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**ENSURING A BETTER PROTECTION FOR CHILDREN DEPRIVED OF FAMILY
ENVIRONMENT: THE APPLICATION OF SUBSIDIARITY PRINCIPLE IN
ETHIOPIA**

BY EYERUSALEM JIMA

**ADDIS ABABA UNIVERSITY
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COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW**

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**A THESIS SUBMITTED TO THE SCHOOL OF LAW ADDIS ABABA UNIVERSITY IN
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APRIL, 2016

Declaration

I, Eyerusalem Jima, 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.

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List of Abbreviations

- ABoWCA**-Addis Ababa Bureau of Women and Children Affairs
- ACC**-Alternative Childcare Options
- ACRWC**-African Charter on the Rights and Welfare of the Child
- ACPF**-African Child Policy Forum
- CDFE**-Children Deprived of Family Environment
- CHH**-Child-Headed Household
- CHSA**-Charities and Societies Agency
- CRC**-Convention on the Rights of the Child
- CSA**-Central Statistics Agency
- CSO**-Charity and Society Organizations
- EACN**-Ethiopian Alternative Childcare Network
- FFIC**-Federal First Instance Court
- FDRE**- Federal Democratic Republic of Ethiopia
- GC**- General Comment
- ICA**- Inter-country Adoption
- KC** -Kinship Care
- MoE**-Ministry of Education
- MoH**-Ministry of Health
- MoJ**- Ministry of Justice
- MoWCA**-Ministry of Women and Children Affairs
- NGOs**- Nongovernmental organizations
- OBoWC**- Oromia Bureau of Women and Children Affairs
- OVC**-Orphan and Vulnerable Children
- RFC**-Revised Family Code
- UNGA**- The UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children
- UNICEF**-United Nations Children's Fund
- UNHCR**- United Nations High Commissioner for Refugees

Abstract

Children deprived of family environment are the most vulnerable group of society and hence demand special attention and protection. The principle of subsidiarity deals with alternative childcare options for children deprived of family environment based on the provisions provided under the CRC, the ACRWC, the Hague Convention and the UNGA. The provisions clearly put inter-country adoption and institutional childcare options to be considered subsidiary to other domestic family based childcare options. Accordingly, this study first, explores the existing national normative frameworks governing the principle of subsidiarity in Ethiopia. It then discusses the legal and policy gaps based on international child rights instruments ratified by the country. The status of alternative childcare options in Ethiopia has also been discussed based on the national guidelines on alternative childcare options. By using semi-structured interviews and case analysis the thesis further discusses key challenges faced in the implementation of subsidiarity principle. The study finds out that, despite promising progress made by the government of Ethiopia in adopting international child rights instruments and national guidelines, the proper implementation of subsidiarity principle remained major challenge in the country. Besides, the existing normative frameworks on alternative childcare options need legal and policy reforms. Yet, comprehensive legal schemes on alternative childcare options must be adopted by the government to better address the problems. Furthermore, effective implementations on the hierarchy of alternative childcare options through strong monitoring and evaluation on the performance of different stake holders involved on childcares are important. In the process of application, the principle of the best interests of the child should be given the paramount consideration.

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Chapter One

General Introduction

1.1 Background of the Study

Family is the fundamental unit of society within which children are conceived, born and reared with strong physical and emotional attachment.¹ Despite the fact that both international and national human rights instruments give a high concern for the child to grow up within a family environment, millions of children in the world live without parental care and family environment.² According to UNICEF, worldwide there are an estimated 153 million single or double orphan children.³

In 2011, the total population of Ethiopia was estimated to be more than 82 million of which 55% were children.⁴ Out of the child population, approximately 6 million were considered vulnerable.⁵ As indicated under the 2012 inter-censal report of Central Statistics Agency (CSA), there were 3.2 million single and double orphans which comprise 8.2% of child population in Ethiopia.⁶ Extreme poverty, HIV/AIDS and urbanization are considered as structural causes of vulnerability.⁷ The underlying causes of vulnerability are family instability and disintegration, violence in the home, abuse of children and disabilities. Neglect and abandonment were identified as immediate causes of vulnerability in Ethiopia.⁸

In Ethiopia, traditionally there was a strong culture of caring for orphan and vulnerable children (OVC). Most of the cares were being offered informally through nuclear and extended family members, communities and religious organizations. However, the cumulative effect of

¹ Aderanti Adepoju, *Family Population and Development in Africa* (1st ed. 1997), N.J, p. 28.

² Convention on the Rights of the Child, UN General Assembly Document A/RES/44/25 (12 December 1989), *See* Preamble, Paragraph 4; *See also* Preamble, Paragraph 5 of African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) (Entered into Force Nov. 29, 1999).

³ World Wide Orphans, *Defining Orphans: the World's Most Vulnerable Children* (April 7, 2015) available at, www.orglawstreetmedia.com/.../worl... (accessed on 8, February 2015).

⁴ The African Child Policy Forum (ACPF), *Inter-country Adoption Alternatives and Controversies: Proceedings of the Fifth International Conference on the African Child* (2012), p.19.

⁵ *Ibid.*

⁶ Central Statistics Agency, Ethiopia (Inter Censal Report of 2012).

⁷ ACPF, *Supra* note 4, P.19.

⁸ *Ibid.*

urbanization, prevalence of HIV/AIDS, drought, high population growth, shortage of land and other problems challenged the traditional efforts to address the problems of OVC.⁹ Besides there were a claim that children in informal care do not receive an equal standard of care and exposed to various exploitation and abuses.¹⁰

The international and regional human rights instruments on the rights of the child provide that, children who are deprived of the family environment are entitled to different types of alternative cares which includes foster placement, *kafalah* of Islamic law, adoption and placement in suitable institutions.¹¹ In addition to the above four options, Article 21 of the CRC reveals that inter-country adoption may be considered as an alternative means of child's care if the child cannot be placed in a foster or in an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.¹² These places inter-country adoption and institutional care as measure of last resort after exhausting other options.

The above provisions of alternative childcare options must be guided by the principle of subsidiarity.¹³ Additionally, the principle is indicated in various instruments including, the 2010 UN Guidelines for Alternative Care of Children, Articles 4 and 17 of UN Declaration on Social and Legal Principles with Special Reference to Foster Placement and Adoption Nationally and Internationally, relating to the Protection and Welfare of Children and Article 4(b) of the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.¹⁴

According to the principle of subsidiarity, as a general rule, the child can be cared by other alternative childcare options only when other options to keep the child with their biological family have been exhausted.¹⁵ This is based on the presumption that parental care is in the best

⁹ Tsegaye Chernet, *Overview of Services for Orphans and Vulnerable Children in Ethiopia*, Addis Ababa (April 26, 2001), p.4, available at, www.bettercarenetwork.org/.../..., (accessed on 4 January 2015).

¹⁰ Tiaji Salaam, AIDS, Orphans and Vulnerable Children (OVC): Problems, Responses, and Issues for Congress, CRS Report for Congress, 1st March Congressional Research Service, The Library Congress (2004), p.6.

¹¹ *Supra* note 2, See Article 20(3) of the CRC; See also Article 25 (2) of the ACRWC.

¹² *Id.*, See Article 21(b) of the CRC.

¹³ Girmachew Alemu and Yonas Birmeta, *Handbook on the Rights of the Child in Ethiopia*, Addis Ababa University, (í .), p.110 [hereinafter Alemu & Birmeta].

¹⁴ *Ibid.*

¹⁵ African Child Policy Forum, *Africa the New Frontier for Inter-country Adoption*, Addis Ababa, (2012), p, 26 [hereinafter ACPF].

interests of the child.¹⁶ If placement with original family or kin is impossible, domestic placement with the foster or adoptive family is taken as the next option. On the impossibility of both options inter-country adoption and institutional care can be taken as the last resort. This shows hierarchy of options first, care by family relative followed by substitute family through fostering or adoption and lastly inter-country adoption and appropriate institutions.¹⁷

The above hierarchy of options outlined is based on the consideration that the family environment is the best place for the full and harmonious growth of the child. Since, children grow in a healthy manner when they live in a secure and nurturing family environment.¹⁸ The principle also gives due emphasis for the permanent placement of children which is vital for continues development and emotional attachment purpose.¹⁹

As a State Party to the CRC and the ACRWC, the government of Ethiopia has formulated different policies and guidelines concerning children without parental care to comply with the above provisions. Among others, these includes the 2009 Revised Alternative Childcare Guidelines on Alternative Child Care and the 2010 Standard Service Delivery Guidelines for OVC Care and Support Program which are adopted by the Ministry of Women and Children Affairs (MoWCA).²⁰ In spite of such universal and national recognition of the rights of children for appropriate alternative childcare options, a number of children are placed under the care of institutions and inter-country adoption. Besides, other domestic childcare options are not being effectively exhausted as per the principle of subsidiarity.

Therefore, this study thoroughly examines the application of subsidiarity principle for the child welfare in Ethiopia. Both international and regional human rights instruments on subsidiarity principle are discussed. More importantly, the study analyzes the existing legal and policy frameworks that provide protection for children without parental care and legal loop holes. The

¹⁶ Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child (3rd^{ed}, Geneva 2007), p.295 [hereinafter Hodgkin & Newell].

¹⁷Id, p. 278.

¹⁸ Alemu & Birmeta, *Supra* note 13,p.111.

¹⁹ Ibid.

²⁰ Id, p. 112.

study also assesses the application of alternative childcare options in Ethiopia and practical challenges in the implementation of the principle.

1.2 Statement of the Problem

Children without parental care are the most vulnerable group of society. These children suffer from various discrimination including lack of access to basic developmental needs, physical and psychological abuse and lack of love and affection. The above problems further worsen on the placement of children without considering appropriate care option cognizant with the best interests of the child.

Under the human rights system of Ethiopia, article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE)²¹ indicates that, International Human Rights agreements ratified by the country are considered as an integral part of the law of the land. The international and regional human rights instruments ratified by the country provide hierarchy of alternative childcare options for the proper placement of children deprived of family environment. The hierarchies of options are constructed based on giving utmost priority for family environment and domestic childcare options. In this regard, the government of Ethiopia has also adopted different guidelines with due emphasis on community and family based childcare options.

Despite the above concerted efforts to implement the principle of subsidiarity in Ethiopia, different findings revealed that institutional care and inter-country adoption, which is supposed to be the last resort, is being offered to children without adequately exhausting other domestic childcare options. Furthermore, family based childcare options most importantly domestic adoption is not being effectively implemented and accepted by the community. According to the report of African Child Policy Forum, in 2010 Ethiopia was ranked the second most inter-country adoption sending country in the world following China.²² Different studies revealed that inter-country adoption creates great risk of abuse and malpractice together with depriving the

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

²² ACPF, *Supra* note 15, p.6.

cultural identity of children. Similarly, According to the 2014 UNICEF report, the number of children found in childcare institutions was estimated to be 9,000.²³ Apart from having detrimental effect on physical, emotional, and cognitive development, there are high incidences of abuse and neglect on children placed under the care of institutions.²⁴

Stated specifically, lack of comprehensive legal document with force of law to protect and promote the right of children without parental care, failure to consider hierarchy of alternative childcare options indicated under relevant international and regional child rights instruments, weak follow-up of implementation of policies, guidelines, standards, and misconception on the alternative childcare options are some of the problems against the proper application of subsidiarity principle.

1.3 Objectives of the Study

1.3.1 General Objective

The general objective of this study is to analyze the application of alternative childcare options outlined for the protection of children deprived of family environment under the principle of subsidiarity in Ethiopia.

1.3.2 Specific Objectives

The following are specific objectives of the study

- To examine the existing normative, policy and procedural framework to protect the welfare of children deprived of family environment in Ethiopia with special emphasis on the principle of subsidiarity.
- To assess the current implementation status of alternative childcare options in Ethiopia.
- To discuss about the substantive content of subsidiarity principle under international and regional human rights instruments.

²³ United Nations Children's Fund (UNICEF) Ethiopia Country Office, Thematic Briefing Note, Media & External Relations Section and Child Protection Section,(2014) p.1 available at, www.unicef.org/ethiopia (accessed on 4 February 2015).

²⁴ Ibid.

- To assess the position accorded to the principle of the best interests of the child in deciding hierarchy of childcare options in Ethiopia.
- To forward possible recommendations that aimed at the legal and practical solutions for better protection of children deprived of family environment.

1.4 Research Questions

This study seeks to answer the following research questions:

- What are the specific legal and policy frameworks in Ethiopia to protect the rights of children deprived of family environment?
- Are the domestic normative frameworks on alternative childcare options in conformity with the international child rights standards regulating alternative childcare options?
- Has Ethiopia adopted adequate and reasonable measures to realize the application of subsidiarity principle, what is the status of implementation?
- What is the position given to the principle of best interests of the child in deciding the hierarchy of alternative childcare options in Ethiopia?
- What possible legal and implementation devices are recommended to implement the principle of subsidiarity in Ethiopia?

1.5 Methodology of the Study

The study employs a qualitative research method and makes use of both primary and secondary data. Accordingly, critical examination of legal and policy documents that are essential for the application of subsidiarity principle have been undertaken. Furthermore, the research employs structured interview with different stakeholders from governmental and non-governmental organizations, so as to determine whether there exists harmony or otherwise between the legal protections envisaged and the practice. The study also employs personal observations and case analysis as strategies of qualitative inquiry. Finally, the research work assesses the body of existing literatures including books, articles, journals and others to conceptualize and analyze the issues associated with subsidiarity principle.

1.6 Literature Review

The issue of subsidiarity principle has got little attention by legal researchers in Ethiopia. As far as the researcher is concerned there are no domestic literatures found on the subject matter of the study. Yet, there are a few works that have direct and indirect bearing on the matter. Most of the works discuss subsidiarity principle from the perspective of inter-country adoption. The implication of subsidiarity principle on other childcare options and its national applications are issues that have rarely been studied.

According to Benyam, placing inter-country adoption as a measure of last resort has essentially aimed at promoting the best interests of the child.²⁵ His study discusses inter-country adoption in relation to other alternative care options. Benyam further discusses that, inter-country adoption as a measure of last resort should be read to mean as being subsidiary to other care options but subject to exceptions. He also added as a measure of last resort should not mean when all other possibilities are exhausted.²⁶

The study undertaken by Sarah Brittingham discusses the situation of birth families and inter-country adoption in Ethiopia. Sarah identifies that birth families relinquishment of children for inter-country adoption and abandonment is mainly linked to social and economic inequality in Ethiopia. She argues that, until the root cause of relinquishment or abandonment is mitigated, stakeholders must take a leading role in offering alternative types of care for children.²⁷

There is also a study conducted in collaboration with different stake holders including MoWCA, which analyses the national childcare options in Ethiopia through understanding institutionalization and factors driving institutionalization.²⁸ It reveals that though the development of institutional care in Ethiopia has been increasing, little emphasis has been given to developing other domestic alternative childcare options.²⁹ Similarly, the study of

²⁵ Benyam D. Mezmur, *Intercountry Adoption as a Measure of Last Resort in Africa: Advancing the Rights of a Child Rather than a Right to a Child*, International Journal of Human Rights (2009),p.21[hereinafter Mezmur].

²⁶ Ibid.

²⁷ Sarah Brittingham, *Birth Families and Inter-country Adoption in Addis Ababa, Ethiopia*, ISS, USA (Masters of Arts in Development Studies, Unpublished, 2010), p.42.

²⁸ Getnet Tadele et al., *Improving Care Options for Children in Ethiopia through Understanding Institutional Childcare and Factors Driving Institutionalization* (June 2010).

²⁹ Id, p.14.

Wereldkinderen³⁰ indicates that, while local child protection policies are existing inter-country adoption is taking control of the local child protection sector in Ethiopia.³¹

Concerning the principle of the best interests of the child, the study of Zenaye Tadesse discusses the role of the Federal Government of Ethiopia in implementing the best interests of the child.³² Zenaye asserts legal gap as the cause for problem of implementation of the principle of the best interests of the child in specific situations of children. From the perspective of subsidiarity principle, Davel, in his writing argues that, though subsidiarity principle is an important aspect to be considered, the best interests of the child should be an overriding principle in all matters affecting the welfare of the child. He further emphasize that, subsidiarity principle should always be interpreted in the context of the best interests of the child.³³

UNICEF has also sheds light on the hierarchy of alternative care options to be prioritized for children deprived of family environment. According to UNICEF, hierarchies of options are intended to protect the best interests of children in need of alternative care. Accordingly family based solutions, permanent solutions and domestic options respectively should be given priority in the implementation of alternative placements for children deprived of family environment.³⁴

1.7 Significance of the Study

The place where children placed for their growth is one of the main factors in the full personal development of a child. The place could be where children are protected and nurtured either in a good way or where their right is abused. This particular research focuses on the rights of children deprived of family environment to be cared by the appropriate childcare options. The study contributes a lot by exploring the application of alternative childcare options for children after their separation from their biological family. The study also analysis the legal and policy loopholes and challenges in proper implementation of subsidiarity principle.

³⁰ Wereldkinderen, Inter Country Adoption: The Rights of the Child, or the "Harvesting" of Children, Ethiopia (October 2009) available at, www.againstchildtrafficking.org/.../secon... (accessed on 6 February 2015).

³¹ Id, p. 5.

³² Zenaye T. Zeleke, The Role of Federal Government Organs in the Protection of the Best Interests of the Child in Ethiopia, Addis Ababa University, School of Law (LLM- Thesis, 2008, Unpublished).

³³ Davel Trynie , Inter-country Adoption from an African Perspective (Julian Sloth-Nielsen ed., 2008) ,p.257.

³⁴ UNICEF, Inter Country Adoption, Innocenti Digest, (1998) available at, www.unicef-irc.org/.../pdf/digest_4e.pdf (accessed on 9 February 2015).

Thus, the study will serve as an important input for institutions working on childcare and for the judiciary. This research also provides basic guidance to law makers while enacting legislations on the rights of children to be cared based on the principle subsidiarity. Moreover it will also serve as a reference for MoWCA in their responsibility of implementing and monitoring alternative childcare options. Finally, as far as the knowledge of the researcher is concerned, no comprehensive research has been done on the application of subsidiarity principle in Ethiopia. Thus, it may also extend some sort of knowledge on subsidiarity principle for the readers of this thesis. The researcher also strongly believes that, this study will assist other researchers who are interested in doing related work.

1.8 Scope of the Study

From the various forms of vulnerability and violation of rights facing children deprived of family environment, which each needs its own separate study, this study is limited to the application of subsidiarity principle for the child welfare in Ethiopia. The study is based on formal alternative childcare options. This study is particularly concerned with the application of alternative childcare options by childcare institutions and concerned governmental and nongovernmental organizations. The study also assesses the application of subsidiarity principle by the judiciary during the court decision for inter-country adoption. Moreover, it identifies and analyzes the legal and policy frameworks, and assesses existing domestic legal safeguards so as to protect rights of children deprived of family environment in Ethiopia, in light of international child rights and standards.

1.9 Limitations of the Study

The first limitation of the study is related to lack of disaggregated data on children deprived of family environment. Especially, on issues of inter-country adoption except courts all concerned organizations prefer to keep data secret. Misunderstanding or mistrusting the purpose of the

research as a fault-finding mission was the other prominent challenge encountered. Finally because of time limitation all aspects of subsidiarity principle would not be discussed in detail.

1.10 Organization of the Study

This research work is comprised of five chapters each of which is further divided into sections and sub-sections. The first chapter provides the general background and presents the structure of the study. The second chapter deals with international and African definitions, nature, principles and normative grounds of subsidiarity principle. The third chapter is devoted to analyzing the existing normative and policy frameworks for protecting the welfare of children deprived of family environment in Ethiopia. The fourth chapter deals with the analysis of application of subsidiarity principle in Ethiopia. It discusses the implementation status of alternative childcare options in Ethiopia. Finally under chapter five, brief conclusion and recommendations are included.

Chapter Two

The Principle of Subsidiarity under International and African Human Rights Instruments

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.

Kofi Annan

2.1 Introduction

Children deprived of family environment have the right to alternative childcare. They have the right to be nurtured in a manner that enhances the development of their personality. The right of children to alternative childcare like other rights does not only entail implementation and obedience to it. But also children need to be informed about their rights and they should be provided with the opportunity to exercise these rights and they need to have a clear guidance of any one legally responsible for them in the exercise of those rights.³⁵

The basis for the rights of the child for alternative care can be found in various international instruments. The 1924 Geneva Declaration on the Rights of the Child and the 1959 Declaration on the Rights of the Child are important instruments in providing the need for the care of children.³⁶ However, neither of these instruments provides subsidiarity principle in the context of alternative childcare options. Similarly, the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally is an important document in stipulating clear classification between general family and child welfare, foster placement and adoption. Though not binding the Declaration paves the way for some of important principles and formulations which made their way particularly to the CRC.³⁷

Among human rights instruments with binding legal force the CRC, the ACRWC and the Hague Convention on Protection and Cooperation in respect of Inter-Country Adoption (the Hague

³⁵ Charlotte Phillips, *Child-Headed Households: A Feasible Way Forward or an Infringement of Children's Right to Alternative Care?* (2011), p. 20 [hereinafter Philips].

³⁶ *Id.*, pp. 24-27.

³⁷ Philips, *Supra* note 35, p.30.

Convention) contain provisions pertaining to the principle of subsidiarity.³⁸ Furthermore, the UN Guidelines for the Alternative Care of Children is a document directly dealing with the principle and derived from legally binding standards and a strong frame of reference for national legislation in practical application of the principle.

2.2 The Principle of Subsidiarity under International Human Rights Instruments

The CRC and the Hague Convention are the main international legal frameworks governing the principle of subsidiarity. The UN Guidelines for the Alternative Care of Children (2009) which provides detailed guidance on the practical application of the principle is the policy framework in dealing with the subject.

2.2.1 The UN Convention on the Rights of the Child (CRC)

The CRC is the main international human rights document governing the principle of subsidiarity.³⁹ Considering alternative childcare options, the Preamble of the Convention starts with giving due recognition for the child to grow up in a family environment in general and alternative cares in particular.⁴⁰ Article 20 of the CRC is the principal provision concerning the principle of subsidiarity

Article 20 of the CRC prescribes:

1. A child temporarily or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.
2. State Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care shall include, inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

³⁸ Mezmur, *Supra* note 25, p.84.

³⁹ Convention on the Rights of the Child, UN General Assembly Document A/RES/44/25 (12 December 1989) [hereinafter the CRC].

⁴⁰ Id, *See* Preamble Paragraph 6 of the CRC, it states that, "recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."

Accordingly, those children who are temporarily or permanently deprived of family environment or in whose own best interests removed from that environment have the right to be cared with state provided alternative childcare. The care options are foster placement, Islamic *kafalah*, adoption and lastly institutional care respectively. This suggests hierarchy of options first, family relatives followed by substitute family through fostering or adoption and finally an appropriate institution.⁴¹ This position further acknowledged by the Committee on the Rights of the Child (CRC Committee), whereby orphans are best protected by extended family in a family based setting. If that is not possible, other forms of family based childcare options like foster care should be pursued.⁴² Institutional childcare may have to be employed only as a measure of last resort where family based care is not an option and should be employed with stringent regulation.⁴³

Article 21 of the CRC elaborates on adoption and Sub-article 2 of the same provision stipulates that, inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared in the child's country of origin.⁴⁴ This provision indicates as inter-country adoption is subsidiary to other national childcare options. This is further confirmed by the CRC Committee with a conclusion that "inter-country adoption should be considered, in the light of Article 21, namely as a measure of last resort."⁴⁵ Though the position of the CRC Committee as to whether inter-country adoption or institutional care that generally should be considered as a measure of last resort is unanswered, the operative language that has emerged in recent time has been for ICA to be considered as a measure of last resort.⁴⁶ This is further supported by influential organizations such as the United Nations Children's Fund (UNICEF) and the United Nations High Commissioner for Refugees (UNHCR).⁴⁷

⁴¹ Hodgkin & Newell, *supra* note 16, p. 278.

⁴² Committee on the Rights of the Child, General Comment No. 3 (2003) HIV/AIDS and the Right of the Child; Thirty-Second Session, CRC/GC/2003/3,(2003) Para 34 [hereinafter UN General Comment No. 3 (2003)] .

⁴³ *Id.*, Paragraph 35.

⁴⁴ The CRC, *Supra* note 39, *See* Article 21(2).

⁴⁵ Mezmur, *Supra* note 25, p.7.

⁴⁶ *Id.*, p. 96.

⁴⁷ *Id.*, p. 83.

2.2.1.1 General principles of the CRC

Subsidiarity principle cannot be seen in isolation to the four pillars of the CRC which are crucial in its application. These are the principle of Non-Discrimination, the Best Interests of the Child, Right to Life, Survival and Development to the Maximum Extent and Child Participation. Based on the principle of non-discrimination, it is the obligation of state and concerned bodies to protect children from any form of discrimination including discrimination related to child care placements.⁴⁸ The state has also an obligation to ensure survival and development of children.⁴⁹ Based on the principle of child participation, children have the right to participate in any decisions that affect them in accordance with their age and maturity. This must include all decision about alternative child care placements.⁵⁰ The principle of the best interests of the child has its own separate discussion.

2.2.1.2.1 Family Environment

Family is assumed to be the natural environment of the child that ideally offers the greatest protection, provision and emotional support to the child.⁵¹ Various international treaties also affirmed the primacy of family environment for the proper upbringing and development of a child.⁵² This can also be referred from the Preamble and different provisions of the CRC.⁵³ However, there is no single definition accorded to the term family environment. It is a new concept introduced under the CRC and adopted by consequent international documents.⁵⁴ In recognition of the different form of family environment the CRC and the ACRWC refer to a child deprived of his or her family environment not a family environment or the family environment. This implies the fact that Article 20's notion of family covers the family

⁴⁸ Andrew Dumn et al., A last Resort, the Growing Concern about Children in Residential Care, International Save the Children Alliance, p.7 [hereinafter Dumn et al.,] available at, www.savethechildren.net, (accessed on 20 June 2015) See also Article 2 of the CRC.

⁴⁹ Ibid, See also Article 6 of the CRC.

⁵⁰ Ibid, See also Article 12 of the CRC.

⁵¹ Nigel Cantwell and Anna Holzscheiter, A Commentary on the United Nations Convention on the Rights of the Child, Article 20 Children Deprived of their Family Environment, Martinus Nijhoff (2008),p.11 [hereinafter Cantwell &Holzscheiter].

⁵² Id, p.10.

⁵³ *Supra* note 39, See Paragraph 5 of the Preamble, See also Articles 2,3,5,8,9,10,11,14,16,18,20,21,22,23,24,27,37 and 40.

⁵⁴ Geraldine V. Bueren, International Children's Rights: A Stop-Go History (Verhellen ed, 1996), p.69.

environment, rather than biological parents.⁵⁵ Different findings suggest that absence of such family environment where there is an emotional attachment destroys both the child as well as the society itself.

2.2.1.2. 2 Children Deprived of Family Environment (CDFE)

As mentioned under Article 20 of the CRC, CDFE are those groups of children who are temporarily or permanently removed from their family environment either because of circumstances such as the death of parents, children's abandonment or relinquishment by parents, armed conflict, internal displacement, temporary or permanent incapacity of parents (due to imprisonment, illness or disability) and or in their best interests by administrative or judicial decision.⁵⁶ Though the list is non-exhaustive, children within the juvenile system are not included under CDFE since they are separately provided for.⁵⁷ Similarly, the position of homeless children (vagrant children and street children) and Child-Headed Households (CHH) remains unclear under international law.⁵⁸ Likewise poverty⁵⁹ and disability of parents cannot be considered as the best interest reason to deprive children from family environment.⁶⁰

2.2.1.2. 3 State Obligations

CRC envisages that a child deprived of family environment either temporarily or permanently or in his own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance by the State.⁶¹ Thus, if children lack parental care, the state parties as the ultimate guardian of children, have an obligation to provide appropriate care.⁶² States are also obligated to provide special protection from harmful family environment which

⁵⁵ UNICEF, Article 20(1) of the CRC; Implementation Handbook for the Convention on the Rights of the Child (2007), p. 278.

⁵⁶ Hodgkin & Newell, *Supra* note 16, p. 279.

⁵⁷ Cantwell & Holzscheiter, *Supra* note 51, p.38.

⁵⁸ *Ibid.*

⁵⁹ Nigel Cantwel et al, Moving Forward: Implementing the Guidelines for the Alternative Care of Children, UK: Centre for Excellence for Looked after Children in Scotland (2012), p.38, [hereinafter Cantwel et al] See also Article 15 of the UN Guidelines.

⁶⁰ Alemu & Birmeta, *Supra* note13, p.111, See also Convention on the Rights of Persons with Disabilities, Article, 23 Paragraph 4.

⁶¹ *Supra* note 39, See Article 20 (1) of the CRC.

⁶² *Id.*, See Article 20(2) of the CRC.

cannot be allowed to remain in that environment and to ensure that there are suitable alternative care options in place that guarantee a minimal disruption of the child's emotional, physical and personal development.⁶³ In other words upon missing the first level protection from birth families, children have a moral claim on the rest of the society.⁶⁴

2.2.1.2.4 The Principle of the Best Interests of the Child

The Best interest of the child is the fundamental principle in providing alternative childcare for CDFE. All decisions taken by states and other organizations regarding the care and protection of children should be in the child's best interests.⁶⁵ Apart from Article 3 and 20 of the CRC with a general formulation, Article 21 is one of the areas where the principle of the best interests of the child mentioned specifically. Accordingly, in relation to adoption the best interests of the child should be 'the paramount consideration' not just 'a primary consideration' as given under Article 3.⁶⁶ In this regard, whenever a choice is made between different alternative childcare options the best interests of the child should be the governing factor. In other words based on the principle of best interests of the child, inter-country adoption, which is considered as a measure of last resort, might be taken as the first option for the child.⁶⁷ Thus, subsidiarity principle should be implemented based on individualized treatment of the child. What is best for one child might not work for others.⁶⁸

⁶³ Cantwell & Holzscheiter, *Supra* note 51, paragraph 14, p.9; it states that, States are expected to provide alternative childcare based on national laws of the country and in accordance with the best interest of the child.

⁶⁴ Hodgkin & Newell, *Supra* note 16, p.277.

⁶⁵ Dumn et al., *Supra* note 48, p.7.

⁶⁶ The Committee on the Rights of the Child, General Comment No. 7, Implementing Child Rights in Early Childhood, Fortieth Session, Geneva, CRC/C/GC/7/ 20 September (2009) paragraph 36(b). *See also*, Benyam D. Mezmur, *The African Children's Charter versus the UN Convention on the Rights of the Child: A Zero-Sum Game?*, SAPR/PL (2008) pp.7-9. With respect to the principle of the best interest of the child, the use of the phrase 'a primary consideration, under Article 3(1) of the CRC, allows for other principles and considerations to be taken into account. On the other hand, the use of the phrase 'the' primary consideration, under Article 4 (1) of the ACRWC, increases the influence of the principle and suggest for all other principles in the instrument should be analyzed in light of the child's best interest.

⁶⁷ Mezmur, *Supra* note 25, p. 92.

⁶⁸ Guidelines for the Alternative Care of Children, UN General Assembly Document, A/RES/64/142 (24 February 2010) [hereinafter UNGA] *See also* Articles 6, 58-70 & 78-98 of UNGA.

This is further supported by the Constitutional Court of South Africa on the case of AD and Another Vs DW and Others.⁶⁹ The constitutional court held that the principle of subsidiarity should be seen as a core factor governing inter-country adoption, but that is not the ultimate governing factor in inter-country adoption. The constitutional court added that "the subsidiarity principle itself must be seen as subsidiary to the paramount principle."⁷⁰ The court indicated that, the best interests of the child cannot be determined through mechanical legal formulae or through rigid hierarchical ranking of care options rather contextualized enquiry be conducted based on the case of each child.⁷¹ This shows the predominant role of the best interests of the child over subsidiarity principle.

Furthermore, in providing alternative childcare for CDFE based on the best interests of the child priority must be given to the need to maintain continuity in a child's ethnic, religious, cultural and linguistic background.⁷² Here, children's cultural identity, especially in the context of Africa is actually an important element in defining their best interests.⁷³

2.2.2 The Hague Convention on Protection and Cooperation in Respect of Inter-country Adoption (1993) (the Hague Convention)

The Hague Convention is a legal instrument which is enacted as consequence of a vast increase in the number of inter-country adoption in the 1980s with often a serious human and legal outcome.⁷⁴ And it is the most directly applicable treaty in the area of inter-country adoption.⁷⁵ Article 4(b) of the convention is one of an important provision in connection with subsidiarity principle. It provides inter-country adoption as alternative childcare option, only if the competent authorities of state origin have determined after possibilities for placement of the child within the state of origin have been given due consideration that "inter-country adoption is in the child's

⁶⁹ Mezmur, *Supra* note 25, p.92, the case is concerned on the application for sole custody and sole guardianship by citizens of USA, to adopt South African child Baby R. The application of subsidiarity principle in the case of Baby R was debated both by lower court and Constitutional court.

⁷⁰ ACPF, *Supra* note 15, p.29, On the case of, South Africa Constitutional Court, AD and Another vs. DW and Others, CCT 48/07, (Sentence.7 Dec 2007b, § 48).

⁷¹ Ibid.

⁷² The CRC, *Supra* note 39 see Article 20(3).

⁷³ ACPF, *Supra* note 15, p.39.

⁷⁴ Philips, *Supra* note 35, p.79.

⁷⁵ Ibid.

best interests⁷⁶ In this provision, the convention shows a clear deviation from the CRC and the ACRWC, in putting inter-country adoption in preference to non-family based care options like institutional care in a child's country of origin, than as a measure of last resort.⁷⁷

2.2.3 The UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (UNGA)

UNGA is adopted with the intention to enhance the implementation of the CRC and of relevant provisions of other international instruments regarding the protection and wellbeing of children who are deprived of parental care or who are at risk of being so.⁷⁸ In this regard, the UNGA serves to fill the gap between state obligation under the CRC and practical implementation. Though legally a non binding document, the guidelines serve as a reference text for governments, policy makers and all those involved in providing alternative care for children.⁷⁹

The UNGA clearly provides the need for alternative childcare for CDFE and guide the manner how it has to be implemented nationally by providing specific clear guidance to the implementing authority and supervision of the process. However, concerning the scope of alternative care, the UNGA fill the gap created on the CRC by including regulation of informal care setting like kinship care and care by extended family.⁸⁰

There are two main principles underpinning the UNGA in setting standards for the provisions of alternative childcare of children. These are the Necessity and Suitability Principles.⁸¹ According to necessity principle, the need for a child to be placed in alternative childcare has to be clearly established.⁸² And suitability principle demands for the care option to be provided in an

⁷⁶ Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (29 May 1993) Article 4b.

⁷⁷ ACPF, *Supra* note 15, p.25.

⁷⁸ UNGA, *Supra* note 68, *See* Preamble Paragraph 3.

⁷⁹ Philips, *Supra* note 35, p.70.

⁸⁰ *Supra* note 68, *See* Article 29 of UNGA, It states that, "alternative childcare is a formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his or her parent(s) or primary caregivers, or spontaneously by a caregiver in the absence of parents." *See* also Articles 11, 17, 27 & 99-103 of UNGA.

⁸¹ Cantwell et al., *Supra* note 59, p.22.

⁸² *Ibid*, acting on the necessity principle involves first, preventing situations and conditions that can lead to alternative care being foreseen. Secondly, it concerns the establishment of gate keeping mechanism where children

appropriate manner.⁸³ The assessment of the necessity principle primarily goes with ascertainment of whether the alternative childcare to deliver is in the best interests of the child or not based on child family circumstance and opinion of the child.⁸⁴ The UNGA also introduced the concept of permanency as a key goal for alternative childcare. Accordingly, the care setting should be decided in a way to maintain child permanency.⁸⁵

Concerning the care options, the UNGA gives the utmost priority to keep children under the care of the family.⁸⁶ The UNGA acknowledged both the biological family and extended family like close family members. Family reunification and reintegration are concepts which are highly given priority and main concern under the UNGA. Failing to the first option, the guidelines goes towards looking for permanent solutions like adoption and *kafalah* of Islamic law. However, the position of inter-country adoption is not mentioned under the guidelines. Following permanent care, long-term options like foster care and appropriate residential care are put to be delivered as a last option.⁸⁷ Concerning residential care, most parts of the UNGA stressed on the need to use residential care only to situations where it is absolutely necessary and to provide temporary care. More importantly unlike the CRC, the UNGA gives recognition for CHH and acknowledge their need for specific care and protection.⁸⁸

2.3 The Principle of Subsidiarity under African Human Rights Instruments

2.3.1 African Charter on the Rights and Welfare of the Child (ACRWC)

are placed to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family have been examined. Finally it demands, regular review of placement.

⁸³Id, suitability principle involves first, if a child in deed requires alternative care, all care settings must meet general minimum standards in terms of, for example, conditions and staffing, regime, financing, protection and access to basic services (notably education and health).the second aspect concerns with the matching of the care setting with individual child concerned. And finally, in developing this range of options, priority should clearly be given to family and community-based solutions.

⁸⁴ Id, p.26.

⁸⁵ Id, p72, It dictates that, the innate concern of permanency is not in its forever meaning but a sense of belonging and being cared for in a safe, stable and supportive environment. Concerning alternative care situations, it has an implication that, the same feeling of security and support must be ensured even when changes in setting are proposed.

⁸⁶UNGA, *Supra* note 68, pp.2, 3.

⁸⁷ Id, Articles 2,161.

⁸⁸ Id, p.60.

The need for drafting of the ACRWC arose in response to under representation of African states in the drafting process of the CRC and in order to have a charter which is peculiar to the continent addressing particular needs of African children.⁸⁹ However, most provisions of the charter including the Preamble get aspiration from and strongly resembles to the CRC. Nonetheless, as the region specific the charter provides a high level of protection in additional or adopted articles.⁹⁰ Thus with region specific, the ACRWC plays supplementary role to the CRC.⁹¹

2.3.2 The Comparison of the Relevant Provisions of the CRC with that of the ACRWC

Concerning CDFE, similar to the CRC, the Preamble of the ACRWC recognizes the importance of family environment for the full and harmonious development of a child. Addressing the principle of subsidiarity, Article 24(b) of the charter is one of an important provision. Accordingly, inter-country adoption, as the last resort be considered as an alternative means of a childcare, if the child cannot be placed in a foster or an adoptive family or can not in any suitable manner be cared for in the Childs country of origin.⁹² Here unlike the CRC, the ACRWC clearly put inter-country adoption as a measure of last resort.⁹³

On the other hand, Article 25 of the ACRWC is similar to Article 20 of the CRC with a number of minor differences. The article started by indicating the need for provision alternative care for CDFE for any reason⁹⁴ The inclusion of the word for any reason⁹⁵ indicates the broader scope of Article 25 than Article 20 of the CRC, by including who are unaccompanied, separated or displaced as a result of armed conflicts and natural disasters.⁹⁶ Sub-article 2 of the same provision noted for the government to ensure alternative family based care⁹⁷ with an impression that alternative care should be family based care.⁹⁸ ACRWC mentioned foster placement or placement in suitable institutions as possible forms of care. Paragraph 3 of the ACRWC indicates, for any choice regarding alternative care to be in the best interests of the child⁹⁹ This

⁸⁹ Philips, *Supra* note 35, p. 58.

⁹⁰ Id,p.58.

⁹¹ Id, p. 60.

⁹² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) (Entered into Force Nov. 29, 1999) [hereinafter the ACRWC], Article 24(b).

⁹³ Id, Article 25(1).

⁹⁴ Philips, *Supra* note 35, p.66.

⁹⁵ Ibid.

sub-article put the principle in an explicit way than the CRC which provide for the determination of the best interests of the child only with reference to the decision to remove a child from its family environment.⁹⁶ This is an important indication of the need to impose the principle of the best interests of the child in all aspect of alternative childcare.

2.4 Alternative Childcare Options (ACC)

Preservation of family environment is the first step that should be taken before the issues of alternative childcare come in forefront. Up on losing the natural family environment International and African Human Rights documents provide alternative childcare options for CDFE. Thus, the following discussion focuses on ACC options based on the lists provided under the CRC, the ACRWC and the UNGA.

2.4.1 Family Reunification/Reintegration

CRC stipulates that, once separation of children from family environment takes place, family reunification measures should be pursued.⁹⁷ The CRC and the ACRWC indicate family reunification as the obligation of the state.⁹⁸ This supports for reunification of children with their parents or extended family. Similarly at the heart of the UNGA, states are required to prevent family separation through different prevention approaches and once it happens, states are required to facilitate family reunification when it is in the best interests of the child.⁹⁹

The success of reunification is based on the extent to which states put in place adequate institutional frameworks and procedures to reunify children with their families. In this aspect, Strong partnership, early planning and intensive efforts with the family and other professionals are required to maximize opportunities for safe, timely and sustainable reunification within the child's developmental timeframes.¹⁰⁰ Identification, documentation, family tracing and reunification (IDFTR) is one of the mechanisms which are recommended by UNICEF.

⁹⁶ Ibid.

⁹⁷ The CRC, *Supra* note 39, *See* Article 10.

⁹⁸ ACPF, *Supra* note 15, p.41, *See* also Article 10 of the CRC.

⁹⁹ Ibid.

¹⁰⁰ Jenny Papageorgiou, *Guidance on Family Reunification*, p.1 available at, www.dhs.vicc.gov.au/.../guidance-on- (accessed on 4 April 2015).

2.4.2 Kinship Care (Community Based Care), Foster Care, and *Kafalah*

Though there are different ways where community based care system are regulated with in a state, the discussion will focus on kinship care (KC) in light of its wide practice, acceptance and significance. Kinship care is “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”¹⁰¹ Like other care options KC is taken as a solution to a short term problem of the child or as a long term solution based on the situation of the child. In most developing countries of Asia and Africa, there is a culture of the extended family taking over a child when parents are unable to provide care for a limited period of time or based on the death of parents.¹⁰² Various studies demonstrated that children placed under KC are at high risk of neglect, abuse or exploitation.¹⁰³ In order to avoid this, in many developed countries particularly with the development of social services and child protection policies KC is taken by foster parents after the proper placement of the child under the competent authorities. Such legal placement of children by competent authorities undertaken with family members is known as “Formal Kinship care”¹⁰⁴ This practice is particularly important on preventing neglect and abuse on children as it provides legal safeguard. Generally, a focus on community based care has the potential to address the challenges posed on CDFE if there is strong and coordinated system of regulation within the community.¹⁰⁵

The UNGA describes foster care as, “situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family that has been selected, qualified, approved and supervised for providing such care.”¹⁰⁶ This care system unlike kinship care does not require biological or

¹⁰¹ Child Welfare League of America (CWLA), *Kinship Care fact Sheet*, available at, www.cwla.org/programs/kinship/factsheet.htm (accessed on 10 April 2015) “This definition is designed to be inclusive and respectful of cultural values and ties of affection.”

¹⁰² International Social Service & UNICEF, *Improving Protection for Children without Parental Care, Kinship Care: An Issue for International Standards* (2004), p.2.

¹⁰³ The Faith to Action Initiatives, *Children, Orphanages and Families* (2014), p.11 according to the study the closer the biological ties, the more secure and less discriminated against the child feels. This makes care by grandparents or older sibling preferable.

¹⁰⁴ Id, p.2.

¹⁰⁵ ACPF, *Supra* note 15, p.42.

¹⁰⁶ UNGA, *Supra* note 68, Article 29.

fictive relationship between the foster family and foster child. Important decision concerning the live of the child is made by any organ or individuals having the custody of the child including the courts, social welfare agencies, and substitute parents.¹⁰⁷

Foster care is unique in its shared role between state and foster parents. Parental responsibilities are shared between the states through State financing of the care system and foster parents physical care for children.¹⁰⁸ Foster care has benefit of offering family environment for children deprived of family environment.¹⁰⁹ It also creates attention and bonding with care givers which stimulates their attachment process, learning development and inter personal skills.¹¹⁰ Financially, Foster care is less expensive than institutional care. In this regard, the study conducted in South Africa reveals that the annual cost for one child in an institution is four times more expensive than foster care.¹¹¹ This in short explains the financial advantage of foster care in comparison with institutional care.

In contrast, there are arguments which criticize the system for maintaining children in temporary situations where the best arrangement for children is permanent arrangement in home with biological parents or adopted parents. It is argued that, the more the child is placed in a foster care, the less likely to become the option of permanent placements.¹¹² In addition, ambiguous nature of a child's status, frequent placement changes, and the lack of power by foster Parents to make decision about children's lives are areas with red labeling for effective development of children in foster care.¹¹³

On the other hand, the practice of *kafalah* under Islamic law is similar to permanent form of foster care. Where, a family takes CDFE permanently, however without the child concerned

¹⁰⁷ McDonald et al., *Assessing the Long-Term Effects of Foster Care: A Research Synthesis*, Institute for Research on Poverty Special Report (1993), p. 5.

¹⁰⁸ Andrew Bainham, *Children: The modern law*, Jordan Pub (2nd ed, 1998), p.191.

¹⁰⁹ Mezmur, *Supra* note 25, p.11.

¹¹⁰ E 15 Summary Report on Foster Care, *The Need to Strengthen Foster Care in Ethiopia*, Draft, p.3 [hereinafter *Summary Report on Foster care*].

¹¹¹ John Williamson and Aaron Greebereg, *Families Not Orphanages*, Better Care Network (2010), p.7 [hereinafter *Williamson & Greebereg*] available at www.bettercarenetwork.org/docs/families%20not%20orphanages.pdf... accessed on 11 may 2015).

¹¹² Nina W. Mbengue, *Permanency: A Key Concept for Children in Foster Care* (2008), P.1 available at, <https://www.foster.net/...fosteri...>(accessed on 5 June 2015).

¹¹³ *Ibid.*

having a family name and inheritance rights.¹¹⁴ In Africa, apart from most of North Africa countries and significant number of states that adheres to *Shariah* as state law, *kafalah* is neither widely known nor practiced.¹¹⁵

2.4.3 Adoption

Adoption is a process of permanent family arrangement by which a legal transfer of parental rights and responsibilities for a child is made to adoptive parents.¹¹⁶ Adoption is different from other forms of ACC in its permanent nature whereby full parental responsibilities are conferred on the adoptive parents. Once the adoption process is completed there is no periodic review or state supervision unlike other forms of ACC.¹¹⁷

2.4.3.1 Domestic Adoption

Domestic adoption is utilized as a mechanism of providing permanent family care for children in the same place where the child was born.¹¹⁸ Domestic adoption as being the permanent nature of ACC, added with its national placement and offering family environment puts it at the head of other alternative childcare options.¹¹⁹

Though domestic adoption is a preferable option, the rate varies between countries and many African and Asian countries have extremely low rates of domestic adoption. On the other hand, USA, China and Russian Federation are the major domestic adopters respectively.¹²⁰ This indicates the exposition of African children to other alternative childcare options than domestic adoption.

2.4.3.2 Inter-Country Adoption (ICA)

¹¹⁴Hodgkin & Newell, *Supra* note 16, pp. 295-296.

¹¹⁵ ACPF, *Supra* note 15, p. 42.

¹¹⁶ Every Child, *Adopting Better Care: Improving Adoption Services around the World*, London (2012), p.7 [hereinafter Every Child] available at, <https://www.everychild.org.uk/.../> (accessed on 12 May 2015).

¹¹⁷ Nigel Cantwell, *Towards UN Guidelines on Alternative Care For Children: From Concerns to Consensus* (2008) available at, <http://www.bettercarenetwork.nl.org> (accessed on 6 June 2015).

¹¹⁸ Every Child, *Supra* note 116, p.7.

¹¹⁹ Mezmur, *Supra* note 25, p.11.

¹²⁰ *Ibid.*

Inter-country adoption involves the placement of a child with a new family where the adoptive parents live in another country than child's birth country.¹²¹ The movement of children in international adoption is largely from developing countries to developed countries. In the past countries like Guatemala, China and Central and Eastern European countries like Romania and Ukraine were the most prominent sending countries. However, these countries suspended shutdown or limited ICA due to variety of reasons including the introduction of stringent eligibility criteria and the promotion of domestic adoption.¹²² As a result, prospective adoptive parents increased their attention towards Africa and Africa is said to be the new frontier for ICA.¹²³

As discussed above, the principle of subsidiarity places ICA as a measure of last resort after exhaustion of other national family based options. Different justifications are forwarded for putting ICA at the end of other care options. Some of the arguments are, first, ICA creates great risks of abuse and malpractice that undermine the best interests of the child.¹²⁴ The other is to give more emphasis on biological family and domestic solutions. Here, children are assumed to be better cared if they grow up with their birth family or extended family within the country.¹²⁵ The right to cultural identity of children is also another area with great concern in dealing with ICA. Opponents of ICA argue that, ICA strips away the cultural identity of children. Especially in the context of Africa children right to cultural identity is central to the question of ICA. In this regard certain critics denounce the practice of ICA as modern day imperialism, allowing dominant, developed cultures to strip away a developing country's most precious resources, its

¹²¹ Save The Children, *International Adoption, Policy Brief* (2010), p.1. *See also*, David Tolfree *Roots and Roots: The Care of Separated Children in the Developing World* (1995), p.38. It stipulates that, most cases of ICA are trans-cultural and trans-racial where the child is placed with a new family in a cultural environment different from that child birth family or of different racial origin.

¹²² *Ibid.*

¹²³ *Ibid.*, *See also* ACPF, *Supra* note 15, p.6, *See also* Elizabeth Bartholet, *International Adoption: Children and Youth in Adoption, Orphanages, and Foster Care* (Lori Askeland ed., Greenwood Publishing Group Inc., 2005), p.1 [hereinafter Bartholet] As a result of huge socio economic, cultural, and racial and nationality difference between adoptive parents and children, this form of adoption is often known as "stranger" adoption.

¹²⁴ *Ibid.*

¹²⁵ Mezmur, *Supra* note 25, p.1.

children.¹²⁶ These areas are very debatable issues with differing positions of countries against and for the practice of ICA.

2.4.4 Institutional Care

“Institutional care is an establishment founded by a governmental, nongovernmental or faith based organization to give care to unaccompanied children.”¹²⁷ It is the only non family based care option among lists discussed above. Institutional care is suggested to be used as a measure of last resort, since different studies and documentations demonstrates its adverse effect on health and over all well being of the child that results in long term and permanent damage.¹²⁸

Children in institutional care suffer from lack of attachment with care givers due to high ratio of children to staff, staff turnover and nature of shift work which resulted in long term psychological problems.¹²⁹ In relation with this there is a rule of thumb which demonstrates for every three months that a young child resides in an institution there is a loose of one month development.¹³⁰ Similarly, Findings of different studies suggest as children reared in orphanages had on average, an IQ 20 points lower than their peers in foster care.¹³¹ Added to that overcrowding, poor resource, high risk of abuse by untrained and irresponsible care givers, risk of becoming homelessness after institution, suicide and high rate of criminal record are some of the risk factors demonstrated on different findings.¹³² The cost of institutional care is also 5 to 10 times higher than other forms of care.¹³³

Despite the negative effects of institutional care on the life of children, there are institutions with the best intention of protecting children, integrated with the community and staffed with

¹²⁶ ACPF, *Supra* note 15, p.14, *See* also Article 20(3) of the CRC, It states that ,whenever considering alternative care solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

¹²⁷ Tadele et al., *Supra* note 20, p.8.

¹²⁸ David Tolfree, *Facing the Crisis: Supporting Children through Positive Care Options*, London: Save the Children UK (2005) p.4 *available at* , www.crin.org/scalin%20... (accessed on 2 September 2015).

¹²⁹ Phillips, *Supra* note 27, p.124 *See* also, *The Faith to Action Initiative, Children, Orphanages and Families, A Summary of Research to Help Guide Faith Based Action* (2014), p.9. It state that, no matter how the highest quality of care provided, it is not nearly as important as consistent and responsive child-caregiver interaction, in this regard different research findings demonstrated that, the absence of positive interaction between a child and primary care giver results in damage to brain development.

¹³⁰ Williamson & Greenberg, *Supra* note 111, p. 6.

¹³¹ *Ibid.*

¹³² Phillips, *Supra* note 35, p 125.

¹³³ Williamson & Greenberg, *Supra* note 111, p. 6.

qualified and trained staff, active in family tracing and reunification and linked with broader systems.¹³⁴ Here, when there is a need to use institutional care as alternative childcare options, group homes, small residential facilities located within a community and designed to serve children should be preferred over large orphanages.¹³⁵ It is mostly argued that it is these types of homes that both the CRC and the ACRWC refer to as 'suitable institutions.'¹³⁶ Such institutions can be acceptable and serve the best interest of the child in specific cases at least for a short term. For instance, it can be a first step in getting the child off the street, and the best short term alternative measure to an abusive family situation until the child can be placed with alternative family.¹³⁷

2.4.5 Comparison of Inter-country Adoption and Institutional Care

The principle of subsidiarity based itself on hierarchy of alternative care options indicated on the CRC, the ACRWC, the Hague Convention and the UNGA. However, the question whether institutional care or inter-country adoption to be considered as last resort is an area which doesn't get a clear answer. In this regard, the Hague Convention though not expressly, put institutional care as the measure of last resort. However, the position given by the CRC and the ACRWC is debatable and as it has been discussed above the position of CRC Committee is unclear.

In one of well known Madonna case in Malawi, The Judge in infant CJ case high court noted that, in terms of Article 24(b) of the ACRWC, inter-country adoption should be taken as a measure of last resort.¹³⁸ The judge recognized the suitability of an orphanage where the child used to live and reasoned; 'in any suitable manner' refers to the style of life of the indigenous child, or as close a life as possible to the one that the child has been leading since birth. However, on Appeal the supreme court of Appeal (SCA) disagreed with the lower courts position and reasoned that, in the factual situation the infant left with only two options, 'can either stay in Kondanani orphanage and have no family life at all, no love and affection of

¹³⁴ Id, p.4.

¹³⁵ ACPF, *Supra* note 15, p. 43.

¹³⁶ Ibid, *See also* Article 20(3) of the CRC and Article 25(2) (a) of ACRWC.

¹³⁷ Williamson & Greenberg, *Supra* note 111, p. 3.

¹³⁸ ACPF, *Supra* note 15, p.28.

parents or she can be adopted by the Appellant and grow in a family that the Appellant is offering. On the basis of this, the SCA allowed the adoption order.¹³⁹

Different literatures also pointed, unnecessary over use of residential care due to failure on having developed family based options. In addition, Evidences suggest the move to make institutional care as a primary response, weaken community's motivation to help OVC and divert resources from family based solutions.¹⁴⁰ Based on the above points, there is a growing trend to make institutional care than ICA as a measure of last resort.¹⁴¹ Here, it calls for the CRC Committee and the African Committee of Experts on the Rights and Welfare of the Child to give a clear position for which option to be considered as a measure of last resort.

2.4.6 General Rule of Thumb in Applying Hierarchies of Alternative Childcare Options

According to the study conducted by UNICEF, following the best interests of the child three principles which are internationally recommended policy should guide the principle of subsidiarity.¹⁴² As a general rule of thumb, the internationally recommended policy stipulates that:

- Family-based solutions are generally preferable to institutional placements
- Permanent solutions are generally preferable to inherently temporary ones
- National/domestic solutions are generally preferable to those involving another country.¹⁴³

The above hierarchy put domestic adoption as the head of other childcare options based on the fulfillment of all the three requirements. Foster care and ICA on the other hand fulfills the two criteria's and lastly as subsidiary to all options institutional care followed, by fulfilling only the last criteria.

¹³⁹ Id, p. 29.

¹⁴⁰ Mezmur, *Supra* note 25, p.95.

¹⁴¹ Ibid.

¹⁴² United Nations Children's Fund [UNICEF], Innocenti Digest: Inter Country Adoption (1998) , p.5 available at, <http://www.unicef-irc.org/publications/pdf/digest4e.pdf> (accessed on 04 July 2015).

¹⁴³ Ibid.

Chapter Three

3. The Principle of Subsidiarity in Ethiopia: Analysis of the Legal and Policy Frameworks

3.1 Introduction

As has been discussed in the previous chapters, the principle of subsidiarity is enshrined in various international and regional human rights instruments. These instruments provide standards and guarantee to safeguard appropriate care for CDFE. Ethiopia has ratified most of major human rights instruments related to child rights. According to the FDRE Constitution all human rights instruments ratified by Ethiopia are integral part of the laws of the land.¹⁴⁴ Accordingly, among others more importantly with direct relevant for the subject, the CRC and the ACRWC are human rights instruments ratified by Ethiopia.¹⁴⁵

In addition to the international and regional human rights instruments, the principle of subsidiarity is reflected under national laws and policies of Ethiopia. For the purpose of this study guidelines adopted by MoWCA are policy frame works. Hence, the chapter examines and analyzes the current normative safeguards available to protect CDFE and outlines the possible legal and policy gaps and proposes some potential solutions on the way forward.

¹⁴⁴See Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Federal Negarit Gazeta, 1st Year, No.1, 21st (August1995) [hereinafter the FDRE Constitution or the Constitution] See also Proclamation No.10/1992, which is the Proclamation to ratify the CRC. See also Proclamation No.283/2002, A Proclamation to Ratify the African Charter on the Rights and Welfare of the Child, 8th year No. 31, Addis Ababa, 4th July, 2002.

¹⁴⁵ Ibid.

3.2 Laws and Policies Pertaining to the Principle of Subsidiarity

3.2.1 The FDRE Constitution

As has been discussed above, Ethiopia is a state party to the CRC and the ACRWC. Based on the obligations emanating from the international child rights instruments,¹⁴⁶ the FDRE Constitution provides fundamental legal basis for the protection of the rights of children.¹⁴⁷

Article 36 of the FDRE Constitution provides fundamental legal protection for children. Sub Article 2 of the same provision indicates that, "in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child."¹⁴⁸ In this aspect, all actions undertaken by any concerned body must take in to account the fundamental principle of the best interests of the child. The principle of the best interests of the child as mentioned under the Constitution is in line with the ACRWC which has a wider application than the CRC.¹⁴⁹ Hence, all branches of the government including every concerned sector on the placement of the children should take in to account the principle of the best interests of the child and ensure that appropriate protection and placements are implemented.

¹⁴⁶ *Supra* note 39, *See* Article 4 of the CRC, it imposes the obligation on a State Party to undertake all appropriate legislative, administrative and other measures for the effective implementation of rights recognized in the Convention. *See also* UN Committee on the Rights of the Child, General Comment No.5, General Measures of Implementation of Convention on the Rights of the Child, Thirty-Fourth Session, CRC/GC /2003/5 27 (November 2003), paragraph 2. It provides that, ensuring all domestic legislations fully compatible with provisions and principles of the CRC, its direct application and appropriate enforcement of rights contained in the CRC are fundamental to realize the rights of children.

¹⁴⁷ *Supra* note 144, *See* Article 9 (1) of the constitution it states that, the Constitution is the supreme law of the land and hence any law, customary practice or decision of an organ of state or public official, which contravenes the provisions of the constitution, shall be of null and void.

See also Article 9(4) of the constitution, it indicates that, all international instruments ratified by Ethiopia are considered as integral part of the laws of the land. Based on the above provisions we can note that the ACRWC and the CRC which are ratified by Ethiopia are considered part of the laws of the land and any law or practice which contravene the rights and protections accorded by the instruments can be of no effect. However, Ethiopia is not yet a signatory to the Hague Convention on Protection of Children and Co-operation in respect of Inter country Adoption.

¹⁴⁸ *Id.* *See* Article 36(2) of the FDRE Constitution.

¹⁴⁹ Frans Viljoen, *International Human Rights Law in Africa*, Oxford University Press (2007), P.263.

concerning the principle of the best interests of the child, The "best interest" norm, as provided for in the African Children's Charter is stronger than that of Article 3(1) of the CRC making "Best interest" consideration the ultimate consideration with the use of the phrase "the primarily consideration" as opposed to simply being one of many, as in the CRC with the phrase "a primarily consideration."

In the context of protecting the rights of CDFE, the FDRE Constitution stipulates that the government should provide special protection for orphans and encourages for the establishment of institutions which aimed at the adoption of such children as well as at the advancement of their welfare and education.¹⁵⁰ This constitutional provision gives specific concern for protection of orphan children. At the same time it acknowledges the establishment of institutions aimed at adoption of children, this provision might be open for abuse unless and otherwise managed and regulated well. According to Charities and Societies Organizations, Ethiopian children deprived of their family environment are classified into three categories. These are orphans bereft of both parents, children who do not live with their biological mothers and children who reside in single adult households.¹⁵¹ However, the constitutional provision addressed only orphan without including CDFE for other factors. Concerning ACC, the FDRE Constitution mentioned the existence of institutional care and recognized adoption, while nothing is mentioned about other care options.

Article 41 of the FDRE Constitution also provides that, children without parental care are entitled to rehabilitation and assistance by the government in accordance with available means or resources.¹⁵² The provision does not explicitly indicate the form of assistance and dependence of the assistance on the availability of resource is a matter of concern in view of the obligation of the state emanating from child rights instruments.¹⁵³

From the above discussion we can deduce that the provisions under the constitution are formulated in a very general way. Hence, as Ethiopia ratified the CRC and the ACRWC enforcing the relevant international child rights standards and guidelines is relevant for the appropriate protection and placement of CDFE. In addition, as it has been repeatedly recommended by the CRC Committee on the rights of the child, the state party needs to ensure that the national laws comply with the CRC and an extensive children's code is adopted.¹⁵⁴

¹⁵⁰ *Supra* note 144, *See* Article 36(5) of the FDRE Constitution.

¹⁵¹ Third Periodic Report of the Federal Democratic Republic of Ethiopia, United Nations Committee on the Rights of the Child(1999-2003/04) (submitted at 27 April 2005) *See* paragraph 114.

¹⁵² *Supra* note 144, *See* Article 41 of the FDRE Constitution.

¹⁵³ *Supra* note 39, *See* Article 4 of the CRC, *See* also Article 1 (1) of the ACRWC.

¹⁵⁴The Committee on the Rights of the Child, Concluding Observations of the Committee on the 3rd Periodic Report of Ethiopia (CRC/C/ETH/CO/31), (November 2006) [herein after CRC/CO/ETH/CO/31] *see* Paragraph 8. *See* also

3.2.2. The Revised Family Code of Ethiopia (RFC)

The RFC has provisions relevant to the protection of CDFE, particularly on the issue of adoption. The Preamble of the code stipulates that, one of the objectives of the revision was to amend the existing law in such a way that gives priority to the well-being, upbringing and protection of children in accordance with the Constitution and international human rights instruments which Ethiopia has ratified.¹⁵⁵

Chapter ten of the RFC governs both inter-country and domestic adoption. The code covers various issues including age of the adopter and the adopted child, conditions to be fulfilled in any adoption agreement, role of the court and other governmental and nongovernmental actors, approval and revocation of adoption agreement. Nevertheless, other forms of alternative childcare options are not included under the RFC with the only exception of adoption. According to the RFC, any court before approving adoption agreement should take into account the best interests of the child and opinion of the child, among others. This reflects some of the key concepts enshrined under the CRC and the ACRWC.¹⁵⁶

Concerning the principle of subsidiarity, the RFC indicates that, in case of ICA or the adopter is a foreigner, the court before approving adoption agreement should ascertain the absence of access to raise the child in Ethiopia.¹⁵⁷ Here, there is no clear process in place so as to verify absence of access to raise the child in Ethiopia as well as how it is interpreted by judges.¹⁵⁸ However, though not expressly mentioned, the provision is indicative of the subsidiary position of ICA to other national care options.

Concluding Observations of the Committee on the Rights of the Child, the 2nd Periodic Report of Ethiopia (CRC/C/70/Add.7), Received on (28 September 1998) and Adopted (January 2001), paragraph 14.

¹⁵⁵ Preamble Paragraph 3 of the Revised Family Code, Proclamation No.213/2000, Federal Negarit Gazetta Extra Ordinary Issue No. 1/2000 (July 2000)[hereinafter the RFC].

¹⁵⁶ *Supra* note 155, See Article 194 (2(3(a) of the RFC.

¹⁵⁷ *Id*, Article 194(3(d).

¹⁵⁸ Bunkers Kelley, Informal Family Based Care Options: Protecting Children's Right? A Case Study of Gudifecha in Ethiopia, Institut Universitaire Kurt Bosch and Universite de Fribourg (MA Thesis, 2010), p.41.

3.2.3 Alternative Care Guidelines on Community-Based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Service (2009) (the National Alternative Care Guidelines)

The National Alternative Care Guidelines of Ethiopia was approved in 2009, after revision of the 2001 National Alternative Childcare Guidelines.¹⁵⁹ As indicated on the Preface of the guidelines, the 2001 Alternative Childcare Guidelines are revised pursuant to the CRC, the ACRWC, the laws of the country and in consultation with childcare institutions, concerned professionals and children.¹⁶⁰ The guidelines cover various forms of ACC options which include Community-Based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Services. As indicated on the Preface, the guidelines provide minimum conditions that should be followed by any alternative childcare providers.¹⁶¹ The guidelines also provide definition of terms including lists of children who are categorized as OVC.¹⁶²

Section two of the National Alternative Care Guidelines incorporates community based childcare option which aimed at mobilizing the community and its resources so as to address the needs and rights of OVC. Under community based child care, the guidelines identified five types of alternatives for placement of OVC in the community. These are Kinship Care, Sponsorship Care, CHH, Group Home and Foster Family Care.¹⁶³ Community based childcare recognize CHH when the child is fifteen years or older, which is in conformity with the UNGA. However, this contradicts with provision of the RFC which indicates as the minor is not qualified to hold guardianship over another child.¹⁶⁴ This contradiction between the RFC and the National

¹⁵⁹ Alternative Childcare Guidelines on Community-Based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Service, Federal Democratic Republic of Ethiopia, Ministry of Women's Affairs, Addis Ababa (May, 2009), p.3 [hereinafter the National Guidelines] According to the National Guidelines, the need for the revision of the previous guidelines emanated from the outcomes of the assessment made on the implementation of the guidelines.

¹⁶⁰ Id, See Preface.

¹⁶¹ Id, p.1, the National Guidelines set minimum standards on issues of eligibility, recruitment, placement, assessment, and training, monitoring and reporting.

¹⁶² Id, p 11, It states that, categories of OVC include but not limited to children who are single and double orphans, street children, abandoned children whose parents or families are untraceable, children with disability, trafficked children, children exposed to the worst forms of child labor, children infected or affected by HIV/AIDS, victims of sexual abuse and exploitation, displaced children, on-orphan children whose parents are not able to support the child due to illness, injury or detention and child mothers, children in conflict with law, child headed households, separated children, refugee children and other target children depending on the local definition of vulnerability.

¹⁶³ Id, p.19.

¹⁶⁴ *Supra* note 155, See Article 242 of the RFC.

Alternative Care Guidelines indicate that there is a need for internal harmonization of regulations. Community based childcare option is said to be preferable care option because of its cost effectiveness and ability to reach large number of children with in a given community.¹⁶⁵ It also promotes informal care arrangements.

The National Alternative Care Guidelines incorporates detail regulations on each of alternative childcare options including monitoring and reporting mechanisms. Concerning hierarchy of alternative childcare options, the guidelines identify five ACC options based on their hierarchical priority. These are Community-Based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Services. Of the care options, institutional care is subsidiary to other care options and implemented as a measure of last resort.¹⁶⁶ Though the enactment of the National Alternative Care Guidelines is an important development, the guidelines with a non binding nature lack force of regulation. Thus, it is important to have a separate regulatory system on ACC, which ensures compliance and accountability of care givers in Ethiopia.

3.2.4 Standard Service Delivery Guidelines for Orphans and Vulnerable Children's Care and Support Programs (The Standard Service Delivery Guidelines)

Another important development in the area of CDFE is the adoption of the Standard Service Delivery Guidelines by MoWCA and Federal HIV/AIDS Prevention and Control Office (FHAPCO).¹⁶⁷ The Standard Service Delivery Guidelines initiated to solve problems resulted from lack of standardized or uniform service delivered for OVC. In this regard, the overall goal of the Standard Service Delivery Guidelines is to standardize the implementation of OVC services in an effort to improve the general well being of OVC.¹⁶⁸ The guidelines highlighted seven core service areas and discussed with particular focus on quality dimension and quality characteristics. Coordination of care is also discussed as a critical component of care package for

¹⁶⁵ *Supra* note 159, *See* the National Guidelines, P.14.

¹⁶⁶ *Id*,p.47.

¹⁶⁷ Ministry of Women and Children Affairs and Federal HIV/AIDS Prevention and Control Office, Standard Service Delivery Guidelines For Orphans and Vulnerable Children's Care and Support Programs(Feb 2010).

¹⁶⁸ *Id*, p.2.

OVC.¹⁶⁹ The Standard Service Delivery Guidelines are recommended to be used by policy makers and program managers, stakeholders working on OVC programs at all levels, Community members and beneficiaries.¹⁷⁰ Yet, the Standard Service Delivery Guidelines are very important tool in controlling and solving the great gap created by service providers especially, childcare institutions that provide service below the standard. However, strong advocacy team and supervisory bodies are crucial for having the desired result.

¹⁶⁹ Id, p.13.

¹⁷⁰ Id., p.7.

Chapter Four

4. The Application of Subsidiarity Principle in Ethiopia

4.1 Introduction

The previous chapter provided us with the conceptual framework concerning the legal frameworks governing subsidiarity principle in Ethiopia. In this chapter the application of subsidiarity principle in Ethiopia will be discussed and analyzed. Accordingly, key stakeholders involved in the application of subsidiarity principle, the state of subsidiarity principle in Ethiopia and problems and challenges in the application of subsidiarity principle has been discussed thoroughly.

4.2 Key Stakeholders involved in the Application of Subsidiarity Principle

The major administrative roles in the implementation of alternative childcare options on the government side are performed by the Ministry of Women and Children Affairs (MoWCA), the Federal First Instance Court (FFIC) and Charities and Societies Agency (CHSA), and their corresponding regional organs. On the private side, alternative childcare service providers such as community groups, parents, childcare institutions, adoption service providers and Legal aid centers are key actors involved in the implementation of subsidiarity principle.

MoWCA is the main government body empowered to coordinate and implement child rights in the country.¹⁷¹ The Ministry is mandated to provide care and support program for CDFE. The ministry plays a principal role in the strengthening of alternative childcare options for CDFE. The MoWCA is responsible for developing different policies including the National Guidelines and Standard Service Delivery Guidelines which help to improve the quality of service delivery

¹⁷¹ Proclamation No.916/2015, A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia; Federal Negarit Gazeta, 22nd Year No.12, Addis Ababa(December 2015), *See* Article 36.Accordingly, MoWCA is the main Government body in charge of coordinating and implementing the child rights in the country. The minister office has the responsibility to submit periodic reports on the implementation of the CRC to the CRC Committee.

and to ensure accountability of service providers. In line with this, monitoring and supervision on the performance of Regional Bureaus and institutions in accordance with the international instruments ratified by the country and national standards is one of an important mandate of MoWCA.¹⁷² Adoption agreement cannot produce legal effects unless they are approved by the FFIC.¹⁷³ CHSA licenses and monitors non-governmental institutions working on alternative childcare programs which include childcare institutions and adoption service providers.¹⁷⁴

4.3 The Status of Alternative Childcare Options in Ethiopia

The government of Ethiopia has taken various measures towards ensuring the application of subsidiarity principle. Of these, the adoption of the National Alternative Care Guidelines can be taken as an encouraging effort. The National Alternative Child Care Guidelines put alternative childcare options based on their hierarchical priority. Accordingly, community-based childcare, reunification and reintegration program, foster care, adoption and institutional care services are put in their order of priority. Based on this, ICA and institutional care are subsidiary to other domestic solution and the guidelines put institutional care as the measure of last resort after exhausting all other childcare options. Thus, in this section the status of each alternative childcare options and their respective operational challenges and problems will be assessed.

4.3.1 Community-Based Childcare

As per the National Alternative Care Guidelines, Community-based childcare is an alternative that provides care and support to the children in a state of condition that is familiar to the children who used to experience it.¹⁷⁵ It has an objective of mobilizing the community, its resources and indigenous knowledge with the goal of addressing the needs and rights of OVC in a sustainable manner.¹⁷⁶ According to the report of Ethiopia, the number of children getting

¹⁷² Interview with Ato Tewodros kibreab, Child Promotion Expert, Ministry of Women and Children Affairs (MoWCA) (September 12, 2015).

¹⁷³ *Supra* note 155, *See* Article 182(2) of the RFC.

¹⁷⁴ Charities and Societies Proclamation, Proclamation No. 621/2009, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 15th Year No.25 ,Addis Ababa (February 2009) *See* Article 6.

¹⁷⁵ *Supra* note 159, *See* the National Guidelines,p.20.

¹⁷⁶ *Ibid*, According to the guidelines, the rationale behind this approach is that the emotional, social, physiological and spiritual needs of OVC are fulfilled and effectively protected from abuse and exploitation, without such children being removed from their families or community environment.

domestic alternative care support through community-based care increased from 361,857(2010/11) to 4.9 million (2014/15).¹⁷⁷ Among the five care options, sponsorship care is highly practiced with the majority of the organizations working on community-based childcare. As the interview conducted with Addis Ababa Bureau of Women and Children Affairs (ABoWCA) indicates, there are around 280 Charity and Society Organizations (CSO) in Addis Ababa and a total of 250,000 children are being cared through sponsorship care.¹⁷⁸ In Oromia, which is the largest regional state government in the country, there are around 192 CSO, of which 306,900 children are being cared through community based care mainly through sponsorship care.¹⁷⁹ From the above data, it can be inferred as there is a great move towards placing children under community based childcare options.

Concerning challenges of this care option, an interview conducted with an informant revealed that lack of social accountability is the main challenge in applying community based childcare options. It is effort taking to make people believe on the program and make them part of the agenda (Translation mine).¹⁸⁰ An informant from MoWCA in addition to supporting the above claim noted as most people prefer institutional care and ICA than community based care options. The informant added that there is a gap in establishing appropriate ways of awareness creation strategies to change the attitude of society towards the importance of community based care options.¹⁸¹ Another informant from MoWCA points out, as there are community based institutions that perform the agenda of NGOs who support them financially than fulfilling the interests of vulnerable children.¹⁸² As it has been pointed out by the respondents, awareness creation on the community based childcare and improving social accountability should be given attention by the government and concerned bodies. In addition, a measure should be taken on those community based organizations that compromise the right of the CDFE to benefit NGOs illegally.

¹⁷⁷ Written Replies by the Government of the Federal Democratic Republic of Ethiopia, to the List of Issues (CRC/C/ETH/Q/4-5) by the Committee on the Rights of the Child, In Consideration of the Combined Fourth and Fifth Periodic Reports of the Federal Democratic Republic of Ethiopia (March 2015), p. 32.

¹⁷⁸ Interview with Mulumebet Ashebir, Research and Project Advocacy Officer, Addis Ababa Bureau of Women and Children Affairs (ABoWCA) (September 15,2015).

¹⁷⁹ Interview with Ewunetu Busheri, Child Right and Welfare Protection Expert, Oromia Bureau of Women and Children Affairs (OBoWCA) (October 1,2015).

¹⁸⁰ *Supra* note 177, Interview with Mulumebet Ashebir.

¹⁸¹ *Supra* note 172, Interview with Tewoodros Kibreab.

¹⁸² Interview with Tadese Ayalew, Child Protection Care and Support Expert, Ministry of Women and Children Affairs (MoWCA) (September 12, 2015).

4.3.2 Reunification and Reintegration Programs

Reunifying separated children to their parents or relatives and reintegration of those children who attain majority to the society are the care options which are recognized under the National Alternative Care Guidelines.¹⁸³

Though there is no disaggregated data available, the report of MoWCA indicates as many children were reunified with their parents. UNICEF is supporting the Ethiopian government Bureaus of Women and Children affairs (BoWCA) on conducting assessment on the exiting childcare institutions, deinstitutionalization of children from childcare institutions operating below the standard, facilitating the placement of children in different childcare options and supports the deployment of social workers to the government structures to support family tracing and reunification efforts.¹⁸⁴ This can be taken as a key step towards deinstitutionalization of children from childcare institutions.

Concerning the challenges and problems of reunification process, as the interview conducted with the respondents revealed, most of the children given care are orphans and children found abandoned at their early age which makes the reunification with their family very difficult.¹⁸⁵ Another informant indicated that, there are conditions where those abandoned and found children are capable to indicate as to where they came from but some BoWCA facilitate their stay at institutions rather than finding their families and unifying them.¹⁸⁶

On other cases, parents place children under the care of institutions on difficult economic, social or health conditions. In such conditions most parents prefer for their children to be placed under institutions than suffer with them. In such situations, According to an informant, after consulting

¹⁸³ *Supra* note 159, See the National Guidelines p.12, The National Guidelines put Reunification and Reintegration programs as the second alternatives. According to the guidelines, Reunification refers to a rehabilitative intervention designed to facilitate the reunion of orphans or other vulnerable children separated from their families with biological parents or member/s of the extended family to restore a family environment as a means of a permanent placement for the proper upbringing and development of the child.

on the other hand ,Reintegration refers to a rehabilitative intervention meant for children whose parents/extended families are untraceable or for those who reach the maximum age limits in the institution to facilitate their permanent placement in a community environment either individually or in groups.

¹⁸⁴ Interview with Janbo Getu, Child Protection Specialist, UNICEF (November 30, 2015).

¹⁸⁵ Interview with Selamawit Chane, Social Worker, Kebebe Tsehay Orphanages Center (September 29, 2015).

¹⁸⁶ Interview with Dagne Shibiru, Asset Liquidation Transfer and Disposal Directorate Director, Charities and Societies Agency (CHSA) (November 26, 2015).

with their families if there is suitable situation, financial support will be provided for children upon their return to their families.¹⁸⁷

The National Alternative Care Guidelines stipulate three process of reunification namely, pre-reunification, reunification and post reunification. But according to an informant from the private childcare institution, the post reunification follow up is very difficult for institutions. Children come from different parts of the country, which makes the follow-up process very difficult for institutions unless having branch office in the specific place of their reunification or where the child came from.¹⁸⁸ In this regard, the researcher suggests that BoWCA offices found in different parts of the country to share mandate of post-reunification follow up process. Concerning Reintegration, the writer observed as the report of MoWCA as well as institutions fail to incorporate the reintegration aspect. Giving training with some amount of money for those children who were not having any access with the society is not enough in building a self dependent generation. The government as well as other concerned bodies needs to cooperate and design a system in managing the issue of children who attain majority.

