

ADDIS ABABA UNIVERSITY

SCHOOL OF LAW

PROTECTION OF THE RIGHTS OF CHILDREN LIVING WITH  
IMPRISONED MOTHERS AT THE ETHIOPIAN FEDERAL  
PRISONS

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JUNE 2018

**ADDIS ABABA UNIVERSITY**  
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Protection of the rights of children living with imprisoned mothers at the Ethiopian federal prisons

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## **DECLARATION**

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

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## **ACKNOWLEDGEMENT**

I thank God for this opportunity and for His provision. I am so grateful to my family because without their support and encouragement this would not have been possible. My heartfelt gratitude is also to Dr. Yonas Birmeta, my patient and knowledgeable advisor, thank you for the hours you put in correcting my work. Without your assistance and guidance I would have thrown in the towel! Finally, my thank you goes to Ato Mekete Teferi for editing the language.

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## **ABSTRACT**

This study is an investigation of the welfare of children who live in prison with their incarcerated mothers as well as expectant mothers in selected prisons of Ethiopia. Article 36 of the FDRE Constitution provides the best interest of the child to be the primary consideration in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies. This constitutional protection underscores the need for concern and special attention for the best interest of the child in the criminal justice system, in the federal prison administration, and also before other executive organs. There are also pertinent provisions reflected in the four general principles of CRC, and also in the African Charter on the Rights and Welfare of the Child such as the right not to be discriminated against based on the status of their parents (Article 3), the best interests of the child as the primary consideration in actions affecting children (Article 4(1)), the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 4(2)) and the right to survival and development (Article 5). Hence, taking all these into consideration, the study examines gaps in the policy and legal framework in Ethiopia on the protection of the rights of infants and youths in prison with their incarcerated mother. It also looks at the social, physical and economic conditions of these children in the federal prisons along with the enforcement of laws pertaining to their well-being. The study has employed mainly qualitative research methods, and it has reviewed international laws as well as national laws in the course of exploring the subject matter. Identifying gaps in the full implementation of the child rights, the study eventually forwarded recommendations to improve their conditions.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background

Crime is regarded as a major social problem due to its inherent nature as a threat to the wellbeing society as a whole, and to the individuals who live in that society. The magnitude even becomes worse when parental incarceration happen as a result of committing an offense of a certain kind. Nowadays, there is a tendency that among women prisoners most of them are single parents with dependent children (Coyle, 2002). This could result in children at certain age or who are born in prison may be incarcerated with their mothers to get the care of their mothers. However, these children are at increased risk of coming in conflict with the law.

Based on a study conducted by the Ethiopian Human Rights Commission (EHRC) in 2012 on 114 of the 119 detention centers, in nine regional states and two federal city administrations, that housed both convicted and people waiting for verdict accommodated 88,610 detainees, of whom 2,700 (3.1%) were female<sup>1</sup>. The EHRC also found that 496 children were staying with their mothers in the detention centers around the country.

Children deprived of their liberty, due to the level of their physical and mental conditions, require special treatment and protection as they are vulnerable for so many problems. In the process of the administration of the Ethiopian criminal justice, children may be kept in prisons and detention centers. The establishment proclamation of the federal prison administration also permits to live children who are under 18 months with his or her mother and the innocent children also detained with their mothers only because their mothers are under investigation or convicted by a court of law.

In fact, the Ethiopian government has already undertaken positive initiatives to promote and protect the rights of children in the country. These include: the ratification of the major international instruments concerning children, particularly the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), and the recognition of these treaties as integral parts of the laws of the land in the Constitution of the Federal Democratic Republic of Ethiopia.

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<sup>1</sup> The Ethiopian Human Rights Commission Report, 2012 page 210

## 1.2 Statement of the Problem

Only limited statistics exist globally about the number of children living in detention with their mothers. The ‘best interest of the child’ principle is generally regarded as a sound basis for a decision to permit children to live with their mothers in prison. There are no rules in international instruments about whether children can stay with their parents in detention or the age up to which they can do so. As a result, many countries, including Ethiopia, have developed policies that specify an age.

However, the Universal Declaration of Human Rights states that children are entitled to special care and assistance and affirms the right of everyone to a standard of living adequate for their health and wellbeing<sup>2</sup>. Nevertheless, studies conducted in different counties indicated that small babies and children who are in prison with their incarcerated mothers may lack clear vision on outside of prison world, suffer from overcrowding, challenge with bad prison systems<sup>3</sup>, lack of education, and their welfare is adversely affected<sup>4</sup>. Consequently, these children are also unlikely to be able to mix with children outside prison. The restricted and often harsh, punitive environment of prisons can permanently damage the psychological and mental wellbeing of children there.

In Ethiopia, studies on small babies and children who reside in prison with their incarcerated mothers are scarcely found. Although the report of the Ethiopian Human Right Commission recognizes the presence of problems on these babies and children, it understated the issues. Indeed, the report did not incorporate any solution or recommendations at all on this matter<sup>5</sup>.

Therefore, this study will dwell on identifying problems on the protection of infants and youths who live in prison with their incarcerated mothers as well as expectant mothers. In other words, the study questions how the best interest of the child principle along with other rights included, such as in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child should be interpreted and used as a guideline in a child centered approach in the prison administration to guide decisions taken in respect of children born in prison or living with their mothers in prison.

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<sup>2</sup> Universal Declaration of Human Right, Art 25

<sup>3</sup> Alejos Marlene, Babies and small children residing in prison. Quaker United nation Office. March, 2005, page 9,51

<sup>4</sup> Kaggwa S.K. Report of the Special Reporter on Prison and Conditions of Detention in Africa. Presented on 52<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights Yamoussoukro, Cote d’Ivoire. 2012 Oct, 9-22

<sup>5</sup> The Ethiopian Human Right Commission Report, 2012, page 210.

## **1.3 Research Objective**

### **1.3.1 General objectives**

This research investigates the practice of the rights of the child in the Ethiopian federal prisons with special reference to children who live in prison with their incarcerated mothers. The study also examines the prevailing gaps in the policy and legal framework for the protection of the rights of children imprisoned with their mothers.

### **1.3.2 Specific objective**

1. To assess the safety of children who live in prison with their imprisoned mother;
2. To evaluate the practice of prison centers in the protection of the rights of children who live with their incarcerated mothers light of local and international child laws and conventions;
3. To assess the awareness and practice of prison administrators in the federal prisons in view of protecting the different child rights;
4. To identify gaps in the policy and legal framework for the protection of the rights of children who live with their incarcerated mothers;
5. To forward possible recommendations to improve gaps in the policy and legal framework as well as practice of the protection of the rights of children who live in prison with their imprisoned mothers

## **1.4 Research Questions**

The study will address the following questions:

1. What are the pressing problems of children who reside in prison with their incarcerated mothers?
2. What rights are out there for children who reside in prison with their mothers?
3. How are the rights the child stipulated in the Ethiopian and international laws and conventions practiced in the Federal Prison Administration Centers?
4. What gaps are there in the policy and legal framework for the protection of the rights of children who live with their incarcerated mothers?

5. What should be done to fully realize the protection of the rights of the children who live with their incarcerated mothers?

### **1.5 Research Methodology**

This study applies mixed approach using both qualitative and quantitative research methods to assess the conditions of young children of the incarcerated mothers. The populations of the study are imprisoned mothers who live with children and the prison administrators, and data were gathered using structured questionnaire, personal administered interviews, and through observation. The collected data was entered and analyzed by using SPSS statistical software version 20.

### **1.6 Significance of the Study**

The findings of this study are believed to bring issues of infants and youths who reside in prison with their incarcerated mothers before policy makers and implementers. The study is also important in identifying key problems and directions for the future action including: the need to review domestic laws in line with international standards; the need for government to promote the principle that the detention of children should be a last measure and ensure its adoption as a standard practice throughout the country; the imperative of equipping prison authorities with the wherewithal and resources to provide the facilities and services needed to meet their obligations and the need to build, through training and sensitization, the capacity of law enforcement bodies. Moreover, it becomes instrumental for further studies in the area by providing researchers valuable information about the realization of the rights of children in general and children who reside in prison with their incarcerated mothers in particular. Last but not least, it may serve to promote and protect the rights and wellbeing of children in a wider context.

### **1.7 Scope of the Study**

The study focuses on exploring how infants and youths who reside with their incarcerated mothers as well as expectant mothers are treated and examining what services they are provided with for their healthy development. It will also deal with the extent of the deprivation of their liberty in the prisons. The study is limited to assess the protection of children reside in the Addis Ababa and Dire Dawa federal prisons and detention centers as they are the only institutions that host women prisoners under the Ethiopia Federal Prison Administrations.

## **1.8 Structure of the Study**

This study is organized into five chapters. Chapter one constitutes background, statement of the problem, research objectives, research questions, significance of the study, scope of the study, and structure of the study.

The second chapter elaborates some international and regional human rights protection frameworks applicable to all children, paying special attention to issues relevant to children residing in prisons, are reviewed and discussed. More specifically, the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Bangkok Rules and Nelson Mandela Rules are assessed.

Chapter three examines Ethiopia's legislation, policies, procedures and practices regarding infants and young children incarcerated with their mothers in prisons. The discussion, particularly, is made in light of the FDRE Constitution, the Ethiopian child policy, the Ethiopian criminal justice policy and the Ethiopian Federal Prisons Commission Establishment Proclamation. An assessment is also made on Ethiopia's compliance with international obligations relevant to children.

The fourth chapter presents the research methodology employed in the study as well as the analyses based on the data collected directly from the vulnerable children's mothers and the police officers to show the extent of the implementation of the international, regional and country's laws in protecting the innocent infants and youths under consideration in federal prisons administration.

