interest of the child principle; however, the mother expressed her inability to cover the cost of the test. Consequently, the applicant's complaint was rejected due to her failure to prove her case.

In another case, the petitioner filed a petition in the same court, identified as File No. 101293. She stated that while employed as a servant at the respondent's house, she was forced and raped, resulting in the birth of a child. She requested the court to declare paternity and award child support. In response, the respondent denied the rape allegations and claimed that he was not the father of the child. After considering the arguments, the court directed the applicant to provide evidence for her case. However, she explained that she could not provide a witness as no one was aware of the incident, and she requested a DNA test. The court ordered the DNA test to be conducted, with the Federal Children's Justice Project covering the cost. The test confirmed that

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<sup>44</sup> As per the articles stipulated in the code, it is clear that DNA cannot be used as evidence to establish paternity but can be employed as defense evidence for disowning the child.

the respondent was indeed the father of the child. Surprisingly, in its decision on January 25, 2023, the court rejected the applicant's petition, incorrectly interpreting the DNA result to conclude that the respondent was not the father. The result actually indicated a 99.9% probability of paternity. Although the court misunderstood the result, it is unlawful for the court to accept DNA as conclusive evidence since the family code does not permit the court to order DNA tests for paternity establishment.

Furthermore, besides cases involving rape, there are circumstances where proving paternity is impossible without DNA. Secret relationships are a common example, where witness testimony cannot verify the relationship. In the absence of witnesses, DNA remains the only viable means of proving paternity. Unfortunately, the law does not recognize DNA as conclusive evidence for establishing paternity. Consequently, the fate of children in situations where evidence is lacking to establish paternity becomes a significant challenge.

Overall, due to the unavailability of evidence in such cases, it becomes challenging to secure the child's right to receive child support. Through focus group discussions conducted for this research, it became evident that judges often order DNA tests and base their decisions on the results to safeguard the child's right to maintenance. However, judges generally believe that DNA is not evidence to prove paternity, but rather to disprove it. Additionally, the burden of proving paternity primarily falls upon the mother initiating the action unless a prima facie case is established, shifting the burden to the defendant. In the current context, the court faces a dilemma between ensuring the child's right to know their paternity and their right to financial support, while also complying with legal requirements. Nonetheless, it is widely recognized that preserving the child's rights is an obligatory duty. Personally, I also share this belief. Children have the right to know their fathers and receive financial support, and these rights should be upheld. Although there is a gap in the law regarding this matter, judges can rely on the decisions of the Cassation Division of the Supreme Court, particularly Case Number 148570 (which affirmed the court's authority to order DNA tests for the sake of justice), as well as international conventions such as the CRC and the principles of the constitution that prioritize the best interests of the child in making their decisions.

#### **4.1.1.2 Challenges on issues not covered by the law vis-à-vis the best interest of the child principle**

Article 143(d) of the revised Family Code stipulates that if a child is conceived during a series of sexual intercourse while the couple was together and within the period when pregnancy could occur, the man would be considered the father of the child. Even if the relationship is not legally recognized, the child born from such a relationship should have a natural and legal father. Therefore, if the alleged father does not accept the child as his own, the court may declare paternity based on the existence of this relationship. However, verifying the two necessary points for establishing paternity under this provision poses challenges, as they are open to interpretation and difficult to prove with evidence.

For instance, the interpretation of the phrase "continuous sexual intercourse" varies among judges. Some judges believe that it does not exclude or include any specific duration of a relationship. They argue that the important factor is the existence of a relationship, regardless of whether it lasted one or two days, as long as it can be established that the child was born as a result of this relationship. Their perspective is based on the intention of the law to prevent children from being fatherless and to ensure their right to financial support. On the other hand, other judges contend that a one-day or two-day relationship is not sufficient, and the relationship should be repeated. They argue that the law should be respected, as it specifically mentions "continuous sexual relations," and one or two days cannot be considered consecutive. Their reasoning is to prevent false accusations of paternity and to ensure that only actual fathers are recognized, rather than allowing anyone the mother spent a brief time with to be accused of fatherhood.

