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College of Law and Governance Studies



IMPLEMENTATION OF BIRTH REGISTRATION LAWS IN ADDIS ABABA: IMPLICATION FOR THE REALIZATION OF THE RIGHTS OF THE CHILD

By:

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DECLARATION

I, Gemechu Tarekegn Gerbaba, hereby declare that this dissertation is original and has never been presented in any other academic institution. Where other people's works have been used and or referred to, acknowledgments have been duly made.

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LL.M PROGRAMME PUBLIC INTERNATIONAL LAW STREAM

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Acronyms

- ACERWC** - African Committee of Experts on the Rights and Welfare of the Child
- ACHPR** - African Charter on Human and Peoples' Rights
- ACRWC** - African Charter on the Rights and Welfare of the Child
- CRC** - Convention on the Rights of the Child
- FDRE** - Federal Democratic Republic of Ethiopia
- RVENIC** - Registration of Vital Events and National Identity Card
- RVERA** - Federal Registration of Vital Events Registration Agency
- ICESCR** - International Covenant on Economic, Social and Cultural Rights
- ICCPR** - International Covenant on Civil and Political Rights
- UDHR** - Universal Declaration of Human Rights
- UNHRC** - United Nations Human Rights Committee
- UNGA** - United Nations General Assembly
- VERA** - Vital Events Registration Agency
- OAU** - Organization of African Unity
- UNICEF** - United Nations Children's Fund
- UNHCHR** - United Nations High Commissioner for Human Rights

Abstract

Birth registration a process by which a child birth is recorded in civil registry officially by the government plays a great role in realizing many rights of the child. Accordingly implementation of birth registration starts from enacting law and establishing institutions that deal with the task of registering birth. Many human right treaties like ICCPR,CRC and ACRWC provides birth registration of every child immediately after birth, the right to name, the right to acquire nationality and the right to know and be cared by parents. Ethiopia being a party to the United Nation Convention on the right of the Child has an obligation to develop an effective system of birth registration to realize the right of the child. Consequently, Ethiopia has enacted laws on registration of Vital Events. Based on this the researcher has assessed the implementation of birth registration laws in Addis Ababa and Its implication for the realization of the right of the child based on qualitative method ,for this purpose interview with 8 person from the concerned organs, assessment of international and domestic laws is made. Thus the existing theoretical and practical challenges attached with birth registration are identified. From the practice the researcher envisaged that birth registration law is not effectively implemented much has yet to be done to realize the right of the child. Low level of awareness on the existing law, lack of coordination among organs responsible for implementation, gaps and shortcomings of the law hampered effective implementation of birth registration.

Key Words:- Birth registration, Birth certificate, Vital Events: Declarants, Universality Non discrimination, Compulsoriness, Continuity and permanence.

Chapter One

General Frame Work of the Research

1.1 Background of the study

The right to birth registration is not only a right of the child but of all human beings.¹ Birth registration establishes the existence of the child under law and provides the foundation for ensuring many of the child's rights. Despite the importance of birth registration, according to UNICEF, the birth of nearly one fourth of the global population of children under five year have never been registered.² Non-registration is a particularly serious problem in developing countries, particularly in sub-Saharan Africa, and Asia.³

The right of the child to be registered at birth is enshrined under many international human rights instruments.⁴ International Covenant on Civil and Political Rights [here in after ICCPR] recognizes birth registration as a fundamental right under Article 24, paragraph 2 of the Convention. Also the United Nations Convention on the Right of the Child [here in after CRC] enshrined under Article 7 the right of the child to be registered at birth. Accordingly, the Convention states that “the child should be registered immediately after birth and shall have the right from birth to a name and to acquire a nationality.”⁵ The convention further stipulates that state parties have the obligation to ensure the right of the child to birth registration in their respective countries. At regional level, the African Charter on the Rights and Welfare of the Child [here in after ACRWC] under Article 6 enshrines the right of every child to be registered after birth.⁶ The fulfillment of the right to be registered at birth is closely linked to the realization of many other rights; such as the right to health, the right to education, child labor, protection against early marriage and protection from participation in armed conflict at particular

¹ UN Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law, 3 April 2012, A/HRC/RES/19/9, available at: <http://www.refworld.org/docid/503cdba52.html> accessed 14/2/2017.

² United Nations Children's Fund [here in after UNICEF] status report October 2016, available at data.unicef.org/topic/---/birth-registration/ accessed 27/02/2017

³ UNICEF, *A Passport to Protection: A Guide to Birth Registration Programming*, December 2013 ,p.11

⁴ See also International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29 which states “Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”

⁵ Convention on the Right of Child , Adopted on November 1989 , Article 7(1).

⁶ African Charter on the Rights and Welfare of the Child, OAU Doc.CAB/LEG/24.9/49 (adopted 1990), (entered into force 29 November 1999)[here in after ACRWC] ,

risk where birth registration is not systematically carried out, and the protection of child right is jeopardized.⁷

In Ethiopia, the attempt to establish civil registration which includes birth registration was started during the enactment of the 1960 Civil Code of Ethiopia. Under the Code, it was envisaged to establish the office of civil status which records births, marriages and deaths.⁸ However, what provided under the code was not put in to practice since the office of civil status was not established. Even though it was not compulsory the mere act of recording the birth of a child have been undertaken by hospitals and churches.⁹ However, not all hospitals record the births of children and there is no consistency and uniformity in the way they do so.¹⁰ Besides, less than 6 per cent of births take place in hospitals and clinics in the first place.¹¹ Churches can also record the birth of a child, if and when the child is baptized. Baptism records are, however, limited in coverage and quality.¹²

Ethiopia, being a party to the United Nations Convention on the Right of the Child, has an obligation to implement the right of the child to birth registration. The Committee on the Right of the Child, during the hearing on the status of child right protection of Ethiopia, recommended Ethiopia to develop an effective system of birth registration to realize child rights.¹³ Following this recommendation, Ethiopia has enacted a Proclamation on the Registration of Vital Events and National Identity Card Proclamation no.760/2012 and Vital Events Registration Agency Establishment Regulation No. 278/2012. The Proclamation urges an appropriate regional organ to be established or designated by each region to direct, coordinate and support the registration of Vital Events at regional level and to transfer records of Vital Events to the appropriate federal

⁷UN Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law, A/HRC/RES/19/9, available at: <http://www.refworld.org/docid/503cdba52.html> accede on,14/2/2017

⁸ Civil Code of the Empire of Ethiopia , Proclamation No. 165 of 1960 ,Article47(1)

⁹ Plan Ethiopia and African Child Policy Forum .A review of birth registration in Addis Ababa and the regions Oromia, Amhara and SNNPR, Ethiopia, September 2005.p 35

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³CRC Concluding Observations of the Committee on the Rights of the Child: Ethiopia, 1 November 2006, CRC/C/ETH/CO/, para. 32, available at < <http://www.unhcr.org/refworld/docid/45c30bd60.html> accessed on 29/02/2017

organ.¹⁴ Pertinently, the Addis Ababa city Administration has enacted the Addis Ababa City Administration Vital Events Registration Agency Establishment Regulation No. 63/2015.

Now that child birth registration is enacted, the writer is interested to assess the implementation of birth registration in Addis Ababa and Its implication for the realization of right of the child.

1.2 Statement of Problem

Lack of birth registration is a violation of the child's inalienable human right to be given an identity at birth. Where birth remains unregistered, it can lead to serious violations of human right such as the right to education, the right to health, Statelessness, nationality and citizenship, early marriage, child labor, child trafficking, children in conflict with the law and recruitment into the armed forces.¹⁵ Since the adoption of the CRC member states were required to develop a system that ensure birth registration of child by the national law.¹⁶ The ACRWC also requires states to develop national framework of birth registration.¹⁷ In Ethiopia, for long period of time, there was no system for the birth registration. Birth registration came in to effect only after the enactment of the Proclamation on the Registration of Vital Events and National Identity card Proclamation no.760/2012 and Vital Events Registration Agency Establishment Regulation No. 278/2012.

Since the birth registration system Ethiopia adopted is new, there is lack of research that assesses whether the implementation of the enacted birth registration and its implication for realization of the right of the child. Therefore, with the view to asses these gaps, this research focuses on examining the implementation of birth registration in Addis Ababa and Its implication for realization of the rights of the child.

¹⁴ Proclamation On The Registration Of Vital Events And National Identity Card Proclamation No.760/2012, Article5,Proc.No.58,Fed . Neg. Gas. Year 18.

¹⁵Supra note at 7

¹⁶CRC, cited above at note 5 ,Article7(1),

¹⁷ ACRWC, cited above at note 6, Article 6(4).

1.3 Research Questions

This thesis focuses on the question of the extent to which birth registration laws of Ethiopia are implemented in such a way that they realize the right of the child? in general and in particular the following questions:-

- How far is the practice of birth registration compatible with the law?
- Do the organs responsible for implementation discharging their duty?
- Is the birth of foundling declared by police?
- Does health institutions recording birth and issuing birth certificate in accordance with the law?
- What practical measures are taken to ensure birth registration of the child?
- What are experiences of other countries that Ethiopia takes lesson?
- What are the barriers obstructing the implementation of birth registration to realize the right of the child?

1.4 Objectives of the study

This research paper has general and specific objectives.

1.4.1 General Objective

The cardinal objective of this study is to assess the implementation of birth registration law and its implication for the realization of child right in Addis Ababa City Administration..

1.4.2 Specific Objective

Within the framework of the above general objective, the study has the following specific objectives:

- Analyzing principles of birth registration
- Analyzing the instruments dealing with birth registration under the international legal regime.

- Flesh out the scope and content of the birth registration law as well as to examine the nature in light of international standards.
- Critically examine whether the practice regarding birth registration is in line with the law.
- To show that birth registration is important for realization of child rights.
- To identify the major impediments for implementation of birth registration.
- Suggest possible recommendations for the problems which could be revealed as research findings.

1.5 Significance of the study

As there is no comprehensive research on the implementation of birth registration laws, this study will provide concerned government officials and decision makers with relevant and research based information for further action. It will also serve as reference to further research. Moreover, it can contribute knowledge to the existing discourse on the issue.

1.6 Research Methodology

In this research a qualitative methodology is employed. The study employs qualitative method for the fact that reasons, justification and legal analysis on the subject matter is made. The method of data collection is based on primary and secondary source. The primary sources addressing relevant legal instruments pertaining to birth registration at international, regional and domestic laws are thoroughly dealt with. For further analysis available data collection and interviewees are selected on purposive sampling method. The needed data is usually collected from a place where the researcher deems convenient and the right place to collect the necessary data particularly from Addis Ababa city Government Vital Events Registration Agency. The researcher has made interview with 8(eight) concerned organs 1(one) Deputy director of Addis Ababa Vital Events Registration Agency, 2(two) Heads of Gulele sub city Vital Events Registration Office, 2 (two) Officers of Civil Status at Gulele Sub City Wereda 07 and Wereda 08, 1(one) Police officer at Addis Ababa Police Commission Crime Investigation Department and Child Protection Unit Affairs , 1(one) Head of Addis Ababa City Health Institute, Gulele Sub City Wereda 8 Health Institute and 1(one) Administrator of Kibebe Tsehay orphanage center are interviewed. To this end, as secondary source it consulted, inter alia, books, journals,

articles, reports, and publications issued by international organizations and other relevant publications.

1.7 Literature review

There are some studies conducted on the area of birth registration and child rights. One of the researches assessed is study done before the enactment of birth registration system of Ethiopia by Plan Ethiopia.¹⁸ The study included a review of the legal and policy framework for a birth registration system, an assessment of individual and institutional perceptions of birth registration, practices related to birth certification in Addis Ababa and four regional states, and the effect and impact of the absence of birth registration on institutions and individuals. Moreover, a piece published by UNICEF, *A passport to protection*¹⁹ and *Innocent Digest*²⁰, addresses basic principle of birth registration and pin points that registering a child's birth is crucial first step towards safeguarding his/her lifelong protection.

Furthermore, a study conducted by Todros Jonathan²¹ examines birth registration as an essential first step towards ensuring the rights of all children. There are also commentaries on the convention of the right of the child particularly on the right of birth registration. A commentary by Ineta Ziemele²² and Sharon Detrick²³ analyses the international and regional instruments pertaining to the right of birth registration. The general comment given by the committee on the right of the child and general comment given by ACERWC, hand books written by Hodgkin and Newell²⁴ dealing with the right of birth registration are also some of the works in this area. However, there is lack of research dealing with implementation of birth registration law in Ethiopia and its implication for the realization the right of the child, which this research is aimed at.

¹⁸Plan Ethiopia and African Child Policy Forum , cited above at note 9.

¹⁹UNICEF, cited above at note 3

²⁰ UNICEF, *Innocent Digest : Birth registration Right from start*, No.9 , March 2002 .

²¹Todros, Jonathan. "Birth Registration: An Essential First Step toward Ensuring the Rights of All Children." Human Rights Brief 10, no.3 ,2003:

²²Ineta.Ziemele, 'Article7. The Right to Birth Registration, Name and Nationality, and theRight to Know and Be Cared for by Parents, in:A Commentary on the United Nations Convention on the Rights of the Child, Leiden:MartinusNijhoffPublishers 2007

²³Sharon Detrick, A Commentary on the United Nations Convention on the Rights of the Child,Martinus Nijhoff, The Hague, 1999

²⁴Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child,3rd edn , UNICEF, Geneva, 2007

1.8 The Limitation of the Study

The major limitation that the researcher faced was obtaining information that for the purpose of the study it has been a demanding and burdensome task owing to the tedious bureaucracy in the government offices. Worst of all, it was difficult to get relevant data to be used as input to the study due to the absence of organized data in the research site. Due to lack of sufficient time and resource assessing the real awareness of the society is outside this research.

1.9 Organization of the Study

This dissertation is organized into five chapters. Chapter one provides background to the study summarizes the relevant literatures, identifies the research questions to be tackled with, and introduces the objectives, significance of the research, research methodology, the scope of the study and limitation. In chapter two, the nature, definition and the legal framework of birth registration, pertinent international and regional legal instruments dealing with birth registration state obligation, and the importance of birth registration for the realization of child Right is discussed. Chapter Three is devoted to show the legal regime governing birth registration in Ethiopia such as proclamation on the registration of Vital Events and National identity card Proclamation , the FDRE Constitution, International instruments adopted by Ethiopia, The Revised Criminal Code, The Revised Family Code and Vital Events Registration Agency establishment Regulation No. 278/2012. Chapter Four being the major chapter Analysis of the implementation birth registration law in Addis Ababa and Its implication for realization of the right of the child is addressed. The institutional framework for birth registration based on Addis Ababa City administration Vital EventsRegistration Agency establishment Regulation No.63/2015, Practice of birth registration within the period provided by the law, Birth registration at health institution, birth registration of foundling, measure taken to ensure birth registration and implication of birth registration for realization of the rights of the child is discussed.

The last part, chapter five concludes the findings and provides list of recommendations for effective implementation of birth registration for better realization of the rights of the child.

Chapter Two

International Legal Framework on Birth Registration

2.1 Introduction

International principles, recommendations and standards provide the foundation for setting and monitoring targets to improve civil registration systems. Birth registration being the official recording of birth should comprise basic principles of registration like universality, continuity and permanence, compulsoriness, and confidentiality. The right to have birth registration is proclaimed in international and regional human right treaties like CRC, ICCPR and ACRWC. Thus, under this chapter the United Nations standard rules on Vital Events registration, international legal framework dealing with birth registration, particulars of birth registration, general principles of child rights, major State obligations and importance of birth registration for the realization for the realization of the right of the child are briefly discussed below.

2.2 Definition and Nature of Birth Registration

2.2.1 Civil Registrations in General

The United Nations defined civil registration as the continuous, permanent, compulsory and universal recording of the occurrence and characteristic of Vital Events pertaining to population as provide through decree or regulation in accordance with legal requirement of each country.²⁵ The main Vital Events recorded within civil registration systems include registration of birth, death, marriage, divorce, adoption, annulment, legitimating, recognition, judicial separation, foetal death.²⁶ The top priority vital events to be recorded are birth, marriage, divorce and deaths.²⁷

Civil registration systems are fundamental to safeguarding human right as such systems establish and provide legal documentation of vital events.²⁸ This documentation acts as source of protection for individual's identity, nationality and age which is key for citizen's legal protection

²⁵ United Nations , Principles and Recommendations for a Vital Statistics System, Rev 3, (2014) , No 19, p 65

²⁶ Ibid

²⁷ Ibid

²⁸United Nations Department of Economic and Social Affairs, Statistics Division, Handbook on Civil Registration and Vital Statistics Systems: Preparation of a Legal Framework, (United Nations publication,1998,) No.71,p .66-67

and to attain access to essential services.²⁹ Civil registration systems are also critical for state to effectively monitor its citizen plan and program service for their needs.³⁰

Pursuant to UN Handbook on Civil Registration and Vital Statistics, civil registration system prevailing in given country will have at least three functions.³¹ These set forth functions are legal, administrative and statistical function that is, enabling other public entities to accomplish their purpose.³² The main objective of the legal function of civil registration is to register events and acts that form the source of civil status. From the legal point of view, a civil registration system purports to record acts and events prevailing in the jurisdiction of a given state.³³

2.2.2 Birth registration in particular

Birth registration is the process by which a child's birth is recorded in a civil register by the applicable government authority.³⁴ UNICEF describes birth registration as part of an effective civil registration system that acknowledges the person's existence before the law, establishes family ties, and tracks the major events of an individual's life, from birth to marriage and death.³⁵ It also acts as a bridge to other fundamental rights, providing protection against age-related exploitation and abuse.³⁶ A child who is not registered does not legally exist and runs a substantial risk of falling outside of the reach of government's protective actions towards the realization of child rights.³⁷ While discussing birth registration it is pivotal to address what the term birth denotes. The United Nations recommended standard definition for vital events.³⁸ One of the definitions recommended is about Live Birth. As per the definition Live Birth is:-

“the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which after such separation, breathes or shows any other evidence of life, such as beating of the heart, pulsation of the

²⁹ Ibid

³⁰ Ibid

³¹ Id ,p.68

³² Ibid

³³ Id,p.145

³⁴ Todres Jonathan , cited above at note 21,p.2

³⁵ UNICEF, cited above at note 3, p. 11.

³⁶ UNICEF , cited above at note 20, p.3

³⁷ General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, [here in after ACERWC/GC/02], 7-16 April, 2014,para.43

³⁸ United Nations Department of Economic and Social Affairs, Statistics Division, cited above at 28, p.45

umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached; each product of such a birth is considered live born (all live-born infants should be registered and counted as such, irrespective of gestational age or whether alive or dead at the time of registration, and if they die at any time following birth they should also be registered and counted as deaths)”.³⁹

Furthermore, the office of United Nations High Commissioner for Human Rights set forth that birth registration involves three interrelated processes.⁴⁰ The first is the occurrence of birth must be declared to civil registrars.⁴¹ Secondly, civil registrars officially record the birth.⁴² Third, the registering organ issues a birth certificate which is an evidence for birth registration.⁴³

2.3 Birth registration and United Nations standard rules on Vital Events registration

The underlining yardstick principles of Vital Events registration are provided by United Nations Hand Book on Civil Registration and Vital Statistics.⁴⁴ These indispensable principles are Compulsoriness, Universality, Continuity and Permanency, and Confidentiality.⁴⁵ Accordingly, as part of the civil registration system, birth registration should fulfill these qualities or principles of the registration method.

2.3.1 Compulsoriness

Compulsory birth registration is one of the mechanisms of easing the problem of unregistered birth. Compulsoriness were first introduced by the Statistical Commission of UN and got affirmation by the Economic and Social Council of the United Nations in 1953.⁴⁶ One way of making compulsory birth registration is through legislation.⁴⁷ The United Nation Statistical Division noted that:-

³⁹ Id .p, 48

⁴⁰ United Nations High Commissioner for Human Rights, cited above at 7, Para.7

⁴¹ Ibid

⁴² Ibid

⁴³ United Nations High Commissioner for Human Rights, cited above at 7, Para 67

⁴⁴ United Nations Department of Economic and Social Affairs, cited above at note 28,p

⁴⁵ United Nations Department of Economic and Social Affairs, cited above at note 28,p60

⁴⁶ UNICEF, cited above at note 3, p.23

⁴⁷ United Nations , cited above at 25, Para.294

“Legislation that makes registration compulsory is the best way to ensure continuous, permanent recording of Vital Events. Such legislation should provide sanctions to ensure fulfillment of the requirements of the registration system. Failure to register should be punishable by law. Since penalties for failure to comply with registration laws may not always be invoked, and penalties may also be a deterrent to registration, it is imperative to have a legal basis for prosecution if general compliance with the registration law is to be achieved.”⁴⁸

Hence to ensure compulsory birth registration the principles of universality and confidentiality of birth registration should have to be applied at the first glance.⁴⁹ With regard to the compulsory nature of civil registration, the Implementation Handbook for the Convention on the Rights of the Child states the following: “registration requires that domestic law makes registration a compulsory duty both of the parents and of the relevant administrative authorities.”⁵⁰

2.3.2 Universality

To say that there is a functioning birth registration system in a given country the nature of the registration should be universal.⁵¹ This is to mean that the system should be designed to register every new born child in the country ⁵² This principle accounts for the principle of non-discrimination which implies that States must ensure that access to registration is not undermined by discrimination of any kind, including on the basis of “the child’s or the child’s parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁵³ All children should have access to birth registration in the country where they are born, including non-nationals, asylum seekers, refugees and stateless children.⁵⁴

⁴⁸UNICEF, cited above at note 3, p.23

⁴⁹ Ibid

⁵⁰ ibid

⁵¹ United Nations , cited above at note 25, para.296

⁵² Ibid

⁵³Richard Hodgkin and Peter Newell, cited above at note 24,p. 97

⁵⁴ Ibid

Moreover, the Committee on the Rights of a Child recommended state parties to ensure all children are registered at birth.⁵⁵ This can be achieved through universal, well managed registration system accessible to all and free of charge.⁵⁶ The principle that all registration, including late registrations, be free of charge is also recognized in UN General Assembly's Human Right Committee Resolution.⁵⁷

2.3.3 Continuity and permanence

Continuity and permanence are the other principles of civil registration that are pivotal to ensure that registration works properly and without interruption.⁵⁸ These are achieved through the functioning of an institution with stability and permanence, mandated by civil registration law.⁵⁹ Birth registration as part of civil registration should be continuous and permanent.⁶⁰ Thus, continuity and permanence requires the existence of an agency of sufficient administrative stability whose operation is not limited by the factor of time and records birth permanently.

2.3.4 Confidentiality

The attribution of the principle of confidentiality is protecting the information obtained during registration.⁶¹ Confidentiality of such information needs to be guaranteed under the law so that public has no inhibition in giving such information.⁶² Particularly the information obtained through registration of vital event should not be used in contrary to the purpose stipulated by the law. Protecting information that is personal to the individuals is a key requirement. Protecting the confidentiality of vital records has two purposes.⁶³ First, it protects the privacy of individuals and second it improves the accuracy of data.⁶⁴ Some information obtained through civil registration

⁵⁵ Committee on the Rights of the Child, General Comment No. 7: Implementing rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006

⁵⁶ Ibid

⁵⁷ General Assembly resolution A/HRC/22/L.14/Rev.1 (2011), p. 4.

⁵⁸ United Nations, cited above at 25, Para. 297

⁵⁹ Ibid

⁶⁰ ibid

⁶¹ Ibid

⁶² Id, para.299

⁶³ African Center for Statistics, cited above at note 63, p.22

⁶⁴ Ibid

processes such as race, religion, birth out of wedlock is highly sensitive and personal, and could be misused to instigate discrimination.⁶⁵ It should therefore be kept confidential by law.

2.4 Birth registration under the international human rights instruments

Birth registration is essential to securing the child's right to a name, identity, and nationality, which are all rights of deep importance recognized by international law.⁶⁶ Under this sub topic an attempt to assess the international legal framework dealing with birth registration is made. The major human rights instruments that dealt with birth registration are the ICCPR, the CRC and the ACRWC.⁶⁷

2.4.1 International Convention on Civil and Political Rights

The right to birth registration is recognized as a fundamental human right by the ICCPR.⁶⁸ Article 24 of the ICCPR declares that "every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of the State. The ICCPR then follows with this provision: "Every child shall be registered immediately after birth and shall have a name." Thus, the ICCPR makes it clear that birth registration is considered a measure of protection for the child that states have the responsibility to provide.

2.4.2 Convention on the Rights of the Child

The CRC is one of universal treaty dedicated solely to the protection and promotion of children's rights. The convention was adopted by the UN General Assembly in 1989.⁶⁹ It has the prestige of

⁶⁵UNICEF, cited above at note 3, p.25

⁶⁶Todres Jonathan, cited above at note 21, pp. 32-33.

⁶⁷ See also Convention on the Reduction of Statelessness, 1961, Article1,American Convention on Human Rights, 1969, Article 20 ,Convention on the Elimination of All Forms of Discrimination Against Women , 1979, Article 9, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families,1990, Article 29 , European Convention on Nationality,1997, Article 6 .

⁶⁸ The ICCPR was adopted by the United Nations general assembly on December 16th, 1966 and entered in to force on March 23rd, 1976.

⁶⁹CRC ,Cited above note at 5.

being the human rights treaty with the most ratification.⁷⁰ Only the United States has not ratified the CRC, although the State has taken the initial step of signing the treaty.⁷¹

The CRC being the central focus of child right it enunciated a right to birth registration. Article 7 of the convention 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 and as far as possible, the right to know and be cared for by his or her parents'.⁷² Having said this, the detailed elements of the provision is discussed in the forthcoming sub topic.

2.4.3 African Charter on the Rights and Welfare of the Child

The ACRWC was adopted by the Organization of African Unity (OAU) in 1990 and came into force on 29 November 1999. Like the CRC, this Charter is a comprehensive legally binding regional instrument that sets out rights, principles, and norms for children.⁷³ The CRC and the ACRWC are the international and regional human rights treaties that dealing with major children's rights.⁷⁴

The right to birth registration under ACRWC is enshrined in Article 6 under the caption dealing with the right to name and nationality. Accordingly, Article 6 provides that:-

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Despite this fact, the provision does not provide any procedure to be followed for birth registration. However, what has to be followed is highlighted by the African Committee of

⁷⁰ Paula Prodlock(ed),South Africans progress in realizing the right of Child,(2014) ,University of Cape Town, p.12

⁷¹United Nations Treaty Collection Website, Convention on the Rights of the Child, available at: treaties.un.org, accessed on 18/04/2017

⁷²CRC, cited above at note 5,Article 7(1)

⁷³D.Olowu, The regional system of protection of human rights in Africa, Children's rights in Africa: A legal perspective (2008), p.17

⁷⁴Ibid

Experts on the Rights and Welfare of the Child [here in after ACERWC].⁷⁵ Accordingly, the committee has provided that “it must be universal, free, accessible and immediately after the birth of a child” and that States Parties should guarantee the registration of the birth of each and every child on their territories.⁷⁶

2. 5 Particulars of Birth Registration

2.5.1 The Right to Birth Registration “immediately after birth”

Birth Registration is the State’s first official acknowledgement of the child’s existence; it represents recognition of each child’s individual importance to the State and of the child’s status under the law.⁷⁷ Under the three human rights instruments⁷⁸ in the provision dealing with the right to birth registration it is dealt that birth registration should be ‘immediately after birth’.

However, the ICCPR (Article 24 (2)), the CRC (Article 7 (1)) and the respective committees do not explain what ‘immediate registration’ means. As per the commentary given on the subject matter by writer called Ineta Ziemele, “it is left to states to determine the registration procedure in accordance with national law”.⁷⁹ Moreover, it is said “reference to immediate registration implies a much shorter period of time which implies registration within days and weeks rather than months and years.”⁸⁰ Hence, from this it can be deduced that immediate registration reduce danger that may happen on children and enables children to enjoy benefits and protection provided by state.⁸¹ ACRWC provides for registration of every child immediately after birth.⁸² The ACERWC interprets “immediately” to mean “as soon as possible, with due regard to cultural and local practice related to maternity and infant rearing.”⁸³

The Committee is of the view that by “immediately after birth” the drafters of the African Children’s Charter intended to make birth registration occur within a few days or weeks after

⁷⁵ ACERWC/GC/02, cited above at note 37 ,pp 1-101.

⁷⁶ Ibid

⁷⁷ Todres, Jonathan, cited above at note 21, p. 35.

⁷⁸ See ICCPR cited above at note 68, Article24(2), CRC Article7(1) and ACRWC cited above at note 17,Article6.

⁷⁹ Ineta. Ziemele, cited above at note 22, p.21

⁸⁰ Ibid

⁸¹ Todres Jonathan, cited above at note 21,p.2

⁸² ACRWC cited above at note 17, Article6(2)

⁸³ ACERWC/GC/02 cited above at note 37, Para.79.

birth and not months or years later⁸⁴. The above interpretation of the phrase “immediately after birth” should therefore guide national legislation on birth registration which should indicate the number of days within which a child must be registered after birth.⁸⁵

The Human Rights Committee in general comment N0.17 has also emphasized that the duty to register a child is closely linked with the right of a child to special measures of protection and ‘it is designed to promote recognition of the child’s legal personality.’⁸⁶

2.5.2 The right to name

The entitlement of a child to a name was first set forth in Principle 3 of the Declaration of the Rights of the Child, "The child shall be entitled from his birth to a name and a nationality."⁸⁷ This right became part of international law through Article 24 (2) ICCPR which states that "Every child shall be registered immediately after birth, and shall have a name."⁸⁸ Also the CRC under Article 7 (1) echoed that “the child shall be registered immediately after birth and shall have the right from birth to a name...” and ACERWC Article 6 (1) also provides that “Every Child shall have the right from his birth to a name”.

The name is an important element of an individual’s identity.⁸⁹ Birth registration as a minimum; include the child’s name, sex, date and place of birth, and the name, address and nationality of both parents.⁹⁰ ACEWRC in the general comment on Article6 illustrate that “names which under national laws, customs and traditions are found to fall in any of the following categories should not be permissible: names that have offensive or obscene references; could incite violence; are typographically unconventional; are bizarre or ridiculous; might defraud or mislead the public; might confuse the public; might interfere with the rights of others; or could be considered contrary to public policy.”⁹¹ Therefore, States parties are required to take appropriate measures to ensure that a child’s name does not undermine the best interests of the child.⁹²

⁸⁴ *ibid*

⁸⁵ Sharon Detrick, cited above at note 23, pp. 144–145

⁸⁶ HRC, General Comment No. 17, Para. 7.

⁸⁷ CRC, cited above at note 5

⁸⁸ ICCPR, cited above at note 68, Article 24(2)

⁸⁹ Ineta. Ziemele, cited above at note 22, p.15

⁹⁰ United Nations, cited above at note 28

⁹¹ ACERWC, cited above at note 37, Para.38

⁹² Ineta. Ziemele, cited above at note 22, p.18

2.5.3 The Right to acquire a Nationality.

The right to acquire a nationality is one of the most fundamental human rights. This right is recognized in a number of international and regional treaties.⁹³ Article 24 (3) of the ICCPR enshrined the right to nationality in specific reference to the right of the child stating that: "Every child has the right to acquire a nationality". According to ICCPR, "the Human Rights Committee, conditional obligation rests on States to grant nationality but they are nevertheless required to adopt all appropriate measures internally and in cooperation with other States to ensure that no child is left stateless at birth."⁹⁴

The CRC also stressed the right of a child to acquire nationality. Article 7 CRC protects not only the right of every child to birth registration but also the right to acquire a nationality. The CRC Committee acknowledges that not being registered at birth can prevent access to a nationality and lead to statelessness.⁹⁵ As per the committee's birth registration provides official evidence of key facts relating to a child's birth, including birth place and parentage, without which the child may face difficulties proving his/her entitlement to nationality under the law and may not be considered as a national by the state.⁹⁶

Countries grant nationality based on the principle of *jus soli* and *jus sanguinis*.⁹⁷ The principle of *Jus Soli* holds a born child within the state boundary is granted nationality regardless of the nationality of both Parents.⁹⁸ In this scenario, birth registration gives the child automatic right to citizenship of the country in which he or she was born. Whereas, according to the principle of *jus sanguinis* a born child within a certain state boundary is granted nationality if either of the parents are a national of that state.⁹⁹ When a certain country follows the principle of *jus sanguinis*,

⁹³Universal Declaration of Human Rights 1948, Article 15; International Covenant on Civil and Political Rights 1966, Article 24; Convention on the Elimination of All Forms of Discrimination Against Women 1979, Article 9; Convention on the Rights of the Child 1989, Articles 7 and 8; African Charter on the Rights and Welfare of the Child 1990, Article 6; International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990, Article 29.

⁹⁴ UN Human Rights Committee (HRC), General Comment No. 17:7 April 1989 (HRC General Comment No. 17.Para.8.

⁹⁵ CRC Committee concluding observation , CRC/C/15/Add.243, Para. 31

⁹⁶ Ibid

⁹⁷ UNICEF, cited above at note 20, p.5

⁹⁸ Ibid

⁹⁹ Ibid

difficulties may arise for children of parents who are not nationals of a country that grants nationality. Typically in this system there is a risk that the children remain stateless.

With the view to alleviate this kind of problem the CRC committee recommends “the State party to amend its nationality and citizenship laws and regulations in accordance with the provisions of Article 7 of the Convention so as to ensure the registration of all children and protect children from de jure statelessness and Consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness”.¹⁰⁰ Moreover as per CRC’s concluding observation in some countries, in granting nationality it is envisaged when preference over gender¹⁰¹ is made and in some countries even children born out of wedlock¹⁰² were excluded from being granted nationalities. To this end , the state party is not only required to apply Article 7 of the convention in the nationality law but also required to ensure the nationality law of the country is not discriminatory and in line with the principle of the best interest of the child.¹⁰³

With regard to the right to acquire nationality ACRWC provides a better protection than CRC. The ACRWC depicts child’s right to acquire nationality under Article6 (3) and (4). Article 6 (3) of the charter is elaborated in one of the known case, Nubian children case. The ACERWC provides that “there is a strong and direct link between birth registration and nationality”¹⁰⁴.

The Committee stresses that:-

“Article6 (3) does not explicitly read, unlike the right to a name in Article 6 (1), that every child has the right from his birth to acquire a nationality”. It only says that every child has the right to acquire a nationality. Nonetheless, a purposive reading and interpretation of the relevant provision strongly suggests that, as much as possible, children should have a nationality beginning from birth. This interpretation is also in tandem with Article4 of the African Children’s Charter that requires that “in all actions

¹⁰⁰ CRC committee concluding Observation, CRC/C/JPN/CO/3

¹⁰¹ CRC/C/15/Add.21, Jordan, Para.11

¹⁰² CRC/C/15/Add.84, Para. Libya 18

¹⁰³ CRC/C/15/Add.96, Kuwait, Para.20

¹⁰⁴ Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian descent in Kenya v The Government of Kenya Decision: No 002/Com/002/2009 (Nubian Children Case), Para.42.

concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration”.¹⁰⁵

The ACRWC, Article 6 (3) in conjunction sub-articles (4) provides a more specific obligation on states “to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born”.¹⁰⁶ The ACRWC, Article 6(4) requires states Party in whose territory a child is born to grant nationality if the child would otherwise be stateless.¹⁰⁷ This has also been repeated in the general Comment of the ACRWC, accompanied by further prescriptions stating that, “States may not discriminate on any basis in relation to the acquisition of a nationality”¹⁰⁸.

2.5.4 The Right to Know and Be Cared for by His or Her Parents’

Article 7 (1) of the CRC provides a child with the right to know and be cared for by his or her Parents’. Since birth registration typically includes such details as the child’s birth place and information on the child’s parents it gives a child the right to know and be cared for by his or her Parents’.¹⁰⁹ The problem to know one parents usually arise in case of a born child out of wedlock. The CRC Committee has pointed out that it is important to identify the father in the birth certificate even if a child is born to an unmarried couple.¹¹⁰ Article 7 should be read in conjunction with Article 8 (preservation of identity, including nationality, name and family relations), Article 9 (separation from parents), Article 10 (family reunification) and Article 20 (continuity in upbringing of children deprived of their family environment). The ACERWC also envisages that birth registration serves beyond establishing the identity and parental affiliation of a child in preserving the child’s identity against illegal changes of name falsification of family ties, which are easier to achieve when the child is not registered.¹¹¹

¹⁰⁵ Ibid

¹⁰⁶ ACERWC, cited above at note 37, Para. 92.

¹⁰⁷ Id, Para.50

¹⁰⁸ Id, Para. 9

¹⁰⁹ Todres, Jonathan., cited above at note 21,p.3

¹¹⁰ CRC Committee Concluding Observations: Ireland CRC/C/15/Add.85, 1998, Para. 36.

¹¹¹ ACERWC, cited above at note 37, para.34

2.6 General principles of a Child right and Birth registration

The CRC Committee on the Rights of the Child and ACERWC has identified four general principles that should guide the implementation and realization of all Convention rights.¹¹²

2.6.1 Principle of Non-discrimination

The Principle of non discrimination is protected by Article 2 of the CRC and Article 3, of ACERWC. The principle has been identified by CRC committee as general principle of fundamental importance for implementation of the whole convention.¹¹³ Related to this the human right committee under its general comment points out that states have to take positive action to eliminate conditions that are factor for discrimination. Moreover, the ACERWC underlines the principle of non-discrimination in the context of “the rights to a name, birth registration and to acquire a nationality means that no child should be deprived of his/her right to a name, that no child’s birth should go unregistered whatever his/her parents’ or legal guardians’, ethnic group, sex, religion, political or other opinion, national and social origin, birth or other status.”¹¹⁴

2.6.2 Best interests of the children

Article 3 of the CRC provides 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”. The CRC Committee has held that the application of the best interest’s principle means considering how decisions and actions affect children’s rights.¹¹⁵ The ACERWC provides in Article 4 (1) that the best interests of the child shall be the primary consideration in all actions concerning the child undertaken by any person or authority. All laws, policies and programs related to the improvement of the birth registration system must be in conformity with the best interests of the child.¹¹⁶

¹¹² M. Verheyde and G. Goedertier, A Commentary on the United Nations Convention on the Rights of the Child: Article 43-45: The UN Committee on the Rights of the Child (2006), p.19

¹¹³ Ibid

¹¹⁴ ACERWC /GC/02 , cited above at note 37 , Para.9

¹¹⁵ CRC, General Comment No.5,Para12.

¹¹⁶ Id, Para 15

2.6.3 Survival, development and protection

As a first step in ensuring rights to survival, development and access to quality services for all children, the CRC Committee recommended that States parties take all necessary measures to ensure that all children are registered at birth.¹¹⁷ The Committee on the CRC addressed the issue of birth registration in its General Comment No.7 on implementing Child rights in early childhood.¹¹⁸ The Committee stated that comprehensive services for early childhood should begin at birth.¹¹⁹ The ACEWRC considers a child's identity as one of the cornerstones to ensure his/her survival, development and protection.¹²⁰ Proof of identity through the birth registration system can also contribute to the prevention of and protection from harmful practices that particularly threaten children whose identity cannot be established such as abandoned and some separated children, as well as stateless children.¹²¹

2.6.4 Right to Be Heard and To Participate

This right is mainly addressed under Article 12 of the CRC. As per this article a child is given the right to express the views freely in all matters affecting him or her right. Even though child has the right to be heard and participate it is difficult to know the child's views on matters of his/her naming, birth registration or acquisition of nationality at the early stage of his/her life.¹²² However, according to the views of ACEWRC "it is a requirement of Article 4 (2) of the Charter to give the opportunity to the child to be heard and to take into consideration the child's views whenever he/she is capable of communicating them during judicial and administrative proceedings where issues relating to name, nationality or identity are at stake."¹²³

¹¹⁷ Todres Jonathan., cited above at note 21, p.3

¹¹⁸ CRC, General comment NO.7, 2006, pp. 11–12

¹¹⁹ *Ibid*

¹²⁰ ACEWRC /GC/02 .Para. 9

¹²¹ *Ibid*

¹²² *Id*, Para. 21

¹²³ *Ibid*

2.7 Major State obligations

The Convention on the Rights of the Child reinforces the fundamental importance of the right to birth registration in its Article 7 (1), which states that “the child should be registered immediately after birth and have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”¹²⁴ Article 7 (2) Of the CRC enunciates the obligations of States Parties to ensure the safeguard of this right.¹²⁵ Accordingly, state parties are required to ensure the implementation of birth registration rights in accordance with their national law and their obligations under the relevant international instruments, in particular where the child would otherwise be stateless.¹²⁶

Pursuant to the CRC, state parties have the obligation to implement the right to birth registration according to their national laws.¹²⁷ One way of following whether state has fulfilled this obligation is through reporting mechanism.¹²⁸ Under the CRC, the states must submit regular reports detailing their progress in implementing the guaranteed rights.¹²⁹ The Committee on the Rights of the Child in its general comment No. 7 recommended that States take all necessary measures to ensure that all children are registered at birth, which can be achieved through a universal, well managed registration system that is accessible to all and free of charge.¹³⁰

States also have an obligation under Article 7 (2) of CRC to protect a child from statelessness. A child whose nationality or citizenship is not established is at risk of statelessness.¹³¹ While a state must grant some form of legal recognition to all children born on its soil, it is not obligated to grant nationality to every such child.¹³² Depending on the state's national legislation, nationality is either given according to jus sanguineous or jus soli principles, or a combination of the two.¹³³

The Committee on the Right of the Child recommends that the State party review its citizenship legislation and procedures to ensure their full compliance with international standards aimed at the prevention and reduction of statelessness and ensure that all children born in its territory

¹²⁴ CRC, Cited above at note 5, Article7(1)

¹²⁵ Id, Article 7(2)

¹²⁶ ibid

¹²⁷ Ibid

¹²⁸ Ineta Ziemele Cited above at note 22, p.9

¹²⁹ CRC, cited above at note 5, Article44

¹³⁰ General comment CRC/C/GC/7 P.2, CRC/C/GC/11 .P.3

¹³¹ Jonathan Todres cited above at 21, P.2

¹³² Ineta Ziemele . cited above at 22 p.13

¹³³ Ibid

acquire nationality, if otherwise they would be stateless, irrespective of the legal status of their parents¹³⁴.

The ACEWRC also provides states obligation towards realizing the right to birth registration. States are required to take all appropriate legislative, administrative and other measures to ensure this right for all children.¹³⁵ Above all, the Committee stressed the state parties to abolish discriminatory laws and practices with regard to registration.¹³⁶ More importantly state has the obligation to prevent and reduce statelessness which starts from taking all necessary measures to ensure that all children born on its territory are registered.¹³⁷ These include registration of children born out of wedlock and children born to a parent or parents who are foreigners. State parties to the convention are also required to abolish registration fees and late registration fines.¹³⁸

2.6 Importance of birth registration for the realization of the right of the child

Under this caption a major attempt to discuss the importance of birth registration for the realization of the right of a child is made. The right to birth registration is a fundamental human right of the child. Thus, birth registration is a right which is supposed to be the basis for the realization of most of the rights of the child in particular stipulated under the conventions dealing with the rights of the child. As pointed out above, a large number of the human rights set forth in the international covenants rely for their realization or implementation on the individual seeking to enjoy the right of being able to prove identity, age, nationality, marital status, the age, number and birth order of children. Some of these rights require proof of only one characteristic, supplied by one vital record, while others need evidence on more than one characteristic derived from one or more records.

¹³⁴ See the CRC committee recommendations No.CRC/C/TKM/C0/2-4 and CRC/C/CHE/C0/2-4

¹³⁵ ACERWC/GC/02, cited above at 68, Para. 32

¹³⁶ Ibid, para.33

¹³⁷ Ibid

¹³⁸ Ibid

2.6.1 The right to preserve identity

A consolidated birth registration system is indispensable to preserve identity of a child. The child to be able to proof such identity, he/she must have first record of birth. This is mainly important to protect children against illicit changes to their identity, such as changes of name or falsification of family ties.¹³⁹ Article 7 of CRC is closely connected with Article 8 of the CRC provides the child's right to an identity.¹⁴⁰ Under Article 8, the child has the right to "preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference" States cannot fulfill their obligation to respect this right unless the child is first given a chance to establish his or her identity through registration of the birth of a child.¹⁴¹

2.6.2 The right to education

The right to education is encapsulated under CRC and ACRWC. The CRC under Article 28 provides that "state parties recognize the right of the child to education and with a view to achieve this right progressively and on the basis of equal opportunity." The ACRWC also under Article 11 states that "every child shall have the right to education". Particularly it is pivotal to have birth registration to prove the age of the child for enrollment of school at the right age, provides the right of the child to education. Thus, the existence of birth registration is one of the mechanisms for realizing the right to education.

2.6.3 The right to health care

Under Article 24 of the CRC it is recognized that the child has right to the "enjoyment of the highest attainable standard of health". To achieve this right and to provide age related medical treatment like vaccination/immunization birth registration is important.¹⁴² Accurate age of the child is obtained when birth registration really exists.¹⁴³ Hence, effective birth registration

¹³⁹ UNICEF, cited above at note 20, p.5

¹⁴⁰Yamile Mackenzie, The Campaign For Universal Birth Registration In Latin America: Ensuring All Latin American Children's Inherent Right To Life And Survival By First Guaranteeing Their Right To A Legal Identity GA. J. INT'L & COMP. L. [Vol. 37:519]p.537

¹⁴¹Ibid

¹⁴² Jonathan Todres, cited above at note 21 , p.3

¹⁴³ Ibid

systems play a role in this crisis, and helps for children to get medical treatment at the right age.¹⁴⁴

2.6.4 Protection against all forms of exploitation and abuse

The existence of systematized birth registration system is one way of protection of the right of the child against any form of child abuse and exploitation.¹⁴⁵ A child who has no official identity or proven nationality or an age is prone to exploitation and abuse. Birth registration plays an important role in efforts to protect children from all forms of exploitation and abuse. The CRC and the ACRWC have several provisions that aim to protect children from all form of exploitation and abuse including child labor¹⁴⁶, sexual exploitation¹⁴⁷, child trafficking, sale and abduction¹⁴⁸, protection from all forms of violence¹⁴⁹ and prohibitions on the involvement of children in armed conflicts¹⁵⁰ which cannot be addressed effectively without proof of age.

2.6.5 The right to protections in the juvenile justice system

Birth registration is indispensable within the juvenile justice system for the protection of children right that they might face problem because of their age. A birth certificate may provide children under arrest with some protection against prosecution as an adult by providing proof of age.¹⁵¹ As per the ICCPR in determining the criminal charge of juvenile persons it is noted to take in to account their age.¹⁵² And when convicted shall be segregated from adults and be accorded treatment appropriate to their age and legal status.¹⁵³ The CRC also under Article 40 and 37 paragraph C provides that children with special protection, including the protection against prosecution as an adult, and right not to be detained with adults. Moreover, the importance of birth registration in juvenile justice system was set out by the Committee on the Rights of the Child in its general comment No. 10 which clarified that a child without a provable date of birth

¹⁴⁴ Ibid

¹⁴⁵ Ibid

¹⁴⁶ CRC cited above at note 5, Article 32 and ACRWC cited above at note , Article 15.

¹⁴⁷ CRC , cited above at note 5 , Article 34 and ACRWC, cited above at note 17 , Article 27 .

¹⁴⁸ CRC , cited above at note 5, Article 35 and ACRW, cited above at note 17, Article 29.

¹⁴⁹ CRC , cited above at note 5 , Article 19.

¹⁵⁰ CRC , cited above at note 5 , Article, 38 and ACRWC , cited above at note 6 , Article 22 .

¹⁵¹ Children's Legal Center and UNICEF, "Guidance for Legislative Reform on Juvenile Justice," 2011, p.95 available at www.unicef.org/policy_analysis/files/Juvenile_justice_16052011_final.pdf accessed on 22/04/2017

¹⁵² ICCPR, cited above at note 68, Article, 14(4).

¹⁵³ Id, Article 10(2)

is extremely vulnerable to all kinds of abuse and injustice in relation to the juvenile justice and penal system.¹⁵⁴ The ACRWC under Article17 echoed too the protection accorded to juvenile person, more importantly stressed minimum age to be underlined for a child to be held criminally responsible.¹⁵⁵ To this end, proof of age is of maximum importance and for this purpose the record of birth contained in the official register, is essential for safeguarding the rights of the child offender.¹⁵⁶

¹⁵⁴CRC/GC/C/10, Para.39.

¹⁵⁵ ACRWC, cited above at note 17, