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**ENSURING ETHIOPIAN CHILDREN, IN NEED OF CARE AND
PROTECTION FOR THE ABANDONED CHILD: THE LAW AND THE
PRACTICE, THE CASE OF ADDIS ABEBA**

BY SOLOMON TSADIKU

**ADDIS ABEBA UNIVERSITY SCHOOL OF GRADUATE STUDIES
COLLEGE OF LAW AND GOVERNANCE STUDIES SCHOOL OF LAW**

September, 2020

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**A THESIS SUBMITTED TO THE SCHOOL OF LAW ADDIS ABEBA
UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF THE DEGREE OF MASTERS OF LAW (LL.M) IN
HUMAN RIGHTS LAW**

ADVISOR

YONAS BIRMETA (PHD)

September, 2020

Declaration

I, Solomon Tsadiku, hereby declare that this thesis is my own original work and has never been presented in any other institution. I also declare that where sources are used, they are duly acknowledged.

Signature:

Date:

ADVISOR

I, Yonas Birmeta, have read this thesis and approved it for examination.

Signature:

Date:

APPROVED BY BORD OF EXAMINERS

NAME	DATE	SIGNITURE
1, DEMELASH SEFERAW(PHD)
2, MESENBET ASSEFA(PHD)

Acknowledgment

I would like to thank God for giving me the strength, wisdom and knowledge required to complete this study. I am eternally grateful to my parents; Aba, AquYa, KuriYa and Emay for their continuous support and motivation throughout my academic life. I am grateful to my supervisor, Yonas Birmeta (PhD) for his credence in my ability to complete this study. To my friends, thank you for believing in me. Your words of encouragement and relentless support have played a vital role in me being where I am today. Much honor and respect also goes to those Ethiopians whom they scarify their bloods and life to secure the sovereignty and independence of our country.

God bless Ethiopia, and the people!

List of Abbreviations

AAAWCAB:-Addis Ababa Administration Women's and Children's Affairs Breau

A.A:- Addis Ababa

ACRWC:-African Charter on the Right and Welfare of the Child

CDFE: - Children Deprived of Family Environment

CCPR: - Committee on Civil and Political Right

CRC: - Convention on the Right of the Child

CSA: - Central Statics Agency

FDRE: - Federal Democratic Republic of Ethiopia

Para: - Paragraph

PRT: - Parental Right Termination

RFC: - Revised Family Code

UN: - United Nations

USA: - United States of America

UNHRC: - United Nations Human Right Council

Abstract

Abandoned children are considered as among the vulnerable group of the society; because, they are deprived from family environment through means of rejection or physically abandoned by their own parent or caregiver. The practice of child abandonment mainly violates child right to life, survival and the right to development which has a grantee under CRC, ACRWC and FDRE constitution. It is the main social problem for a long time, especially in Addis Ababa. Most abandoned children in Ethiopia faces high rate poverty, less access to education and labour exploitation. The study mainly identified that, despite the constitutional guarantee for all child right, the Ethiopian legislation are not adequately address the issues of abandoned child in the protection of their right to grow and cared by own family and the right to get alternative child care. In addition, they stay in a bad situation within the care institution until transfer to new foster or adoptive family. Due to such identified legal and practical problems, the study recommended to revise the current legislations in line with the best protection for abandoned child and provide capacity building for parents and child care institutions in order to mitigate the number of abandoned children within Addis Ababa.

Key words: *Child Abandonment; Institutional Care; Alternative Child Care; court; Ethiopia.*

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Chapter One

Introduction

1.1 Background of the Study

It is unquestionable that, parental care for children is the best natural way for their development.¹ In respect of some international and regional human rights conventions provide the child right to know and be cared for by their parents² and impose the primary obligation on parents for the upbringing and development of children.³ However, due to different socio-economic factors, parents become unable to attain their obligation and decided to kill or abandon the newborn baby.

From a different age group, infants and young children are highly vulnerable to abandonment.⁴ Throughout history, parents have been known to abandon their children,⁵ through means of infanticide, exposure, or donation to an apprenticeship or to convents.⁶ Currently, child abandonment is widely recognized as one of the social problems for most of the country.⁷

¹ Federal Democratic Republic of Ethiopia(FDRE) Ministry of Women's and Children Affairs, Alternative Child Care Guidelines on Community Based Child Care, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Service,(2009), Addis Ababa, P 21; (Here in After 'The Guideline')

² Article 7(1) of The Convention on the Right of the Child, Adopted and Opened for Signature, Ratification and Accession by the General Assembly Resolution 44/25 of 20th November 1998 and Enter in to Force 2 September 1990, (Here in after ' the CRC or the convention')

³ Ibid, Article 18(1)

⁴ Kevin Brown(Pro), et al, Child Abandonment and its Prevention in Europe, (University of Nottingham, United kingdom, 2012), P 3(available on <https://bettercarenetwork.org/sites/default/files/attachments/Child%20Abandonment%20and%20Its%20Prevention%20in%20Europe> > accessed on 25 December 2019)

⁵ Joanne Mueller and Lorraine Sher, 'Abandoned Babies and Absent Policies' (2009), Health Policy, P 1

⁶ Abandonment and Child Infanticide, P 1, available on < https://www.press.uchicago.edu/books/TheChild/Child_pages_1-10.pdf > accessed on 12/29/19

⁷ Gerard Youan Vadivalu, 'Legally Defining parental Abandonment of a Child: a Comparison Between South Africa and Californian law'(2014), University of KwaZulu-Natal, Howard College, P 41

The bad of abandoning children does not simply lie in the fact that the parent renounces parental responsibility, but, the real harm that a child is likely to suffer, either in long or short term.⁸ It tends to have serious consequences for the child and it is classifiable as a severe form of child neglect and abuse.⁹ Studies have identified that abandoned child in poor countries faces poverty, less access to education, traumatic grief, impaired cognitive and greater likelihood of being exploited as child labor.¹⁰

Some studies also demonstrated that, child abandonment was the key reason why children under the age of three are placed under institutional care, and they concluded institutional care is damaging to the development of small children relative to foster care.¹¹ Due to its effect, child care institutions place a last resort for better upbringing of children among alternative child care options.¹² And also, institutions are not suitable for the child's future mental as well as emotional development.¹³ Besides its effect on the future, the cared children's rights are not adequately protected, and sometimes, the institutions itself violate some of their basic rights.¹⁴

To provide better protection for abandoned children, States are trying to develop a legal and institutional mechanism by criminalizing the action, accessing alternative care, and allowing unanimous safe abandonment of the child.¹⁵ Legalization of some kind of child abandonment necessitates saving the life of an infant from infanticide or physical abandonment under trash bins or street corners which possibly leads the child into imminent danger.

⁸ S. Giuordano, 'Crime and Misdemeanors: The Case of Child Abandonment', *Journal of Medical Ethics*, Vol. 33, No.1 (Jan, 2007) P 31

⁹ *Ibid*, P 2

¹⁰ Kathryn Whetten, Jan Ostermann...et al 'A Comparison of the Wellbeing of Orphans and Abandoned Children Ages 6–12 in Institutional and Community-Based Care Settings in 5 Less Wealthy Nations', *PLoS ONE* 4(12): e8169(2009), P 2

¹¹ *Ibid*, and see Brown (n 4) P 4

¹² Girmachew Alemu(PhD) and Yonas Birmeta, *Hand Book for the Right of the Child in Ethiopia*, Center for Human Rights, Collage of Law and Governance Studies, Addis Ababa University, P 112

¹³ Workye Tsige, 'Psychological Wellbeing Between Institutional Land Non Institutional Orphan Children In Gulele Sub City Addis Ababa'(2015), Addis Ababa University , Unpublished Thesis, P 3

¹⁴ Save the Children, *Institutional Care: The Last Resort*, Policy Brief (2014), P 3 (available on https://resourcecentre.savethechildren.net/node/8202/pdf/sc_child_care_institutions_policy_brief_.pdf Access on 28/1/2020)

¹⁵ Mueller and Sher(n 5) P 5; see also Youan (n 7) P 27

Statistical figures show that from the total Ethiopian population, children under 18 years cover 52%, and out of this, 71.6% of children are live in a natural family with both parents, 14.5% of children are living with their mothers but not their fathers, whereas only 3% of Children are live with their fathers and 11% of them are orphan who has lost their parents due to death.¹⁶

Under Ethiopian legislation, there is no clear definition of child abandonment. However, Criminal code criminalizes all kinds of child abandonment and neglect by imposing a penalty, fine or imprisonment, to the extent of removing family right in a grave circumstance.¹⁷ Despite the criminalization of this social fact, parents are continuing to abandon their children in a place not suitable for the children's health and wellbeing. In effect, the state took the abandoned children into child care institutions until they transferred to a new adoptive or foster family.

The principle of the best interest of the child applied and manifested through all functioning of government action, policy formulation, and legislative enactment.¹⁸ Courts, police officers, prosecutors, and child care institutions are functioning under the structure of the government and oblige to fully respect and protect this grand principle while they are doing a day-to-day activity including child abandonment cases.¹⁹ However, because of lack of detail governing law and lack of clarity on the law itself, become difficult to attain the full realization of the best interest of the child principle for the protection of an abandoned child.

The study mainly tried to identify the specific Ethiopian statutory provisions and policies which protect and ensure the right of an abandoned child and their families. Besides, the study explores the condition of child abandonment in Addis Ababa. And also, to check whether the child abandonment civil and criminal proceedings held under the notion of the best interest of the child or not. On the way of conducting the study, I will explore any violation of the right for the abandoned children while they cared for by specific institutions that are found within the city.

¹⁶ Ethiopian Central statistical Agency (CSA), Ethiopian Population Projection (2014), Addis Ababa, Ethiopia

¹⁷ The Criminal Code of the FDRE Proclamation No. 414/2004, Article 659(1) and (2)

¹⁸ The FDRE National Children's Policy(April 2017), P 14

¹⁹ FDRE Constitution, Article 9

1.2 Statement of the Problem

In Ethiopia, despite the constitutional guarantees for child rights and protections, child abandonment became one of the social phenomena that existed for a long period.²⁰ It has been an act of parents since the earliest times, but even in our modern enlightened society, children are still ejected from their homes and physically abandoned in frightening numbers. Even though child abandonment is a relatively common occurrence in Addis Ababa, it remains an understudied social phenomenon. Through such practice, Parents or other caregivers violate the right of the child to grow in a family environment and to know and be cared for by his or her parents and other rights stipulated under the CRC and the FDRE constitution.

It is indisputable that, socio-economic conditions of the country exacerbate the number of child abandonment,²¹ and increase the burden of child care institutions for carrying them. As part of this society, we heard several newborn infants found in died and physically abandoned in trash bins, street corners, under wealthy individual's house fence, religious sites, and suburb forest. The researcher also personally observes many reported cases of child abandonment in to the police for investigating the crime.

Currently, in Addis Ababa, almost all abandoned children are cared under state-funded institutions until re-unify with their parents or transfer to adoptive or foster parent. For all abandoned children found in Addis Ababa, Kibeba Teshay, hold the whole burden of carrying the children. The high pressure on a single child care institution could possibly eradicate the degree of protection of the children's basic rights and reduce the quality of service provision.

International as well as regional child right conventions oblige states to protect those children who are in need of care and protection, including abandoned child, through adopting and forming statutory and institutional mechanisms, respectively. As a consequence, the Ethiopian legislator issued a law with the intent to preserve the children right in general, and impose criminal liability on parents without allowing other options for voluntary legal safe child abandonment. Despite

²⁰ Getnet Tadele, 'Child Abandonment: Five Dramatic Cases of Mothers in Addis Ababa'(2006), P 292 (Available on https://pdfs.semanticscholar.org/ac83/eecec191182ae5debb2a10a4d695baed9f9e.pdf?_ga=2.146181168.588235055.1578341629-1889969558.1575661987 accessed on 30/11/2019)(Here in after 'Tadele')

²¹ Ibid, P 303

the promulgation of a prohibiting law for child abandonment, some parents are continuing to abandon their children in unsafe areas because of fear of discovery and criminal liability. Even so, some parents prefer to kill the newborn baby instead of physically abandon in a certain public place. This indicates that, there is a problem of adequately address the issue of child abandonment under the law, or inappropriately interpreted by the executive or the judiciary.

In general, the existing Ethiopian legal regime lacks clear provisions that deal with child abandonment and its subsequent consequence. Even though, if it exists, it lacks clarity in time of practical application. Such legal gaps possibly hamper the full realization of the right and freedoms of the abandoned child and their parent. And, the non-fulfillment of legal guarantees for child right frequently paves the way for passing decisions against the principle of the best interest of the child in civil and criminal cases of child abandonment.

1.3 Research objective

- ❖ To identify different views on the issue of child abandonment.
- ❖ To identify and analyze the legal rights of abandoned children in Ethiopia.
- ❖ To identify and analyze the legal protection of children from abandonment in Ethiopia.
- ❖ To analysis the child abandonment courts proceeding and its effect on the right of the child and their parents.
- ❖ To identify institutional challenges for protecting and preserving the abandoned child rights.

1.4 Research Question

This research seeks to answer the following key questions;

- ❖ What are those different views in relation to child abandonment?
- ❖ What are the different legal rights and protections for the abandoned children under Ethiopian law?
- ❖ How courts, police, and child care institutions handle the case for abandoned child and protect their rights?
- ❖ Is there any legal way-out under the Ethiopian statutory provision to allow parents or caregivers to voluntary legal safe abandonment of their child?

1.5 Research Methodology

Legal research literature recognized that, there is nearly always a certain gap between actual social behavior and the behavior demanded by the legal norm, and certain tension between actual behavior and legally desired behavior.²² In this research topic, I tried to see the existing societal facts that can't be fully addressed and covered by the relevant law or policy. As a result, I select a socio-legal; Non-doctrinal, legal research methodology to attain the intended research objectives. Basically, the qualitative type of research methodology will be employed and some quantitative data will also be used to clarify the research question.

1.6 Sample Size and Sampling Technique

For this research, I used a purposive sampling method from the non-probability sampling technique to identify appropriate and specific institutions or a person who has rich in information for the intended research questions. As a result, the study identified and selects federal first instance court judges who are working in child adoption civil case and criminal abandonment cases in Bola and lideta bench respectively and, federal public prosecutor who are working in Addis Ababa sub-cities branch offices of the federal attorney general as a coordinator of 'child and women affairs'. Investigative police officers are also being selected whom they are working within the Addis Ababa police commission and sub-city district police stations 'women and children crime affairs' as team leader. Finally, employees and managers from Kibeba Teshay child care institution become selected to get enough data about child abandonment.

1.7 Source and Method of Data Collection Techniques

For answering all research questions, I used both primary and secondary sources which intended to clarify the research objective.

1.8 Primary Source

The statutory provisions of relevant Ethiopian laws, international and regional human rights documents which Ethiopia ratified and adopted, court cases, first-hand data collected by relevant

²² Khushal Vibhute Prof (Dr) and Filipos Aynalem, *Legal Research Methods: Teaching material*, (Prepared Under the Sponsorship of Ethiopian Justice and Legal System Research Institute, 2009) P 86

governmental and non-governmental organs, data (information) collected from individuals and personal observations became the main primary source for the research.

1.9 Secondary Source

In this source of data, desk review of different books, university research papers, legal commentaries, concluding observations of international human right committees and dictionaries which are related to the research topic became used.

1.10 Primary Data Collection Techniques

As I already mentioned, the research is socio-legal and mainly uses a qualitative type of methodology. In this type of methodology, primary sources of data will be gathered through semi-structured interviews to have some flexibility while conducting the interview. The following individuals become interviewed;

- ❖ Judges from federal first instance court, lideta branch women and children's bench whom they entertain criminal cases for child abandonment and a civil adoption case of the abandoned child.
- ❖ Interview with public prosecutors whom they are working in police stations as a coordinator (focal person) for women and children's department.
- ❖ Interview with investigative police officer coordinator working in the Addis Ababa police commission and its sub-city district police departments
- ❖ Interview with employees and administrators of Kibeba Teshay child care institution.
- ❖ Interview with social workers from the child care center and court

1.11 Literature Review

In Ethiopia, the issue of child abandonment has got little attention by legal as well as non-legal researchers. As far as the study area is concerned, the researcher couldn't get enough local literatures which directly related to child abandonment. But, some research works are tried to raise the issue of child abandonment in order to support their main themes without detail on the legal aspect. Among the research, Getnet Tadele in his work mainly focused on the reasons for child abandonment in Addis Ababa instead of children right protection. He identified reasons

for child abandonment and areas for abandonment chosen by parents.²³

Meskerem Desalegn on her study *'the role of child care institutions in seeking other children alternative to the best interest of the child'* tried to identify some hitches of the child care institutions during applying the principle of the best interest of the child. She argued that inadequate budget, lack of proper background checking for a child and lack of proper documentation of the orphaned children's negatively affect the best interest of the child in seeking child care alternatives.²⁴

The study undertaken by Gerard Youan discusses the issue of *legally defining parental abandonment of a child under South Africa and USA legal regimes*. She argued that, the wording of child abandonment statutes is vitally important and must be strictly adhered to in determining whether the facts of a particular case support a finding of abandonment.²⁵ Commonly, abandonment, couched alongside abuse and neglect, is a ground for the termination of parental rights. She further reveals that, how US courts infer the intent of the abandoned parent from their conduct and how the court sees the standard of proof in child abandonment cases.²⁶

1.12 Significance of the Study

A literature review revealed that very little research has been undertaken on the Ethiopian statutory provisions applicable to children abandoned by their parents. The majority of the studies were focused on child abuse, alternative care, violation of children's basic rights, and cause for child abandonment. However, through this study, I aimed to throw one stone on the protection of children's rights who have deprived of their family environment, particularly for abandoned children.