4.3.3 Foster Care

As discussed under the previous chapter, foster care is a short or long term care for OVC in a house of foster families. The National Alternative Care Guidelines put foster care as the third alternative childcare option. According to the 2015 report of Ethiopia, In Ethiopia a total of 2,712 Children are placed with foster families.¹⁸⁹ Though it is found difficult to find disaggregated data on specific regions, the interviewed Regional Bureaus indicated as foster care is not effective as it is expected to be. An informant from different childcare institutions also responded as foster care is not effective as other care options, Most foster families want to take children for labor purpose especially girls.¹⁹⁰ Furthermore, foster care in Ethiopia is explained by expert from OBoWCA, as òa drop of water from an ocean.ö¹⁹¹ Similarly, an informant from ABoWCA have agreed on the above assertions and suggested as foster care is not practically

¹⁸⁷ Interview with Ermiyas Gizaw, Accountant, Birhan Childcare center (October 14, 2015).

¹⁸⁸ Interview with Zelalem Bahiru, V. Director, Sele Enat Association (October 15, 2015).

¹⁸⁹ *Supra* note 177, Written Replies to the CRC Committee.

¹⁹⁰ *Supra* note 185, Interview with Selamawit Chane,

¹⁹¹ *Supra* note 179, Interview with Ewunetu Busheri.

advantageous childcare option for CDFE children in Ethiopia.¹⁹² As an informant revealed, some institutions that began the process with good initiation, has now decreased and stopped the practice. These suggest as there is a need for the revision of the foster care practice with the situation in the country and design a new strategy accordingly.

4.3.4 Domestic Adoption

The National Alternative Care Guidelines place adoption as the fourth alternative care option. According to the 4th and 5th Ethiopia's Report to the CRC Committee, domestic adoption is on increase and the government is promoting and supporting it as an option to address the orphan situation in the country.¹⁹³ According to the report, the number of children getting domestic adoption increased from 1,347 to 10,387 during the period of 2010/11-2014/15.¹⁹⁴ Though the report of Ethiopia indicates as such, all the respondents revealed that domestic adoption is not implemented as it should be.

A judge on adoption bench has indicated that majority of the cases concern request for ICA than domestic adoption.¹⁹⁵ All respondents agreed on the above idea and noted as the focus of institutions is on ICA than domestic adoption. In this regard another respondent from MoWCA responded that, although there is a great change in the area, there are challenges especially related with the issue of inheritance. There is also a gap on changing the perception of society towards domestic adoption (Translation mine).¹⁹⁶

Though the efforts being exerted to implement domestic adoption are encouraging, as a permanent, domestic and family based care option a lot is needed to be done to promote it. In this respect, all concerned bodies should give priority for awareness raising campaigns and different regulations as a best way of safeguarding the best interests of OVC.

¹⁹² Interview With Menbere Endirias, Institutions Support and Supervision Officer, Addis Ababa Bureau of Women and Children Affairs (ABoWCA) (September 15,2015)

¹⁹³ Combined 4th and 5th Periodic Report of the Federal Democratic Republic of Ethiopia to the United Nations Committee on the Rights of the Child (2006-2011),(submitted at April 2012), p.20.

¹⁹⁴ *Supra* note 177, Written Replies to the CRC Committee.

¹⁹⁵ Interview with Behailu Tewabe, Judge, Federal First Instance Court (FFIC), Bole, Adoption Bench (December 30, 2015).

¹⁹⁶ *Supra* note 172, Interview with Tewodros Kibreab.

4.3.5 Inter-country Adoption (ICA)

As indicated on the report of Ethiopia to the CRC Committee, The number of ICA has decreased from 4269 to 1250 in the period between 2010/11-2014/15.¹⁹⁷ The report of the FFIC also confirmed the above data with negligible difference. In this regard, an interview conducted with an expert from MoWCA stated that, "Various measures were taken in order to reduce the number of children placed under ICA. The first of these is to urge all concerned stakeholders to strictly focus on family and community based care options before proposing children for ICA. Based on the direction of the MoWCA, the above decision is being implemented by all Regional Bureaus. For instance the Tigray Regional Government has completely stopped ICA and the Oromia Regional Government planned to reduce ICA by half (Translation mine)."¹⁹⁸

In contrast, some respondents from different private childcare institutions revealed that the above decision is in contrary to the fundamental rights of a child to be cared by a family. In this aspect an informant from private institution responded that, "As a result of the government decision the number of children placed under ICA eventually decreased, this resulted for the decreased amount of financial support from international donor organizations. This in turn affected the capacity of the institutions to care for OVC children and as a result many childcare institutions are forced to close (Translation mine)."¹⁹⁹ In this regard, as long as childcare institutions are believed to be important, at least as a temporary childcare option, it is the view of the researcher that the government is expected to allocate or facilitate the financial support that could have been obtained in the name of ICA.

Concerning the procedures of judgment, the assigned judge on the bench responded that, before deciding for ICA, the court receives comments from MoWCA and ascertains it through social workers of the court. The comments of the MoWCA are not final, there are instance where the court decides for ICA based on the best interests of the child, while MoWCA commented on the contrary.²⁰⁰ The social worker of the court confirmed the same and accordingly, the situation of

¹⁹⁷ *Supra* note 177, Written Replies to the CRC Committee, p. 33.

¹⁹⁸ *Supra* note 172, Interview with Tewodros Kibreab.

¹⁹⁹ *Supra* note 188, Interview with Zelalem Bahiru.

²⁰⁰ *Supra* note 195, Interview with Behailu Tewabe.

original family and the child will be examined only through interview and written documents provided to the court.²⁰¹

On the same issue experts from MoWCA explained as the situation of the children proposed for ICA is ascertained based on the information gained from regional bureaus. On similar issue, an expert from OBoWCA explained that the comments given by their office to MoWCA is based on the final decision from the regional court. Whereas the regional courts give decision based on the statements of individual witnesses and in some conditions evidence from regional police office may be required.²⁰²

Based on the above procedures, which is common to all regional state governments in Ethiopia, the FFIC gives the final decision on the future fate of the children proposed for ICA. Such a judgment which is mainly reliant on the statement of the witness, in the absence of organized system of investigation may open the door for falsification of evidences. This eventually affects the decision of the court on the life of the children

Concerning the implementation of subsidiarity principle in the courts' decision, as per the concerned judge's statement, there are no ICA cases rejected due to non-exhaustiveness of the alternative childcare options. The researcher has made case observation on closed files, and majority of the cases are closed due to delay of comments by MoWCA and unfulfilled evidences. Coming to decided cases, the cases on ICA are of two types namely through individual applicant (10%) and institutions (90%).²⁰³

On a specific case concerning child Bona,²⁰⁴ who is being cared for in Kidus Firanchesco childcare institution, the adopting parents Mr Benti Christian and Mrs. Milan Sara brought an agreement of ICA for the final court approval. The court gave judgment after analyzing the documents concerning the situation of adopters and receiving comment from MoWCA. On this case the comment of MoWCA ascertains only as Bona is abandoned. But nothing has been

²⁰¹ Interview with Winta Zemuy, Social Worker, Federal First Instance Court (FFIC),(December 30, 2015).

²⁰² *Supra* note 179, Interview with Ewunetu Busheri.

²⁰³ *Supra* note 195, Interview with Behailu Tewabe.

²⁰⁴ Bona Vs Others, Federal First Instant Court, Bole Adoption Bench, Case No. 26/13 (05/06/2007 E.C) (Unpublished).

mentioned about the exhaustion of other childcare options based on consideration of the best interests of the child. The document attached by the Kidus Firanchesco also contains only the situation of the child and adopted parents and it indicates as it is better for the child to grow with the adopting parents than childcare institution.

Similarly on the case concerning child Tsega Wanawu Tebeje, whose adopting parents are Wanaw Tebeje Workineh and Wro Zewuditu Nigat Mekonen.²⁰⁵ On this case, the biological mother, W/ro Genet Mekonnen agreed for adoption since she has no financial capacity to raise the child. MoWCA also confirmed in its comment about this child that it is better for her to grow with the adopted parents and the court also affirmed the same decision. In both cases starting from the beginning up to the judgment of the case, there is nothing mentioned about the proof on the exhaustion of other local remedies before authorizing the child for ICA. Even if these decisions are acceptable as per the best interests of the children, if ICA is taken as preferred care option than other alternatives, the concrete reasons should have been included on the judgment. Similarly, on comments of BoWCA as well as MoWCA, apart from commenting based on parental condition of the child, the exhaustion of other childcare options were not explicitly included. This also raises a question on domestic application of relevant international human rights instruments.

The researcher also observed a gap on understanding the clear concept of subsidiarity principle by all concerned authorities working on ICA. Considering the best interests of the child in line with a clear hierarchy of alternative childcare options recognized by the country is one of an important issue that needs to be given priority in commenting as well as deciding for ICA. However, the communication as well as the decision on ICA is mainly based on a mere written statement which might open the door for wrongfully putting the child under ICA. The court and MoWCA should design a system of investigation on the condition of children. Otherwise, the mere reduction on the number of ICA, without having appropriate systems which aimed at protecting the best interests of the child will be insignificant.

²⁰⁵ Tsega Wanawu Vs Others, Federal First Instant Court, Bole Adoption Bench, Case No 19376(04/03/2006 E.C) (Unpublished).

Concerning the follow up report on the condition of the adopted children, there is a clear procedure, for adoption service providing agencies to provide written post placement reports to MoWCA. The report will be given quarterly during the first year and annually starting one year after the adoption takes place. However, the experts from MoWCA stipulated that one of the big problems is lack of strong follow up procedure on the condition of the adopted children.

4.3.6 Institutional Care

The National Alternative Care Guidelines put institutional care as the last option, to be provided only when all other types of childcare options have been exhausted. As indicated in the 2012 report of Ethiopia to the CRC Committee, throughout the country, there are about 149 childcare institutions which provide care for 11,920 OVC.²⁰⁶ The 2015 written report of MoWCA to the CRC Committee indicated that the number was decreased to 4,901.²⁰⁷ The interview conducted with an expert from CHSA shows that there are no new institutions licensed within the past five years. For the question raised concerning activities undertaken to make institutional care as the last option, an expert from MoWCA pointed out that, "taking into account the findings of different national and global researches on the negative effects of institutional care, the government has taken different strategies to reduce the number of children placed under institutions, based on this before approving any proposal for institutions the office ascertains whether or not other family and community based care options are included in the project proposal. If institutions fail to perform as per the standard and the operational agreement, based on investigation result they might be forced to close (Translation Mine)."²⁰⁸

In this regard, an informant from private childcare institution responded that, the government is putting heavy pressure on the institutions and taking some measures without considering the importance of institutions for children at least as a temporary option. For instance, in Hawasa town up on the order of Regional Government to close institutions, around 17 children were found eaten by hyena. Above all, children with special needs are victims of the decision.²⁰⁹ Though it is important to take appropriate measures on institutions working below standards and

²⁰⁶ *Supra* note 193, 4th and 5th Periodic Report of Ethiopia, p.27.

²⁰⁷ *Supra* note 177, Written Replies to the CRC Committee, p.34.

²⁰⁸ *Supra* note 182, Interview with Tadese Ayalew.

²⁰⁹ *Supra* note 188, Interview with Zelalem Bahiru.

that fail to provide alternative family and community based care options, closing of institutions should take into account the best interests of the child.

Pertaining to service delivery and quality of childcare, researches conducted in Ethiopia and across the globe have identified the problems and the resulted consequences. As a result, MoWCA adopted the National Alternative Care Guidelines and The Standard Service Delivery Guidelines, which urge institutions to adhere to the minimum required standards. As to a respondent from government childcare institution, though there are improvements in institutional childcare, still the services delivered are not sufficient. The budget allocated for a child is 21 birr per day which is not enough to fulfill the daily demand of a child. There are also problems of health materials like HIV examination kit for examining HIV status of a child before joining the institutions. The informant added that, the quality of childcare is abused because of employees' capacity limitation, dissatisfaction in salaries, high work load and high staff turnover.²¹⁰ In the course of data collection, the researcher has observed institutions working below the standard and actually risky for children.

Concerning supervision of institutions, MoWCA receives regular written reports from regional governments and city administrations on the condition of children under institutions. Supervision is undertaken mainly through reports and there is a serious human and financial limitation to make personal observations.²¹¹ In this regard, the researcher believed that children in institutions suffer from lack of appropriate food, health care, hygiene and related problems as a result of lack of planned and regular supervision by authorities. This is in fact one situation which calls for all concerned bodies to work towards quality of institutions and develop supervisory mechanisms which aimed at protecting the overall welfare of children.

²¹⁰*Supra* note 185, Interview with Selamawit Chane.

²¹¹ *Supra* note 182, Interview with Tadese Ayalew.

4.4 The Main Challenges in the Application of Subsidiarity Principle in Ethiopia.

4.4.1 Child Trafficking and Falsification of Documents

Child trafficking is an area where laws and policies are less developed in Africa.²¹² As indicated on the 2009 UN Report, many African countries do not have legislation on child trafficking for adoption purpose. The existing laws criminalize only some aspect of human trafficking, such as trafficking for sexual purpose.²¹³ The situation of Ethiopia is also not far from this. Child trafficking is incorporated only in the FDRE Criminal code and its scope is limited to trafficking of women and children for the purpose of forced labor only.

According to an informant from CHSA, there are private childcare institutions who engage in some illicit activities for the purpose of ICA. In this regard, child trafficking and falsification of documents are the main problems. Traffickers move children from one locality to another for the purpose of gaining a letter of abandonment.²¹⁴ As it has been mentioned above, children can enter into ICA procedure either through direct relinquishment by birth parents or through abandonment declaration. The procedures of direct relinquishment cases require more time for judicial process but abandonment cases proceed faster. This increase the number of children to be declared abandoned.²¹⁵

Falsification of documents especially birth certificates, letter of abandonment declaration and death of parents are common practice of most childcare institutions in Ethiopia.²¹⁶ Week registry system especially the absence of birth registration facilitates the production of false documents.²¹⁷ The researcher also observed that majority of children found in institutions are below three years and registered as abandoned. In fact, these activities leave children without

²¹² Benyam D. Mezmur, *The Sins of the Saviours: Child Trafficking in the Context of Inter country Adoption in Africa* (2010), p.9.

²¹³ *Ibid.*, as elaborated by Benyam, the policy gap occurs, as a result of a belief that trafficking of children, particularly for adoption purposes is not happening within countries' respective borders. For instance, on the state reports submitted for the African Committee out of the 12 State Party Reports submitted to the African Committee of experts on the Rights and Welfare of the Child, only some of countries identified trafficking of children for adoption purposes as a problem.

²¹⁴ *Supra* note 186, Interview with Dagne Shibiru.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

parents and keep them under the guardianship of institutions which is the main challenge towards the principle of subsidiarity. This is also against the UNGA which directs not to put children below three years under childcare institutions. Therefore, the researcher strongly believes that there is a need for detailed investigation of the matter and there should be a system to curb the problems.

4.4.2 Financial Resource for Childcare Institutions

Financial resource is the main element for functioning of a certain childcare institutions. As the interview conducted with respondents revealed, ICA is the main financial source for the performance of childcare institutions. The amount of fund received depends up on the number of children placed for ICA programs.

Informants from international organizations working as mediators of inter-country adoption confirmed the above stance and revealed that their donation to childcare institution based itself on the number of children recruited for ICA.²¹⁸ In the situation where there is no governmental support and social mobilization, the financial dependency of institutions on a single source is a big challenge in the run towards making ICA the last resort at least before institutional care. In the current move, Institutions are forced to serve the interest of the funding organizations than the interest of children. Yet, to have institutions who stand for the welfare of children the government is expected to minimize the support from international ICA providing agencies and cover the costs of institutions as much as possible. Otherwise, heavy burden from the government without any support will force institutions to be closed which violates the recognized rights of children.