Chapter five draws a conclusion on the application of relevant international human rights and norms to the infants and youths who reside in prisons with their incarcerated mothers in Ethiopia. It also forwards recommendations on how best the rights of these vulnerable children are promoted and protected.

## **CHAPTER TWO**

### **INTERNATIONAL LEGAL FRAMEWORK ON THE RIGHT OF CHILD**

#### **2.1 Definition of Children Who Live in Prison**

Under the UN Convention on the Rights of the Child, (article 1) a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. When a mother suspected or sentenced with legal criminal and decided to be imprisoned, her innocent baby or child also may go into prison with her. So, children who live in prisons are an innocent baby boy or baby girl who deprived his or her liberty and live with his or her imprisoned mother under the custody.

#### **2.2 The UN Convention on the Rights of the Child (1989)**

The UN Convention of the Rights of the Child (CRC) is main international instrument for the protection of children and realization of their rights. It is an incredibly powerful instrument as it has been ratified by more than 195 countries in the world including Ethiopia.

Article 3 of the CRC provides that in all actions concerning children, the best interests of the child shall be a primary consideration, even for the children of incarcerated parents. The Committee for the Rights of the Child has recommends that where the defendant has child caring responsibilities, the principle of the best interests of the child should be carefully and independently considered by independent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing and decisions concerning the placement of the child.<sup>6</sup> Children whose parents had been implicated by the criminal justice system have equal rights to all other children. The best interest principle implies that even when the courts of law are passing sentences on the primary care giver, the best interests of the child have to be considered. The legislature and administrative authorities when they make laws and policies should also consider the best interests of the child each time they are to enact a law regulating the stay of mothers and children in correctional facilities.

The Preamble of the CRC acknowledges that a child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well

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<sup>6</sup> Consideration of Reports submitted by States Parties under Article 44 of the Convention. Concluding observations, Thailand, 17<sup>th</sup> March 2006, CRC/C/THA/CO/2 48.

as after birth. Safeguarding the child through appropriate legal protection starts when the state acts upon its obligation to make legislative and other measures to protect the rights of children.

The CRC in its preamble also recognizes 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. Although it does not provide specifically for children living with imprisoned mothers, there are several provisions that are useful in the protection of children in such a situation. For the CRC to really advance the rights and wellbeing of the children of the incarcerated, children's rights provided for in the convention need to be applied by everyone who is directly or indirectly concerned with a parent's involvement with the criminal justice system.<sup>7</sup>

Article 9 of the CRC provides that state parties shall ensure that a child shall not be separated from his or her parents against their will except when competent authorities subject to judicial review determine that such separation is necessary for the best interests of the child. The article also provides that when a child is separated from one or both parents contact with the separated parent should be maintained on a regular basis, except if it's contrary to the child's best interests.<sup>8</sup> Article 16(1) of the CRC provides that

“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honor and reputation.”

Furthermore, when a child is temporarily or permanently removed from the family environment, because of the best interest of that child, the child is eligible to receive special protection and assistance from the state.<sup>9</sup> These provisions highlight the ideal environment where a child should grow up with unhindered access to all parents. When the child is to be removed from the family environment alternative care that is suitable for giving the child a suitable environment should be provided. The right of the child to grow up in a family environment should also be considered in light of the right to a standard of living adequate for the child's physical, mental spiritual, moral and social

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<sup>7</sup> Mason-White H and Kearney HF Children of (Alleged) Offenders: Revised Draft Framework for Decision Making (Quaker United Nations Office March 2012)5. Retrieved 20/3/2018 from [http://www.quno.org/sites/default/files/resources/Revised % 20 Draft %20 Framework %20 for % 20 Decision-Making\\_black & 20 and % 20 white % 20 version % 20 for % 20 printing. pdf](http://www.quno.org/sites/default/files/resources/Revised%20Draft%20Framework%20for%20Decision-Making_black%20and%20white%20version%20for%20printing.pdf).

<sup>8</sup> United Nations Convention on the Right of the Child, Art. 9(3)

<sup>9</sup> Ibid, Art 16(1)

development.<sup>10</sup> Article 27(2) provides that parents or others responsible for child should have the primary responsibility to secure within their abilities and financial capabilities, the conditions of living necessary for the child's development. This places an obligation on the state to ensure that the children living with their imprisoned mothers should get the adequate resources to create the necessary family environment needed for the development of the child's physical, mental, spiritual, moral and social development. Facilities for children living in prison should be child-friendly, clean and hygienic, designed with their development and safety in mind. The duty of the state arises from two aspects; firstly, the state has a duty to provide for these children when their parent is in prison as the state is responsible for all the people in correctional facilities. Secondly, these children are in the correctional facilities because of their parent's crimes and they should be treated as innocent as they are and should not be deprived of their needs necessary for a proper development.

Added to the right of keeping the child in a family environment, article 24 of the CRC recognizes the child's right to the highest attainable standard of health and to facilities for the health care for the treatment of illness and rehabilitation of health.<sup>11</sup> Article 24(2)(c) further provides that states parties shall ensure the implementation of the child's right to access to health services and take appropriate measures to ensure appropriate pre-natal and post-natal health care for mothers. This right gives protection to the unborn child by stipulating that pregnant mothers should have pre-natal health care services and implies that female prison facilities should provide an effecting nursing facility that protects that pregnant mother, the unborn and the newly born child and the infant in early years. Children have specific health needs which may not be easily met in prison and most likely to be a health risk, particularly in situations of overcrowding or inadequate nutrition.<sup>12</sup> The child's right to live in an environment conducive for the physical, mental, spiritual, moral and social development cannot be separated from the child's right to access to right to health care, adequate nutrition<sup>13</sup> and to be protected against environmental dangers and risk.<sup>14</sup>

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<sup>10</sup> Ibid, Art 27(1).

<sup>11</sup> Ibid, Art 24(1)

<sup>12</sup> Roberson Collateral Convicts: Children of incarcerated parents: Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011 23. Retrieved 2/7/2016 from [http://www.quno.org/sites/default/files/resources/ENGLISH\\_Collateral\\_Convicts\\_Recommendations\\_%20and\\_%20practice.pdf](http://www.quno.org/sites/default/files/resources/ENGLISH_Collateral_Convicts_Recommendations_%20and_%20practice.pdf)

<sup>13</sup> United Nations Convention on the Right of the Child, Supra Note 17, Art 27.

<sup>14</sup> Ibid, supra note 17, at Art 24

In as much as the state parties have an obligation to provide socio-economic rights to children without parental care, international law has provided limitations curtailing the availability of socio-economic rights. Article 4 of the CRC as read with the General Comments 5 of 2003<sup>15</sup> creates an obligation on states to take legislative, administrative and other steps to give effect to all rights contained in the convention and to fulfill socio-economic rights in accordance with the maximum available resources. However, the lack of resources seems to have provided some form of justification for states' failure to provide socio-economic rights. Where a state argues that it lacks available resources it should still be able to prove within their own national budget that it took all the measures necessary to realize a child's rights, with specific relevance to vulnerable children.<sup>16</sup> Even where the available resources are demonstrably inadequate, the obligation remains for a state party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.<sup>17</sup>

Although article 37 of the CRC does not directly address children born or living with incarcerated mothers the right provided for in this article is also applicable to children born to incarcerated mothers.<sup>18</sup> These children are likewise deprived of their liberty because they are in the care with of imprisoned mothers. Accordingly, children staying with their imprisoned mothers should similarly be treated with humanity and inherent dignity in a manner that is consistent with the child's age. It should also be considered that just as incarceration of a child should be considered as a last resort, the incarceration of a primary care giver where it would result in the child having to stay with the parent in prison should be considered as a last resort as well.<sup>19</sup>

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<sup>15</sup> General Measures of Implementation of the Convention on the Rights of the Child CRC/GC/2003/5. Retrieved 2/7/2016 from <http://www.refworld.org/docid/4538834f11.html>

<sup>16</sup> Stewar L "Resource constraints and a child's right to legal representation in civil matter at state expense in South Africa" 2011 IJCR 302. Retrieved 2/7/2016 [http://dspace.nwu.ac.za/bitstream/handle/10394/9836/Shoko\\_T.pdf?Sequence=1](http://dspace.nwu.ac.za/bitstream/handle/10394/9836/Shoko_T.pdf?Sequence=1)

<sup>17</sup> The CRC Committee (General Comment No. 5 (2003)5. Retrieved 2/7/2016 from <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?Enc=6QkG1d%2FPPrICAqhKb7yhsiQql8gX5Zxh0cQqSRzx6Zd2%FQRsDnCTcaruSeZhPr2vUevjbn6t6Gsi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

<sup>18</sup> A 37 "States Parties shall ensure that: (b) no child shall be deprived of his or her liberty unlawfully or arbitrarily...(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".

<sup>19</sup> In *S v M* the judge argued that in as much as the constitutional provision that a child should be detained as a last resort is mostly applicable to child offenders, there can still be a change in the mind-set that takes appropriately equivalent account of the new constitutional vision in relation to children of incarcerated parents.

### **2.3 UN Standard Minimum Rules for the Treatment of Prisoners (1955)**

The Standard Minimum Rules for the Treatment of Prisoners is the first of such instruments that was devoted specifically to protect the rights of persons under any form of detention. Though the Universal Declaration of Human Rights, earlier, prohibited cruel, inhuman or degrading treatment or punishment, it was general principle which calls further clarification to be invoked as rights by the alleged victims. In addition, the latter doesn't address exclusively the detainees as beneficiaries of the provision. The Standard Minimum Rules for the Treatment of Prisoners, on the other hand, exclusively addresses the detainees and the provisions are so elaborated to easier application.

The UN Standard Minimum Rules for the Treatment of Prisoners<sup>20</sup> “set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.”<sup>21</sup> The standards recommended refer to the living conditions, recreation, health, abuses - covering all aspects of life in prison. Rule 23 provides that special accommodation will be made in women's institutions “for all necessary pre-natal and post-natal care and treatment” and that “arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.”<sup>22</sup> Rule 23 further calls for “a nursery staffed by qualified persons” to be provided in cases “where nursing infants are allowed to remain in the institution with their mothers,” and that when the infants are not in their mothers' care they will be placed in the nursery.<sup>23</sup>

### **2.4 The Bangkok Rules (2010)**

The UN General Assembly adopted the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures (Resolution A/RES/65/229), also known as the Bangkok Rules complement and supplement, but do not replace the UN Standard Minimum Rules for the Treatment of Prisoners. The newly adopted Bangkok Rules developed out of recognition of the different needs and characteristics of women in the criminal justice system. They provide comprehensive provisions concerning, amongst others, the rights of children incarcerated with their mothers.

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<sup>20</sup> Standard Minimum Rules of the Treatment of Prisoners (adopted by the First United Nations Congress on the prevention of Crime and the Treatment of Offenders, 1955; approved by the Economic and Social Council by Resolutions 663 C (XXIV) (July 31, 1957) and 2076 (LXII) (May 13, 1977)),

<sup>21</sup> Ibid.art. 1.

<sup>22</sup> Ibid.art.23(1).

<sup>23</sup> Ibid.art.23(2).

Although not binding on states, the Bangkok Rules can be useful in developing a framework that would guide states in renewing and upgrading existing laws. While the Bangkok Rules are mainly concerned with the needs of women prisoners and their children, it is important to note that since the focus of the Bangkok Rules includes the children of imprisoned mothers, it is necessary to acknowledge the role of both parents in the child's life. Some of the provisions would therefore apply equally to male prisoners who are fathers.

Like the CRC, the Bangkok Rules state that any decisions dealing with the separation of a child from its mother must be based on individual assessments and the best interests of the child (Rule 52). The Rules also stipulate that children in prison with their mothers should never be treated like prisoners (Rule 49). The 'Bangkok Rules' clearly state that children must be considered at all stages of a parent's contact with the criminal justice system. Furthermore, it is specified that mothers must be provided with the maximum possible opportunities to spend time with their children who are imprisoned with them (Rule 50). Rule 51.2 states that the environment provided for children in prisons 'shall be as close as possible to that of a child outside prison'.

Perhaps one of the more innovative provisions of the Bangkok Rules, which relate to children incarcerated with their mothers, is rule 2.2:

Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

In some areas, offenders are immediately taken to prison following sentencing, without the time to make arrangements for their children's care (Robertson, 2011: 17). Rule 2.2 should apply to all those caring for children.

As the most comprehensive and specific international instrument relating to the treatment of women prisoners and their children, the Bangkok Rules constitute a positive step forward for this usually marginalized group. Up until the end of 2010, when the 'Bangkok Rules' were approved without a vote, there was a dearth of legal provisions specifically addressing the needs of children who accompany their mothers into prison.

The Bangkok Rules bridges the gap to some degree in that they act as a basic international framework within which states can assess whether their prisons and correctional facilities are equipped to fulfill the rights of the infants and young children who accompany their parents in prison.

## **2.5. The Nelson Mandela Rules (2015)**

The Nelson Mandela Rules, dubbed in an honor of the late president of South Africa who spent 27 years in prison and advocated for the rights of prisoners, set out the minimum standards for good prison management among others to ensure the rights of prisoners are respected. The rules are not entirely new, but an updated version of the 1955 Standard Minimum Rules for the Treatment of Prisoners. The rules were revised in eight substantive areas.

Rules 28 and 29 of the Nelson Mandela Rules states that the decision on whether children are accommodated in prison with their parent should be based on the best interests of the child. Provision needs to be made for the pre- and post-natal care, childcare facilities and healthcare services for children. Children housed in prison must never be treated as prisoners.

## **2.6 The African Charter on the Rights and Welfare of the Child (1990)**

The African Charter on the Right and Welfare of the Child (ACRWC), a regional law specifically applicable in Africa. All forms of inhuman treatment are also prohibited under Article 5 of the ACRWC which provides —every individual shall have the rights to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The Charter, more specifically, addresses the African children’s unique problems including traditional barriers to development, armed conflicts, hunger, socio-economic rights, to mention but a few. The ACRWC in its preamble just like the CRC recognizes the need for a child to grow up in a family environment and an atmosphere of happiness, love and understanding. The Charter unlike the CRC addresses the needs of children of imprisoned mother explicitly because in most part of the African continent mothers are predominantly the primary caregivers of a child.<sup>24</sup>

The ACREW echoes the language of the CRC in establishing the ‘best interest’ standard<sup>25</sup> and specifically addresses children with incarcerated mothers. The Charter requires on its Article 30,

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<sup>24</sup> Chirwa D “The merits and demerits of the African Charter on the Rights and Welfare of the Child” 2002 IJCR retrieved 1/5/2016 from <https://www.crin.org/en/library/publication/merits-and-demerits-african-charter-rights-and-welfare-child>

<sup>25</sup> African Charter on the Rights and Welfare of the Child, Nov. 29, 1999, art 4, retrieved 2/5/2016 from CAB/LeG/24.9/49, <http://pages.au.int/acerwc/documents/african-charter-rights-and-welfare-child--acrwc>

parties “to provide special treatment to expectant mothers and to mothers of infants and young children”.<sup>26</sup>

When convicted of criminal offenses and to “ensure that a non-custodial sentence will always be first considered when sentencing such mothers”<sup>27</sup> The same Article requires that parties “establish and promote measures alternative to institutional confinement for the treatment of such mothers,” and prohibits the death penalty for mothers.

The focus on mothers appears to reflect the assumption in much of the world that the practice of incarcerating mothers is generally more disruptive to children’s lives than the practice of incarcerating fathers. However, while there are some valid, biologically determined gender distinctions, such as with pregnant or lactating mothers, incarcerating fathers may also have significant repercussions for dependent. Article 30 of the ACRWC provides for the consideration of alternatives to custody to ensure that deprivation of liberty is only as a last resort as apprehension of a pregnant mother and a mother with a child is a serious violation of the rights of the child. State parties will be under a duty to consider non-custodial sentences, to develop alternatives to institutional confinement and where that is not possible, to develop special alternative institutions for confined mothers.<sup>28</sup> Both the CRC and the ACRWC permit imprisonment of a mother and the child as the measure of last resort. Article 4 of the ACRWC provides that in all actions concerning the child undertaken by an person or authority the best interest of the child shall be the primary consideration.

However, the reality of correctional facilities design is based on models that do not provide for an environment conducive for the raising of children especially units for mother and baby. Most correctional centers are over populated and creating special units for children is out of reach for many states as they are expensive.<sup>29</sup> Furthermore, state parties should promote measures of alternative to

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<sup>26</sup> Ibid, Art 30

<sup>27</sup> African Charter on the Right and Welfare of the Child, Nov. 29, 1999, Art 30, retrieved 2/5/2016 From CAB/LEG/24.9/49, <http://pages.au.int/acerwc/documents/african-charter-right-and-welfare-child-acrwc>

<sup>28</sup> Van Bueren. The International Law on the Right and Welfare of the Child (Kluwer Law the Hague 1998) 227. Retrieved 4/7/016 from <https://pdfs.semanticscholar.org/0320/cbelcd82dle277abca46f8b95265b6f645f4.pdf> Supra note supra note 20 Art 30(1)(a)

<sup>29</sup> United Nations Convention on the Right of the Child, Supra Note 20 art 30(1)(b) and (c).

institutional confinement for the treatment of such mothers and establish special institutions for holding such.<sup>30</sup>

### **2.6.1 General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) On: “Children of Incarcerated and Imprisoned Parents**

The African Committee of Experts on the Rights and Welfare of the Child (the Committee) as established with a mandate to promote and protect the rights enshrined in the African Charter on the Rights and Welfare of the Child (African Children’s Charter). In particular, the Committee is expected to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa.

The General Comment No. 1 recognizes children living in prison with their mothers experience a range of violations of their rights, including psychosocial and health problems and difficulties in accessing education. The overall purpose of the General Comment No. 1 is to support States Parties, and other stakeholders in the effective implementation of Article 30. Article 30 lays out a number of provisions ensuring ‘special treatment’ for pregnant women and mothers who are accused or convicted of criminal offences. Under this Article, States Parties must ensure that non-custodial sentences are always considered first for pregnant women and mothers of young children and they must establish alternatives to detention for them. Article 30(1)(f) also states: ‘the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.’

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<sup>30</sup> Ibid art 20(1) (2).

## **CHAPTER THREE**

### **THE LEGISLATION, POLICIES, PROCEDURES AND PRACTICES REGARDING INFANTS AND YOUNG CHILDREN WHO LIVE WITH THEIR INCARCERATED MOTHERS IN ETHIOPIA**

International legal frameworks on the rights of the child discussed in chapter two should be regarded as the minimum accepted standards for the protection of human rights in which children rights are also upheld. It is the responsibility of individual states and those who draft legislation, regulations, policies and programs to further develop these standards with the aim of offering stronger protections to, in the case of this study, children incarcerated with their mothers.