In this study, I will also strive to give insight for policymakers, legislators and human right activists to formulate the best policies and laws to mitigate the prevalence of child abandonment

²³ Tadele (n 20), P 301-306

²⁴ Meskerem Desalegn, 'The Role of Child Care Institutions in Seeking other Children Alternative to the Best Interest of the Child'(2015), Addis Ababa University, Graduate School of Social Work, Unpublished thesis, P 39- 45

²⁵ Youan (n 7) P 23

²⁶ Ibid

in the country and it will appreciate other researchers to further investigate the study area in the future. It also aims to awaken the government to take positive measures to improve the quality of child care institutions and provide community-based family support mechanisms. Furthermore, it creates awareness for judges, public prosecutors and investigative police officers working on child abandonment civil and criminal proceedings.

Chapter Two

The Right of the Child to Family Environment and the Right to Alternative Child care

2.1. Introduction

In the past human history, Children didn't have any recognized rights and freedoms; rather, they were under the full control by their parents to the extent of killing one's own child as of right believing as a permissible act.²⁷ Children were recognized as objects of intervention rather than as legal subjects in their own right.²⁸ However, after the Second World War, a number of negotiations and deliberations were conducted by the international community in order to reach consensus to accept children rights and freedoms which are specific to them and as a consequence, they adopt CRC.²⁹

²⁷ Catherine Bonnet, 'Adoption at Birth: Prevention Against Abandonment or Neonaticide'(1993), Child Abuse and Neglect, Vol 17, P 502, Available at <
https://www.researchgate.net/publication/14797562_Adoption_at_birth_Prevention_against_abandonment_or_neonaticide > accessed on 7/3/2020)

²⁸ Rama Kant, 'History of Child Rights and Child Labor'(1987), P 1 Available on
<http://webcache.googleusercontent.com/search?q=cache:BD7wehs_4wkJ:menengage.org/wp> accessed on
7/3/2020

²⁹ Claire Breen, 'Age Discrimination and Children's Right'(2006),International Student in Human Right Vol 86, P 3

2.2. The Protection of Children who are Deprived of Their Parental Environment under the CRC

2.2.1. The Child Right to Life, Maximum Survival and Development

Article 6 of the CRC, recognize the child's right to life, survival and development, and it is more fundamental than other rights.³⁰ The United Nations Human Rights Committee (HRC) has described the right to life as "the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation."³¹ In addition, the CRC general comment tried to interpret 'development' in its widest sense as a holistic concept which comprises the child's mental, physical, psychological, spiritual, moral, and social development.³² Basically, the right to development is highly linked and related to child survival. Children have the right to survive under conditions that enable them to develop to their full potential.³³

The CRC committee clearly outlined that those children who have lost their family environment, including orphans and abandoned children, are at serious risk on the right to development.³⁴ The reason for the low level of development is the nature of the children vulnerable to the harm caused by unreliable, inconsistent relationships with parents, and dependent on assistance from the family or the state.³⁵

³⁰ Elaine E Sutherland, 'The Child's Right to Life, Survival and Development: Evolution and Progress' (2015), Stellenbosch Law Review. V 26, 272-294, P 272

³¹ UNHRC, CCPR General Comment No. 6: Article 6 (the Right to Life), Adopted at the Sixteenth Session of the Human Rights Committee, on 30 April 1982, Para 1, available at: <https://www.refworld.org/docid/45388400a.html> (Accessed on 1/3/ 2020)

³² Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from all Forms of Violence, CRC/C/GC/13, Para 62

³³ Mira Dutschke and Kashifa Abrahams, 'Children's Right to Maximum Survival and Development' (2006), Children's Institute, University of Cape Town, P 1; (available on

http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/Projects/Completed_Protocols/Rights_in_brief_survival.pdf > Accessed on 1/3/2020)

³⁴ Committee of the Right of the Child, General Comment No. 7, Implementing Child Rights in Early Childhood (Fortieth Session Geneva), CRC/C/GC/7/Rev.1, 20 September 2006, Para 36(b)

³⁵ Ibid

2.2.2. The Child Rights to Benefit from Social Security and Adequate Standard of Living

Sometimes, children may be at risk when parents or caregivers are unable to cater to the basic needs of their children due to illness, death, or disruption to families.³⁶ To minimize the danger, state intervention is needed by providing social security mechanisms, including social insurance for the children and their families to redress the child's socio-economic barriers to their development.³⁷

Article 27 of the CRC provides that, 'every child has the right to a standard of living adequate for their physical, mental, spiritual, moral, and social development'. In addition to parental responsibility, the State also has the obligation to assist parents and guardians to alleviate poverty where needed.³⁸ The right to an adequate standard of living contains the essential subsistence rights which include; adequate nutrition, food, clothing, housing, and the necessary conditions of care.³⁹

2.2.3. Family Environment and the Need for Family Care on Child's Development

Families are fully recognized as playing a unique and vital role in the lives of children and the achievement of their rights.⁴⁰ Research shows that 85% of human cognitive, social, and emotional capacity is formed before the beginning of school by our families.⁴¹ The fulfillment of emotional and psychological needs is the primary responsibility of parents, legal guardians, or persons responsible for the child.⁴² Likewise, the presence or lack of family affection determines

³⁶ Ibid

³⁷ The CRC, Article 26(1)

³⁸ The CRC, Article 27(2) and (3)

³⁹ CRC General Comment No.7 (n 31) Para 26

⁴⁰ Ibid

⁴¹ Unicef, Children Deprived of Family Environment, (available on

<https://www.unicef.org/northmacedonia/children-deprived-family-environmentac> Accessed on 24/02/2020)

⁴² Ekanem Okon, 'Towards Defining the "Right to a Family" for the African Child', African Human Rights Journal, (2012), P 384

the child's later emotional adjustment, including feelings of insecurity, loneliness, depression, and perceived self-worth by the child.⁴³

Under the CRC, children's rights to family life are well-acknowledged and it recognizes children as human persons and holders of individual rights who are entitled to be actively involved in the realization of their rights.⁴⁴ The basic child right principles are also enshrined under the declaration of the Rights of the Child.⁴⁵ The declaration recognizes that, 'the child, for the full and harmonious development of his personality, needs love, understanding and grow up in the care under the responsibility of his parents'.⁴⁶ This provision is echoed and developed under the Convention's preamble.

2.2.4. Parental Responsibilities, Rights and Duties

Article 5 of the convention is mainly recognized parental responsibility, right and duty upon their children. The convention enumerates the rights and freedoms in which children are enjoyed without mentioning which specific case falls under parental responsibility or duties. Basically, parental responsibilities are emanates from the application of the principle of the best interest of the child in which every child rights are based upon, and the wording of the last sentence of article 5 which emphasis for parents duty to show appropriate direction and guidance in the functioning of child rights recognized in the Convention.⁴⁷

2.2.5. Children Right to have Family and Parental Obligation

Article 7 and 18 of the convention recognize the child right to know and be cared for by his or her parents, and carry out primary responsibility for the upbringing and development of their children. The two provisions imply that children have the right to know the identity of their birth or genetic parents, indicating the importance attached to the sense of belonging and identity

⁴³ Ibid

⁴⁴ Breen (n 29) P 3

⁴⁵ Declaration on the Rights of the Child was Adopted Unanimously by all 78 Member States of the UN General Assembly in Resolution No.1386 (XIV), 20 November 1959

⁴⁶ Ibid, Article 6

⁴⁷ Rachel Hodgkin and Peter Newell, Implementation Hand book for the Convention on the Right of the Child, (3rd edn, Geneva 2007) P 76

associated with the family.⁴⁸ It also affirms the presumption that children are best cared for within the family.

The convention indicates the possibilities of some children rising out of parent's homes due to different social-economic factors.⁴⁹ The CRC committee in its different concluding observations strongly recommends state parties to refrain from any kind of actions, including issuing a law, which hampers the right of the child to know his or her parent in any way.⁵⁰

Under article 18 of the CRC, Parents are expressly recognized as having the primary responsibility for raising their children. This article indicates that, both the mother and the father of the child have a similar parental rights and responsibilities.⁵¹ The primary responsibility extends to the legal guardians as well.⁵² While conducting their duties, the best interest of the child should become a parent's main concern and goal.⁵³ However, in default of their responsibility, the state may assist parents in their child-rearing duty by providing institutions, facilities, and services for the care of children and child care services for working parents.⁵⁴

2.2.6. The Child Right to Preservation of Identity: Name, Nationality and Knowledge of and Care by the Child's Parents

The convention provides that the element of a child's identity includes his or her name, nationality, and family relations as recognized by law without unlawful interference.⁵⁵ Article 8 and 7 of the convention provides the child's right to birth registration, including the acquisition of a name and nationality as well as the right to know and be cared for by his or her parents, which relates to family relations. The state, therefore, ensures the registration of all children, including abandoned children to give identity at birth and to be regarded as part of society.⁵⁶

⁴⁸ Ibid, P 107

⁴⁹ Ibid, P 106-107

⁵⁰ Ibid

⁵¹ Ibid, P 232

⁵² The CRC, Article 18(1)

⁵³ Ibid

⁵⁴ The CRC, Article 18(2) and (3)

⁵⁵ The CRC, Article 8(1)

⁵⁶ Hodgkin and Newell(n 47) P 102

Failure to register the birth of a child violates the child's basic human right including acquiring nationality.⁵⁷

2.2.7.Children Separation from Parents

The parent-child relationship is given the utmost importance, and cannot be easily dissolved.⁵⁸ But, it doesn't mean it is absolute.⁵⁹ Article 9 of the convention paved a way for the separation of a child from their parents when the best interest and the will of the child are so required. The state should also ensure that a child shall not be separated from his or her parents against their will, and ensure the process of separation sanctioned by the competent authority subjected to judicial review.⁶⁰

Deprivation of parental rights is considered as one factor for parental right termination (PRT).⁶¹ When parents involved in child abuse and neglect treatment, interested parties can file PRT proceedings to separate the child from parents since it is done in the best interest of the child.⁶² PRT brings two competing interests, such as; parents right to raise their child and the right of the child cared by their parents on one side, and the state interest to ensure the child right to be free from any kind of maltreatment, neglect and abuse provided under article 19(1) of the CRC.⁶³ After termination order, parents lost the legal custody of their children including; the right to care, custody, and control of the child. In other words, they are freed from the duty to provide food, clothing, shelter, medical care and education for their children.⁶⁴

⁵⁷ Ibid, P103

⁵⁸ Youan (n 7) P 45

⁵⁹ Ibid

⁶⁰ The CRC, Article 9(1)

⁶¹ 'Child Abandonment: The Botched Beginning of the Adoption Process', The Yale Law Journal, Vol. 60, No 7, 1951, pp. 1240–1250, P 1240 JSTOR (www.jstor.org/stable/793698, Accessed on 3 Mar, 2020.

⁶² Ibid, P 45-46

⁶³ Ibid

⁶⁴ Sara DePasquale and Jan S. Simmons, 'Abuse, Neglect, Dependency and Termination of Parental Right Proceedings in Northern Carolina'(2019), Chapter Nine, Termination of Parental Right, P 6

2.2.8. Children Deprived of Family Environment (CDFE) and the Right to Alternative Child care

Article 20 of the CRC recognizes special protection and assistance, including alternative care for those children who are temporarily or permanently deprived of their family environment. Children could be unable to live with their families, either because of circumstances such as death, abandonment, displacement, or removed by the state intervention in their best interests.⁶⁵ Orphan children, street children, refugee children, and children of a certain tribe fall under the category of CDFE.⁶⁶

CDFE are entitled to different types of alternative care systems which include; foster placement, *kafalah* of Islamic law, adoption, and institutional care.⁶⁷ In addition, inter-country adoption can be used as an alternative means of child care only when the child is unable to place in a foster or an adoptive family or the child cannot be cared by in a suitable manner within the child's country of origin.⁶⁸

2.2.8.1. Foster Care

It refers to a situation where children are cared for in a household outside their family temporarily, and the birth parents in most cases retain their parental rights and responsibilities.⁶⁹ Care can be taken by the extended family (kinship care) or by unrelated families such as neighbors or friends of the family, who are often known to the child.⁷⁰ In many communities, children who are left without parental care due to family breakdown, orphaning, or abandonment situations are often cared for by the community on a short or long-term basis.⁷¹

⁶⁵ Hodgkin and Newell (n 47) P 277

⁶⁶ Solomon Tekle, 'State Responsibility for the Protection of Rights of Children Deprived of their Family Environment: The Ethiopian Perspective' (2009), Addis Ababa University, Unpublished Thesis, P 20

⁶⁷ The CRC, Article 20(3)

⁶⁸ The CRC, Article 21(b)

⁶⁹ UNHCR, 'The Implementation of UNHCR BID Guideline', (The UN Refugee Agency, 2011), Field Hand Book, P 34 available on <https://www.refworld.org/pdfid/4e4a57d02.pdf> Accessed on 15/12/

⁷⁰ Ibid, P 37

⁷¹ The Guideline (n 1) P 28

2.2.8.2. Adoption

It is a child protection measure that enables parentless children to benefit from a substitute and permanent family care.⁷² It aims to provide children with the security of parents and home.⁷³ States are intended to promote the best interests of the child while safeguarding the rights of natural and adoptive parents.⁷⁴ In all adoption processes, the best interest of the child takes the paramount consideration and no other interest shall be considered as dominant or equal to the interest of the child.⁷⁵

In the adoption proceeding, the consent of the natural parents is generally a precondition to an adoption.⁷⁶ However, if a child is adjudged abandoned, such consent is unnecessary because, abandonment is a conduct of the parent or caregiver which renounces the parental relationship.⁷⁷ Once a child is transferred to a new adoptive family, because of its irrevocable nature, it is important to take the views of the child before approving the adoption agreement.⁷⁸

2.2.8.3. Institutional Care

It is an establishment that intended to give all-rounded care and support for disadvantaged children in a center.⁷⁹ It is a short-term alternative care strategy and used only as a last resort after exhaustion of all other alternative child care options.⁸⁰ When a child deprived of a family environment, the state should first search placement within the wider family of the child before inserting to institutional care.⁸¹

⁷² The Guideline (n 1) P 8

⁷³ Hodgkin and Newell (n 47) P 294

⁷⁴ See Supera note 62

⁷⁵ The CRC, Article 21

⁷⁶ The Guideline (n 1) P 41

⁷⁷ Child Abandonment(n 61) P 1241

⁷⁸ Hodgkin and Newell (n 47) P 296

⁷⁹ The guide line (n 1) P 9

⁸⁰ Ibid, P 47

⁸¹ Hodgkin and Newell (n 47) P 278

Studies identified that the institutionalization of children is one of the biggest threats to early brain development.⁸² Those children under care institutions are also much more vulnerable to neglect, violence, and abuse.⁸³ Furthermore, countries with a long history of child institutionalization have also seen problems during reintegration into society as young adults (e.g, high rates of suicide, homelessness, aggression, difficulties finding employment, and criminal activity).⁸⁴ The harm may worsen when the child remains within the institution for a long period.⁸⁵

2.3. African Charter on the Rights and Welfare of the Child⁸⁶

Child protection policy in Africa is today mostly guided by ACRWC. This legal setting asserts several rights for children found in Africa, sets out basic principles to be applied, and creates a legal obligation to put these rights and principles into practice. Compared to other regional human rights treaty, the Charter has been described as the most progressive and a pioneering treaty on the rights of the child.⁸⁷ The charter comprises different provisions which directly intended for the protection of family and children in general and, vulnerable and affected children in particular.

⁸² John Brown, 'Maternal Care and Mental Health'(1952), a report prepared on behalf of the World Health Organization as a contribution to the UN program for the welfare of Homeless Children, P 19

⁸³ Van IJzendoorn, Marinus H., et al. 'Children in Institutional Care: Delayed Development and Resilience' Monographs of the Society for Research in Child Development, vol. 76, no. 4, 2011, pp. 8–30. P 1

⁸⁴ Safe the Children, Institutional Care; The Last Resort, P. 1 , Available in
<https://resourcecentre.savethechildren.net/node/8202/pdf/sc_child_care_institutions_policy_brief_.pdf
Accessed on 3/3//2020

⁸⁵ Brown (n 4) P 10

⁸⁶ The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49, Entered in to Force on November 29, 1999; (here in after 'ACRWC or The charter')

⁸⁷ Dejo Olowu, 'Protecting Children's Rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child', International Journal of Children's Rights 10: 127–136, (2002), P 130

2.3.1. African children, the Right to have Family and Parental Responsibility

In Africa, the burden of caring children is falling under not only to the parents, but also to the extended family and the larger community.⁸⁸ To preserve such bondage, the charter acknowledges family as the natural unit and basis of the society, and needs protection and support from the state.⁸⁹

The charter recognizes the right of the child to get parental care, protection, and the right to reside with his or her parents.⁹⁰ And also, unlike CRC, the charter explicitly imposes a provision for parental responsibility.⁹¹ Parents or another person responsible for the child holds the Primary responsibility for the children's upbringing and development.⁹² To affect their responsibility, always, the best interest of the child becomes their basic concern, and priorities should be given to the security of a child's development and ensure appropriate discipline.⁹³

2.3.2. African Children Whom they deprived of Family Environment

Every African child has a guarantee under the charter not to separate from his or her parent without their will; unless, a judicial authority determines the separation in the best interest of the child.⁹⁴ If the child separated from his/her parents or deprived of a family environment, the states should provide special assistance and protection.⁹⁵ African States are under obligation to arrange and provide alternative family care options, foster placement and institutional care, depending on which care system is best for a specific child.⁹⁶ Child adoption has also recognized under article 24 of the charter to secure the children's upbringing.⁹⁷ Inter-country adoption of a child becomes

⁸⁸ Usang Maria, 'Understanding Kinship Care of Children in Africa: a Family Environment of an Alternative Care Option?' (2013), University of the Western Cape, Doctoral Thesis, P 27

⁸⁹ ACRWC, Article 18(1)

⁹⁰ Ibid, Article 19(1)

⁹¹ Ibid, Article 20

⁹² Ibid, Article 20(1)

⁹³ Ibid, Article 20(1)(A-C)

⁹⁴ Ibid, Article 19(1)

⁹⁵ Ibid, Article 25(1)

⁹⁶ Ibid, Article 25(2)(a)

⁹⁷ Ibid, Article 24(a)

the last option when all other alternatives are exhausted.⁹⁸ The reason for such precaution is to preserve the children from any kind of abuse and identity crisis while they rise in a strange culture.⁹⁹

⁹⁸ Ibid, Article 24(b)

⁹⁹ Eyerusalem Jima, 'Ensuring a Better Protection for Children Deprived of Family Environment: The Application of Subsidiarity Principle in Ethiopia' (2016), Addis Ababa University, Unpublished Thesis, P 25, (here in after 'Jima'),

Chapter Three

The Situation of Child Abandonment in Addis Ababa

3.1. Introduction

As has been discussed in the above chapters, children deprived of a family environment, particularly, abandoned children have required special protection and assistance from the state by taking appropriate legislative, social, and administrative measures. To take special protection, first, it needs to identify who is ‘abandoned child’, and what kind of parental action results ‘abandonment’. The chapter tries to show the definition of child abandonment and related issues, forms of child abandonment, cause and prevalence of child abandonment in Addis Ababa will become analyzed.

3.2. Definition of Key and Related Concept

3.2.1. Child Neglect

Depending on the variation in culture and beliefs, the definition of child neglect takes a different meaning in different professions and cultures.¹⁰⁰ It is generally perceived as a failure on the part of the parents to provide care and protection or, the act of ignoring the needs of a child that has an impact on the child’s functioning or physical, psychological, or emotional development.¹⁰¹ Sometimes, it is shown by deprivation of clothing, nutrition, medical, hygiene, or mental health care, unsafe environments, unmet emotional and psychological needs, lack of proper supervision, and even abandonment by the family.¹⁰²

¹⁰⁰ Diane De Panfilis, *Child Neglect: A guide for Prevention, Assessment and Intervention, Child Abuse and Neglect User Manual Series*(2006), P 9

¹⁰¹ *Ibid*, P 10

¹⁰² Desmond K. Runyan et al. ‘Child Abuse and Neglect by Parents and other Car Givers’(2002) P 61

3.2.2. Child Exposure

It can be described as; placing a child in a place or position as to leave him unprotected against danger to his health, life or subjected him to the danger of severe suffering or serious bodily harm.¹⁰³ Exposure of a child could be an effective way of causing the death of an unwanted child.¹⁰⁴ But, it is different from infanticide that, exposure may not always results the death of the child.¹⁰⁵ It has a direct relation with physical child abandonment and leads the child into life, or health endangerment.¹⁰⁶

3.2.3. Child Abandonment

No international human right instruments are tried to define what ‘child abandonment’ is. The word ‘abandonment’ originated from an Anglo-French word “abandoner” which was derived from the phrase ‘*a bundun*’ which means ‘to hand over’.¹⁰⁷ The word abandonment literally mean; to leave, forsake, to give up absolutely, desert, left unattended to, or uncared for.¹⁰⁸ Black’s law dictionary defines it as ‘the relinquishing of a right or interest with the intention of never again claiming it’.¹⁰⁹

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) of the USA, defines child abandonment as ‘the failure to provide reasonable care, support, communication, or visitation with the child.’¹¹⁰ Sometimes, it occurs when a parent or any care giver fails to provide

¹⁰³ Bryan A. Garner(ed), Black’s Law Dictionary(2007), Eighth Edition

¹⁰⁴ Stephen Wilson, ‘Infanticide, Child Abandonment, and Female Honour in Nineteenth-Century Corsica’, *Comparative Studies in Society and History*, Vol. 30, No. 4 (1988), PP. 762-783, Cambridge University Press, P 775

¹⁰⁵ Ibid

¹⁰⁶ Yonas Birmeta, ‘Training on Abandonment Status: The Legislation, Court and Social Services Responsibilities and Role’ (2012), Unpublished, P 6

¹⁰⁷ Josephine Azuka and Bokime Gabriel, ‘Child Abandonment And Its Implications For Educational Development in Nigeria’ *Archives of Business Research* – Vol.6, No.9(2018), P 15

¹⁰⁸ Youan (n 7) P 30

¹⁰⁹ Black’s Law Dictionary

¹¹⁰ Uniform Child Custody Jurisdiction and Enforcement Act, article 1, section 102(1); available on https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/uccjea_final_97.pdf 5/2/2020)

necessary care for the child.¹¹¹ Sometimes, parent may relinquish their child (Child relinquishment) for adoption or leave their child uncared places (Child abandonment).¹¹²

In some literature, the definition encompasses; orphans, children in residential child care institutions, children living in the street, refugees, war victims, child prostitutes, children relinquished for adoption, and children left behind by their parents.¹¹³ It could be expressed or performed physically or emotionally.¹¹⁴ Physical abandonment occurs when parents failed to provide inadequate nutrition and meals, continuous supervision, inadequate clothing, housing, and shelter.¹¹⁵ In emotional neglect, parents fail to provide the emotional conditions and emotional environment necessary for the healthy growth of the child.¹¹⁶

In the Ethiopian legislations, as far as the knowledge of the researcher is concerned, there is no authoritative definition for child abandonment. However, an alternative child care guideline defines it as; ‘the child who is left unattended or deliberately rejected by his or her parents’.¹¹⁷ For the purpose of this study, child abandonment means; the action of the parent or any care giver either desert a child without any regard for the child’s physical health and safety with the intention of completely abandon the child.

3.3. Forms of Child Abandonment

3.3.1. Leaving an Infant on Outside of Parents Home

It is the most known form of child abandonment that parents or caregivers physically abandon their child in a certain place, other than original home, with the intent to relinquish parental rights and obligations.¹¹⁸ Parents prefer to leave their children in the open veld or on a rubbish

¹¹¹ Youan (n 7) P 3

¹¹² Pien Bos and Fenneke Reysoo, et al ‘Qualitative Research in to the Root Cause of Child Abandonment and Child Relinquishment in Vietnam’(2013-2014), UNICEF, International Social Service, P 8

¹¹³ Deirdre Elizabeth Blackie, ‘Sad, Bad and Mad: Exploring Child Abandonment in South Africa’(2014), University of the Witwatersrand, South Africa, Thesis, P 16; And *see* Kevin, Shihning and Kate (n 4) P 4

¹¹⁴ Bassam Yousef and Ibrahim Banat, et al ‘Foundling and Abandoned Children in Palestine’, Global Journal of Health Science; Vol. 11, No. 11; 2019, P 53

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ The Guideline(n 1) P 8

¹¹⁸ Wilson (n 104) P 775

dump, riverbank, in a hospital, children's home, or in baby-safe places.¹¹⁹ The first three places considered as unsafe places for children's life, and the rest are perceived to be safe places for children.¹²⁰

Frequently, states criminalize such acts because; the abandoned child may face imminent danger on his life or health.¹²¹ In this type of abandonment, parents were not easily identified by the police because; they leave the child undercover to escape from criminal responsibility and fear of societal shame. However, some states allow parents to abandon their children anonymously within a specified time limit and place to prevent the child from any physical harm.¹²²

3.3.2. Parents Being Absent From the Home

In this form of child abandonment, the child can be called abandoned; when parents left their children at home for a time long enough to create a substantial risk of harm to the child.¹²³ Though, the time must be 'long enough', and the harm should be 'substantial' to the individual child. Sometimes, the harm could lead the child into death.¹²⁴ The time and risk parameters are dependent on the age level, duration of time the child was left without adult supervision, and

¹¹⁹ Elizabeth (n 113) P 8

¹²⁰ Ibid

¹²¹ Birmeta,(n 106) P 4

¹²² Carol Sanger, 'Infant Safe Haven Laws: Legislating in the Culture of Life' Columbia Law Review, Vol. 106, No. 4 (May, 2006), pp. 753-829, P 789; (Available on https://www.jstor.org/stable/4099469?seq=1&cid=pdf-reference#references_tab_contents, Accessed: 30/12/2019)

¹²³ The 2005 California Family Code, Section 7822, B

¹²⁴ In Japan, the 2010 'OSAKA child abandonment' case could be an essential case that shows the effect of parental abandonment with in a house. A 23 years old Japanese, single mother in Osaka, sealed the door of her apartment shut, abandoning 3 years old daughter and 1 years old son inside the house for several days, and the two were found dead because of starvation. After her arrest, she responds that 'I had left them, because, i am tired of feeding and bathing'. (Source:- <https://enacademic.com/dic.nsf/enwiki/11864294>, accessed on 29/4/2020)

economic hardship of the parent.¹²⁵ For instance, a newborn baby may not face similar harm compared with a two years old child when parents left a house for an hour.¹²⁶

3.3.3. Parents Leave a Child with another Person

In this form of abandonment, the child has been called abandon, when parents leave their child for another person, non-parent, without providing adequate support or communication within a specified time.¹²⁷ Lack of effort on the parent's part to support, and without meaningful communication with the child for a period specified by the statute is central to the presumptive evidence of the intent to child abandonment.¹²⁸ The court may also declare the child abandoned, when parents made only token efforts to support or communicate with the child.¹²⁹

3.3.4. Parent has Left the Child in the Care and Custody of the other Parent

In this form of child abandonment, the child has been called abandoned when; the non-custodial parent left the child without providing adequate support or enough communication for a specified time.¹³⁰ In this situation, the child may call abandoned only for non-custodial parents. Since, the child fallen in the hands of another parent, the child may not incur substantial harm to his life. But, failure to support and visitation may affect the life of the child. Failure to communicate or provide financial support for one year is presumptive evidence of the intent to abandon, and 'token efforts' to support or communicate will not overcome the presumption.¹³¹

¹²⁵ Find Law Team, 'When can you leave a Child Home Alone?'(2020), Available on <https://criminal.findlaw.com/criminal-charges/child-abandonment.html> 9/4/2020)

¹²⁶ Gail Hornor, RNC, et al, 'Child Neglect: Assessment and Intervention'(2014), Journal of Pediatric Health Care Volume 28 Number 2, P 189

¹²⁷ California Family Code, Section 7822 A (1)

¹²⁸ Re Jacklyn F Vs. Noel B, California Court of Appeal, 114 Cal.App.4th 747, 7 Cal. Rptr. 3d 768 (Cal. Ct. App. 2003) P 754 available on <https://casetext.com/case/in-re-jacklyn-f> 9/4/2020)

¹²⁹ Ibid

¹³⁰ California Family Code, Section 7822 A(3)

¹³¹ J.D Vs. S.D, Court of appeal of the state of California fourth appellate district division two, E070576, 5/8/19, P. 11; available on < <https://www.courts.ca.gov/opinions/archive/E070576.PDF> accessed on 10/5/2020)

3.4. Cause of Child Abandonment in Addis Ababa

3.4.1. Poverty

Tadele in his study identified that; the economic condition of a parent can force the mother to decide abandonment of her child.¹³² Particularly, those women who come from rural parts of the country may face homelessness and poverty because; most of them engaged in a daily laborer or housemaid, and earn a small amount of wage which is insufficient for their subsistence.¹³³ When she gets pregnant or birth a child, economic complication may reach at complex level. Things could also be more worsen, when she lost her job because of pregnancy or birth. Tadele rightly argued that;

“...Anyone can recognize that a mother who doesn’t have nothing to eat on her own, and strives to survive by way of working as a maid, is highly disposed to abandon her child; because, no one wants to hire her if she carries her small child. And also, employers usually fire their maids right after when they know she become a pregnant”¹³⁴

3.4.2. Incompatibilities in Marital Life

Studies revealed that single mothers and internal migrant women were identified as risk groups for possible child abandonment.¹³⁵ When the marriage is broken, the parent who has custody of the child may abandon the child in order to avail them from the economic hardship of child-rearing.¹³⁶ In some parts of Ethiopian, girls may marry at the early age of childhood without proper readiness for marriage responsibility.¹³⁷ This imbalance of age may affect the bond of love between the two and sometimes, it used as a cause for interpersonal disagreements and incompatibilities.¹³⁸ Instability of the marriage may finally end with separation and consequently leads abandonment of the children.¹³⁹

¹³² Tadele(n 20) P 303

¹³³ Ibid, P 302-303

¹³⁴ Ibid

¹³⁵ Bos and Reysoo (n 112) P 47

¹³⁶ Tadele (n 20) P 303

¹³⁷ Ibid, P 302

¹³⁸ Ibid

¹³⁹ Ibid

3.4.3. Fear of the Stigma for Early and Unwanted Pregnancy

In a certain society, motherhood is linked to married women and sex before formal marriage is seen as a morally condemnable act.¹⁴⁰ Due to such beliefs, children born from single or adulterous mothers are not accepted within the family and the society.¹⁴¹ A girl living with her parents may engage in casual sex and may expose her to unwanted pregnancy. When she gives birth, she experiences intense shame, guilt, and fear about her birth and may be so fearful of disappointing her parents or other community members. As a result, she possibly abandons the child in order to shield her from social stigma and family shame.¹⁴²

3.4.4. Problem of Migration

In rural to urban migration, particularly in Addis Ababa, women may face difficulties in getting permanent residence and work.¹⁴³ They are more vulnerable to sexual violence and unwanted pregnancy. And, because of lack of sustained work and lack of extended family support, she may not be able to raise her child properly. And also, women who migrated to the city usually live in communities far from their native villages leaving their parents, and lack of social control due to the dislocation of women could be considered as the root cause for unexpected pregnancies and premarital child births.¹⁴⁴ Due to such facts, she may decide to abandon a newborn baby.¹⁴⁵

3.5. Prevalence of Abandoned child in Addis Ababa

In 2007, the study conducted by the ministry of labor and social affairs, estimated that around 150,000 street children were living in Ethiopian major cities, and out of this, 40% of street children are found in Addis Ababa.¹⁴⁶ In 2010, over 11,000 children were living on the street of

¹⁴⁰ Bos and Reysoo (n 112) P 48

¹⁴¹ Valeri Delaunay, 'Improving Knowledge on Child Abandonment and Care in Africa: A demographic Contribution to the Achievement of Child Protection'(2011), African population studies Vol 25, I, P 79(available at <http://www.bioline.org.br/pdf?ep11005>)

¹⁴² Tadele (n 20) P 301

¹⁴³ Ibid, P 302

¹⁴⁴ Bos and Reysoo (n 112) P 47

¹⁴⁵ Tadele(n 20) P 302

¹⁴⁶ Admasu Nebebe(ed), 'Investing in Boys and Girls in Ethiopia: Past, Present and Future'(2012), Ministry of Finance and Economic Development and the United Nations in Ethiopia, UNICEF, P 30

the Addis Ababa without any parental or adult support and protection.¹⁴⁷ According to the UNICEF classification of street children, those children who are abandoned or rejected by their parents are one part of the overall street children.¹⁴⁸ The majority of abandoned children on the street life have shown common features that, they don't have a home to go to either because of the death of, or the rejection by, their parents.¹⁴⁹

According to the Addis Ababa police commission report, between the years 2011 -2019, nearly 2,696 runaway children were identified and reunified with their families in A.A and different parts of the country. Among them, 59% were females, and 41% left for males. Out of this number, 1766 of them had families within the Addis Ababa and the remaining 960 children were transported to their home village for reunification.

The police data shows that between the year 2011 – 2019, 1836 children were physically abandoned by their parents or caregivers, and the police transferred them into Kibeba Teshay temporary child care institution. On average, 204 children were physically abandoned by their parents or caregiver in each year. Out of the total abandoned children, female and male cover 56% and 44% respectively.

¹⁴⁷ Zerihun Yacob Anja, 'Factors Leading to Children on the Street, Challenges and their Coping Mechanism in Piassa area, Arada Sub-City of Addis Ababa'(2018), Addis Ababa University, College of Social Science, Unpublished Thesis, P 3

¹⁴⁸ Kevin Lalor, Angela Veale, et al, 'Study on Street Children in Four Selected Towns in Ethiopia'(1992),Ministry of Labour and Social Affairs, UNICEF, University of Cork, P. x

¹⁴⁹ Ibid, P 3

Chapter Four

Legal Response for Child Abandonment in Ethiopia

4.1. Introduction

To control child abandonment, states usually criminalize the act of child abandonment as well as provide alternative child care system that aims to secure a family environment for the abandoned child. The legal responsibility of the state comprises, not only securing the substantive right of the child but also ensure all procedural guarantees of the child. So, in this chapter, the rights of abandoned child and the mechanism of protecting those rights will be discussed in detail.

4.2. Types of Unanimous Safe Abandonment of the Child

Many shocking accounts of child abandonment and death received heightened public attention in different states, and stimulate public interest in children's safety and security.¹⁵⁰ And, due to incremental in unsafe abandonment and infanticide, it requires the need for a legislative solution for the problem, and some states began to move to adopt a law which restricts the criminal accusation of abandoned mother by allowing safe abandonment in order to aims to save the life of the child.¹⁵¹ Currently, some states introduced three known forms of safe abandonment laws, such as; safe haven, baby hatch, and unanimous birthing.¹⁵²

Despite its benefit, some individuals raised their fear that, 'the system has the potential to jeopardize the well-being of the abandoned child and violates article 8 of the CRC'.¹⁵³ They

¹⁵⁰ Sanger (n 122) P 754

¹⁵¹ Dayna R. Cooper, 'Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process,' (2003) Hofstra Law Review: Vol. 31: Issue. 3, Article 8, P 877-878; Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol31/iss3/8>)

¹⁵² Lorana Bartels, 'Safe Haven Laws, Baby Hatches and Anonymous Hospital Birth: Examining Infant Abandonment, Neonaticide and Infanticide in Australia' (2012) 36 Criminal Law Journal 19, P 23

¹⁵³ Nadine Lefaucheur, 'The French 'Tradition' of Anonymous Birth: The Line of Arguments', *International Journal of Law Policy and Family* 18(2004) 319-342, P 335 Available on <https://www.nidaa.nl/images/stories/Int%20J%20Law%20Policy%20Family-2004-Lefaucheur-319-42-1.pdf> Accessed on 20/01/2020)

believed that ‘by allowing anonymous abandonment, the father’s paternal rights are denied; because, it is difficult to locate him to see if he would be willing to take on the child.’¹⁵⁴

4.2.1.Safe Haven Laws

This type of protective law mainly adopted and developed in the USA administrative states.¹⁵⁵ Safe haven is an area or a specific person chosen by that state, which is mandated to accept newborn infants whom they fit into the statutory requirements.¹⁵⁶ The law offers mothers who might otherwise kill or recklessly abandon her newborns as an alternative and bring the newborn to a designated location provided by the government.¹⁵⁷ The main target of the legislation is to discourage the young women from killing her newborn by offering the right incentives before and after birth.¹⁵⁸ When mothers comply with Safe haven requirements, she can abandon her child, and she will not be charged with criminal abandonment.¹⁵⁹ However, in order to apply the immunity provisions, the child must be surrendered alive and free from abuse.¹⁶⁰

The laws specify; who can relinquish the baby, where the baby can be left, how old the baby can be, what procedures are required once a child has been left, and the scope of the responsibility of the person abandoning the child.¹⁶¹ The majority of USA states commonly allowed parents to abandon their children in hospitals, fire stations, and police stations.¹⁶² The aims of choosing such sites are related to emergencies and are open and staffed all the time and also linked with trained medical personnel.¹⁶³ The most common age cut-off point is at about one month,

¹⁵⁴ Michelle Hammond, Monica K. Miller. et al, ‘Safe Haven Laws as Crime Control Theater’ (2010), Child Abuse and Neglect 34545-552, P 549

¹⁵⁵ Katherine A. Kunkel et al, ‘Safe Haven Laws Focus on Abandonment Newborns and their Mothers, Child Health Policy’, Journal of Pediatric Nursing, Vol 22 No. 5(2007), P 398

¹⁵⁶ Rosemary Buhl, ‘Safe Haven Laws-Good Intentions, Better Methods Needed’(2004), P 4

¹⁵⁷ Kunkel, See *Supra* Note 155

¹⁵⁸ Ibid

¹⁵⁹ Ibid, P 756; and *see also* Mueller and Sher (n 5) P 2

¹⁶⁰ Child welfare Information Getaway, ‘Infant Safe Haven Laws’(2016) P 3; available at <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> >accessed on 5/5/2020

¹⁶¹ Sanger (n 122) P 755; and *see also* Buhl (n 182) P 3

¹⁶² Cooper(n 151) P 880

¹⁶³ Sanger(n 122) P 769

followed by three days, while two states, Missouri and Northern Dakota, allow children of up to one year to be left at a safe haven.¹⁶⁴ When the parent left the child under safe haven provider without keeping the age requirement, they may face criminal charges and PRT.¹⁶⁵

4.2.2. Baby Hatch Laws

In this system, states are allowed for parents to abandon a one year and below age children in such a way as to guarantee the parent anonymity whilst giving his or her assurance that the child will be cared for by the state.¹⁶⁶ It has almost a similar motive and purpose from that of safe haven law. But, it is different in that anonymity of the abandoned parent becomes so perfect because, there is no direct contact between the person relinquishing the child and the person who receives it.¹⁶⁷ When the mother closes the hatch, an alarm will sound, alerting medical staff to the presence of the baby.¹⁶⁸

4.2.3. Unanimous Birthing Law

In this system, the law permits a woman to safely and legally surrender her child to the care of the state. From the states, France has the most developed anonymous birthing laws by allowing mothers to give birth in a hospital without the requirement to provide any identifying documents.¹⁶⁹ When she has given birth, she can leave the baby at the hospital and remain anonymous.

The French civil code allows a woman to give birth in a hospital without any registration for her personal details, name, and address and then relinquish her parental responsibilities.¹⁷⁰ The child is then placed in an institution for two months (cooling-off period), during which period the mother could reclaim her baby.¹⁷¹ However, once this period has gone, the child becomes

¹⁶⁴ Child Welfare Information Getaway, 'Infant Safe Haven Laws: Summary of State Laws'(2007), P 34; *see* Sanger (n 122) P 767-768; and Bartels (n 152) P 23

¹⁶⁵ Sanger (n 122) P 768

¹⁶⁶ Brown (n 4) P 14

¹⁶⁷ Bartels (n 152) P 20

¹⁶⁸ *Ibid*, P 25

¹⁶⁹ Brown (n 4) P 16

¹⁷⁰ Civil Code of France, Article 326; *see also* Bartels (n 152) P 26

¹⁷¹ Bartels (n 152) P 27

qualified for future adoption, and no legal bonds can ever be established between the mother and child from this point on.¹⁷² The law allows a woman could provide information to the government in a sealed envelope to be given to the child when they reach adulthood.¹⁷³

4.3. Ethiopian Child Policy and FDRE Constitution on the Protection of Children Deprived of family Environment

4.3.1. National Child Policy

The policy begins by admitting the family as the most suitable and irreplaceable natural home for children.¹⁷⁴ The policy generally aims to create a conducive environment for the promotion and protection of children's right, and specifically need to support orphans and vulnerable children to be raised in the Ethiopian culture and social values of their birth areas through strengthening community based, local adoption, foster care and reunification alternative care programs.¹⁷⁵ The policy recognizes the need to care and support service for children separated from their family permanently or temporarily.¹⁷⁶ It also promotes children to be grown in a domestic environment with domestic care option than inter-country adoption with special follow up and assistance.¹⁷⁷ The policy promotes the real application of the best interest of the child principle during all decisions of the government and non-governmental bodies.¹⁷⁸

4.3.2. FDRE Constitution

The constitution recognizes that, every child within the Ethiopian territory has an inalienable and absolute right to life and survival which is the fundamental rights of the child.¹⁷⁹ The right to life not only includes states refrain from any action which deteriorate the life of the child, but also it requires adequate protection measure to combat child poverty by improving social service for

¹⁷² Brown (n 4) P 17

¹⁷³ Bartels (n 152) P 27

¹⁷⁴ Ethiopian Child Policy(n 18) P 6

¹⁷⁵ Ibid, P 13

¹⁷⁶ Ibid, P 7

¹⁷⁷ Ibid

¹⁷⁸ Ibid, P 14

¹⁷⁹ The right to life stated under article 36 (1, a) of the FDRE Constitution framed without any exception. However, article 15 of the constitution allows exception to the right to life.

children.¹⁸⁰ Deprivation of children right to survival and development may result from the prevalence of a high level of poverty.¹⁸¹

The constitution assures the child right to know their parents and the right to be cared for by his or her parents.¹⁸² When the child deprived from the family environment, the constitution provides institutional care and adoption system as an alternative child care options¹⁸³ without mentioning foster and kinship care system even though, kinship care system takes the dominant type of alternative child care in Ethiopian society.¹⁸⁴ Furthermore, article 41 of the Constitution guarantee assistance and rehabilitation to those children whom they left without parent or guardian.

4.4. Ethiopian Legislations which Protect the Right of Abandoned Children

4.4.1. The Criminal Code of Ethiopia

4.4.1.1. Failure to Maintain and Failure to Bring up

Basically, parents have the obligation to uphold the life of their children by keeping from danger and through providing necessary material as well as psychological needs to the maximum of their capacity. When they failed to maintain proper care and attention, they incur criminal liability. Article 659 of the Ethiopian criminal code prohibits parents or any caregivers from abandoning the child without due care and attention, or grossly neglects the child.¹⁸⁵ The prohibition also extends to parents who entrust their children for a long time to a person, an organization or an institution with whom or where he knows or could have foreseen that it will

¹⁸⁰ UN Committee of the Right of the Child, Concluding Observations on the combined Fourth and Fifth Periodic Reports of Ethiopia, 3 June 2015, CRC/C/ETH/CO/4-5, Para. 28

¹⁸¹ Ibid, Para 27

¹⁸² FDRE Constitution, Article 36(1)(C)

¹⁸³ Ibid, Article 36(5)

¹⁸⁴ Jima (n 99) P 38

¹⁸⁵ Criminal Code, Article 659(1)(a)

be reduced to physical or moral destitution, or will be physically or psychologically endangered failing to bring up their children.¹⁸⁶

In this criminal provision, the status of non-custodial parents of divorced husband and wife is not clear enough about the criminal liability for failure to bring up. When the non-custodial parent cuts himself off entirely from the life of the child, his/her action may not constitute the crime of failure to bring up; Because, the provision specifies that the crime is committed only by a person who exercises the authority of guardianship or tutorship, and the child is handed to an identifiable caregiver rather than to strangers or nobody.

4.4.1.2. Exposure or Abandonment of Another

Parents or caregivers who have the right to custody of the child may expose or abandon the child in any situation which likely to result in danger in the life or health of the child. Exposed to danger are manifested through physical as well as psychological risk which potentially hamper the proper development of the child. Leaving a kid within the car for some time and drinking alcohol in front of the kids could expose them to physical and psychological harm respectively.¹⁸⁷

Leaving a child in a dangerous situation commonly related to physical abandonment of the child. It could be broadly seen that, irrespective of the place of abandonment, all physical abandonment could lead the child into a high risk of harm or incur significant harm to the life and health of the child; because, at least, the child has fallen into unknown future destiny without securing safe development.

The criminal code punishes any person that holds the legal custody of the child and exposes or abandon them in to imminent danger to the life and health of the child.¹⁸⁸ For all other exposures and abandonment, the punishment becomes rigorous imprisonment not exceeding five years, or with simple imprisonment for not less than six months.¹⁸⁹ However, the punishment could be

¹⁸⁶ Criminal Code, Article 659(1)(b)

¹⁸⁷ Panfilis (n 100), P 14

¹⁸⁸ Criminal Code, Article 574(1)(a)

¹⁸⁹ Criminal Code, Article 574(1)(b)

severe, when the abandonment and the exposure are committed against an infant child.¹⁹⁰ In addition to liberty punishment, the court may pronounce deprivation of family right for the criminal if it deemed necessary.¹⁹¹

4.4.1.3. Infanticide

It is an act of deliberately murder or kills an infant soon after its birth.¹⁹² Exposure or abandonment of a newborn to a life treating situation results immediate death, or sustained body or psychological harm. Due to this fact, article 544(1) of the criminal code punishes a mother with simple imprisonment when she intentionally kill the newborn child while she is in labor or while still suffering from the direct effect thereof. The article is mainly concerned with measures that seek to prevent women from killing her babies in the hours, days and weeks after birth, regardless of whether the woman is suffering from a mental disturbance or any other socio-economic reasons.

4.4.1.4. Deprivation of Family Right

Depending on the nature of the crime and the circumstances under which the crime was justified such order, or the criminal has shown he is unworthy to exercise family right, the criminal code permits for judges to order deprivation of family rights.¹⁹³ Those parents or caregivers who have been guilty of failure to bring up, exposure or abandonment of a child have the possibility to lose parental rights, tutorship, or guardianship, when the crime becomes grave in nature.¹⁹⁴ In addition to the stated crimes, family right could also be deprived when a criminal offense to a punishment is restrictive of personal liberty, or to capital punishment.¹⁹⁵

The family code permits all interested person or public prosecutors could bring the application for the removal of the family right on behalf of the child.¹⁹⁶ Both the civil or criminal courts can

¹⁹⁰ Criminal Code, Article 574(2)

¹⁹¹ Criminal Code, Article 574(1)(b)

¹⁹² Black's Law Dictionary

¹⁹³ Criminal Code, Article 123

¹⁹⁴ Ibid, *See also* article 574(1) and 659

¹⁹⁵ Article 244(1) of the Revised Family Code(RFC), Proclamation No. 213/2000, Federal Negarit Gazetta, extra Ordinary Issue, No. 1/2000(July 2000) (here in after ' the Family Code')

¹⁹⁶ Ibid, Article 248(1)

order the removal of a person from family right. Before declaring the removal order, the court should take extreme caution, especially, on the removal of the child's mother and father.¹⁹⁷ The proceeding for the removal should respect the due process rights of the accused or the respondent.¹⁹⁸

In effect, the decision for removal of family right may result in the total ban of both tutorship or guardianship of the parent or caregiver for the specified time, or until the court revise its decision.¹⁹⁹ In case of the removal of one parent, the remaining parent exercises the full parental right.²⁰⁰ When a child has known families, other than his/her parents, the court may assign one of his relatives as tutorship or guardianship depending on the order of relatives.²⁰¹ However, compared to the effect of PRT in other jurisdictions; the order for deprivation of family right under the criminal code are not clear enough with regard to visitation right and the possibility of regaining a parental right to the removed parent.²⁰²

4.4.2. The Revised Family Code (RFC)

The revised family code addresses quite a number of child rights that guarantee the children grow within a family environment, and ensure whether the adoption process held in line with the best interest of the child or not. The code contains different legal presumption provisions in relation to the ascertainment of maternity and paternity filiation,²⁰³ which ultimately benefit a child to know his or her parent, and to grow within a family environment by narrowing possibilities of children left without parental care.

Studies reveal that, single motherhood is considered as one reason for child abandonment; because, they lack financial support from the other parent or they lack personal income to raise

¹⁹⁷ Ibid, Article 247(1)

¹⁹⁸ Ibid, Article 248(2)

¹⁹⁹ Ibid, *See also* article 241(2), 244, and 247(2)

²⁰⁰ Ibid, Article 220(1)

²⁰¹ Ibid, Article 225

²⁰² *See* Supera Note 64, P 6, 58 and 60; In the USA legal system, PRT is permanent in nature and in effect, the termination totally cut all ties between the parent and the child relationship

²⁰³ *See* Article 123-130 of the Revised Family Code

their child.²⁰⁴ In this regard, the family code imposes a legal obligation upon the spouse to support and assist each other while they are in marriage.²⁰⁵ Both spouses have joint and equal management right in all cases of the family, especially in the care and wellbeing of their children to make them responsible citizens.²⁰⁶ In order to secure such a relationship, the law prohibits any kind of agreement that ceases the joint family management of the spouse; except, those conditions listed under article 51(1) of the family code.

4.4.3.Procedure for Adoption of Abandoned Child

Under the family code, there are no specific provisions which deal with the adoption procedure for an abandoned child. Although this is so, like any other child, all abandoned children below 18 years of age could be eligible for adoption.²⁰⁷ As a principle, the consent of the parents is a pre-requisite for affirming the adoption agreement if the child has a known family.²⁰⁸ But, in case of abandoned children whom they don't have an ascendant capable of giving his consent, the court may approve the adoption agreement taking into account only the interest of the child.²⁰⁹

Before rushing into the approval of the adoption agreement, a certain procedural requirement must be fulfilled so as to secure the interest of the abandoned child. The police seats under in front line to rescue the life of abandoned children while they received a report from the society with regard to the founding of the child. The law imposes an obligation for all members of the society to report the founding of abandonment of the child to the nearest police station.²¹⁰ The police began to collect relevant information from different sources so as to reach the suspect parent or caregiver. Due to this mandate, the local police stations provide the appropriate

²⁰⁴ Golomolzina Tatiana Vladimirovna, et al, 'Preventing 0 to 3 Years Old Child Abandonment, Modeling Special Service in the Karaganda Oblast'(2014), Technical Handbook, UNICEF, P 12

²⁰⁵ Family Code, Article 49(1)

²⁰⁶ Ibid, Article 50(1) and (2)

²⁰⁷ Family Code, Article 185; and Article 27(3) of Directives on Foster Family and Domestic Adoption Service, FDRE Ministry of Women, Children and Youth, 2019, Addis Ababa(Here in after 'The Directive')

²⁰⁸ Family Code, Article 191(1)

²⁰⁹ Ibid, Article 191(4)

²¹⁰ Article 26(2) of Proclamation No.760/2012, Registration of Vital Events and National Identity Card Proclamation, 18th Year No. 58 Addis Ababa, 22nd August, 2012;(here in after ' proclamation No. 760/12')

evidence that confirms the child is abandoned.²¹¹ Foster Family and Domestic Adoption Service directive list some of the information's that are included under police evidence. In article 27(2) of the directive, the following information is required from the police;

1. The name of the police that found the child
2. The health status of the child
3. A letter that has made the child to temporarily stay in the institution care or temporary shelter found around the locality together with the name assigned to the child pursuant to the culture and custom of the area.
4. Names given to be abandoned children should be free from any religious implications
5. Finally the evidence issued from the relevant government body to admit or assign the child at institutional care should be fulfilled.