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

The principle of the best interests of the child is one of the most fundamental principles underpinning the application of subsidiarity principle. The best interests of the child requires that, in any action requiring the placement of children undertaken by government authorities

²¹⁸ Interview with W/ro Genet Abebe , Representative of Holt International Children-s Services, Forieghn Charity. and Interview with Dereje Yeshidinber, Representative of Celebrate Children International, Foreign Charity (January 3,2016).

,childcare institutions or judicial bodies, child's best interests should be the primary consideration.²¹⁹ This is confirmed under Art 36(5) of the FRDE constitution. One of the manifestations of the best interests of the child is through considering the views of children. As stated under the international child rights instruments, children have the right to express views in all matters affecting their interests. Such views must also be sought and given due weight in accordance with their age and maturity.²²⁰

In the context of childcare options, especially in the area of ICA and institutional care the principle of the best interests of the child is not given the required emphasis. Once institutions took children, they have the right to decide on the future placement of children. Most private childcare institutions place children for ICA than other care options. As discussed above, the dependency of institutions on the financial resource gained from ICA will force them to prefer what is best for the sustainability of institutions than children. In a situation where children are needed for parents, it is difficult to think what is best for children. The interview conducted with children under institutions indicated that children accept what is decided by the institutions, since they have no other choices.²²¹ There is also no appropriate legal process which regulates the application of the best interests of the child in childcare institutions in Ethiopia. In this regard, the CRC Committee in its 2015 Concluding Observations to Ethiopia noted that the best interests of the child are not adequately considered with respect to decision concerning alternative care and family reunification processes.²²²

The Principle of the best interests of the child is not properly taken into account even in most court decisions. In the majority of cases, the court decides upon the fulfillment of the required evidences. However, the decision should be based on the deep investigation on the best interests of the child. Here, it is important to take lesson from Cassation Court decisions concerning the case of Tsedale Demissie v. Ato Kifle Demissie, which involved the custody of a child whose mother had died; the Supreme Court reversed the decision of the Lower Courts on the basis of

²¹⁹ *Supra* note 39, *see* Article 3(1) of the CRC, *See* also Article 4 (1) of the ACRWC, Article 21 of the CRC also establishes that the best interests of the child is the primary consideration with regard to adoption.

²²⁰ *Id*, *See* Article 12 of the CRC, *See* also Article 7 of the ACRWC.

²²¹ The paper avoids disclosing the name of children for the purpose of security.

²²² Committee on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Ethiopia, CRC/ETH/CO/4-5 (June 2015), paragraph 25.

the principle of the best interests of the child under the CRC and the Ethiopian Constitution.²²³ Similarly on the case pertaining to revocation of ICA, between Ms. Franswis Pastor v. Mr. Dukman Veno and Ms. Barbot Letitya, the Cassation Bench used the principle of the best interests of the child to reject the claim of the respondent.²²⁴ Similar other Cassation Bench decisions are undertaken based on the best interests of the child especially concerning revocation of ICA agreements. Likewise, the principle of the best interests of the child should be given the ultimate consideration in deciding alternative childcare options for CDFE. Besides, as a very sensitive issue the country needs to develop the best interests frame work so as govern the decision of all concerned bodies.

Concerning the views of children to be adopted, the concerned judge and the social worker clarified that majority of children especially those from institutions are not in a stage to give their free consent. And those who are able to express their views will be asked by the court. In order to get a free consent of children, the court is required to arrange an informal session either through social workers or any other way which is comfortable for them. In addition, the judges as well as concerned social workers should get appropriate training to develop child friendly communications which help children to give their view without fear and influence.

4.4.4 Lack of Awareness Campaigns

The Subsidiarity principle gives due emphasis for permanent domestic childcare options where family and community based care options takes the pivotal place. Prevention of family separation, reunification, foster care and adoption demands high participation of society. All key informants cited the misconception of society towards different care options as a challenge. Accordingly, the general public prefers, ICA over domestic adoption in terms of future support for family and as a big opportunity for children. Similarly, the community members and some authorities working on childcare management have a positive perception about institutional care. Some childcare agencies and institutions have also contribution in creating a positive image on the community. In this regard an informant from MoWCA indicated, though MoWCA provided

²²³ Tsedale Demissie v. Ato Kifle Demissie,, Federal Supreme Court Cassation Division, Cassation File No. 23632 (October ,2007).

²²⁴ Ms. Franswis Pastor v. Mr. Dukman Veno and Ms. Barbot Letitya, Federal Supreme Court Cassation Division, File No. 44101 (February,2010).

different awareness creation sessions on the matter and brought great change, what is performed in terms of creating social mobilization is not enough.²²⁵

Motivating government bodies, institutions and organizations working on childcare to invest on family care as well as supporting communities to maintain their children is not a simple task. Similarly, changing the deep rooted misconception of society towards ICA and Institutional care is not an issue to be left over. These require huge human and financial resource so as to have fruitful and healthy generation. Thus, the government needs to give political priority on strengthening the capacity of MoWCA both in terms of finance as well as human resource.

Concerning the dissemination of the guideline, the researcher observed some institutions not having the National Alternative Child Care Guidelines. On this point an informant from CHSA revealed that the reason for institutions to follow different standards is due to the failure to disseminate the Guidelines and follow the progress accordingly. This problem is especially observed on institutions found in the regions.²²⁶ These calls for attention of MoWCA, apart from developing the guidelines, translating it in to different languages, disseminating and following up of the implementation should be given high attention.

4.4.5 Lack of Accountability and Coordination

Creating coordination and a clear accountability of all concerned levels is also one aspect which needs to be given focus. All key respondents directed all activities of controlling and awareness creation to MoWCA. However, with limited experts the works of coordinating, controlling and awareness creation activities on different childcare options are burdensome. As part of a great move towards improving child welfare system, it is vital to create a sense of accountability and coordination of all concerned bodies.

As a move towards a coordinated work, in 2012 EACN (Ethiopian Alternative Childcare Network) was launched with the aim of having strong collaboration and coordination between civil society organizations, NGOs and government structures so as to ensure solid programming,

²²⁵ *Supra* note 182, Interview with Tadese Ayalew.

²²⁶ *Supra* note 186, Interview with Dagne Shibiru.

a strong legal framework and support for alternative care. MoWCA, MoJ, MoH, MoE, the police, bilateral organizations (UNICEF), Donors, INGOs and LNGOS take part in the network. The network facilitates the drafting of policies, guidelines and legal provisions for different alternative childcare options. Generally, it played a role to fill the gap of implementation on alternative childcare options through coordination practices and efforts. However, as the interview conducted with experts revealed, the Network has ceased to work after 2014. The problems related to work load of experts and other reasons which they were not willing to expose led for non functionality of the network.²²⁷ The researcher believes that this is a big failure on the part of MoWCA. In this regard, reestablishing the network with a strong authority and accountability will be recommendable.

²²⁷ Interview with Tilahun G/Tsadik , Children Issue Mainstreaming Officer, Ministry of Women and Children Affairs (MoWCA), (September 13, 2015).

Chapter Five

Conclusion and Recommendations

Living without parents, without even remembering if you have ever seen them, it is a serious problem for me. I wonder what parental love feels like and I realize that I do not know it at all because I have never experienced it. I wish all children to be brought up in a family, with affection, peace, and being protected from any danger.²²⁸

5.1 Introduction

The above interview with a child who lived in Rwanda Orphanage for 12 years would have been partly an apt conclusion for this study as far as the importance of family environment is concerned. This chapter further provides concluding remarks and recommendations on key findings of the study.

5.2 Conclusion

The principle of subsidiarity based itself on consideration of family environment as the best place for the harmonious development of a child. According to the principle, the child should grow with the family environment as much as possible. If placement with parents or extended families is impossible children have the right for state provided alternative childcare options. In view of that, domestic placements with the foster or adoptive family are a preferable option followed by inter-country adoption and institutional care as subsidiary to other childcare options. However, the clear position for inter-country adoption or institutional care to be considered as measure of last resort is debatable. But in applying hierarchy of alternative childcare options the best interests of the child should be the paramount principle governing the principle of subsidiarity.

²²⁸ Family for Every Child, Why Care Matters: The Importance of Adequate Care for Children and Society, Every Child FSCE (2015) p.16.

Interview with, Akiki, aged 16, who lived in Rwanda residential care for 12 years up on the death of his parents

Among human rights instruments with binding legal obligation the CRC, the ACRWC and the Hague Convention contain provisions pertaining to principle of subsidiarity.²²⁹ Furthermore, UNGA is an important instrument and a strong frame of reference for national legislations in practical application of the principle.

In addition to providing some aspects of children rights under the FDRE Constitution, the government of Ethiopia has ratified the CRC and the ACRWC. And the constitution acknowledges all international instruments ratified by Ethiopia to be considered as an integral part of the domestic laws of the country. Hence, the principle of subsidiarity acquired the Constitutional recognition under the Ethiopian human rights system. Concerning CDFE, the constitution provides special protection for orphan and recognizes the establishment of institutions which aimed at adoption of children. However, the constitution limits its scope of application only to orphans without including children deprived of family environment for other reasons. The constitution also did not consider other childcare options except institutional care and adoption.

The RFC of Ethiopia also contains provisions relevant for protection of CDFE. Among other the RFC covers only domestic and inter-country adoption. Accordingly, before approving adoption agreement the court is expected to take into account the best interests of the child. Concerning inter-country adoption, if the adopter is a foreigner, the court is needed to ascertain the absence of access to raise the child in the country. These provisions though not specifically provide a clear process to ascertain the situation of the child and parental condition, it is indicative of the subsidiary position of ICA to other childcare options.

Though the above laws include some aspects of CDFE, they fail to impose a clear obligation on the government to provide alternative childcare options. Similarly, clear hierarchy of alternative childcare options are not provided under the laws. Moreover, though the CRC Committee repeatedly commented, national legislation on alternative childcare is not enacted.

²²⁹ Mezmur., *Supra* note 25, p.84.

There are also guidelines that have relationship with the protection of CDFE. The National Alternative Childcare Guidelines are important instruments with direct relevance for the principle of subsidiarity. The guidelines provide an obligation on the state to provide alternative childcares in the form of community-based childcare, reunification and reintegration program, foster care, adoption and institutional childcare services hierarchically. Based on the National Guidelines institutional care is considered as a measure of last resort. The Standard Service Delivery Guidelines are another important document in providing uniform and standardized service for OVC. However, since these are guidelines they lack a force of law.

Concerning the application of subsidiarity principle, the government of Ethiopia implements alternative childcare options based on the National Alternative Care Guidelines which base itself on the CRC, the ACRWC and the UNGA. In this regard, the report of Ethiopia indicates that during the period of 2010/11-2014/15 children supported through community based childcare option increased from 361 to 4.9 million. Similarly, children placed under domestic adoption increased from 1,347 to 10,387 and children placed under ICA decreased from 4269 to 1250 in the same period. Additionally in 2014/15, 4,901 children are placed under institutions and 2,712 Children are placed with foster families. These data show a better concern accorded to CDFE.

Though the report of Ethiopia stipulated as there is a tremendous change concerning the issue, the findings of the study revealed that, the application of subsidiarity principle both in the federal and regional level is weak. However, the study recognizes the efforts being exerted to apply the principle of subsidiarity. ICA and institutional care, which are considered subsidiary to other childcare options practically remained the first choice of the community and still highly practiced under the umbrella of protecting children. Most children are placed under institutions after declaration of abandonment and then given for ICA without effectively exploring the exhaustion of other domestic childcare options based on the best interests of the children.

There are also challenges and problems in proper application of the principle including, child trafficking and falsification of documents, ICA being the only financial source for childcare institutions, low emphasis given to the principle of the best interests of the child, lack of strong supervisory mechanisms, lack of public awareness campaigns and coordination activities. Generally it is found that, though the government of Ethiopia has made a significant effort for

the protection of children deprived of family environment more specifically in applying the principle of subsidiarity, there is still much left to be done including the adoption of specific legislation on alternative childcare options.

5.2 Recommendations

The analysis of this study has identified some gaps and practical problems concerning the application of subsidiarity principle in Ethiopia. Hence, the study offers the following recommendations as the way forward to realize the protection of children deprived of family environment in Ethiopia.

1. The existing national laws on child rights have their own shortcomings in adequately protecting the rights of CDFE. It does not cover comprehensive issues of alternative childcare options for protection of children. Thus, the adoption of a comprehensive child law which deals with relevant childcare options should be given a great precedence by the government. Besides, the National Guidelines should be given a force of law so as to make accountable the disobedience by care givers and other concerned bodies. The hierarchy of childcare options enshrined under the National Guidelines should be reviewed and put in a way permanent family based care options are given a great priority. For instance, domestic adoption should come before foster care.
2. Different studies reveal that poverty is the main cause for relinquishment and abandonment of children in Ethiopia. Thus, the government should solve this problem by designing different family supporting and prevention approaches. This complies with the principle of subsidiarity that gives great concern for children to remain with the natural family environment.
3. In approving ICA, the court and concerned government bodies must ensure that the principle of subsidiarity is taken into consideration. A mere reduction in the number of children placed for ICA without having an appropriate system which guarantees the protection of children will be insignificant. Thus, domestic family based care options

should be exhausted before a child is given for inter-country adoption. This also requires, ensuring the principle of the best interests of the child to be of the ultimate consideration.

- ❖ In order to shift the focus of institutions from ICA to other domestic childcare options the government should closely regulate all financial aspects of inter-country adoption. There should be a central authority governing all aspects of inter-country adoption, which closes the direct connection between inter-country adoption agencies and childcare institutions.
 - ❖ The government of Ethiopia should ratify the Hague Convention as it has strong protection and placement criteria. Especially it has regulations against the financial issues like taking inter-country adoption as sole source of finance.
 - ❖ The government should take strong measures on those institutions and agencies participating on illegal activities in relation to inter-country adoption.
4. There should be adequate awareness creation about appropriate alternative childcare options. The deep rooted attitude of society towards the importance of ICA and institutional care should be changed towards domestic family based care options through mass awareness and sensitization program. In addition, conducting different trainings to all concerned government and non-governmental bodies on the principle of subsidiarity based on international and national instruments is necessary. The National Guidelines should be effectively communicated to all childcare institutions.

5. The appropriate care of children deprived of family environment should be given priority by the government.

- ❖ The government should allocate adequate financial and human resources for MoWCA and Regional Bureaus.
- ❖ Priority must be given on strengthening regular supervision and evaluation on the performance of childcare institutions and other concerned governmental and non-governmental organizations operating on children.
- ❖ Strong and coordinated reporting mechanism and data management on condition of CDFE must be designed.

6. Family and community based care options should be strengthened. The government should design a system to effectively provide the placement of children under domestic family based care options. Childcare institutions should be endowed with a clear regulatory direction to shift their focus towards family and community care options. ICA and institutional care should not be the first resort as to the performance of childcare institutions rather it is essential to shift their direction to ensure that children who cannot be cared for by their own parents have a range of quality options in a family environment.

7. Promoting strong accountability and coordination among different stake holders involved in directly or indirectly supporting and providing alternative childcare is quite necessary and timely.

Finally, and most importantly, as a States Party to the CRC and ACRWC, the government of Ethiopia has an obligation to implement the principle of subsidiarity. Hence, the government should create conducive environment that facilitates the work of all stakeholders involved in alternative childcare towards protecting the welfare of children through the principle of subsidiarity.

Bibliography

A. International and Regional Human Rights Instruments

I. United Nations (UN) Human Rights Instruments

- The Geneva Declaration on the Rights of the Child, League of Nations (26 September 1924)
- The Declaration on the Rights of the Child, the United Nations General Assembly, Resolution 1386 (XIV) (20 November 1959)
- The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, the United Nations General Assembly, Resolution A/RES/41/85 (3 December 1986)
- The Convention on the Rights of the Child (CRC), the United Nations General Assembly, Resolution 44/25 (20 November 1989)
- The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption ,1870 U.N.T.S. 167 (29 May 1993)
- The Guidelines for the Alternative Care of Children, UN General Assembly Document, A/RES/64/142 (24 February 2010)

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

- Committee on the Rights of the Child, General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child, CRC/GC/2003/5 27(2003)
- Committee on the Rights of the Child, General Comment No. 3, HIV/AIDS and the Right of the Child, CRC/GC/2003/3(2003)
- Committee on the Rights of the Child, General Comment No. 7, Implementing Child Rights in Early Childhood, CRC/C/GC/7/ 20 (2009)
- Committee on the Rights of the Child, General Comment n. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC /GC/2005/6 (2005)
- Committee on the Rights of the Child, General Comment n. 8, The Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading forms of Punishment, CRC /C/GC/8 (2007)
- Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, the 2nd Periodic Report of Ethiopia, CRC/C/70/Add.7 (January 2001)
- Committee on the Rights of the Child, Concluding Observations of the Committee on the 3rd Periodic Report of Ethiopia ,CRC/C/ETH/CO/31 (November 2006)

- Committee on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Ethiopia, CRC/ETH/CO/4-5 (June 2015),

III. African Human Rights Instruments

- The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (Entered into force November 29, 1999)
- The African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3(Entry into force October. 21, 1986)

B. National Laws

- The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995,1st Year No.1, Addis Ababa (August, 1995)
- Revised Family Code, Proclamation No.213/2000, Federal Negarit Gazetta Extra Ordinary Issue ,No. 1/2000 (July 2000)
- Charities and Societies Proclamation, Proclamation No. 621/2009, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 15th Year No.25 ,Addis Ababa (February 2009).
- The Proclamation No. 414/2004, the Criminal Code of the Federal Democratic Republic of Ethiopia, Addis Ababa (May, 2005)
- The Proclamation No.213/2000, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 6th Year Extra Ordinary Issue No, I, Addis Ababa (July, 2000)
- Proclamation No.916/2015, A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia; Federal Negarit Gazeta, 22nd Year No.12, Addis Ababa(December 2015)

A. National Policy Documents and Reports

- Alternative Childcare Guidelines on Community-Based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Service, Federal Democratic Republic of Ethiopia, Ministry of Womenø Affairs, Addis Ababa (May, 2009)
- Standard Service Delivery Guidelines For Orphans and Vulnerable Childrenø Care and Support Programs, Ministry of Women and Children Affairs and Federal HIV/AIDS Prevention and Control Office, Addis Ababa (Feb 2010)
- Third Periodic Report of the Federal Democratic Republic of Ethiopia, United Nations Committee on the Rights of the Child(1999-2003/04) (submitted at 27 April 2005)
- Combined 4th and 5th Periodic Report of the Federal Democratic Republic of Ethiopia , the United Nations Committee on the Rights of the Child (2006-2011) (submitted at April 2012)

- Written Replies by the Government of the Federal Democratic Republic of Ethiopia, to The List of Issues CRC/C/ETH/Q/4-5 by the Committee on the Rights of the Child, In Consideration of the Combined Fourth and Fifth Periodic Reports of the Federal Democratic Republic of Ethiopia (March 2015)
- Central Statistics Agency, Ethiopia (Inter censual report of 2012)

B. Books

- Aderanti Adepoju, Family Population and Development in Africa (1st edn ,1997)
- Andrew Bainham, Children: The modern law, Jordan Pub (2nd edn, 1998)
- Charlotte Phillips, Child-Headed Households: A Feasible Way Forward or an Infringement of Children's Right to Alternative Care?, e-ISBN 978 90 817636 1 5 (2011)
- Davel Trynie , Intercountry Adoption from an African Perspective (Julian Sloth-Nielsen ed., 2008)
- David Tolfree, Roofs and Roots: The Care of Separated Children in the Developing World (Save the Children UK-John Wiliamson,2003)(1995)
- Elizabeth Bartholet, International Adoption: Children and Youth in Adoption, Orphanages, and Foster Care, Greenwood Publishing Group Inc., (Lori Askeland ed., 2005),
- Frans Viljoen, International Human Rights Law in Africa, Oxford University Press (2007)
- Getnet Tadele et al., Improving Care Options for Children in Ethiopia through Understanding Institutional Childcare and Factors Driving Institutionalization, FHI (June 2010)
- Girmachew Alemu and Yonas Birmeta, Handbook on the Rights of the Child in Ethiopia, Addis Ababa University, (í .)
- McDonald et al., Assessing the Long-Term Effects of Foster Care: A Research Synthesis, Institute for Research on Poverty special report (1993)
- Nigel Cantwel et al, Moving Forward: Implementing the Guidelines for the Alternative Care of Children, UK: Centre for Excellence (2012)
- Nigel Cantwell and Anna Holzscheiter, A Commentary on the United Nations Convention on the Rights of the Child, Article 20 Children Deprived of their Family Environment (Martinus Nijhoff , 2008)
- Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child (3rd ed ,Geneva 2007)
- Save The Children, International Adoption Brief (2010)
- The African Child Policy Forum (ACPF), Inter-country Adoption Alternatives and Controversies: Proceedings the Fifth International Conference on the African Child, ACPF (2012)

- The Faith to Action Initiatives, Children, Orphanages and Families, A summary of Research to help Guide Faith based actions (2014)
- Geraldine V. Bueren, International Children's Rights: A Stop-Go History (Verhellen ed, 1996).
- Tiaji Salaam, AIDS, Orphans and Vulnerable Children (OVC): Problems, Responses, and Issues for Congress, CRS Report for Congress, 1st March Congressional Research Service, The Library Congress (2004)
- UNICEF, Article 20(1) of the CRC; Implementation Handbook for the Convention on the Rights of the Child (2007)
- Wereldkinderen, Inter Country Adoption: The Rights of the Child, or the Harvesting Children, Ethiopia (October 2009) available at, www.againstchildtrafficking.org/.../secon... (accessed on 6 February 2015)

C. Articles and Journals

- Andrew Dumn et al., *A last Resort, the Growing Concern about Children in Residential Care*, International Save the Children Alliance, available at, www.savethechildren.net (accessed on 20 June 2015)
- Benyam D. Mezmur, *Intercountry Adoption as a Measure of Last Resort in Africa: Advancing the Rights of a Child Rather than a Right to a Child*, International Journal of Human rights (2009)
- Benyam D. Mezmur, *The African Children's Charter versus the UN Convention on the Rights of the Child: A Zero-Sum Game?*, SAPR/PL (2008)
- Benyam D. Mezmur, *the Sins of the Saviours: Child Trafficking in the Context of Inter country Adoption in Africa* (2010)
- Child Welfare League of America (CWLA), *Kinship Care fact Sheet*, available at, www.cwla.org/programs/kinship/factsheet.htm (accessed on 10 April 2015)
- David Tolfree, *Facing the Crisis: Supporting Children through Positive Care Options*, London: Save the Children UK (2005) available at, www.crin.org/.../scaling%20down%20... (accessed on 2 September 2015)
- Every Child, *Adopting Better Care: Improving Adoption Services around the World*, Every Child, London (2012) available at, <https://www.everychild.org.uk/.../> (accessed on 12 May 2015)
- Jenny Papageorgiou, *Guidance on Family Reunification*, available at, www.dhs.vic.gov.au/.../guidance-on- (accessed on 4 April 2015)
- John Williamson and Aaron Greeberg, *Families Not Orphanages*, Better Care Network (2010) available at, www.bettercarenetwork.org/docs/Families%20Not%20Orphanages.pdf. (accessed on 11 May 2015)

- Nigel Cantwell, *Towards UN Guidelines on Alternative Care for Children: From Concerns to Consensus* (2008) available at, <http://www.bettercarenetwork.nl.org> (accessed on 6 June 2015)
- Nina W. Mbengue, *Permanency: A Key Concept for Children in Foster Care* (2008) available at, <https://www.foster.net/.../foster/>... (accessed on 5 June 2015)
- Tsegaye Chernet, *Overview of Services for Orphans and Vulnerable Children in Ethiopia*, Addis Ababa (April 26, 2001) available at, www.bettercarenetwork.org/.../..., (accessed on 4 January 2015)
- United Nations Children's Fund [UNICEF], *Innocenti Digest: Inter Country Adoption, Digest* (1998) available at, <http://www.unicef-irc.org/publications/pdf/digest4e.pdf> (accessed on 04 July 2015)
- World Wide Orphans, *Defining Orphans: the World's Most Vulnerable Children* (April 7, 2015) available at, www.orglawstreetmedia.com/.../worl... (accessed on 8, February 2015)

D. Unpublished Research Papers and Dissertations

- Bunkers Kelley, *Informal Family Based Care Options: Protecting Children's Right? A Case Study of Gudifecha in Ethiopia* (Unpublished MA thesis, 2010), Kurt Bosch and Universite de Fribourg
- Sarah Brittingham, *Birth Families and Inter-country Adoption in Addis Ababa, Ethiopia, USA* (Masters of arts in Development Studies, unpublished, 2010)
- Zenaye T. Zeleke, *The Role of Federal Government Organs in the Protection of the Best interests of the Child in Ethiopia*, Addis Ababa University, School of Law (Unpublished, LLM Thesis, 2008)

E. Interview

- Interview with Ato Tewodros kibreab, Child Promotion Expert, Ministry of Women and Children Affairs (MoWCA) (September 12, 2015)
- Interview with Mulumebet Ashebir, Research and Project Advocacy Officer, Addis Ababa Bureau of Women and Children Affairs (ABoWCA) (September 15, 2015)
- Interview with Ewunetu Busheri, Child Rights and Welfare Protection Expert, Oromia Bureau of Women and Children Affairs (OBoWCA) (October 1, 2015)
- Interview with Tadese Ayalew, Child Protection Care and Support Expert, Ministry of Women and Children Affairs (MoWCA) (September 12, 2015)
- Interview with Janbo Getu, Child Protection Specialist, UNICEF (November 30, 2015)
- Interview with Selamawit Chane, Social Worker, Kebebe Tsehay Orphanages Center (September 29, 2015)

- Interview with Dagne Shibiru, Asset Liquidation Transfer and Disposal Directorate Director, Charities and Societies Agency (CHSA) (November 26, 2015)
- Interview with Ermiyas Gizaw, Accountant Birhan Childcare Center (October 14, 2015)
- Interview with Zelalem Bahiru, Director, Sele Enat Association (October 15,2015)
- Interview with Behailu Tewabe, Judge, Federal First Instance Court (FFIC), Bole, Adoption Bench (December 30, 2015)
- Interview with Winta Zemuy, Social Worker, Federal First Instance Court (FFIC) (December 30, 2015).
- Interview with Tilahun G/Tsadik , Children Issue Mainstreaming Officer, Ministry of Women and Children Affairs (MoWCA) (September 13, 2015)
- Interview With Menbere Endirias, Institutions Support and Supervision Officer, Addis Ababa Bureau of Women and Children Affairs (ABoWCA) (September 15,2015)
- Interview with W/ro Genet Abebe , Representative of Holt International Children-s Services, Forieghn Charity (January 3,2016).
- Interview with Dereje Yeshidinber, Representative of Celebrate Children International, Foreign Charity (January 3, 2016).

F. Cases

- Bona Vs Others, Federal First Instant Court, Bole Adoption Bench, Case No. 26/13 (05/06/2007 E.C) (Unpublished)
- Tsega Wanawu Vs Others, Federal First Instant Court, Bole Adoption Bench, Case No. 19376 (04/03/2006 E.C) (Unpublished)
- Tsedale Demissie v. Ato Kifle Demissie, Federal Supreme Court Cassation Division, Cassation File No. 23632 (October 2007)
- Ms. Franswis Pastor v. Mr. Dukman Veno and Ms. Barbot Letitya, Federal Supreme Court Cassation Division, File No. 44101 (February 2010)
- South Africa Constitutional Court, AD and Another vs. DW and Others, CCT 48/07, (Sentence.7 Dec 2007b, § 48) *available at*, www.centerforchildlaw.co.za/.../south- (accessed on 25October 2015)

Appendix

Appendix A

Interview Guide for Experts at MoWCA and Related Government Bodies

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia.” The purpose of this interview is to get information on how far the Principle of subsidiarity been implemented for the welfare of CDFE.

Questions

1. What is the role of the office in protecting CDFE?
2. What are the alternative childcare options recognized by the office and priorities accorded?
3. What are the activities being undertaken in order to encourage family based care options?
4. Are there effective monitoring mechanism on the implementation of legislation and policy affecting children in different alternative care?
5. What are the criteria to evaluate institutions involved in child care activities?
6. What are the conditions followed to render comments on ICA cases?
7. Is the Alternative Child Care Network operating as per the purpose of its establishment? How?
8. What are the efforts being undertaken in order to change the National Alternative Care Guidelines into binding legal instrument?
9. Which of the factors considered problematic or barriers to the implementation of subsidiarity principle in Ethiopia?
10. What types of measures have been taken to stop and minimize the above problems?
11. What do you suggest to curb problems children facing currently in order for children to have suitable family environment?

Appendix B

Interview Guide for Judge at the Federal First Instance Court and Court Social Worker

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia.” The purpose of this interview is to get information on how far the Principle of subsidiarity been implemented for the welfare of CDFE.

Questions

1. What is the role of FFIC court in adoption cases?
2. What are the pre conditions followed before approval of adoption agreement?
3. How do you evaluate the credibility of opinion received from MoWCA on ICA cases?
4. What are the mechanisms followed to identify the best interests of the child on ICA cases?
5. Is there any consideration on the exhaustion of other national care options before approving ICA cases?
6. What possible recommendations do you suggest for effective implementation of subsidiarity principle?

Appendix C

Interview Guide for Childcare Institutions

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia.” The purpose of this interview is to get information on how far institutions are working in the application of subsidiarity Principle for the welfare of CDFE.

Questions

1. How many children are found under the child care institution?
2. What are your criteria for accepting children?
3. What are the alternative child care options provided for children under the institution?
4. What is the focus of the institution among different child care options, why?
5. What are the sources of income for the institution?
6. Is there any effort undertaken to encourage family and community based child care options?
7. How do you receive and handle views of children under the institution?
8. What type of Services are rendered by the institution and standards followed?

9. Which of the factors considered problematic or barriers to the implementation of subsidiarity principle in Ethiopia?
10. What do you suggest in order to solve the problem?

Appendix D

Interview Guide for Inter-country Adoption Agencies

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia.” The purpose of this interview is to get information on how far the Principle of subsidiarity been implemented for the welfare of CDFE.

Questions

1. How do you see the status of Inter-country adoption in Ethiopia?
2. What are your criteria to fund local child care institutions?
3. What are the barriers that currently prevent your organization from doing more on inter-country adoption? Explain their impacts?

Appendix F

Interview Guide for Child Specialist Expert at UNICEF

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia.” The purpose of this interview is to get information on how far UNICEF is working in the application of subsidiarity Principle for the welfare of CDFE.

Questions

1. What is the role of UNICEF in protecting children deprived of parental environment?
2. What are the activities undertaken by the office for the realization of subsidiarity principle?
3. What do you think is the status of ICA and institutional care in Ethiopia?
4. What are the measures taken by the office to reduce the practice?

5. How do you evaluate the influence of the National Alternative Child Care Guidelines in Ethiopia?
6. Which of the factors considered problematic or barriers for the implementation of subsidiarity principle in Ethiopia?

Appendix G

Interview Guide for Children under Childcare Institutions

Introduction: I am Eyerusalem Jima, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title "Ensuring a Better Protection for Children Deprived of Family Environment: the Application of Subsidiarity Principle in Ethiopia." The purpose of this interview is to get information on how far the Principle of subsidiarity been implemented for the welfare of CDFE.

Questions

1. How did you find the child care institution? Is it suitable or not?
2. Do you face any problem at childcare institution? If yes, what are these problems and there causes?
3. Are school services accessible for you? For instance, Food, Health care, water, school, playground?
4. Do you give your opinion if there is any decision concerning your placement?
5. What changes do you think should be made in the future, to improve the quality of care offered for you?