These differing interpretations hold significant weight in establishing paternity in court. It raises the question of whether the interpretation of "continuous sexual relations" should prioritize the best interests of the child or strictly adhere to the wording of the law. Analyzing Article 143's provisions indicates that continuous sexual intercourse does not encompass one-day or two-day relationships. If the law intended to include all children born outside legally recognized relationships, it would not have set forth verification requirements in its subsections. Instead, it could have simply stated that "if the father does not accept children born from relationships not recognized by law, paternity will be declared in court." Moreover, it is known that pregnancy can

occur from one-day or spontaneous sexual intercourse. Consequently, there is a considerable challenge in interpreting the law within the court system.

During the research conducted in the Addis Ketema Divisional Court and the Arada Divisional Court, it was observed that judges have two different interpretations regarding these issues. Some judges believe that the law does not exclude children born as a result of intercourse within a day or two, while others consider these cases as not covered by the law. Two cases illustrate these different interpretations. In File No. 80478, filed in the Family Court, Addis Ketema Division, the plaintiff sought a declaration of paternity on February 12, 2019, claiming that the respondent was the father of her child, born on August 13, 2018. During the trial, the plaintiff admitted to a single act of sexual intercourse with the respondent, but the respondent argued that the plaintiff never discussed her pregnancy with him, and thus, he refused to accept the child as his own. The court denied the paternity case on March 23, 2021, stating that the plaintiff could not request a declaration of paternity in the absence of continuous sexual intercourse.

In contrast, in the Arada Divisional Court, Case No. 212641 on December 4, 2022, the petitioner claimed that she had a sexual relationship with the respondent in 2022 due to their friendship, and on July 22, 2022, they had a child named Abigail Mathias. The petitioner requested child support as the respondent was not assisting in raising the child. In his response on January 01, 2023, the respondent denied being friends with the petitioner and claimed that they had sexual intercourse with a condom on one occasion, without recalling the specific date. Furthermore, he argued that there was no relationship between them and that he was not the child's father. During the hearing, the petitioner admitted to having sex with the respondent for two days, once with a condom and once without. The court ordered a DNA test, which confirmed that the respondent was not the father. In its decision on March 20, 2023, the court concluded that the respondent was not obligated to pay child support as he was not the father of the child. Therefore, this court allowed the paternity of a child born from a one-day relationship to be established.

These cases exemplify the divergent treatment of relationships not explicitly covered by the law. However, it is important to note that a judicial declaration of paternity is only admissible when the conditions specified in Article 143(a) to (e) of the Family Code are fulfilled. This understanding is supported by an analysis of a decision by the Federal Supreme Court's Cassation Division, Case No. 68418, dated May 30, 2020. According to the court's analysis,

paternity can be confirmed under Article 143 when one of the conditions specified in subsections (a) to (e) is met. The court emphasized that the legislator intended to establish paternity through the court but with strict conditions, ensuring that individuals who are not fathers are not falsely declared as such and that children are not left without a father. Thus, the court should carefully ensure that the standards and parameters specified in the law are met before confirming paternity.

This interpretation suggests that Article 143 provides an exhaustive list, and it is not possible to establish paternity based on conditions not explicitly stated in the law by invoking the best interest of the child principle. However, the requirement of continuous sexual intercourse imposed by the law infringes upon the rights of children born from spontaneous sexual encounters. Therefore, the law should be drafted based on the best interests and rights of children, as guaranteed by international agreements and the country's constitution.

#### **4.1.1.3 Challenges in DNA Evidence for Establishing Paternity**

DNA profiling is increasingly crucial in court procedures for investigating the paternity of children born outside legal marriage. It is the most reliable and conclusive method for determining whether an alleged father is the biological father of a child. The revised Family Code, under Article 144, acknowledges the use of medical evidence as a means for the alleged father to defend himself. However, the admissibility of DNA evidence as the sole proof of paternity for the petitioner mother remains controversial. In many cases, it is the mother who seeks to establish paternity for maintenance purposes, placing the burden of proof on her to demonstrate that the defendant is the father. However, the revised Family Code does not clearly specify the type of evidence she must present.

In civil cases such as paternity establishment, the petitioner has the right to prove facts using any evidence, unless the law stipulates specific requirements. According to the Civil Code of Ethiopia, Article 2002, evidence for proving facts can include witness testimony or documents. While written evidence is required for disputes related to contracts involving immovable property<sup>45</sup>, government administrative contracts<sup>46</sup>, and long-term contracts<sup>47</sup>, no special evidence

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<sup>45</sup> article 1723 of the civil code

is mandated for the mother to establish paternity. The law only outlines the facts that need to be proven. During the focus group discussions conducted for this research, family court judges expressed differing opinions on the use of DNA evidence to establish paternity. Some judges believed that DNA cannot serve as evidence, but they ordered tests when there was no other evidence available to prove paternity conclusively. However, one Supreme Court judge who participated in the discussion argued that if the law does not explicitly prohibit DNA evidence, it should be allowed. He maintained that in civil cases, the mother has the freedom to prove her facts using any kind of evidence.

While this argument seems valid, others raised concerns about the difficulties faced in writing judgments after allowing DNA as a means of proving paternity. Questions arose regarding which article could be cited to establish paternity after a DNA test. Referring to Article 143 in the judgment was deemed inappropriate since the facts mentioned in that article were not proven by the mother, and DNA alone cannot establish such facts. Alternatively, should the court simply rely on the mother's word? The judges discussed a hypothetical scenario where the mother claims the defendant is the father of her child based on a sexual relationship they had, but the defendant denies any relation or parentage. In such a case, if the mother requests a DNA test as she lacks other evidence and the court orders the test, which then confirms the defendant as the father, the court would face challenges in citing Article 143(d). The court cannot reference this article when the required facts stated within it have not been proven. Furthermore, what if the defendant objects to the DNA test by arguing that the mother should first prove the existence of their sexual relationship at the time of conception? In such a situation, the court lacks a legal basis to disregard the defendant's argument and order the DNA test. Therefore, DNA cannot be considered as evidence for establishing paternity based on the mother's claim alone. Additional evidence must be presented to demonstrate a potential relationship between the mother and alleged father that could result in conception. This fact cannot be proven by DNA alone and requires supplementary evidence such as witness testimony or written evidence. From this analysis, it is evident that DNA cannot serve as the sole evidence in establishing paternity.

However, in practice, paternity cases are often established through DNA evidence, as observed in discussions and case observations. Judges justify this approach by citing the best interest of

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<sup>46</sup> Ibid article 1724

<sup>47</sup> Ibid article 1725

the child. This indicates a problem with the interpretation of the relevant article and gaps in the law concerning the requirements and admissibility of DNA evidence for establishing paternity.

#### **4.1.1.4 Right to Privacy and DNA Testing Orders**

The right to privacy is a fundamental right that cannot be disregarded. Consent from the parties involved is necessary for DNA testing. Even if DNA testing is crucial for a case, parties cannot be forced to undergo the test without their consent. This rule aligns with the overall requirement of consent in legal matters. The parties' consent to undergo DNA testing cannot be overridden by any other factor, even if conventional evidence suggests otherwise.

In paternity cases, difficulties arise when the defendant refuses to undergo the DNA test and the mother lacks other evidence to establish paternity. Sometimes, the defendant even disappears after the DNA testing order is issued. Both privacy rights and the rights of the child are human rights that must be respected. Respecting the defendant's right to privacy could potentially violate the child's right to know their father and receive financial support. In the focus group discussion, judges argued that while the defendant has a right to privacy, the child also has the right to know their father and receive support. The proposed solution is that if the respondent does not comply with the court's order, the court can draw an adverse inference against them. This inference would be a legal consequence of their refusal and is grounded in Article 22 of the civil code. Almost all judges utilize this legal principle when the defendant refuses to undergo the test. However, a question arises: if the mother has no other evidence and the defendant refuses the DNA test, will the court render a paternity decision without any evidence? The writer raised this question, and most judges responded affirmatively, stating that it is a practical approach that they have employed many times. I also observed a case from the Addis Ketema Division, file No. 80370, where the court issued a paternity decision without evidence by inferring Article 22 of the civil code, as the mother could not present witnesses and the defendant refused the DNA test. In this case, the plaintiff requested a paternity declaration and child maintenance based on her claim of a continuous sexual relationship with the defendant resulting in the birth of the child. The defendant did not appear in court but was represented by his brother, who denied his paternity. The plaintiff attempted to produce witnesses but was unable to do so as they were far from Addis Ababa. Ultimately, she requested the court to order a DNA test, which

the defendant refused. Consequently, the court issued a paternity decision by invoking Article 22 of the civil code and the CRC.