The directive prohibits any kind of adoption agreement for abandoned child within two months starting from the first day of identification of the abandonment.²¹² The law purposely left two months' in order to give adequate time to search the parents or family of the abandoned child. It is also essential for both the parents and the children; because, the abandoner may change his/her mind and want their baby back at a later time. When the police investigation ends with noting, the police should present the evidence that confirms the parents are not found.²¹³ Then after, the child becomes eligible for adoption while the two month period has lapsed.

4.4.4. The Right to Birth Registration of Abandoned Child

Birth registration can be defined as the official recording of a child's birth by the relevant government organ in order to establish the existence of a child under the law, and provides the basis for protecting many of the child's civil, social, economic, and cultural rights.²¹⁴ In order to regulate this right, the legislator issued proclamation No. 760/12 and its amendment 1049/17.²¹⁵

²¹¹ The Directive, Article 27(1)

²¹² Ibid, Article 27(3)

²¹³ Ibid

²¹⁴ Hawi Asfaw, ' Birth Registration and Rights of the Child'(2019), P 2; Available on <

<https://www.abysiniaw.com/blog-posts/item/1881-birth-registration-and-right-of-the-child> > (8/3/2020)

²¹⁵ Proclamation No. 1049/2017, Vital Events Registration and National Identity Card Proclamation, 23rd Year No. 74, Addis Ababa, 7th August 2017

The proclamation arranges a mechanism of birth registration for children whom they found abandoned and unable to locate their parents. It is the responsibility of the parent or caregiver to declare the birth of the child in general.²¹⁶ But, for abandon children, the police or other relevant government organ should declare the birth of the child to the officer of civil status in the nearest administrative office.²¹⁷

The detail of the record for abandoned children is not the same as children who have parental care. For abandoned children, only the name given to the child, sex, estimated age of the child, and the date and the place where the child was found become recorded.²¹⁸ Regarding the name of the abandoned child, the officer of civil status may set forth his name.²¹⁹ And also, Article 39(1) of the civil code of Ethiopia provides that;

‘A child, whose father and mother are not known shall have the name and two first names that are given to him by the officer of civil status in his record of birth.’(Emphasis added)

The detail records of abandoned child identity are helpful to take part in the age-specific benefits, and reduce the chance for physical abandonment by his/her own parent; because, if the child registered before abandonment, the police could easily trace and identify the identity of the parents.²²⁰

4.4.5.The Right to Nationality of Abandoned Child

The FDRE constitution recognizes that all Ethiopian national has the right to enjoy of all rights, protection, and benefits resulting from Ethiopian nationality.²²¹ To acquire Ethiopian nationality, Article 3(1) of nationality proclamation No. 378/2003²²² clearly provides that ‘any person shall be an Ethiopian national by decedent where both or either of his parents is Ethiopian’. In a similar fashion, a child can acquire the nationality of Ethiopia being at least one of his/her parent is an Ethiopian national. However, if a child doesn’t have known parents or caregivers, and

²¹⁶ Proclamation No. 760/12, Article 26(1)

²¹⁷ Ibid, Article 26(3)

²¹⁸ Ibid, Article 25(1)

²¹⁹ Ibid, Article 27(2)

²²⁰ Hodgkin and Newell (n 47) P 98

²²¹ The FDRE Constitution, Article 33(2)

²²² Ethiopian Nationality Proclamation No. 378/2003, 10th Year No. 13, Addis Ababa ,23rd December, 2003

found within the Ethiopian territory, the law presumes, he/she is an Ethiopian citizen unless, anyone proves the child has foreign national.²²³ Based on this law, all abandoned children who don't know where their parents are, deemed to become Ethiopian citizens and share all protection and benefits equally with other citizens. Such presumption of law protects the children from the status of stateless person and they benefit from any protection measure taken by the government.²²⁴

4.4.6. Alternative Child Care Guideline

The guideline mainly focuses on the protection of orphans and vulnerable children (OVC) which includes, but not limited to, children found in the street and abandoned children whose parents/families are untraceable.²²⁵ In both cases, they lost the protection and guidance of their parents, and spend their day to day life without adequate care and follow-up. In addition to this, their survival and development is highly jeopardized by dangerous living conditions, sexual exploitation, violence, and exposure.²²⁶ In order to make them valuable citizens, provision for alternative child care is required so as to secure their upbringing within the family setting or care institutions.²²⁷

The guideline identified five types of alternative child care options, Such as; community-based, reunification program, foster care, adoption and institutional care service, and put them in hierarchical priorities. The first priority is given for community-based and institutional care place as the last measures after exhausting all other care options.²²⁸

4.5. Child Abandonment and Abortion Law of Ethiopia

The term 'abortion' defined as 'artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus'.²²⁹ States are divided into two categories depending on the issue of abortion; some states freely allow abortion and the rest countries are criminalizing it, but they

²²³ Ibid, Article 3(2)

²²⁴ Hodgkin and Newell (n 47) P 104

²²⁵ The Guideline (n 1), P 11

²²⁶ Ibid

²²⁷ Ibid

²²⁸ Ibid, P 47

²²⁹ Black's Law Dictionary

allowed in certain specific grounds.²³⁰ In Ethiopia, the law principally criminalizes intentional termination of pregnancy at whatever stage.²³¹ However, as an exception, the law permits five grounds for termination of a pregnancy intended to preserve the health of the pregnant women and the child.²³²

Exceptional grounds of abortion under the code would be given a relief to a pregnant woman through allowing extinguishing unwanted pregnancy. Even though, there is a lack of intense study on the correlation between abortion and child abandonment in Ethiopia; for stronger reason, it can be deduced to a conclusion that, abortion law of the country determines the prevalence of child abandonment. In this regard, numerous foreign studies identified that Child abandonment is closely linked to unintended pregnancy or abortion ban.²³³ Likewise, the reasons for un-wantedness of pregnancy are directly linked with the majority grounds of the cause of child abandonment. Some of the criminal law, abortion exceptions are also grouped under the cause of child abandonment. So, instead of letting her to birth the conceived child, it is better to terminate the pregnancy so as to reduce the number of abandoning children; because, until termination grounds exist, the mother remains with a high probability to abandon the infant in any place in order to escape from social stigma or health problem.

Most unwanted children are susceptible to physical abandonment and neglect. In support of this argument, studies identified that unwanted children may be more subject to child abuse and neglect by their parents or caretakers than a desired child.²³⁴ The availability of abortion may affect the prevalence of child abuse and neglect because; parents have a high chance to maltreat unwanted children.²³⁵

²³⁰ Vinod Mishra, et al 'Abortion Policies and Reproductive Health Around the World'(2014), United Nations Department of Economic and Social Affairs, Population Division, P 1

²³¹ Criminal Code, Article 545(1)

²³² Criminal Code, Article 551 and 552

²³³ Andreea Mitrut and Francois Charles Wolff, 'The Impact of Legalized Abortion on Child Health Outcomes and Abandonment. Evidence from Romania'(2011), University of Gothenburg, P 18-21

²³⁴ Marianne Bitler and Madeline Zavodny, 'Child Abuse and Abortion Availability'(2002), AEA Papers and Proceedings, P 363; available at https://www.economics.uci.edu/files/docs/faculty_review/bitler-zavodny-aer-pap-2002.pdf 8/5/2020

²³⁵ Ibid, P 365

4.6. Ethiopian policies and Legislations in Relation to parents or Family Support Measures that Could Reduce the Risk of Child Abandonment

As stated under chapter two of the study, children have the right to benefit from government social security, including social insurance.²³⁶ The States also have the responsibility to recognize and provide social security and assistance to the child and their families according to the means they have.²³⁷ Similarly, the FDRE constitution recognizes the allocation of resources to provide rehabilitation and assistance to children who are left without parents or guardians.²³⁸ The constitution requires a national social protection policy and detailed subsequent legislation to underpin actions necessary to fulfill the basic rights of the constitution.

4.6.1. Ethiopian Social Protection Policy

Social Protection is part of the social policy framework that focuses on reducing poverty, social and economic risk of citizens, vulnerability and exclusion by taking appropriate measures through formal and informal mechanisms to ascertain equitable growth to all citizens.²³⁹ The overall social protection policy objective of the Government of Ethiopia is to build a social protection system that tackles extreme poverty, vulnerability, and inequality in Ethiopia through social protection programs.²⁴⁰ The policy also aims to improve access to health, food security, and education for low income section of the society and empower the poor citizen to access and improve income level.²⁴¹

Under the general risky groups of the society, children under difficult circumstances, including rejected and abandoned children, are mainly covered under the policy.²⁴² It addresses some of the root causes of child abandonment and provides assistance to the abandoned child and their

²³⁶ The CRC, Article 26(1)

²³⁷ Ibid, Article 27(3)

²³⁸ The FDRE Constitution, Article 41(5)

²³⁹ National Social Protection Policy of Ethiopia, Ministry of Labor and Social Affairs, Addis Ababa, Ethiopia: FDRE Ministry of Labor and Social Affairs, 2012, P 1

²⁴⁰ Ibid, P 4

²⁴¹ Ibid,

²⁴² Ibid, P 5

families. Other than child vulnerability, the policy tries to address the main socio-economic problems of pregnant and lactating women, by providing social assistance and social insurance which improve job security, health, and minimum standards.²⁴³

4.6.2. Ethiopian Labor and Civil Servant Laws

As already mentioned under chapter three of this study, one of the reasons for Ethiopian mothers decides to abandon their children is because of the prevalence of deep-rooted poverty and unsecured income means. Lack of means of livelihood or unsecured job for pregnant women could force parents to abandon their child after delivery so as to escape from parental responsibility or to avoid the risk of losing her job.²⁴⁴ Pregnant workers, whether government or private, needs maternity protection in order to advance the rights, health, and economic security. Maternity protection basically aims to preserve the health of the mother and her newborn, or to provide different measures of job security through protection from dismissal or the right to resume work after birth.²⁴⁵ Securing the mother's income will have a direct effect on the decision of the mother to abandon her child on the reason of poverty.

Both labor²⁴⁶ and civil servant²⁴⁷ proclamations, a pregnant worker has special privileges which secure health and means of income. The law prohibits assigning of pregnant women to a position other than the position she assumed through recruitment or promotion unless recommended by the medical certificate.²⁴⁸ The law also protects pregnant women from any kind of contract termination or retrenchment measures during her pregnancy and after delivery until four months.²⁴⁹ The law requires a pregnant worker be granted full salary during the prenatal (30 days) and postnatal period (90 days).²⁵⁰

²⁴³ Ibid

²⁴⁴ Tadele(n 20) P 302

²⁴⁵ International Labour Office, ' Gender Equality at the Heart of Decent Work', International Labour Conference, 98th Session , (2009), Report VI, P 45

²⁴⁶ Labour Proclamation No. 1156/2019, Federal Negarit Gazette, 25th Year No. 89, Addis Ababa 5th September, 2019

²⁴⁷ Federal Civil Servant Proclamation No. 1064/2017, Federal Negarit Gazette, 24th Year No. 12, Addis Ababa 15th December, 2017

²⁴⁸ Article 48(3) and 87(5) of Civil Servant and Labour Proclamations Respectively

²⁴⁹ Article 48(4) and 87(6) of Civil Servant and labour Proclamations Respectively

²⁵⁰ Article 42(3) and 88(3) of Civil Servant and Labour Proclamations Respectively

In addition to the above protection measures, the civil servant proclamation further imposes an obligation for all government institutions to establish a nursery for female civil servants in order to take care of their children and place for breastfeeding.²⁵¹ Such measures reduce the burden of the mother to raise her child and resuming her job, and also enhance the mother's willingness to raise her child even if, she is being a single mother.

4.6.3.Social Health Insurance Proclamation No. 690/2010

The Ethiopian social health insurance strategy justified that; high amount of expenditure on health service could affect the lower level householders.²⁵² Due to this reason, the legislator issued a social health insurance to provide quality and sustainable universal health care coverage to the beneficiary through pooling of risks and reducing financial barriers at the point of service delivery by collecting a certain amount of premium.²⁵³ Similarly, the community based health insurance system is introduced to the householders whom they are not covered under the social health insurance, and all members of the household are beneficiaries of the scheme.²⁵⁴

By providing such basic health care to the poor; it minimizes illness and enhance family capacity to invest the cost of health to other essential family needs and create a better family setting which is suitable for children's development. And also, sharing the family burden on health matters enable women to access reproductive health with minimal cost to manage family planning and reduce unplanned pregnancy and birth, which are the main reasons for child neglect and abandonment.

²⁵¹ Civil Servant Proclamation, Article 48(6)

²⁵² Federal Ministry of Health, Health Insurance Strategy, Addis Ababa, Ethiopia: Planning and Programming Department, Federal Ministry of Health, 2008

²⁵³ Social Health Insurance Proclamation, Article 4 and 9

²⁵⁴ Eskinder Eshetu Ali, 'Health Care Financing in Ethiopia: Implications on Access to Essential Medicines', Value in Health Regional Issues 4 C (2 0 1 4) 3 7 – 4 0, P 39

Chapter Five

Challenges for Abandoned Children Protection in Addis Ababa

5.1. Introduction

In this chapter I will try to identify some legal as well as institutional challenges on the protection of the right of an abandoned child, particularly in adoption and criminal court proceeding on the cases of abandoned child adoption and parent accusation process. Similarly, glitches of child care institutions will also be discussed.

5.2. Violations of Abandoned Children's Right to have Family and the Right to know their Parents

The CRC as well as the FDRE constitution recognizes every child the right to grow within the family setting and the right to know once own biological parent, and impose parents the obligation to care their children depending on the maximum of their capacity.²⁵⁵ Sometimes, children may lose their families through abandonment by their families. At this time, the government is obliged to protect and support the child from any action taken by the family through his own administrative machinery. The police department is one of the administrative branches of the government that protect and investigate any violations of the parent over their children including abandonment. However, instead of protecting and defending the rights of abandon children, sometimes, they involved in the violation of the children's right to know their families and the right to have a family while functioning the day-to-day activities of crime investigation. As an indication, the case between federal public prosecutors vs. w/ro Teyba Yesufe shows how lack of the police due-attention on the investigation of abandoned child's parent affect the basic right of the child to know and cared by his/her own parent.

Case -1

The case between federal public prosecutor(FPP) Vs. W/ro Teyba Yesufe, case No.263485 federal first instance court, lideta branch, 7th criminal bench, the PP file the accusation on accused on to allege the crime of child abandonment on her 3 months old little girl around train station. The police took the child into Kebebe Tsehay

²⁵⁵ The CRC, Article 18

temporary child care institution²⁵⁶ and bring the mother into court of justice. Meanwhile, the institution asked the police whether the child's parent were found or not.²⁵⁷ The police replied to the institution that her family was not identified even though; they know she had a family (the accused w/ro Teyba Yesufe).²⁵⁸ Then after, based on this police report, the institution engaged an adoption agreement with someone by presenting all necessary documents to the court, and the court approved the agreement accordingly.²⁵⁹ After the exhaustion of criminal proceeding, the accused mother asked the court to re-back her child and the court accept the request positively and order the care institution back the child into the original biological mother, but, unfortunately, her child was already transferred to another family through formal adoption process without her consent.²⁶⁰

Because of the irrevocability of the adoption agreement,²⁶¹ the mother was lost every parental right over her child, and similarly the girl lost the right to grow within her biological parent. The above court case and different letters identified the recklessness of the police investigation, which ultimately hampers the right of the child to be cared and to know her own parents. In addition, appendix 1 and 4 clearly indicate that, the police as well as the care institution were not properly register essential information about the abandoned child, like when, where, and by whom the child was found. In support of this argument one respondent, during the interview, admitted that;

“..During crime investigation, the police are not properly searching the parents or family of the abandon child. They replied a similar answer, ‘unable to find any family of the abandoned child’, to the care institution or to the adoption court without making a detailed investigation. Surprisingly, sometime, they replay the request simply siting

²⁵⁶ See Annex 2.1

²⁵⁷ See Annex 2.2

²⁵⁸ See Annex 2.3 and 2.6

²⁵⁹ See Annex 2.5

²⁶⁰ See Annex 2.6

²⁶¹ Article 195(1) of the RFC

under the office without moving to the area of crime scene (the area the child was found)”²⁶²

5.2.1. Documentation of Abandoned Child Files under the Child Care

Institution

In addition to the above problems, proper preservation of the whole abandoned child document is also essential for the child to access his background in the future when he needs. However, from an interview with one employee²⁶³ of the care institution and personal observation of the researcher identified that, there is a lack of proper filing system of the children’s whole document and unable to arrange in a safe and accessible manner. The files are also exposed to lost, mix-up, natural and human made destruction.

Every child has the right to know his/her parents and every family member or child care institutions are expected to inform the child the true parent when he/she needs. Because of lack of detailed investigation and recording of data, the abandoned children could face difficulties in the future to identify their origin where they come from and who are their biological parent.