It should also be underlined many—if not most—of the policy actions require the active involvement of multiple systems working together to achieve positive results for the children of imprisoned parents. As in other areas of human services, however, such collaboration may first require action on the part of policymakers, including state legislators. Some experts on children of incarcerated parents have noted that legislation is needed at both the state and federal levels to fully address the complex range of issues facing incarcerated parents and their children. To lay the groundwork for such collaboration, an initial approach legislators might consider is a broad statement of legislative intent that the relationship between an incarcerated parent and his or her child should be recognized, preserved and strengthened when in the best interest of the child.

This chapter examines Ethiopia's legislation, policies, procedures and practices regarding infants and young children incarcerated with their mothers in prisons. The discussion, particularly, is made in light of the FDRE Constitution, the Ethiopian child policy, the Ethiopian criminal justice policy and the Ethiopian Federal Prisons Commission Establishment Proclamation. An assessment is also made on Ethiopia's compliance with international obligations relevant to children.

#### **3.1 Legislation, Policy and Practice in Ethiopia**

##### **3.1.1 The FDRE Constitution**

The welfare of children is a priority concern for the Ethiopian government. Being the supreme law of the land, the FDRE Constitution provides the basis for the protection of children from violence. The ratification of important international and regional instruments like the UN Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child among others is primarily an expression of this commitment. In fact, Article 9(4) of the Federal Constitution

unequivocally proclaims ‘all international agreements ratified by Ethiopia are an integral part of the law of the land’. Moreover, the Constitution has incorporated a specific provision on the rights of children.

The Constitution recognizes the vulnerable position of children and guarantees their right to protection, preserving to their highest attainable standard of physical and mental health development and obliges the state to protect and promote the health and nutrition of children<sup>31</sup>. It has also a provision to the children whose mothers are in a prison deserved utmost care because they are in a more desperate condition.

Moreover, Article 36(1)(c) of the Constitution stipulates that children have the right to be cared for parents, the law gives the first priority to parents because they are best caregiver and in lieu of them legal guardians appointed by court of law, and the same Article, sub-Article 2 states that the Ethiopian courts who are entertaining cases pertaining to suspected parents are under obligation to consider the interests of the child while deciding, and in sending parents behind bars must be lender of last resort, they are required to exhaust all other possible punishments.

### **3.1.2 The National Child Policy**

Surpassing the acceptance of international and regional standards, the government has initiated undertakings to ensure national laws, policies and practices match the international standards. One of such that the government has found it worth formulating is a comprehensive National Child Policy to sustain its commitment to respect, protect and fulfill children’s rights and enhance the family and community’s role in the healthy growth and personality development of children. The policy was prepared with due consideration of the principles and provisions of the CRC and ACRWC to direct the tasks of various actors and further with a view to promote the rights of children.

This policy focuses on three major issues which are deemed necessary for the welfare of children, namely, development and growth; prevention and protection; and rehabilitation, care and support.<sup>32</sup>

The policy is important in protecting children’s rights and welfare and shields them from labor exploitation, harmful traditional practices and all forms of violence within the family, schools and in the community. More specifically, children whose parents are incarcerated need more protection in

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<sup>31</sup> Ibid, p-31.

<sup>32</sup> Periodic report of the federal democratic republic of Ethiopia to the UN committee on rights of the child, April 2012, p-3.

order to safeguard their welfare, upbringing and education, to guarantee their rights the government is duty bound to implement the aforementioned central policies.

### **3.1.3 The FDRE Criminal Justice Policy (2003)**

The FDRE Criminal Justice Policy<sup>33</sup> has been drafted and been adopted as one of Ethiopia's social policies. This policy is issued in accordance with the values of justice and principles stated in Part One, Chapter 2 and 3 of the Constitution as well as in Part Two, Article 37. Some of these principles are Article 10 on Human and democratic rights, Article 14 on Rights to life security of a person and liberty; Article 17 on the right to liberty, Articles 18 on Prohibition against inhuman treatment; Art 19 and 20. Right of person arrested and accused; relevant to this study Article 21 on Right of person held in custody and convicted prisoners, Article 37 on Right to access of justice and the like. This policy guides the entire justice system of Ethiopia and is to be applied in federal as well as regional states.

The policy has two main objectives. First, the policy is instrumental to ensure the safety and peace of the nation, nationalities, the people, individuals and the state against crime. The other objective is to establish a Criminal Justice System, which protects the rights and freedoms of all individuals affecting all people.

The principles of social justice help to understand how policies and services should benefit the most vulnerable people such as children.

The Criminal Justice Policy has mandated the prison administrations of federal or region government bodies to design a further compressive prison policy on the any issues of prison system, yet to date from the adoption of such policy there hasn't seen any rigorously dealt federal or regional prison administrations prison system policy manual, thus cognizant of its all importance such organs should take a step to enact manual in order to achieve the purpose of the country's Criminal Justice Policy. Directions should also be given to issue of deferential treatment of inmates, such as children and women.

Among others the strength of the policy is its due concern for the human right protection of prisoners including conditions of prison belongs. However, it lacks consideration of more inclusive approaches especially in relation to major policy areas.

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<sup>33</sup> The FDRE Criminal Justice Policy (2003)

### **3.1.4 The Ethiopian Federal Prisons Commission Establishment Proclamation**

Established in 1942, the Ethiopian prison system is relatively a recent phenomenon. The prison administration was established by proclamation thereafter. In one of the articles, the Ethiopian Federal Prisons Commission Establishment Proclamation No 365/2003 addresses concerns of children, with provision that states an infant under the age of eighteen months whose mother is in federal custody and who needs close maternal care may be allowed to stay with the mothers.<sup>34</sup>

In this situation, the Federal Prison administration is under obligation to provide the infant with “the necessary food, vaccination, medical care as well as other necessary items”<sup>35</sup> In addition, on the recommendation of a medical officer, the Administration is required to provide extra food to female inmates who are pregnant or caring for an infant child.

Moreover, the law provides that if the child staying with the mother is likely to “have an adverse physical or psychological impact” on the infant, the child must be placed with a close relative, in the absence of a close relative, the Administration is required to “facilitate the possibilities” of finding another suitable placement for the child.<sup>36</sup>

### **3.2 Ethiopia’s Compliance with International Obligations Relevant to Children Incarcerated with their Mothers**

Article 4 of the Convention on the Rights of the Child provides obligations of member States to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights enshrined in the Convention. Similarly, Article 1 of the African Charter on the Rights and Welfare of the Child spells out the obligations of the member States to recognize the rights and freedoms enunciated in the Charter and to undertake the necessary steps to adopt legislative and other measures necessary for giving legal effect to the provisions of the Charter. Both the Convention and the Charter do not specify particular solutions instead they chart out general measures. Once a state has voluntarily acceded to and ratified a treaty, it is obliged to adopt the same in good faith.

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<sup>34</sup> “Federal Prisons Commission Establishment Proclamation No 365/2003”, Art 28(1).

<sup>35</sup> Ibid Art 28(1).

<sup>36</sup> Treatment of Federal Prisoners Council of Ministers Regulations No. 138 of 2007, art, 12, FEDERAL NEGARIT GZETA OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (June 1, 2007), <http://chilot.files.wordpress.com/2011/01/reg-no-138-treatment-of-federal-prisoners.pdf>.

As a member state to both treaties, Ethiopia has been taking various measures to ensure the realization and observance of the rights of children as enshrined under the Convention and African Children’s Charter and other treaties as well. These measures range from constitutional recognition of the rights of children to that of various steps to be taken with a view to give the provisions of the two treaties legal effect in Ethiopia.

### **3.3 Concluding Observations of the Committee on the Rights of the Child (CRC) of Ethiopia (2015)**

The concluding observations of the Committee on the Rights of the Child are the main outcome of a country session. They are compiled in a public document, which indicates the progress achieved by the reviewed State, the Committee’s main areas of concern and recommendations to the State to improve the implementation of the Convention on the Rights of the Child and/or its Optional Protocols, as well as the date for the submission of the next State report. They are adopted by the Committee for all the States reviewed during a session on the last day of that session.

The concluding observations are based on the issues discussed during the dialogue with the reviewed State. This means that if an issue has not been raised during the country session, it cannot be included in the text of the concluding observations. They highlight the main areas the reviewed State should address and provide concrete recommendations to implement in order to improve the situation of children’s rights. They are, therefore, a very useful public document for children’s rights defenders to monitor the State’s actions and follow up to the Committee’s recommendations. The concluding observations can be used as a roadmap of State’s actions for the next 5 years, as an advocacy tool to put certain issues on top of the State’s agenda, and to establish a dialogue and cooperation with the State on the implementation of certain measures recommended by the Committee.

The concluding observations of Ethiopia<sup>37</sup> by the Committee on the Rights of the Child were adopted in 2015. Of the 11 main areas of concern and recommendations of the document, two of them are found to be relevant to the subject under consideration to discuss in brief hereunder.

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<sup>37</sup> Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Ethiopia, Committee on the Rights of the Child, Convention on the Rights of the Child, 2015

One of the areas of concern and recommendations is the general measures of implementation of Articles 4, 42 and 44, paragraph 6, of the CRC. While welcoming the Ethiopia's efforts to implement some of the concerns and recommendations made upon the consideration of the State party's third report in 2006, the Committee notes with regret that some of the recommendations regarding inter alia, allocation of resources, data collection, discrimination against children in vulnerable situations, birth registration, trafficking, harmful traditional practices, and administration of juvenile justice has not fully implemented. The Committee also regrets the absence of a systematic legislative review in order to bring domestic laws into compliance with the Convention and is concerned that a comprehensive Children's Code has not yet been adopted. Thus, the Committee recommends that the State party bring domestic law into full compliance with the Convention, and design and adopt a comprehensive Children's Code which will incorporate all the provisions of the Convention.

With regard to the best interests of the child, the Committee welcomes the efforts made by Ethiopia to ensure that the right of the child to have his or her best interests taken into account as a primary consideration is respected through the development of training programs and the establishment of child friendly benches and special investigation and prosecution teams. The Committee recommends Ethiopia to ensure that this right is appropriately integrated and consistently applied in all policies, programs and projects that have an impact on children, as well as in all legislative, administrative and judicial proceedings and decisions, in particular with respect to decisions concerning notably adoption and family reunification processes, alternative care.

### **3.4 The Duty to Prevent the Unnecessary Separation of Parent and Child**

The FDRE Constitution affirms the right of children to family care or parental care in Article 36 (c) states that children need 'to know and cared for by his or her parents or legal guardians'. However, the provision of the Ethiopian Federal Prisons Commission Establishment Proclamation No 365/2003 that a child under the age of eighteen months may remain with its mother in the federal custody and who needs close maternal care may be allowed to stay with the mother can be appropriately placed taking into consideration the best interest of the child, The practice, however, deems to be in contradiction with the sections of the CRC and the Constitution referred to above.

For some children, alternative care plans may also be less favorable than remaining with the mother in prison. In such instances, the effect of a policy decision that is rigidly applied and forces the separation of an eighteen months child from the only environment and career the child knows may be catastrophic. The proclamation would then not be fulfilling its own aim of seeking appropriate

placement for the child that takes into consideration the best interest of the child. It would also not be meeting the Constitutional provision of Article 36 (2) of rendering the child's best interests of paramount importance.

It is further submitted that by rigidly applying a ruling that states that children must be separated from their mothers at age of eighteen months the State is, in effect, interfering with the child's family care. Therefore, what is needed is flexibility and decisions which are based on the unique circumstances of each child.

Article 9 (3) of the CRC refers to the responsibility of the State in enabling the child to have regular contact with his or her parent. In the section of the same proclamation which deals with an alternative placement of the infant if the child staying with the mother is likely to "have an adverse physical or psychological impact" on the infant, the child must be placed with a close relative, in the absence of a close relative, the Administration is required to "facilitate the possibilities" of finding another suitable placement for the child.

However, no written policy was found to ensure the realization of the child's right to have continued regular contact with his or her mother. The provision which allows a child to maintain contact with his or her incarcerated mother is positive, but without the practical systems to assist the child and the new primary caregiver, it has the potential of becoming an empty directive. A practical outcome of the combination of the relatively low number of female prisoners in Ethiopia and the vastness of the country is that it is not always possible to incarcerate mothers near their families. As a result, maintaining physical contact with an incarcerated mother is likely to be difficult for many children.

### **3.5 The Duty to Provide Continuity of Care and Special Protection to the Child Temporarily Deprived of His or Her Family**

In recent times, Ethiopia has taken various measures to ensure that its laws and policies concerning alternative care are in line with the Convention on the Rights of the Child. The Ministry of Women, Children and Youth Affairs has adopted a variety of guidelines concerning the provision of alternative childcare. Mainly, these include the 2009 Revised Alternative Child Care Guidelines to establish a regulatory instrument on the quality of the child care system and the 2010 Standard Service Delivery Guidelines for Orphan and Vulnerable Children (OVC) Care and Support Programs.

According to the revised guidelines a child should grow up in a family environment in an atmosphere of happiness, love and understanding for his/her full and harmonious development. However, where a child is temporarily or permanently deprived of his/her family environment the child is entitled to special protection and assistance. The Government is responsible for providing appropriate non-institutional or institutional alternative care to such children, with or through Government and other duly authorized institutions in accordance with its national laws. It is also the role of the Government to regulate and supervise the provisions of alternative care to children and ensure the safety, well-being and development of the children who are receiving alternative care.

More specifically the provisions in the provisions in the Ethiopian Federal Prisons Commission Establishment Proclamation No 365/2003 such as facilitating the process for the proper placement of the child and being responsible for the food, clothing, healthcare and facilities for child while the child is in prison fulfill the requirements under Article 20 of the CRC.

### **3.6 The Duty to Assist Parents with their Child-Rearing Responsibilities**

Parents bear the primary responsibility to provide a suitable upbringing for children. Parental responsibility refers to the duties, obligations and rights that parents have regarding the upkeep of children. Accordingly, different provisions of the CRC and the African Children Charter provide for parental responsibilities. Similarly, Article 18(2) of the African Charter on the Rights and Welfare of the Child stipulates the equal and common responsibilities of spouses regarding their children. At this point, it is important to stress the fact that, according to the African Charter on the Rights and Welfare of the Child, the duties of parents are not only shared, but also equal. This approach is also reinforced by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

In line with this principle, Ethiopian laws recognize the joint responsibility of parents in caring for and exercising guardianship rights over their children. The recognition of joint legal guardianship in the Revised Family Code implies that parental authority should be exercised jointly, whether the parents of the child are married, separated or divorced. This requires that parents should reach an amicable settlement concerning the exercise of parental authority. Therefore, this gives rise to a presumption that joint parental responsibility survives the marriage i.e. joint parental responsibility continues even if the marriage is dissolved by divorce.

In the same vein, Article 34(3) of the FDRE Constitution provides that the family is the natural and fundamental unit of the society and is entitled to protection by society and the State. Article 34(1) of the FDRE Constitution asserts the principle of the equality of men and women with regard to marriage. It goes on to state that men and women have equal rights while entering into, during marriage and at the time of divorce. These provisions demonstrate that the paternal authority over children (*patria potestad*) which was reflected in older domestic legislation in Ethiopia has given way for the notion of parental rights and responsibilities. The provision also reflects the view that the family is the preferred environment or the ideal setting for raising children and for satisfying their needs. Consequently, the FDRE Constitution has entrenched the right of families to support and assistance.

### **3.7 The Duty to Provide Appropriate Medical and Health Care for Pregnant Women and Infants**

Ethiopia complies with Rule 23 of the UN Standard Minimum Rules for the Treatment of Prisoners which stipulates that adequate care be provided to the mother and the infant. There is a provision that conforms to the Standard Minimum Rules requirement that the fact that the child was born in prison should not be recorded on the birth certificate. There are also provisions for the care of pregnant women, as well as for the medical and health care of infants who are incarcerated with their mothers.

## **CHAPTER FOUR**

### **IMPLEMENTATION OF THE RIGHTS OF THE CHILD IN PRISON WITH INCARCERATED MOTHER AT THE FEDERAL PRISON ADMINISTRATION CENTER OF ETHIOPIA: THE ADDIS ABABA AND DIRE DAWA PRISON AND DETENTION CENTERS IN FOCUS**

The rights of infants and young children who reside with their incarcerated mother as well as expectant mothers in federal prison administration centers of Ethiopia seem do not get attention. This chapter dwells on the implementation of the child rights enshrined in the national and international legal rights framework of these children in the Federal prison administrations of Ethiopia.

The Federal Prisons Commission was established by Proclamation No. 365/2003 as an institution, according to Article 5, with the objective to admit and ward prisoners, and provide them with reformatory and rehabilitative service in order to enable them make attitudinal and behavioral changes, and become law abiding, peaceful and productive citizens. It is accountable to the Ministry of Federal, Pastoralist and Semi-Pastoralist Development Affairs.

The Ethiopia Federal Prison Administrations (EFPA) has four divisions of prison and detention centers, namely Zeway, Shewa Robit, Dire Dawa, Addis Ababa detention and prison centers; two of these prison and detention -the Addis Ababa and the Dire Dawa prison and detention centers -hosted incarcerated mothers with their infants and young children . Hence this study examines the actual conditions of children who live with their incarcerated mothers in the Addis Ababa and Dire Dawa women detention and prison centers vis-à-vis different provisions of the national laws and international conventions pertinent to the protection of the rights of the child.

#### **4.1 Profile of Incarcerated Mothers with Their Children**

In this study, 39 incarcerated women who live with their children were participated. Of the total respondents, 23 women are from Addis Ababa Prison while the rest 16 are from Dire Dawa Prison Center.

The table below shows the socio-demographic characteristics of the respondents of this study.

Table 1: Percentage distribution of mothers by socio-demographic characteristics

<b>Socio-demographic characteristics</b>	<b>Frequency</b>	<b>Percent</b>
<b>Age</b>		
21-30	24	61.5
31-40	7	17.9
41-50	8	20.5
51 and above	2	5.1
Total	39	100.0
<b>Religion</b>		
Christian	30	76.9
Muslim	9	23.1
Total	39	100.0
<b>Ethnicity</b>		
Oromo	17	43.6
Amhara	12	30.8
Gurage	2	5.1
Tigrea	3	7.7
Ethio-somali	5	12.8
Total	39	100.0
<b>Marital Status</b>		
Married	11	28.2
Divorced	7	17.9
Widowed	10	25.7
Never Married	11	28.2
Total	39	100.0
<b>Level of Education</b>		
Illiterate	4	10.3
Basic Education	6	15.4
1 to 4 <sup>th</sup> grade	7	17.9
5 to 8 <sup>th</sup> grade	8	20.5
9 and 12 <sup>th</sup> grade	7	17.9
College and above	6	15.4
Total	1	2.6
	39	100.0
<b>Type of Work Engaged in Before</b>		
Minor retail trade	9	23.1
Housewife	8	20.5
Daily Laborer	9	23.1
Domestic Servant	7	17.9
Civil Servant	3	7.7
Others	3	7.7
Total	39	100.0

The youngest respondent was 21 years old and the oldest is 53. Age appears to be a factor in the likelihood of imprisonment since the majority of women (79.4%) stated above are below 40 years of age.

The majority of women (76.9%) were Christian while the rest 23.1 were Muslim. The largest portion of the women is from Oromo and Amhara ethnic groups, which together account about a total of

74.4% of respondents. Regarding their marital status, most of the women (71.8%) were single. Since the majority of the mothers are single, children are more likely to be without parents outside prison.

Among the 39 women respondents, the super majority (82.1%) is below high school, but only 15.4% and 2.6% has some high school and college education respectively. Hence, it is possible to say that the majority of these women have low educational attainment.

Regarding their occupation before imprisonment, 46.2% of the respondents reported they were minor traders (23.1%) and daily laborers (23.1%), followed by housewives (20.5%) and domestic servants (17.9%). This means that the women were engaged in activities that generate meager income to support themselves and their children. The imprisonment of the mother may worsen the situation of children who already lived in poverty.

#### 4.2 Profile of Children with Incarcerated Mothers

The questionnaire completed by imprisoned mothers provided data representing 39 children. Children whose age ranges between 1 to 4 account for about 51.3 %, children aged under 1 year old, about 33.3 % and aged 5 to 9 represent about 10.3%. The number of male of male children was 26(66.7 %) while the number of female children was 13(33.3 %).

The table below shows the distribution of children of incarcerated mothers categorized by age, sex and place of residence.

Table 1: Percentage distribution of mothers by socio-demographic characteristics

Items	Frequency	Percent
<b>Age</b>		
Less than 1 year	13	33.4
1-4	20	51.3
5-9	4	10.3
10-13	2	5.1
Total	39	100.0
<b>Sex</b>		
Male	26	66.7
Female	13	33.3
Total	39	100.0
<b>Place of Residence</b>		
Addis Ababa	26	66.7
Dire Dawa	13	33.3
Total	39	100.0

### 4.3 Implementation of right of sufficient health care

The UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and national children rights other conventions which are ratified by Ethiopian, which becomes part and parcel of the law unequivocally similar in the provision of sustainable health care services for children. According to Article 24 (1) of the CRC, state parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilitate for the treatment of illness and rehabilitation of health.<sup>38</sup> This convention further imposes an obligation on states parties to strive to ensure that no child is deprived of his or her right of access to such health care services<sup>39</sup>.

Article 14 of the African Charter on the rights and welfare of the child also granted a provision that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. This includes the provision of nutritious food and safe drinking water, as well as adequate health care.<sup>40</sup>

Similarly, Article 28 (2) of the Federal Prisons Administration Establishment Proclamation No. 365/2003 states that the Commission shall provide what is necessary to the health and care of the infant who are under custody with their imprison mother.<sup>41</sup>

In general, children of the incarcerated mothers get medical treatment like other prisoners; they use the services which are not always satisfactory. Mothers interviewed have confirmed that vaccination is administrated.

In the case of the Addis Ababa women detention and prison center, there is a clinic which gives any kind of medical service for the children. Moreover, the clinic directs cases beyond its capacity to the referral hospital. The hospital has general doctors as well other medical staff members.<sup>42</sup> The Dire Dawa prison administration center has also a special clinical and uses Dil Chora Hospital as a referral hospital for cases that are beyond the capacity of the clinic.<sup>43</sup>

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<sup>38</sup> United Nations Convention on the Rights of the Child, art. 24(1)

<sup>39</sup> Ibid, supra note 17, at Art, 24.

<sup>40</sup> The African Charter on the Rights and Welfare of the Child, Art. 14

<sup>41</sup> Federal prison Commission establishment Proclamation, Proc No. 365/2003, Art 28(2).

<sup>42</sup> Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018.

<sup>43</sup> Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018.

In the study, with regard to the health care facilities and medical staff, 41.0% (n=16) respondent mothers say they have got a general doctor for their child when they go to the prison health services center, 92.3% = (n=36 mothers) responded that the provision of water for their childcare, as good while 51.3% (n=20 mothers) responded that the provision of child sanitation materials for their child care is good but it is not enough. As it is known vaccination is primary rights of babies, and according to mother respondents of the Addis Ababa prison and detention center only 69.2.0% (n=27 mothers) children had got a chance to vaccination service in the specific period of time while mother respondents from the Dire Dawa branch did not encounter any problem regarding the scheduled vaccination service of their children.

In responding to the same question, the administrators of the two prisons and detention centers, all health services are given in the centers except vaccination; it is given in the nearby governmental health centers. The contribution of the prison administration in this case is only limited to the provision transpiration services and assigning police officers for guarding. Therefore, there was no interruption transportation service provision for scheduled children vaccination as long as proper request is put forwarded.<sup>44</sup>

#### **4.4 Implementation of right of sufficient accommodation (shelter, bedding, cloth)**

According to Article 27 (3) of the Convention on the Right of the Child (CRC), State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing<sup>45</sup>. Likewise, Article 25, sub Article 1 of the Universal Declaration of Human Rights states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Sub Article two of the same article also states the childhood shall enjoy the same social protection.<sup>46</sup>

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<sup>44</sup> Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018.

<sup>45</sup> United nations convention on the right of the child, art. 27(3)

<sup>46</sup> Universal declaration of human right, Article 25 (1 and 2)

Article 28 (1) of the Federal Prisons Administration Establishment Proclamation No. 365/2003 also affirms that where his interest so requires, a dependant infant not beyond eighteen months and that needs close maternal care may stay with his mother who is in custody. Meanwhile, sub Article 3 of the same proclamation further states that where the imprisonment of the mother is found to have an adverse physical or psychological impact on the infant, the commission shall facilitate the possibilities of finding a guardian or tutor to the infant.<sup>47</sup>

In response to the question regarding the actual condition of shelter, bedding and clothing in prison, 59.0% (n+=23) incarcerated mothers responded that the prison administration provides shelter for their young children. However, all the study participants unanimously replied that there is no provision of any supplemental clothing that can be used in a day light and at night for their children. Moreover, 13.4% (n=13) mothers responded that the prison centers are not quit environment during bedtime for their child.

In an interview conducted with the prison administrators whether there is a separate room for nursing mothers admitted the absence of separate rooms for the young children – mothers sleep with along with their children in the same bed. In the course of the investigation, the Addis Ababa prison and detention center<sup>48</sup> was observed to be more crowded of bedding and rooms than the Dire Dawa branch.<sup>49</sup>

#### **4.5 Implementation of right of Education**

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular and make primary education compulsory and available free to all<sup>50</sup> according to Article 28 (1) of the Convention of the Rights of the Child. Article 11 of the African Charter on the Right and Welfare of the Child also declares that every child has the right to an education, to develop his or her personality, talents and mental and physical abilities to their fullest potential. This education also includes the preservation and strengthening of positive African morals, traditional values and cultures. Governments should

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<sup>47</sup> Federal prison Commission Establishment Proclamation, Proc No. 365/2003, Art 28(1)

<sup>48</sup> Interview with Superintendent Alem Tilahun, Addsi Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018.

<sup>49</sup> Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018.

<sup>50</sup> United Nations Convention on the Right of the Child, Art, 28 (1a)

also take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community<sup>51</sup>

Regarding accessibility of educations for their young children, 41.0% (n=16) the participating mothers agreed on the availability of schools whereas they admitted the absence of formal nursery or primary class to their children. Consequently, the young children attended peer teaching, which was prepared for adults. This has its own disadvantage even if it is better than total absence for it helps them to know something.

#### **4.6 Implementation of right recreational activities**

Article 31(1) of the Convention of the Right of the Child declares that states parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. In sub Article 2 of the same article further declares that states parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.<sup>52</sup>

Similarly, the African Charter on the Rights and Welfare of the Child on Article 12 states children have a right to play and participate fully in cultural and artistic life.<sup>53</sup>

The finding of the study on the same matter, 92.3% (n=36) of mothers answered stating that there is no any place for recreational activities in the prison center for the child. The interviews conducted with the administrators of the Addis Ababa Women's detention and prisoner center<sup>54</sup> as well as the branch at Dire Dawa<sup>55</sup> confirmed that the absences of recreational activities within the respective prison administrative centers.

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<sup>51</sup> The African Charter on the Rights and Welfare of the Child, Art. 11

<sup>52</sup> United Nations on the Right of the Child, Art. 31(1)

<sup>53</sup> The African Charter on the Rights and Welfare of the Child, Art. 12

<sup>54</sup> Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018..

<sup>55</sup> Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018.

#### **4.7 Implementation of sufficient food**

The Convention on the Rights of the Child article 6 of sub 2, stipulates States Parties shall ensure to the maximum extent possible the survival and development of the child.<sup>56</sup> On the same matter, the African Charter on the Rights and Welfare of the Child, also includes these rights in Article 14 by stating that every child shall has the right to enjoy the best attainable state of physical, mental and spiritual health. The provision of nutritious food and safe drinking water, as well as adequate health care<sup>57</sup> is also included in the aforementioned article.

On the supply of sufficient food for their children 74.4% (n=29 mothers) incarcerated mothers answered that they do not get special food for their child and 41.0% (n = 16 mothers) of mothers added that there is an offer of 246 Birr per month by the prison administration for preparation of food for the children. However, the mothers complained that the money allocated was not given a regular basis. On the other hand, the prison administrators allowed the incarcerated mothers of children to use the kitchen and/or the stove to make fresh foods for their child. The imprisoned women stated that other advantages that they get from the prison administration also the permission of making food and using fair in the kitchen or electric stoves to prepared a fresh food for the kids.