From the writer's perspective, it is challenging to render a decision without any evidence. Courts should base their decisions on facts, logic, and evidence. This is why it is stated that DNA alone cannot be considered evidence to prove paternity; it should corroborate with other evidence. How can a defendant accept their paternity without at least some evidence? The consequences may not be positive. The defendant may be required to support a child with whom they may never have lived or developed a parent-child relationship. Since they have not accepted their paternity, they may be unwilling to provide child maintenance or establish any attachment with the child. On this point, I would like to consider the reverse scenario. What if the mother refuses to undergo the test, which is requested by the defendant as a defense? Would the court render a non-paternity decision?

In my view, when there is an apparent conflict between a person's right to privacy and the court's duty to uncover the truth, it is preferable for the court to suggest that the parties seek a settlement and refer the case to experts to convince the parties involved.

#### **4.1.2 Practical Challenges**

##### **4.1.2.1 Challenges Related to Paternity Establishment Proceedings and the Best Interest of the Child Principle**

When petitions for paternity declaration and child maintenance are filed, these cases undergo a legal process. The primary objective of the court proceedings in such cases is to determine whether the alleged person is the biological father of the child. In reaching a decision, the court must carefully examine the evidence based on facts, logic, and truth. It is essential to balance the rights of the child and the alleged father, ensuring a fair trial. However, it has been observed that in court, there is often a greater emphasis on protecting the rights of the child, which sometimes leads to biased decision-making rather than a thorough examination of the evidence. Through interviews conducted for this study, judges admitted that they tend to be biased towards the child's rights in court, as safeguarding the best interest of the child is paramount. In my observations of court cases, this bias manifests in various ways. For instance, if the accused admits to having had sexual relations with the mother, the court may overlook the issue of when the sexual intercourse occurred, particularly concerning the period when conception could have taken place. Instead of investigating this critical aspect, the court may declare paternity and

determine the amount of child maintenance without proper scrutiny. In such instances, the burden of proof is simply shifted from the mother to the accused. Additionally, courts may place the burden of proof on the accused even when the mother herself believes she had a relationship with another man, merely because the accused admitted his relation with the petitioner. If the accused is unable to afford the cost of DNA testing, it may be decided that he is the father of the child, and child maintenance is awarded.

To illustrate this, one case can be cited as an example. In the Federal First Instance Court, file number 92163, the applicant filed a complaint on September 15, 2021, stating that they had a two-year-old daughter named Athanasiya from a romantic relationship with the respondent and requested the court to order the respondent to pay child support. In his response on November 26, 2021, the respondent admitted to having had a secret relationship with the applicant but stated that he ended the relationship and returned to his lover because he became aware that the applicant had a relationship with another man. Due to this doubt, he argued that he should not be obligated to pay child support. During the trial, the applicant did not deny having a relationship with another man, and even the witnesses presented by the applicant testified that she believed she had a relationship with another man at the time of the issue's discussion. However, she claimed that she chose the respondent as the father of her child out of love. The court ordered the respondent and the child to undergo a DNA test, with the respondent covering the cost. The defendant stated that he did not have the financial means to cover the cost, and as a result, the court ruled on November 21, 2021, that since the defendant did not deny having sexual relations with the applicant, he is the father of the child, declared paternity, and awarded child support.

In this decision, the court disregarded the arguments presented by the defendant and failed to consider the facts and evidence presented. The court did not investigate when the applicant had sexual intercourse with the accused, which is a fundamental point for making a decision according to Article 143 (d) of the Family Code. Furthermore, the court shifted the burden of proof to the respondent and ordered him to cover the medical expenses, even though the petitioner had the duty to demonstrate why she chose the respondent as the father of her child, excluding the other man, as provided in Article 144 (a) of the Family Code.