5.3. The Right to be cared by an Alternative Child care for Abandoned Children

Children, who need care and protection, require appropriate assistance from the state by arranging different alternative child care system. For abandoned children, re-integration, adoption and foster family child care options are some alternatives that the child care institutions applied sequentially in order to keep the child under secured family setting environment. When the police found the family of the abandoned child, the institution and the police jointly tried to re-integrate the children in to their family here in Addis Ababa or other regions of Ethiopia. In a certain extent, the intuition transfer some children into foster family by providing all essential basic supply’s (food, education fees, health coverage and clothing), and the institution subsidized 2000 birr to the foster family monthly. Such system creates another problem that, the foster

²⁶² Interview with Assistant Inspector Tamerate Tesma, Addis Ababa Police Commission, Addis Ketema Sub-Police Station Women’s and Children’s Crime Investigative Team Leader

²⁶³ Interview with Eheta-mlake Yegzu, Social Worker at the Kibeba Tsehay Temporary Child care Center

family remains dependent on all the assistance comes from the institution. To such problem, one informant confirmed that;

“...Yes, some foster families are shows dependent on the child’s assistance and monthly subsidy money, and they give more focus on the income the system generates instead of focusing more on the child’s mental and physical well-being.”²⁶⁴

5.4. The Right of Abandoned Children Free from Any Kind of Discrimination

The CRC, ACRWC and the FDRE constitution recognize the right of the child free from any kind of discrimination based on parent’s race, sex, color, age, disability, language, religion, and birth or other status.²⁶⁵ However, contrary to this grand principle, one informant from Kibeba Tsehay child care center revealed that;

“The majority of new adoptive families are preferred to adopt infants (0 up to 6 months), girls, and those children free from any mental, physical disability and hereditary disease; Because, adopters believed that ‘girls are highly interactive and adaptable with the family compared to boys, and they prefer infants in order to have free and zero memory for the past family compared to relatively a little older abandoned child’²⁶⁶

In addition to the above argument, another informant told me that;

“The secret behind the selection of more girls for adoption are the need for labor to keep the house safe as a ‘servant’ to the aged adoptive parents instead of boys”²⁶⁷

Such kind of age, sex and health condition preferences could possibly lead relatively older children, boys and physically and mentally disabled, abandoned children remain within the institution for extended time without getting permanent family home, or adequate care until reaching the majority age.

²⁶⁴ Interview with Tiruwork Debaba, Interim Manager at Kibeba Teshay Temporary Child care Center

²⁶⁵ Article 2, 3 and 25 of the CRC, the ACRWC, and the FDRE Constitution respectively

²⁶⁶ See Informant Supera Note 263

²⁶⁷ Interview with Tariku Sahawel, Social Worker at the Child Adoption Court at Federal First Instance Court Bola Branch

5.5. Abandon Children, the Right to Care by his own Family and Parent Accusation

One of the reasons for ordering separation between the child and the parent is a criminal accusation of parents on abandoning the child or fails to bring-up. Frequently, in majority of child abandonment criminal cases, public prosecutors have the discretion to present their charge by criminal code article 574 or 659, depending on the mental status of the parent or, the place where the abandoned child was found. One informant clarifies that;

“The intent of the mother can easily be inferred from the physical action where she leaves the child. For instance, when she leaves the child within the hospital after delivery, she may not have the desire to expose him to danger; instead, she wants to exonerate her from obligation of bringing up. Unlike the above scenario, when the child found within dump site or under sewerage line, it can express the true intention of the mother to expose the child into eminent danger and the need for free herself from the obligation of bring up.”²⁶⁸

From the above interviewer argument, we can understand that the criminal code become unable to settle or indicate some insight or the parameter that the public prosecutor refers it as a base to select appropriate provision from the criminal code. These legal loopholes widen the discretionary power of the public prosecutors by giving personal judgment to select article 574 or 659 of the criminal code. One informant additionally argued that;

“Almost all public prosecutors are deemed to be perceived that “physical child abandonment” become the only parental action that leads to criminal responsibility; but, other parental action may not consider as an abandonment or neglect.”²⁶⁹

Contrary to the above argument, one respondent judge explained that;

“..Yes, the majority of this court entertains the accusation of the physical abandonment of the child, but we can distend the criminal code provisions (574 or 659) into a more inclusive interpretation that hold every parent action over their children which amounts

²⁶⁸ Interview with Marta Tameru, Public Prosecutor at Federal Attorney General Addis Ketema Branch Office, Women and Children Affairs Focal Person

²⁶⁹ Interview with Ruhama Alemeneh, Public Prosecutor at Federal Attorney General Lideta Branch Office, Women and Children Affairs Focal Person

to expose the child into any possible danger in his mental or physical well-being. But, because of less activism on child right protection and the domination of the old perception against the child right, hamper the wide range protection schemes of the criminal code”²⁷⁰

In the majority of child abandonment criminal cases, the accused mother stayed in custody until serving the sentence or release under suspension of penalty because; Most of them are economically poor and they are unable to pay the bail amount, or the court itself ban to release on bail under the condition of lack of permanent known resident according to article 67(2) of the Ethiopian criminal procedure code. Until the criminal accusation ends, the court orders the abandoned child to stay within Kibeba Tsehay temporary child care center. One informant argued in favor of the denial of the mothers bail that;

“When the mother stayed under custody, she may get enough time to cool-down from her emotions and think deeply the result of the abandonment. As a result, majority of them are claim their child and show their remorse.”²⁷¹

The criminal court bench believed that the best interest of the abandoned child becomes served when the child grow up within the biological parents instead of adoption or institutional care. As a result, in a majority of the cases, the accused mother punished with simple fine or released with suspension of penalty and order the re-back of the abandoned child to the mother by admitting let her get one chance of raising her child properly.

5.6. Child Adoption Court, Exhaustion of all Effort to get the Parent of the Abandoned Child and Decision Expediency

According to the family code, every adoption agreement must be approved by the competent court. Both, the adoptee and the adopter need to pass a certain requirement in order to get court approval for adoption agreement. Under article 31 and 32 of the directive lists the following preconditions for every adoption agreement;

From the side of Adopted Child

- Adoption agreement, the signature of the guardian and date of execution of the contract
- One passport size photograph of the adopted child

²⁷⁰ Interview with Honorable Judge Assahibe Bezuneh, Federal First Instance Court Ledeta Branch 7th Women and Children Criminal Bench

²⁷¹ See Supera Note 268, Interview with Marta Tameru

- Birth certificate of the child, short profile and health certificate

From the side of Adoptive Parent

- Medical certificate
- Income status evidence
- Certificate of good conduct
- Marriage status evidence
- Birth certificate
- Home study

Before court approval, the social workers examine all documents presented by the care institution for abandoned child and the adoptive parent. Then finally, the court approves the adoption agreement believing that it is the best interest of the abandoned child instead of growing under the institution. However, sometimes, the police was failed rightly attest the child's parents. One informant told me that;

“It is totally the mandate of the police that attest the existence of the parents; sometimes they send a letter to the court by saying “they are under investigation”. In this situation, the approval of the adoption agreement delayed, and waits for final police report. When the police unequivocally attest the non-existence of the abandoned child's parent, the court immediately approves the agreement without delay. Because, the court doesn't want for the child to stay under Kibeba Tsehay child care center even for a minute”²⁷²

5.7. The Main Problems for Kibeba Tsehay Child care Institution

It is a government funded institution found in Addis Ababa, Gulala sub-city around Sidest Kilo Afencho bare area. It is the only child care institution which receives all abandoned children and foundlings from all corners of Addis Ababa. The institution holds all burdens of providing assistance and protection for those children found in abandoned and lost from family. Despite such overload burden, the institution faces different problems which ultimately violate the basic children's rights enshrined under CRC, ACRWC and the FDRE constitution. The following lists

²⁷² Interview with Honorable Judge Getachew Lagessa, Judge at the Federal First Instance Court Bola Branch 5th Inheritance and Adoption Civil Bench

of problems are identified while conducting interviews with officials and employees of the institution,²⁷³ and personal observation under the center;

- Lack of health center equipped with full medication and trained medical experts
- Lack of enough child food, shelter, and clothing
- Lack of trained baby sisters and other office man power
- Lack of recording essential data's and proper documentation of children's history
- Lack of proper and safe filing system
- Lack of searching other child care alternatives

In addition to the above problems, informant from Gulala police officer share her work incident concerning the extent of how the government ignore the institution that;

*'Before a certain Years back, we found a newborn abandoned child within a child care institution compound which is located to adjacent to Kibeba Tsehay child care center (Kechana women's center), and the criminal suspect young mother of the child was also came to that institution on the same mechanism, that means, by means of child abandonment.'*²⁷⁴

²⁷³ Interview With Respondents mentioned Under Supera Notes, 263,264,267 and 274

²⁷⁴ Interview with Sergeant Zemenay Adana, Addis Ababa police commission, Gulala sub- police station women's and children's crime investigation team leader

Chapter Six

Conclusion and Recommendations

6.1. Conclusions

As already mentioned under the above chapters, for children, growing within the family setting is the best natural way for the better development and well-being. Due to different socio-economic factors, children may found abandoned, and they require special protection and assistance from the government and the society as a whole. International human right instrument; CRC and ACRWC recognize the special treatment of those children deprived of their family through providing social security to families, and securing alternative child care options within the country. As Ethiopia signatories of the CRC and ACRWC, the FDRE constitution manifest some child rights in general terms, and recognize other international human right documents ratified by Ethiopia.²⁷⁵

The FDRE constitution recognizes only orphan children whom they need special assistance and protection without mentioning other vulnerable group of children like street and abandoned children. In addition, in mentioning the options for alternative child care, the constitution limits its scope only to institutional care and adoption without considering other care options. And, because of lack of codified child law, it is difficult and tiresome to find the specific right of the child and obligation of the parent within the dispersed proclamations and regulations.

In connection with abandoned children, The RFC contains some provisions which are essential for the children grown under the family setting. But, it recognized only adoption as an alternative means of care without mentioning other alternative as a means to protect vulnerable children including abandoned child. Other alternative child care options; reintegration, institutional and foster care, were recognized and mentioned under the guideline. However, the guideline doesn't have authoritative status that makes individuals responsible for the non-observance of the guideline. The RFC also provides some provisions which mention the possibility of removing parents from family right without specifically mention the consequence and extent of the removal.

²⁷⁵ The FDRE constitution, Article 9(4)

The criminal code provides some provisions that prohibit a certain action of parents, which violate the right of the child to know and cared by his/her own parents. Despite the prohibition, data collected by the police show that there exists a continuation of abandonment of the child by their parents. Even, because of fear of criminal prosecution, parents have begun to leave children in place very dangerous to the life and health of the child. So that, the purpose of the prohibition under the criminal code is not fully meets the desired goal for protecting the child from abandonment.

Even though, the criminal code prohibits abandonment of children; the term ‘*abandonment*’ doesn’t have clear meaning and definition. As a result, the public prosecutors, during preparing a criminal charge, discretionally select article 574 or 659 of the criminal code for all physical abandonment. In addition, because of lack of clear definition, crime investigation and accusation mainly focus on the physical abandonment cases without taking into account other parental actions that fulfill every criminal element of the above provisions.

Lack of income or poverty becomes the main reason for deciding child abandonment by their parents. The Ethiopian social security policy gives emphasis for vulnerable and needy citizens of the country by providing social security program, improve health and education coverage, and improve the income of the poor citizen. The social health insurance law supports the policy aim of allowing access to health for the low income social group. Such supportive system, improves the living conditions of the entire family life by providing a reproductive health service to control the pregnancy of unwanted child whom they will have a higher chance of abandonment. Labor and civil servant laws also have some provisions that aimed to fight poverty by securing the mother job. Establishing a daycare centers within the working area, could reduce the chance for abandonment of the child at home or leave him to another person without proper care and protection.

Another reason for the cause of child abandonment is the birth of unwanted children. The criminal code allows abortion of pregnant women for a certain limited grounds. From the grounds, some of them are mentioned under the reasons for child abandonment. So that, allowing abortion for a limited ground could minimize the birth of unwanted children. When the birth of unwanted child reduced, the numbers of child abandonment also reduce.

Within Addis Ababa, Kibeba Teshay child care center accommodate beyond its capacity; because, it receives all abandoned and lost children from each sub-city. The institution was established primarily for the sake of protecting the right and interest of abandon children. However, it functioned below the standard, compared to a certain child care institution expected to fulfill, and conversely violates the children rights. Due to this, the police and the adoption court gradually develop a culture of deciding the adoption agreement without detail investigation on the parent of the abandoned child in order to make free from the center without delay. In general, the care institution lacks due-emphasis from the government.

Discrimination based on personal circumstances, ethnic origin and class difference could affect children's opportunities and personal self-esteem.²⁷⁶ Likewise, any discriminatory practice based on sex, age and health condition of the abandoned child during the adoption process; affect children's opportunity to grow within a family environment and the right to maximize their living standard out of institutional care.

It is the mandate of the police, which brings the abandoned child into the care institution and investigate the suspected parent. From the police interview and a court case, we can infer that, the police were not properly investigate the crime, and they don't give due attention to record the detail of the child information. Due to such problem, the right of the abandoned child to know their biological parent and grow within the family setting is overriding by the police recklessness.

In the criminal justice system, the court frequently order the re-back of the child to the mother even if, she is guilty of abandonment. It is ultimately the court which defends the violation of the right of the child, and protects the child's best interest. Based on overall court observation and the parents willingness, the judge may allow or deny the child to grow within his/her family only if it serves the child's best interest.

²⁷⁶ General Comment No. 7(n 31) Para 11(b)(iv)

6.2. Recommendations

- Codified child right provisions in a single document and give legal bases for all forms of alternative child care options.
- The term ‘abandonment’ under the criminal code should be clearly defined or mentioned any factual situation which constitutes the crime of child abandonment and make it clear and predictable for criminal prosecution.
- Make legal reform for child abandonment by allowing parents to legally surrender their child to the specific designated child care institutions through limiting criminal prosecution with some preconditions.
- Early intervention is the best form of prevention from child abandonment. Among the early intervention, enhancing the capacity of every woman by providing essential reproductive health during perinatal and postnatal care for mother and her babies, and improve social and job security.
- Enhance the capacity of crime investigation police officers to conduct appropriate investigation on child abandonment cases and to record the details of the abandoned child diligently.
- Make the adoption court, strict on the report of the police before approving the adoption agreement on abandoned child and the court must ensure that the police made an appropriate investigation on the parent of the adopted child.
- In order to ease the burden of Kibeba Teshay child care center, it has to be established more than one institution which receives abandoned children within Addis Ababa
- Because of its special circumstance, Kibeba Tsehay child care center requires allocation of enough budgets with financial flexibility and freedom from government bureaucracy. In addition, instead of administering under a small directorate office, it is better to structurally established under the city mayor’s office in order to get appropriate attention from the eyes of the government.
- Finally, for the sake of improving the protection of the right of abandoned children, all stakeholders; courts, public prosecutors, police and child care institutions should work jointly and take the principle of the best interest of the child as their primary consideration while doing their daily functions.

Bibliography

International and Regional Human Right Instruments

- The Convention on the Right of the Child(CRC), the United Nations General Assembly, Resolution 44/25(20 November 1989), and Enter in to Force 2 September 1990
- The Universal Declaration of Human Rights (UDHR), United Nations General Assembly resolution No.217 A, Paris on 10 December 1948
- Declaration on the Rights of the Child, Adopted Unanimously by all 78 Member States of the UN General Assembly in Resolution No.1386 (XIV), 20 November 1959
- The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49,Entered in to Force on November 29, 1999

UN Concluding Observations and Recommendations

- Committee on the Rights of the Child, General Comment No. 13 (2011), The Right of the Child to Freedom from all Forms of Violence, CRC/C/GC/13
- Committee of the Right of the Child, General Comment No. 7, Implementing Child Rights in Early Childhood (Fortieth Session Geneva), CRC/C/GC/7/Rev.1, 20 September 2006,
- UN Committee of the Right of the Child, Concluding Observations on the combined Fourth and Fifth Periodic Reports of Ethiopia, 3 June 2015, CRC/C/ETH/CO/4-5
- UNHCR, CCPR General Comment No. 6: Article 6 (the Right to Life), Adopted at the Sixteenth Session of the Human Rights Committee, on 30 April 1982, Para 1, available at: <https://www.refworld.org/docid/45388400a.html> (accessed 1 March 2020)

Foreign Laws

- The 2005 California Family Code
- The South African Children Act 38 of 2005
- Civil Code of France
- Uniform Child Custody Jurisdiction and Enforcement Act, article 1, section 102(1); available on https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/uccjea_final_97.pdf accessed on 5/2/2020

National Policies

- The Federal Democratic Republic of Ethiopia, National Children’s Policy
- National Social Protection Policy of Ethiopia, Ministry of Labor and Social Affairs, Addis Ababa, Ethiopia: Federal Democratic Republic of Ethiopia, Ministry of Labor and Social Affairs, 2012
- Federal Ministry of Health, Health Insurance Strategy, Addis Ababa, Ethiopia: Planning and Programming Department, Federal Ministry of Health, 2008

National Laws

- The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, 1st year No. 1, Addis Ababa (August 1995)
- The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004
- The Revised Family Code, Proclamation No. 213/2000, Federal Negarit Gazetta, extra Ordinary Issue, No. 1/2000(July 2000)
- Registration of Vital Events and National Identity Card Proclamation No.760/2012, 18th Year No. 58 Addis Ababa, 22nd August, 2012
- Vital Events Registration and National Identity Card Proclamation No. 1049/2017, 23rd Year No.74, Addis Ababa, 7th August 2017
- Ethiopian Nationality Proclamation No. 378/2003, 10th Year No. 13, Addis Ababa ,23rd December, 2003
- Labour Proclamation No. 1156/2019, Federal Negarit Gazette, 25th Year No. 89, Addis Ababa 5th September, 2019
- Federal Civil Servant Proclamation No. 1064/2017, Federal Negarit Gazette, 24th Year No. 12, Addis Ababa 15th December, 2017
- Directives on Foster Family and Domestic Adoption Service, FDRE Ministry of Women, Children and Youth, 2019, Addis Ababa
- Alternative Child Care Guidelines on Community Based Child Care, Reunification and Reintegration Program, Foster Care, Adoption, Federal Democratic Republic of Ethiopia Ministry of Women’s and Children Affairs

Books

- Admasu Nebebe(ed), ‘Investing in Boys and Girls in Ethiopia: Past, Present and Future’(2012), Ministry of Finance and Economic Development and the United Nations in Ethiopia, UNICEF
- Andreea Mitrut and Francois Charles Wolff, ‘The Impact of Legalized Abortion on Child Health Outcomes and Abandonment. Evidence from Romania’(2011), University of Gothenburg, Working Paper in Economics,
- Bryan A. Garner(ed), Black’s Law Dictionary(2007), Eighth Edition
- Diane De Panfilis, ‘Child Neglect: A guide for Prevention, Assessment and Intervention, Child Abuse and Neglect User Manual Series (2006),
- Ethiopian Central statistical Agency (CSA), Ethiopian Population Projection (2014), Addis Ababa, Ethiopia
- Girmachew Alemu(PhD) and Yonas Birmeta, Hand Book for the Right of the Child in Ethiopia, Center for Human Rights, Collage of Law and Governance Studies, Addis Ababa University
- Golomolzina Tatiana Vladimirovna,, et al, ‘Preventing 0 to 3 Years Old Child Abandonment, Modeling Special Service in the Karaganda Oblast’(2014), Technical Handbook, UNICEF,
- International Labour Office, ‘Gender Equality at the Heart of Decent Work’, International Labour Conference, 98th Session , (2009), Report VI
- Kevin Brown(Pro), et al, Child Abandonment and its Prevention in Europe, (University of Nottingham, United kingdom, 2012);(available on <<https://bettercarenetwork.org/sites/default/files/attachments/Child%20Abandonment%20and%20Its%20Prevention%20in%20Europe> > accessed on 25 December 2019)
- Kevin Lalor, Angela Veale, and Azeb Adefrisew, „Study on Street Children in Four Selected Towns in Ethiopia“(1992),Ministry of Labour and Social Affairs, UNICEF, University of Cork, Published by UNICEF Ethiopia
- Khushal Vibhute Prof (Dr) and Filipos Aynalem, Legal Research Methods: Teaching material, (Prepared Under the Sponsorship of Ethiopian Justice and Legal System Research Institute, 2009)

- Mira Dutschke and Kashifa Abrahams, „Children’s Right to Maximum Survival and Development“ (2006), Children’s Institute, University of Cape Town; available on <http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/Projects/Completed_Projects/Rights_in_brief_survival.pdf > Accessed on 1/3/2020)
- Pien Bos and Fenneke Reysoo, et al „Qualitative Research in to the Root Cause of Child Abandonment and Child Relinquishment in Vietnam“(2013-2014), UNICEF, International Social Service
- Paraskevi (Paroula) Naskou-Perraki, „An Introduction to the International Protection of Human Rights“; Dagmar Kutsar and Hanne Warming(eds), Children and Non-Discrimination(2014), Interdisciplinary Text Book, (Children’s Rights Erasmus Academic Network)
- Rachel Hodgkin and Peter Newell, Implementation Hand book for the Convention on the Right of the Child, (3rd edn, Geneva 2007)
- Sara DePasquale and Jan S. Simmons, „Abuse, Neglect C, Dependency and Termination of Parental Right Proceedings in Northern Carolina“(2019), Chapter Nine, Termination of Parental Right
- UNHCR, „The Implementation of UNHCR BID Guideline“, (The UN Refugee Agency, 2011), Field Hand Book; available on <https://www.refworld.org/pdfid/4e4a57d02.pdf> Accessed on 15/12/2019

Articles and Journals

- Bassam Yousef and Ibrahim Banat, et al „Foundling and Abandoned Children in Palestine“, Global Journal of Health Science; Vol. 11, No. 11; 2019, Published by Canadian Center of Science and Education,
- Catherine Bonnet, ‘Adoption at Birth: Prevention Against Abandonment or Neonaticide’(1993), Child Abuse and Neglect, Vol 17; https://www.researchgate.net/publication/14797562_Adoption_at_birth_Prevention_against_abandonment_or_neonaticide > accessed on 7/3/2020)
- Claire Breen, ‘Age Discrimination and Children’s Right“(2006), International Student in Human Right Vol 86
- Carol Sanger, ‘Infant Safe Haven Laws: Legislating in the Culture of Life“ Columbia Law Review, Vol. 106, No. 4 (May, 2006), pp. 753-829; (Available on

<https://www.jstor.org/stable/4099469?seq=1&cid=pdf-reference#references-tab-contents>,
Accessed: 30-12-2019)

- ‘Child Abandonment: The Botched Beginning of the Adoption Process.’ *The Yale Law Journal*, vol. 60, no. 7, 1951, pp. 1240–1250; available on *JSTOR*, www.jstor.org/stable/793698, Accessed 3 Mar, 2020
- Dayna R. Cooper "Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process," (2003) *Hofstra Law Review*: Vol. 31: Issue. 3, Article 8, P 877-878; Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol31/iss3/8>)
- Dejo Olowu, ‘Protecting Children’s Rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child’, *International Journal of Children’s Rights* 10: 127–136, (2002)
- Desmond K. Runyan et al. ‘Child Abuse and Neglect by Parents and other Car Givers’(2002)
- Elaine E Sutherland, ‘The Child’s Right to Life, Survival and Development: Evolution and Progress’ (2015), *Stellenbosch Law Review*. V 26, 272-294
- Eskinder Eshetu Ali, ‘Health Care Financing in Ethiopia: Implications on Access to Essential Medicines’, *Value in Health Regional Issues* 4 C (2 0 1 4) 3 7 – 4 0
- Gail Hornor, RNC, et al, ‘Child Neglect: Assessment and Intervention’(2014), *Journal of Pediatric Health Care* Volume 28 Number 2
- Gerard Youan Vadivalu, ‘Legally Defining parental Abandonment of a Child: a Comparison Between South Africa and Californian law’(2014), University of KwaZulu-Natal, Howard College
- Getnet Tadele, ‘Child Abandonment: Five Dramatic Cases of Mothers in Addis Ababa’(2006); (Available on https://pdfs.semanticscholar.org/ac83/eecec191182ae5debb2a10a4d695baed9f9e.pdf?_ga=2.146181168.588235055.1578341629-1889969558.1575661987> accessed in 30/11/2019)
- Hawi Asfaw, “Birth Registration and Rights of the Child” (2019), P 2; Available on < <https://www.abyssinialaw.com/blog-posts/item/1881-birth-registration-and-right-of-the-child> > accessed on 8/3/202

- Joanne Mueller and Lorraine Sher, ‘Abandoned Babies and Absent Policies’ (2009), Health Policy
- John Brown, ‘Maternal Care and Mental Health’(1952), a report prepared on behalf of the World Health Organization as a contribution to the UN program for the welfare of Homeless Children
- Josephine Azuka and Bokime Gabriel, ‘Child Abandonment And Its Implications For Educational Development in Nigeria’ Archives of Business Research – Vol.6, No.9(2018)
- Katherine A. Kunkel et al, ‘Safe Haven Laws Focus on Abandonment Newborns and their Mothers, Child Health Policy’, Journal of Pediatric Nursing, Vol 22 No. 5(2007)
- Kathryn Whetten, Jan Ostermann et al ‘A Comparison of the Wellbeing of Orphans and Abandoned Children Ages 6–12 in Institutional and Community-Based Care Settings in 5 Less Wealthy Nations’, PLoS ONE 4(12): e8169(2009),
- Lorana Bartels, ‘Safe Haven Laws, Baby Hatches and Anonymous Hospital Birth: Examining Infant Abandonment, Neonaticide and Infanticide in Australia’ (2012) 36 Criminal Law Journal 19
- Marianne Bitler and Madeline Zavodny, ‘Child Abuse and Abortion Availability’(2002), AEA Papers and Proceedings; available at https://www.economics.uci.edu/files/docs/faculty_review/bitler-zavodny-aerpap-2002.pdf accessed on 8/5/2020
- Michelle Hammond, Monica K. Miller. et al, ‘Safe Haven Laws as Crime Control Theater’ (2010), Child Abuse and Neglect 34545-552
- Nadine Lefaucheur, ‘The French Tradition of Anonymous Birth: The Line of Arguments’, *International Journal of Law Policy and Family* 18(2004) 319-342
- Rama Kant, ‘History of Child Rights and Child Labor’(1987) Available on <http://webcache.googleusercontent.com/search?q=cache:BD7wehs_4wkJ:menengage.org/wp> accessed on 7/3/2020
- Rosemary Buhl, ‘Safe Haven Laws-Good Intentions, Better Methods Needed’(2004)
- S. Giordano, ‘Crime and Misdemeanors: The Case of Child Abandonment’, Journal of Medical Ethics, Vol. 33,No.1 (Jan, 2007)

- Save the Children, Institutional Care: The Last Resort, Policy Brief (2014), (available on https://resourcecentre.savethechildren.net/node/8202/pdf/sc_child_care_institutions_policy_brief_.pdf Accessed in 28/1/2020)
- Stephen Wilson, ‘Infanticide, Child Abandonment, and Female Honour in Nineteenth-Century Corsica’, *Comparative Studies in Society and History*, Vol. 30, No. 4 (1988), pp. 762-783, Published by Cambridge University Press
- Unicef, ‘Children Deprived of Family Environment’ (available on <https://www.unicef.org/northmacedonia/children-deprived-family-environment> Accessed on 24/02/2020)
- Valeri Delaunay, ‘Improving Knowledge on Child Abandonment and Care in Africa: A demographic Contribution to the Achievement of Child Protection’(2011), *African population studies* Vol 25, I available at <http://www.bioline.org.br/pdf?ep11005>
- Vinod Mishra, et al ‘Abortion Policies and Reproductive Health Around the World’(2014), United Nations Department of Economic and Social Affairs, Population Division

Unpublished Research Papers and Dissertations

- Deirdre Elizabeth Blackie, ‘Sad, Bad and Mad: Exploring Child Abandonment in South Africa’(2014), University of the Witwatersrand, South Africa, Thesis
- Eyerusalem Jima, ‘Ensuring a Better Protection for Children Deprived of Family Environment: The Application of Subsidiarity Principle in Ethiopia’ (2016), Addis Ababa University, Unpublished Thesis
- Meskerem Desalegn, ‘The Role of Child Care Institutions in Seeking other Children Alternative to the Best Interest of the Child’ (2015), Addis Ababa University, Graduate School of Social Work, Unpublished thesis
- Solomon Tekle, ‘State Responsibility for the Protection of Rights of Children Deprived of their Family Environment: The Ethiopian Perspective’ (2009), Addis Ababa University, Unpublished Thesis,
- Yonas Birmeta, ‘Training on Abandonment Status: The Legislation, Court and Social Services Responsibilities and Role’ (2012), Unpublished

- Workye Tsige, 'Psychological Wellbeing Between Institutional Land Non Institutional Orphan Children In Gulele Sub City Addis Ababa'(2015), Addis Ababa University , Unpublished Thesis
- Zerihun Yacob Anja, 'Factors Leading to Children on the Street, Challenges and their Coping Mechanism in Piassa area, Arada Sub-City of Addis Ababa'(2018) Addis Ababa University, Collage of Social Science, Unpublished Thesis

Court Cases

- The Case between Federal Public Prosecutor Vs. W/ro Teyba Yesufe, Case No.263485 Federal first Instance Court Lideta Branch, 7th Criminal Bench
- Re Jacklyn F Vs. Noel B, California Court of Appeal, 114 Cal.App.4th 747, 7 Cal. Rptr. 3d 768 (Cal. Ct. App. 2003
- J.D Vs. S.D, Court of appeal of the state of California fourth appellate district division two, E070576, 5/8/19; available on <
<https://www.courts.ca.gov/opinions/archive/E070576.PDF> accessed on 10/5/2020)

Interview

- Interview with Judge Assahibe Bezuneh, Federal First Instance Court Ledeta Branch 7th Women and Children Criminal Bench(Conducted on July 28, 2020 8:30 Local Time)
- Interview with Judge Getachew Lagessa, Federal First Instance Court Bola Branch 5th Inheritance and Adoption Bench(Conducted on July 27, 2020 9:30 Local Time)
- Interview with Commander Atseda Wordofa, Addis Ababa Police Commission Women's and Children's Crime Investigation and Protection Head(Conducted on June 3, 2020, 3:30 Local Time
- Interview with sergeant Zemenay Adana, Addis Ababa police commission, Gulala sub-police station women's and children's crime investigative affairs team leader(conducted on June 3, 2020, 4:30 Local Time)
- Interview with Assistant Inspector Tamerate Tesma, Addis Ababa police commission, Addis Ketema sub- police station women's and children's crime investigative affairs team leader(conducted on 27/5/2020, 4:30 local time
- Interview with Mr. Andualem Tafessa, Addis Ababa City Administration women's and children's Affairs breau(AAAWCAB), Child Assistance and Protection Director(Conducted on Jun 26, 2020, 2:30 local Time)

- Interview with Tiruwork Dababa, Addis Ababa Administration women's and children's Affairs bureau, Kibeba Teshay Temporary Child Care Institution Interim Manager (Conducted on July 24, 2020, 3:30 Local Time)
- Interview with Eheta-mlake Yegzu, Social Worker at the Kibeba Tsehay Temporary Child Care Institution (Conducted on 26/5/2020, 9:40 Local Time at the Institution)
- Interview with Tariku Sahawel, Federal First Instance Court Bola Branch, Social Worker for Child Adoption Court (Conducted on July 27, 2020, 8:00 Local Time)
- Interview with Marta Tameru, Public Prosecutor at Federal Attorney General, Addis Ketema Branch Office, Women and Children Affairs Focal Person (Conducted on July 29, 2020, 3:00 Local Time)
- Interview with Ruhama Alemeneh, Public Prosecutor at Federal Attorney General Lideta Branch Office, Women and Children Affairs Focal Person (Conducted on July 29, 2020, 4:00 Local Time)
- Interview with Meherate Balaye, Public Prosecutor at Federal Attorney General Gualala Branch Office, Women and Children Affairs Focal Person (Conducted on July 29, 2020, 4:00 Local Time)
- Interview with Sarone Legssa, Public Prosecutor at Federal Attorney General Arada Branch Office, Women and Children Affairs Focal Person (Conducted on July 29, 2020, 4:30 Local Time)

Appendix

Appendix-1 Interview Questions

- ❖ This is a semi-structured interview questions with federal judges, public prosecutors, AAAWCAB director, child care center manager and staffs, investigative police officers and heads, social worker at adoption court.
- ❖ **Significance of the interview:-** for the fulfillment of the requirement of the award of masters of human right law from Addis Ababa university school of law
- ❖ **Title of the study:-** Ensuring Ethiopian Children, in need of Care and Protection for the abandoned child: The Law and the Practice the Case of Addis Ababa
- ❖ **Researcher:-** Solomon Tsadiku (email:- Ethio2030@gmail.com)
- ❖ **Research advisor:-** Yonas Birmeta (PHD)

Notice

- ❖ The interview will be used only for the purpose of this study
- ❖ All interview answers will be confidential, and it will be used by keeping the university ethical conduct for any research
- ❖ For the purpose of memorizing the interview, with the consent of the interviewer, the researcher may record the interview with electronic devices
- ❖ If the interviewer once agreed and record the interview, the researcher delete all the voice record from any electronic device right after finishing the study

**Thanks in advance, for your support
Solomon Tsadiku**

Interview Guide with Federal First Instance Court Lideta Branch Child and Women's Criminal Bench Judge

- 1) How can the judge determine a certain child become “abandoned child”? What kind of criminal elements are fulfilled? Is it mandatory to cause actual harm on the child? How can the judge infer the criminal intention from the criminal code articles 574(exposure and abandonment of another), and article 659(failure to bring up of their child)?

- 2) What kind of pre-conditions are the court set in order to re-back the abandoned child to the accused mother? If the mothers are incarcerated, where does the court order the child's temporarily leaved (from the perspectives of the best interest of the child principle)?
- 3) Is the court give due consideration to the best interest of the child during calculating the sentence of the accused mother? Is the sentence corrective and appropriate?
- 4) From the perspective of the right of the child, to live with once own family, what kind of consideration are taken by the court during parental right determination as a punishment?
- 5) If the public prosecutor asks the removal of the mother from family right, how could the court react up on it?

Interview Guide with Federal First Instance Court Bola Branch Adoption Civil Bench Judge

- 1) How the courts order the police to find the true parent of the abandoned child before approving the adoption agreement?
- 2) How long the courts wait for finding the family of the abandoned child before approval of the adoption agreement?
- 3) Is the court giving expeditious decision on the adoption agreement?
- 4) The RFC article 187 and 191(1) generally tells us the family (the father or the mother) can give their child to another family through adoption agreement, if so, instead of abandoning their child in a place not conducive for the life of the child, is it possible to arrange a mechanism of leaving once own child in a safe place arranged by the relevant government? Like the system baby hatch, unanimous birthing

Interview Gide with Federal Public Prosecutors working on Children's and Women's Crime coordinator

- 1) How could the public prosecutors differentiate the criminal code article 574 and 659? What is the difference of the two articles? How can you understand the term child abandonment under the criminal code? How could they infer the criminal intention of the abandoned family? How the abandoned parent accused based on the criminal code?

- 2) According to proclamation No. 943/2008 article 6(3)(a) of the federal public prosecutor establishment proclamation, the public prosecutors are mandated to lead the criminal investigation with that of the police, so could you participate during investigation of the biological parent(family) of the abandoned child for the sake of securing the right of the child grown up within the family?
- 3) Is the public prosecutor involving the process of sending and backing the abandoned child to the child care center?
- 4) Is there any occasion the public prosecutor claim to the court the removal of the accused mother (father) from family right according to the criminal code?
- 5) Is it helpful for the right of the child to arrange a place where legally leave their child instead of leaving dangerous area?

Interview guide with Women’s and Children’s Criminal Investigation Team leader Police Officers and Heads

- 1) Are the police rightly moved to the area where the child was falling? How fast they are to send the child to the care institution?
- 2) Are the police diligently collecting relevant information about the abandoned child? How is their effort to get the child’s family? Is the collected information record properly in a manner that helpful for the child to know where and by whom he abandoned?
- 3) How the police respond the question of the care institution or the adoption court to answer the child’s final family report?

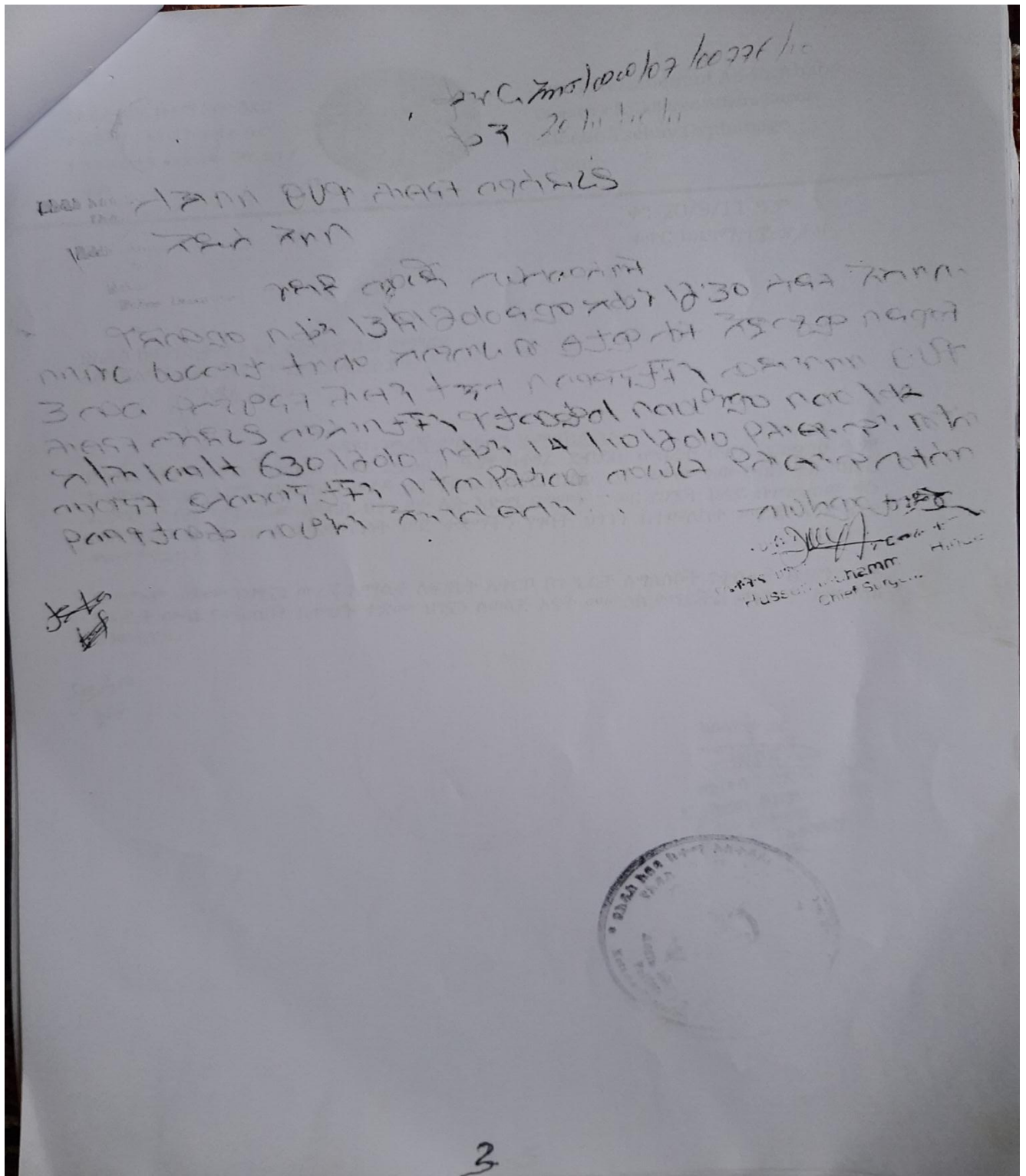
Interview Guide with Kibeba Teshay Child Care Institution heads and staff members

- 1) Is the institution providing adequate food, shelter, health facility, clothing and education for the abandoned child?
- 2) Is the institution adequately funded by the government?
- 3) Is the institution properly record the history of the abandoned child? How can preserve the collected information?
- 4) How the institution moves to maximum extent to find alternative child care option to the abandoned child?

Interview Guide with Social Workers Under the Adoption Court at Federal First Instance Court Bola Branch

- 1) How can they assess the background of the adoptive family before approval of the adoption agreement?
- 2) From a long experience of work, is there any gender preference among the adoptive family? If the answer is yes, why is the reason behind preferring a specific sex?
- 3) From a long experience of work, is there any age preference among the adoptive family? If the answer is yes, why is the reason behind preferring a certain age group children?
- 4) From long work experience, is the adoption culture developed within the country?

Annex 2.3



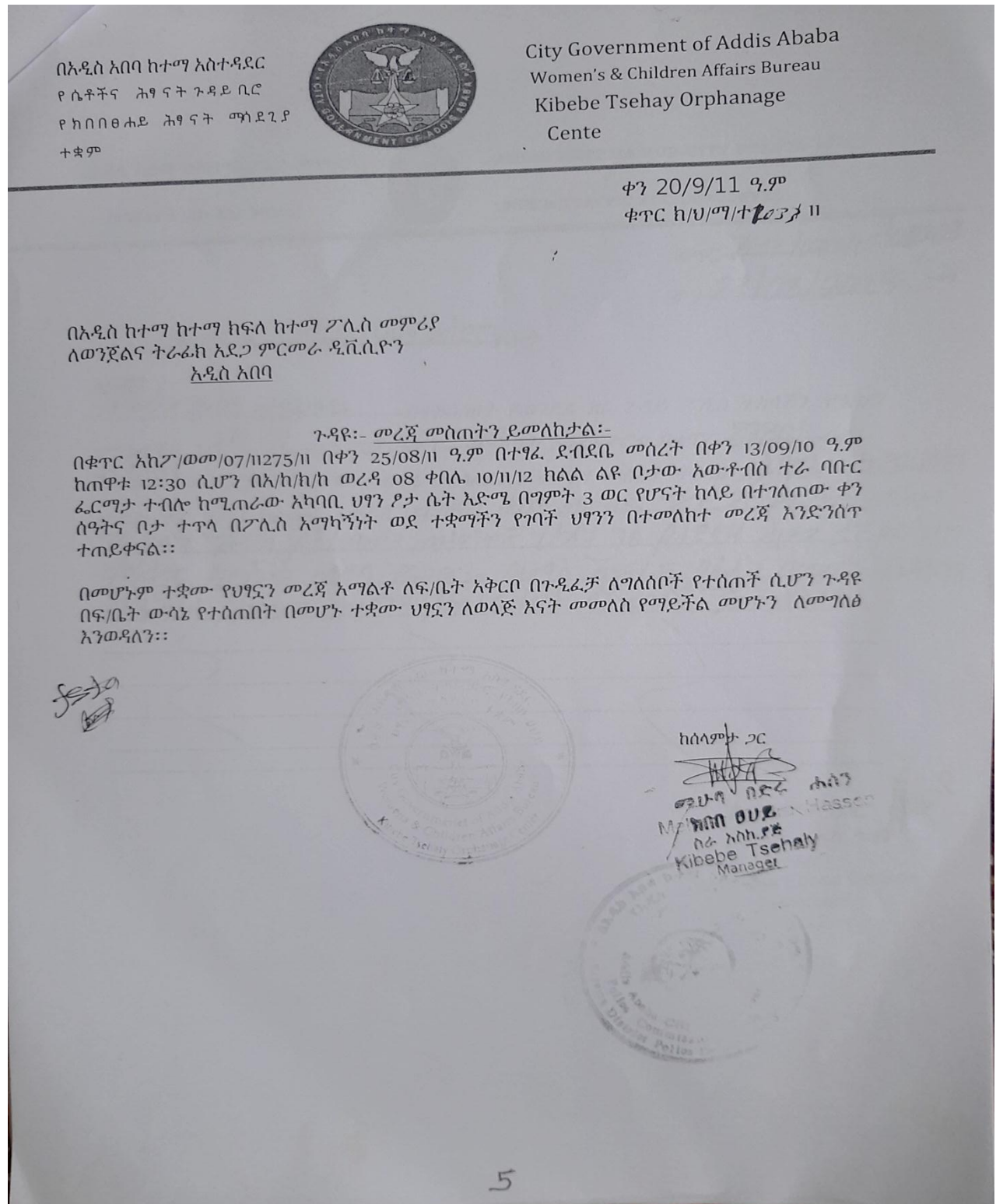
Annex 2.4

ወደ ክብር ወረቀት የሕፃናት ማሳደጊያ ተቋም የሚገቡ ሕፃናት
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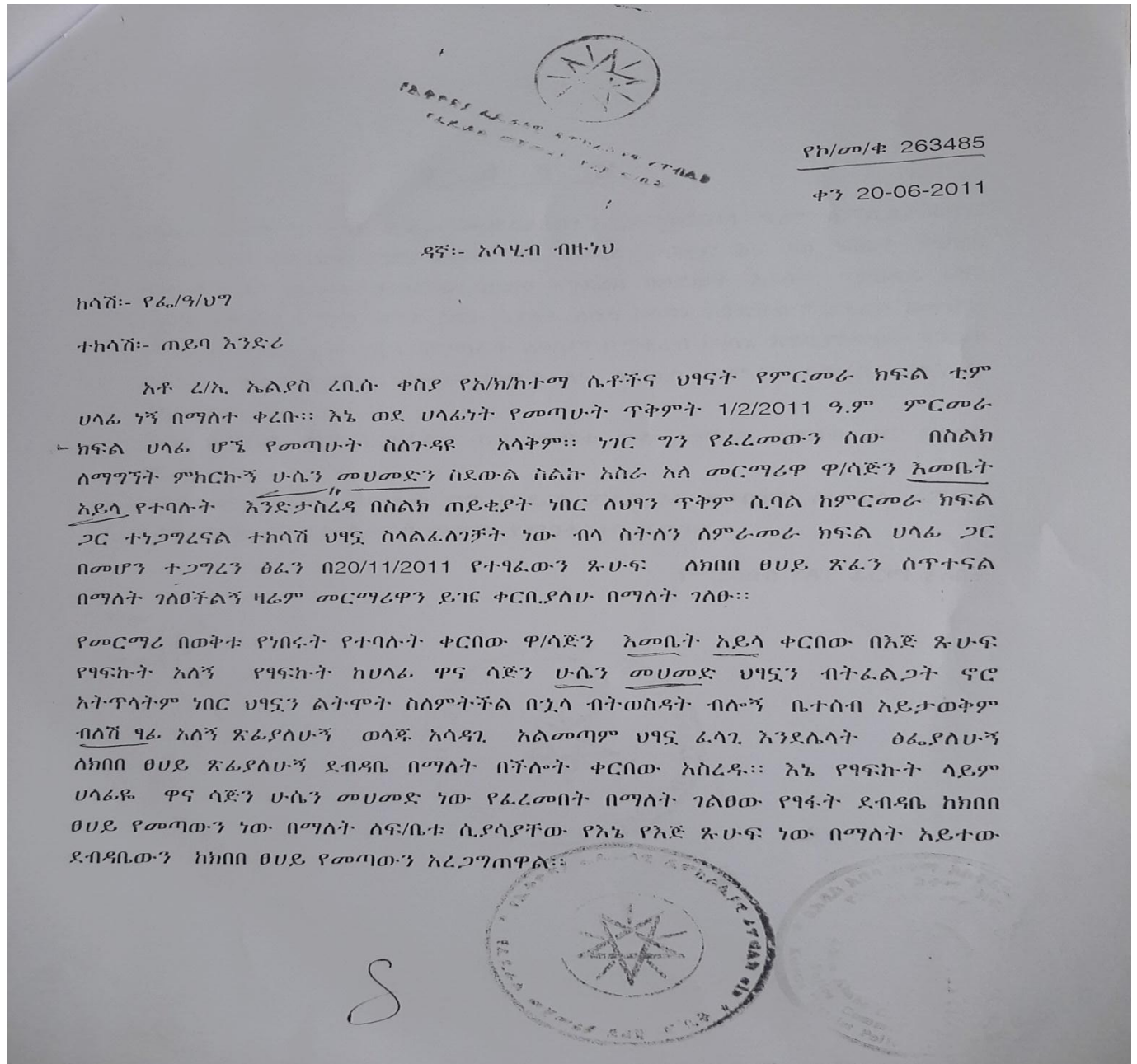
1. የሕፃን/ኗ ሁኔታ በተመለከተ
 - 1.1 በቤተሰብ የወጣለት/ለት ስም ዘራ ጌላ
 - 1.2 በማሳደጊያ ተቋም የወጣለት/ለት ስም የዕህርት ንብረት
 - 1.3 ጾታ ሴት 1.4 የሕፃን/ኗ ዕድሜ /በግምት/ 3 ወር
 - 1.5 ሕፃን/ኗ ላይ የሚተዩ የእካል ጉዳት ካለ ይገለጹ
2. ሕፃን/ኗ ወደ ተቋም የገባበት ምክንያት
 - 2.1 እባትና እናት በጥጥ በመለየታቸው 2.2 እባት በሞት በመለየቱ
 - 2.3 እናት በሞት ስለተለየች 2.4 እባት ባልታወቀ ምክንያት በመሆኑ
 - 2.5 እናት ባልታወቀ ምክንያት በመጥፋት 2.6 እናት ማሳደግ ባለመቻላ
 - 2.7 እባት ማሳደግ ባለመቻሉ 2.8 ተጥሎ/ላ የተገኘ/ች ✓
3. ተጥሎ የተገኘ/ች ከሆነ/ች
 - 3.1 የተገኘ/ች አድራሻ ጌራ ክ/ከተማ ጊዛ ለገገጃ ወረዳ 8 ተባብሮ/ላለች ሰው ባህርይ
 - 3.2 የተገኘበት/ችበት ቦታ የቦታ ሁኔታ ጊዛ ለገገጃ
ልዩ ምልክት ስለ ወቅቱ ካለ
 - 3.3 የተገኘበት/ችበት ሰዓት 12 ደቂቃ 35 ጠዋት ✓ ከሰዓት በኋላ ማ.ታ
ለየት ያለ ሁኔታ ስለ ወቅቱ ካለ
 - 3.4 ሕፃን/ኗን የገኘ /ጠቋሚው ሰው መ.ሉ ስም
 - 3.4.1 በወቅቱ የሰበሰው/ችው ልብስ ዓይነት
 - 3.4.2 የሰውነት ሁኔታ ቁመት የፊት ክለር
 - ተጨማሪ ልዩ ምልክት ካለ ይገለጹ

4

Annex 2.5



Annex 2.6



ትዕዛዝ

- የአዲስ ከተማ ከ/ከተማ ፖሊስ መምሪያ በቀን 20/11/2011 ዓ.ም ለፖሊሲ ቁጥር አብ/ወመ/07/00776/10 የሆነ ደብዳቤ ካለ ተበዳይ ፍቃድ እና ያለ ፍ/ቤት ትዕዛዝ የተበዳይ ህፃን ቤተሰብ ተጠርጣሪ ጠይባ እንደሪስ በህይወት እያለች ተበዳይ ህፃን የላትም በማለት ህፃኗን ወላጅ እናት እያላት ለሌላ አሳዳጊ እንድትሰጥ ያደረጉ በመሆኑ ፖሊስ ምርመራ በመጀመርና በማጣራት ለዓ/ህግ በማቅረብ ውሳኔ እንዲያሰጥበት ፍ/ቤቱ አሟላ። ይፃፍ። ትዕዛዙ ለዓ/ህግ ጽ/ቤት እና ለፖሊስ መምሪያ ይደረስ መዝገቡ ተዘግቷል።
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አ/መ
21-6-11



የአዲስ ከተማ መምሪያ ደረጃ ፍርድ ቤት