In response to the same question, the prison administrators in Addis Ababa prison and detention center denied the irregular of payment while the administrators in Dire Dawa confirmed the total absence of money allowance rather the administration regularly supplies special food items such as milk.

#### **4.8 Implementation of the Right of Named and Registration**

The Convention on the Right of the Child in Article 7 sub Article 1 states that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, the right to know and be cared for by his or her parents.<sup>58</sup> The same article, sub article 2, also states that states parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless<sup>59</sup>.

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<sup>56</sup> United Nations Convention on the Right of the Child, Art. 6(2)

<sup>57</sup> The African Charter on the Rights and Welfare of the Child, Art. 14

<sup>58</sup> United Nations Convention on the Right of the Child, Supra Note 17, art. 7(1)

<sup>59</sup> Ibid, Art 7(2)

The same right is also granted in the African Charter on the Rights and Welfare of the Child (ACRWC) Article 6 sub (1)<sup>60</sup>, and as well in Article 36 (b) of the FDRE Constitution a child has a right to be named and has nationality.<sup>61</sup> In Article 11, sub Article 7 of the Council of Ministers Regulation No. 138/2007, on the treatment of federal prisoners of clearly states that if the child is born in detention center, such fact may not be mentioned in the birth certificate of the child.<sup>62</sup>

The research finding on this matter proves that all respondent mothers unanimously prove that birth certificates issued by the prison administration for children who were born in prison do not mention the birth place. Instead, the clinic or the referral hospital in which they were born is recorded in the certificate. The response of the prison administrators of the Addis Ababa<sup>63</sup> and the Dire Dawa<sup>64</sup> prison and detention centers on the same matter found to be the same. Thus, according to the finding, it can be concluded that the right of registration of the child is fully implemented.

#### **4.9 Implementation of Right to Life**

The best interests of the child is one of the general principles of the United Nations Convention on the Rights of the Child and it is also the main pillar of the convention. All the laws which are declared under the convention one or another way consider it in all kind of circumstances and cases.

Article 6 (1) of the United Nations Convention on the Rights of the Child asserts that states parties recognize that every child has the inherent right to life.<sup>65</sup> The same article, sub Article 2 also declares that states parties shall ensure to the maximum extent possible the survival and development of the child.<sup>66</sup> Furthermore, Article 5 of the African charter on the rights and welfare of the child grants that every child has a right to live.<sup>67</sup>

Articles 14 and 15 of the FDRE Constitution also put in clear terms every person has the inviolable and inalienable right to life, except as a punishment for a serious criminal offence determined by

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<sup>60</sup> The African Charter on the Rights and Welfare of the Child, Supra note 41, Art. 6(1)

<sup>61</sup> The FDRE Constitution, Art 36(b)

<sup>62</sup> Council of ministers regulations No. 138/2007 Council of ministers regulations on the treatment of federal prisoners of Art 11(7)

<sup>63</sup> Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018., supra note 55

<sup>64</sup> Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018, supra note 56

<sup>65</sup> United Nations Convention on the Right of the Child, Art. 6(1)

<sup>66</sup> Ibid, Art 6(2)

<sup>67</sup> The African Charter on the Rights and Welfare of the Child, Art. 5

law.<sup>68</sup> Convention on the Rights of the Child in Article 3 sub Article 1 states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>69</sup>

The same article sub Article 2 also declares that states parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.<sup>70</sup> Moreover, Article 3 (3) of the UN Convention on the Rights of the Child also proclaims that states parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.<sup>71</sup>

Article 19 of the African Charter on the Rights and Welfare of the Child states children should, whenever possible, have the right to live with their parents. No child should be separated from his or her parents against his or her will, except when authorities believe it would be in the best interest of the child.<sup>72</sup>

The Kenyan law states that provided that such child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier<sup>73</sup>. Article 3(1) of the United Nations Convention on the Rights of the Child states in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>74</sup>

This study also proves that Article 28 (1)<sup>75</sup> of the Proclamation No. 365/2003 Federal Prisons Commission Establishment Proclamation and Article 12 (1)<sup>76</sup> of the Council of Ministers Regulations

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<sup>68</sup> The FDRE Constitution, Supra Note 75, Art 14 and 15

<sup>69</sup> United Nations Convention on the Right of the Child, Art. 3(1)

<sup>70</sup> *ibid*, Art 3(2)

<sup>71</sup> *ibid*, Art 3(3)

<sup>72</sup> The African Charter on the Rights and Welfare of the Child, Art. 19

<sup>73</sup> Prisons Act of 1963, 30, 16 LAWS OF KENYA, Cap. 90 (rev.ed.2012)

<sup>74</sup> United Nations Convention on the Right of the Child, Art 3(1)

<sup>75</sup> Federal Prison Commission Establishment Proclamation, Proc No. 365/2003, Art 28(1)

No. 138/2007 on the treatment of federal prisoners grant a chance the child who is under 18 months to live with his imprisoned mother in the custody. The intention of the law in this case is to keep the best interests of the child, and with the assumption that it is a better place than anywhere else in this condition.

One of the questions forwarded to the incarcerated mothers on the reason of bringing the child in prison with them. Of the total participants 64.1% (n=25) of mothers answered that the reason to live with their children in prison is due to having no other best options to grow them up, or no person to leave the child for other family member or the father. However, 12.8% (n=5) of mothers did not agree to let their children live in for the reason that the place is not suitable for the well-being of the child while 10.3% (n=4) of mothers are interested to give their children to the government childcare centers or other interested party or non-governmental organizations.

The time duration, which is limited for the period of 18 months, that children are kept in prison with their incarcerated mothers – according to Article 28 (2) of the Proclamation No. 365/2003 Federal Prisons Commission Establishment Proclamation – 30.8% (n=12) of mothers commented that it is not appropriate while 56.4% (n=22) of them replied that the time is not enough to so it should be amended to more time duration. The other 10.3% (n=4) of the mothers also replied that no need to impose time at all for the sake of meeting the best interest of the child principle. Accordingly, responding to the question through interviews, the administrators of the both the Addis Ababa<sup>77</sup> and Dire Dawa<sup>78</sup> detention and prisoner centers there is no such a strict follow up in implementing the proclamation. They confirm that there are children who still live with their mother at the age of six or seven.

#### **4.10 Supportiveness of Police Officers and Civil Staff**

On the specific objective of this study, there is a plan to survey the understanding and implementation of the international and national laws and conventions of the rights of the child enforced by prison officers and civil staffs, so the answer of the mothers for this question was indicated that on

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<sup>76</sup> Council of Ministers Regulations No. 138/2007 Council of Ministers regulations on the Treatment of Federal Prisoners, Art 12(1)

<sup>77</sup> Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb, 5, 2018.

<sup>78</sup> Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018.

supportiveness of prisoners centers staffs to keep the best interests of the child for the children who live with their imprisoned mothers showed that 61.5% (n=24) mothers said the prison administration provide good care for their children. Furthermore, the interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prison center administrator<sup>79</sup> and interview with Chief Superintendent Mekonnen, Dire Dawas detention and prisoner center administrator<sup>80</sup> indicated that it is difficult to say that all prisoner staffs and police officers have a good knowledge and practice to respect the right of children under international and national laws.

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<sup>79</sup>Interview with Superintendent Alem Tilahun, Addis Ababa Women's detention and prisoner center administrator. Interviewed on Feb 5, 2018.

<sup>80</sup>Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on Feb, 9, 2018.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Conclusion**

This study identifies the existence of some gaps regarding the full implementation of the rights of children who live with their incarcerated mothers in the Federal prisons of Ethiopia. These identified gaps of children's rights, though they are stipulated in law, are observed in the course of executions. The children rights that are granted include the right to education, the right to health, the right to child development, the right to health, provision of sufficient food, the right to recreational activities, provisions of appropriate bedding environment, clothing, shelter and other moral and psychological situations among others. Nevertheless, when considering Ethiopia as a developing country with relatively less skilled human resources and budget, the overall implementation assessment of the rights of children who reside with their imprisoned mothers in federal prisons of Ethiopia can be fall under fair category of handling and interpretation of the law. However, the realization still requires a concerted effort among stakeholders to make the existing situation better. What is more, the implementation of children's rights needs the special attention of the legal justices system as a whole with a center piece of the best interests of the child.

#### **5.2 Recommendations**

Children who reside in prison with their incarcerated mothers are innocent. But they are victim of the legal justice system in place without any legal ground. Ethiopia has its own children rights which are also instrumental for its realization including children who live in prison with incarcerated mothers. The country also considers the ratified international and regional conventions of the child rights as the integral part of its domestic laws. The following are forwarded recommendations based up on the findings of the study on the implementation of the child rights for children who live with their imprisoned mothers in federal prison administrations of Ethiopia:

- Allocate additional financial resources to secure sufficient and balanced diet for children in prison with their mothers, and the policy should also include the necessary budgetary arrangements for the sustainable supply of basic bedding, clothes, as well as diapers and toiletries to maintain the best interests of the child,

- Access medical services with qualified medical staff and pediatricians who can monitor the overall physical and mental care of the children, respond to urgent health matters of children residing in prison, including the referral of children to hospitals for the best and special treatment by specialists and proper and uninterrupted vaccinations for the new born babies,
- Accommodate children who reside in prison with the incarcerated mothers with sufficient rooms with adequate space which upholds their privacy. The sleeping accommodation should meet minimum standards of health requirements such as securing sufficient natural and artificial lighting and air, availing adequate ventilation, providing with adequate sanitary installations with sufficient water supply,
- Provide a play ground to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural activities,
- Facilitate (the prison administration) the provision of primary and nursery education in prison by skilled and professional teachers with the necessary teaching aids and materials,
- Promote (the prison administration) the rights of children granted in the international, regional and national conventions and laws through training and sensitization among police officers and civil staff of the prison and detention centers, especially in those centers where children's live, and
- Facilitate (the prison administration) for the incarcerated mothers of the children to get pardon and amnesty.