Another similar case occurred in the Federal First Instance Court, file number 104033. The petitioner filed charges on September 27, 2022, claiming that the respondent is the father of her three children resulting from their love relationship. The accused denied the love relationship but

admitted to having had sexual intercourse with her multiple times, arguing that the plaintiff was a prostitute and that he was not the father of the children. The petitioner did not deny being a prostitute but argued that there was a significant intimate association between them for several years before and during pregnancy, as well as after the birth of the children, thus asserting that the children are his. No witnesses were presented by the defendant, but the witnesses presented by the petitioner testified that the children belonged to the defendant based on their consistent presence together and witnessing the accused visiting the respondent's house frequently and contacting her by phone. After hearing the arguments, the court ordered the respondent and the children to undergo a DNA test, with the respondent covering the cost. However, the test was not conducted because the defendant claimed he could not afford it. Subsequently, the court declared paternity and awarded child support.

In this case, there was no effort made by the petitioner to prove why she chose the respondent as the father of her children, excluding other potential fathers. Thus, the accused was determined to be the father without substantial evidence. This pattern is observed in many court arguments, particularly when the accused admits to having sexual relations with the applicant. The burden of proof is commonly shifted to the accused, regardless of whether the sexual relationship took place during a period when conception was possible or whether the mother had sexual relations with another man during that time. As a result, the accused bears the full responsibility of disproving the charges, often through DNA testing, which is a basic requirement but financially challenging for a poor man. If the accused cannot afford the DNA test, a court order may declare him the father of the child solely based on unsupported evidence and mandate child support until the child reaches the age of eighteen. It is impossible for anyone but God to definitively determine whether the man is the biological father of the child.

While it is argued that this approach is appropriate for protecting the rights of children, if the DNA test results prove that the accused is not the father, addressing the rights of the accused becomes difficult. In such cases, it would be reasonable for the defendant to be reimbursed for the cost of the test by the plaintiff and for the defendant to receive compensation for any moral harm suffered as a result of the lawsuit. However, if the plaintiff lacks the financial capacity to fulfill these obligations, it is not appropriate to place the entire responsibility on the accused. In cases involving children, it is expected to interpret the law in a manner that benefits them. However, this should not be achieved by violating the rights of other individuals. Instead of

solely compelling the accused to cover the cost of the DNA test, alternative options could be explored, such as seeking sponsorship from a third party willing to cover the cost on behalf of the mother. For example, the Federal Supreme Court's Children's Justice Project, although not always providing such financial support, has been known to offer assistance in covering these costs, providing crucial support to mothers. This ensures a balanced approach that respects the rights of both individuals.

#### **4.1.2.2 The cost of DNA Test**

The cost of DNA tests in paternity establishment cases poses a significant challenge, particularly for economically disadvantaged mothers. It is often the case that these women lack the financial means to cover the cost of the DNA test, which is necessary to prove paternity. As a result, many cases are closed due to the absence of evidence.

In some instances, when the court orders a DNA test but the mother cannot afford it, the Federal Supreme Court's Children's Justice Project may step in to cover the cost. However, it is important to note that the project does not always have the financial resources to provide this support. Consequently, if the project is unable to cover the cost, the case is put on hold until such time that funding becomes available. This means that even if DNA testing is not legally allowed for paternity establishment, it becomes challenging for mothers to access this evidence due to financial constraints.

To address this issue and ensure the rights of children, it is crucial to establish an institution or organization with a mandate to cover the cost of DNA tests in paternity cases. During discussions with Mr. Teklhaymanot Dage, the head of the Federal Supreme Court's Children's Justice Project, it was mentioned that starting in 2023, the project will cover all DNA test costs for mothers who lack economic capacity. This means that if a mother does not have the financial means to pay for the test, the project will immediately cover the cost. The funding for the project comes from various donors such as UNFPA, Save the Children, and the Population Fund.

However, there may be concerns about the long-term sustainability of this support. Relying solely on donor funding can be unpredictable, and there is a need to ensure a consistent and reliable source of funding to cover the costs of DNA tests for paternity establishment. This will help guarantee that mothers, particularly those who are economically disadvantaged, can access this crucial evidence and protect the rights of children in cases where paternity is disputed.

#### **4.1.2.3 Challenges of child maintenance order:**

One of the challenges in granting child maintenance is the time it takes to establish paternity. During this process, the child may face various problems related to their maintenance, such as the need for food, shelter, or medical expenses. Courts face difficulties in deciding whether to grant child maintenance before paternity is established. The implementation of paternity establishment procedures carries a risk of identifying men as fathers who may not actually be the biological fathers. Due to this uncertainty, it becomes challenging for courts to order temporary child maintenance. To address this issue and protect the rights of the child, expediting the trial process is crucial. It is important to note that the best interest of the child principle cannot be properly considered without confirmed paternity.

#### **4.1.2.4 Low level of awareness of mothers on problems associated with judicial declaration of paternity:**

Mothers who seek judicial declaration of paternity often lack legal knowledge and are not supported by experts. This not only hinders courts from impartially examining the cases but also leads them to go beyond their role of protecting the interests of the children and shifting the burden of proof from the mother to the accused. For example, a 37-year-old educated woman I spoke with expressed her surprise when the father denied paternity, expecting the court to independently investigate and decide the case. However, her experience in court left her disappointed as she did not receive the outcome she expected.

Another mother I interviewed, a 27-year-old street coffee seller, shared her economic burdens resulting from going through the court process for child maintenance. She had the responsibility of raising her child and struggled to cover expenses such as food, education, housing, and medical costs. Attending court proceedings forced her to miss work, leading to income loss and an inability to meet daily expenses. These mothers were unaware that the court required witnesses and other forms of evidence, leaving them unprepared for the dispute. They simply came to hear what the court had to say, unaware of the time and effort required to uncover the truth and their responsibility to provide evidence.

These mothers expressed their desire for the father to take responsibility for the child, as the cost of living continues to rise and they are unable to meet the child's expenses with their earnings

alone. They regretted not being able to fulfill their children's needs and wished for the court proceedings to answer the question of who the child's father is, not only for their child but also for society. They also mentioned the burdens of raising a child alone and regretted not being married, as marriage would have involved shared responsibility with the father, reduced psychological pressure from the community and relatives, and provided their child with a father figure like their friends have.

In general, mothers who seek paternity establishment through court proceedings have limited legal knowledge and are unfamiliar with court procedures. Due to their economic challenges, they cannot afford to hire a lawyer. However, the Federal Supreme Court's Children's Justice Project, according to Mr. Teklhaymanot Dagne, provides voluntary lawyers for economically disadvantaged mothers. These lawyers work in all first-instance courts, except for Addis Ketema and Arada bench due to their location. The project is also planning to extend legal aid services to these two divisions, which will have a significant impact on court proceedings.

Overall, gaps in the law and the lack of clarity surrounding it contribute to the complexity of paternity establishment trials and lead to inconsistency in the application of the law among different courts. The rights of children not covered by Article 143, the admissibility of DNA evidence, the absence of laws regarding temporary child maintenance, the lack of knowledge about court proceedings, and the economic situation of mothers seeking paternity establishment create burdens for judges in ensuring the best interests of the child. The practical implementation shows that judges tend to prioritize the best interest of the child and interpret the law accordingly, sometimes without clear limitations. However, this approach can result in alleged fathers not being equally treated in a court of law. The principle of the best interest of the child has a significant impact on disregarding the alleged father's human rights, such as due process and non-discrimination. The mentioned cases exemplify these challenges.

## **Chapter Five**

### **Conclusion and Recommendation**

#### **Conclusion**

In general, the main issues revolve around the lack of clarity, exhaustiveness, and absence of DNA as proof of paternity within the law. The lack of clarity has resulted in inconsistent interpretations by the courts, making it difficult to determine which cases fall under the provision and which do not. Additionally, the law excludes conditions beyond those specified under section 143, denying children their right to know their father, receive support and care, and inherit from him, in violation of international laws and agreements ratified by Ethiopia. Furthermore, the law's restriction of DNA usage solely for disproving paternity is incongruent with current technological advancements. In the absence of alternative evidence, allowing DNA as proof of paternity would provide more convincing evidence.

Concerning DNA testing, the absence of specified procedures in the law hampers addressing privacy concerns, confidentiality of test results, and ethical considerations raised by both plaintiffs and defendants. Moreover, the lack of guidelines for court proceedings when the accused or plaintiff refuses to undergo the investigation hinders the protection of the rights of the mother, father, and child, creating difficulties for the courts.

Regarding temporary child maintenance, the law's silence on the matter leaves judges without a basis to grant or deny requests, leading to challenges in court proceedings, especially for individuals representing themselves without legal assistance. The burden falls heavily on the mother to prove paternity, further exacerbating the difficulty of litigation.

Apart from legal issues, problems arise from courts solely interpreting the law based on the rights and interests of children, disregarding the rights of the defendants and violating the principle of equality.

## **Recommendations**

The revised family law lacks clear provisions that would enable all children to have a legally recognized father. Additionally, it fails to address the use of DNA as evidence for establishing paternity. Amending the family law to address these issues is crucial in mitigating practical challenges. Regarding DNA, it is essential to enact legislation that considers ethical considerations and other relevant factors, empowering judges to effectively implement such provisions. And for rape, abduction, and hidden love relation cases the law should admitted DNA test for paternity establishment since no other evidence is available for such kind of cases.

There exists variation in the interpretation of the law among judges, and a bias towards prioritizing the rights of the child. To address this issue, it is imperative to conduct awareness creation training for family bench judges, aiming to reduce inconsistencies and ensure fair treatment by the judiciary.

Many mothers are unaware of how to navigate the paternity establishment process, and they often lack the financial means to cover the costs associated with DNA testing. To safeguard the rights of their children, it is necessary to establish institutions tasked with providing advice, information, legal representation, and financial support for DNA testing.

The Ministry of Women, Children and Youth affairs should aware women and youth the consequence of having sex before marriage

Incorporating the idea in school curriculums, using media in creating awareness mechanism about the burden that a women face when born a child out of wedlock- The social and the physiological as well as the economic burden. Not only for women but also men should aware the consequence of sexual intercourse out of wedlock. They should be aware burden of at least the financial responsibility. As my observation at court they don't understand they are responsible to the child born out of wedlock. They think it only the woman's' responsibility of raising the child. And they have no knowledge that the court forced them for the responsibility on child maintenance. So that the awareness creation will decrees the men sexual intercourse out of wedlock.

Health centers should give awareness creation in related to contraception. It helps women to protect unwanted pregnancy so that it decreases the number of fatherless children.

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## Court cases

### In the Federal First Instance Court

File No. 97063

File No. 101293

File No. 80478,

File No. 212641

File No. 80370

File No.92163

File No 104033

Cassation Division of the Supreme Court, particularly Case Number 148570

Addis Ababa University School of Graduate Studies Institute of Human Rights

Discussion check list of judges

- If a mother files a lawsuit stating the circumstances that are not included under Article 143 of the family law, will you handle the lawsuit? Or you reject the petition saying that it is not included in the law. For example, is a child born in one day of sexual intercourse covered by the law or not?
- If the mother has filed her case under Article 143 but has no evidence and asks for a DNA test, will you order the test or not? Why? Dose the law allow DNA alone to prove paternity or not?
- What do you do if the mother cannot afford a DNA test?
- If the accused refuses to take a DNA test and the mother has no other evidence, how do you resolve the dispute?
- Do you award child maintenance before paternity is proven in court? If you do what is the legal grounds?
- In trial proceeding do you balance the interest of the accused and the child or you bias to the child right? If you biased to the child right why?

**Interview check list of women**

- How do you know that you have to go to court to prove paternity and for child maintenance?
- Did you get legal aid or not?
- Did you know what kind of argument you might face when you came to court? did you ready for the debate? Or did you not know what to do?
- Did you know the difficulty of proving paternity in court or not?
- How did you feel after you came to court and got a decision? Have you found a solution?
- Based on your experience, what advice would you give other women about extramarital affairs?