## BIBLIOGRAPHY

### Domestic Laws

- The Constitution of the Federal Democratic Republic of Ethiopia Constitution, 1995, Neg. Gaz. Year 1, No. 1
- The Federal Prisons Commission Establishment Proclamation, 2003, Proc.No.365, Neg. Gaz. Year 9, No. 90
- The Council of Ministers Regulations No. 138, 2007, Neg. Gaz. Year 13 year, No. 47

### International Law investor

- Universal Declaration of Human Rights, 1948, United Nations,
- Convention on the Rights of the Child, 1989, United Nations ( ),
- African Charter on Human and People's Rights, 198, OAU
- Standard Minimum Rules for the Treatment of Prisoners, 1955, adopted by the First UN Congress on the Prevention of Crime and Treatment of Offenders,;1977, approved by the Economic and Social Council by Resolutions 663 (XXIV) (July 31, 1957) and 2076 (LXII) (May 13, 1977),

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

- Charter of Fundamental Rights of the European Union, 2012
- Council of Europe, Committee of Ministers, Recommendation on European Prison Rules.
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

### Research Papers

- Alejos Marlene, Babies and Small Children Residing In Prison, (2005, Quaker United Nations Office)
- Kaggwa S.K. Report of the Special Reporter on Prison and Conditions of Detention in Arica,2012, African Commission on Humana and Peoples' Rights.
- Mason-White H and Kearney HF, Children of (Alleged) Offenders: Revised Draft Framework for Decision Making, (2016, Quaker United Nations Office)

( [http://www.quno.org/sites/default/files/resources/ Revised Draft Framework for Decision-Making black and white version forprinting.pdf](http://www.quno.org/sites/default/files/resources/Revised_Draft_Framework_for_Decision-Making_black_and_white_version_forprinting.pdf))

- Robertson Collateral Convicts: Children of incarcerated parents: Recommendations and good practice,(2011, UN Committee on the Rights of the Child Day of General Discussion)  
([http://www.quno.org/sites/default/files/resources/ ENGLISH\\_Collateral Convicts\\_Recommendations and good practice. Pdf](http://www.quno.org/sites/default/files/resources/ENGLISH_Collateral_Convicts_Recommendations_and_good_practice.Pdf))
  - Stewart L Resource Constraints and the Child’s Right to Legal Representation in Civil Matter at State Expense in South Africa, 2011,  
([http://dspace.nwu.ac.za/bitstream/handle/10394/9836/Shoko\\_T.pdf? Sequence=1](http://dspace.nwu.ac.za/bitstream/handle/10394/9836/Shoko_T.pdf?Sequence=1))
  - Sarah Javeed, Children. Accompanying. Mothers in Jail.(2011)
- A. Coyle, A Human Rights Approach to Prison Management: A Handbook for Prison Staff (2002), International Centre for Prison Studies, London.

### **Reports**

- African Commission on Human and peoples’ Rights, The special Rapporteur on prisons, conditions of detention and policing in Africa
- Ethiopian Human Rights Commission, Ethiopian Human Rights Commission Report, 2012
- UN Committee on the Rights of the Child , Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Ethiopia, 2015

### **Interviews**

- Interview with Superintendent Alem Tilahun, Addis Ababa Women’s detention and prisoner center administrator. Interviewed on 5 February 2018.
- Interview with Chief Superintendent Mekonnen Dire Dawa detention and prisoner center administrator. Interviewed on 9 February 2018.

## ANNEXES

### Annex I

Addis Ababa University

School of Law

#### Protection of the Rights of Children Living With Incarcerated Mothers at the Ethiopian Federal Prisons

#### Questionnaire – For Incarcerated Mother

Only women with children under 18 will be asked to complete the survey.

The purpose of this research is to assess the awareness and practice as well as identify gaps in the policy and legal framework for the protection of the rights of the child with a particular reference to children who live in prison with their incarcerated mothers. Any information you give will be kept confidential and get rid of after use. If you do not want to answer some of the questions, you do not have to.

Thank you very much for your willingness to be interviewed.

#### I. Personal Information

1. Age \_\_\_\_\_

2. Religion

A. Christian (Orthodox, Catholic, Protestant, Adventist)

B. Muslim

C. Other (please specify) \_\_\_\_\_

3. Ethnicity

A. Amhara    B. Oromo    C. Tigre    D. Gurage

E. Other (please specify) \_\_\_\_\_

4. Marital Status

- A. Married      B. Single      C. Divorced      D. Separated      E. Widowed

5. Educational Status

- A. Illiterate (can't read and write)      B. Basic education (can read & write only)

- C. 1 to 4th grade      D. 5 to 8th grade      E. 9 to 12th grade (high school)

- F. Other (please specify) \_\_\_\_\_

6. What was your work before being imprisoned?

- A. Housewife      B. Domestic servant      C. Civil servant

- D. Student.      E. Other (please specify) \_\_\_\_\_

**II. Questions on children**

7. How do you rate the medical facilities and staff in prison?

- A. (    ) Excellent                      B. (    ) Very good                      C. (    ) Good;

- D. (    ) Satisfactory                      E. (    ) Not satisfactory                      F. Poor

8. How do you rate the medical treatment that your child receives?

- A. (    ) Excellent                      B. (    ) Very good                      C. (    ) Good;

- D. (    ) Satisfactory                      E. (    ) Not satisfactory                      F. Poor

9. Is vaccination service to children made in a specified period?

- (    ) Yes                      (    ) No

10. Please provide comments, if you have any, in relation to vaccination service for children

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11. Is there sufficient food supply to your child in prison?

Yes       No

12. Is there any special food supply for your child?

Yes       No

13. Please provide comments, if you have any, in relation to food supply to your child in prison?

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14. Is there sufficient accommodation (shelter, bedding and cloth) for mothers and children?

Yes       No

15. Is there supplemental clothing for your child in a day light and at night?

Yes       No

16. Please provide comments, if you have any, in relation to the conditions of the accommodation

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17 Does your child have access to education?

Yes       No

18. If your answer to question No. 17, is it

Formal       Informal

19. Please provide comments, if you have any, in relation to access to education for your child?

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20. Is there any place for recreational activities for your child in prison?

Yes       No

21. Is the prison administration register and issue birth certificate for children born in prison?

Yes       No

22. What place is mention in the birth certificate issued by the prison administration?

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23. What is your reason to live with your child in prison?

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24. Do you think prison is a suitable place for the well being of the child?

Yes       No

25. Have you tried for the arrangement of for your child upbringing outside prison?

Yes       No

26. If your answer for question no. 25 is “Yes”, please list the parties for such arrangement?

A. The other parent      B. Member of family      C. Government childcare centers

D. Non-government organization      E. Other (please specify) \_\_\_\_\_

27. Do police officers and civil staff provide care for your child?

Yes       No

28. If your answer for question no. 27 is “Yes”, how do you rate the childcare given by police officers and civil staff?

A.  Excellent      B.  Very good      C.  Good;

D.  Satisfactory      E.  Not satisfactory      F. Poor

## Annex II

**Addis Ababa University**

**School of Law**

### **Protection of the Rights of Children Living With Incarcerated Mothers at the Ethiopian Federal Prisons**

#### **Questionnaire – For Prison Administrators (police officers and civil staff)**

Only **Prison Administrators (police officers and civil staff)** will be asked to complete the survey.

The purpose of this research is to assess the awareness and practice as well as identify gaps in the policy and legal framework for the protection of the rights of the child with a particular reference to children who live in prison with their incarcerated mothers. Any information you give will be kept confidential and get rid of after use. If you do not want to answer some of the questions, you do not have to.

Thank you very much for your willingness to be interviewed.

#### **II. Questions**

1. Is there a healthcare service in prison?

( ) Yes            ( ) No

2. How do you rate the medical facilities and staff in prison?

A. ( ) Excellent            B. ( ) Very good            C. ( ) Good;

D. ( ) Satisfactory            E. ( ) Not satisfactory            F. Poor

3. How do you rate the medical treatment children of incarcerated mothers receive?

A. ( ) Excellent            B. ( ) Very good            C. ( ) Good;

D. ( ) Satisfactory            E. ( ) Not satisfactory            F. Poor

4. Is vaccination service to children made in a specified period?

Yes       No

6. Please provide comments, if you have any, on vaccination service in prison

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6. Is there sufficient accommodation (shelter, bedding and cloth) for mothers and children?

Yes       No

7. Is there supplemental clothing for your child in a day light and at night?

Yes       No

8. Please provide comments, if you have any, in relation to conditions of accommodation  
in prison specific to children

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9. Is there sufficient food supply to children in prison?

Yes       No

10. Is there any special food supply for children in prison?

Yes       No

11. Please provide comments, if you have any, in relation to food supply to children in prison

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12. Is there any place for recreational activities for your child in prison?

Yes       No

13. Is the prison administration register and issue birth certificate for children born in prison?

Yes       No

14. What place is mention in the birth certificate issued by the prison administration?

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15. Is there an age limit for children of the incarcerated mothers to live in prison?

Yes       No

16. If your answer for question no. 15 is “Yes”, specify the duration

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17. Please provide comments, if you have any, in relation to questions No. 15 & 16

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18. Do you provide special care for children of incarcerated mothers?

Yes       No

19. If your answer for question no. 18 is “Yes”, specify your reason (s)

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20. Please provide comments, if you have any, in relation to child care in prison

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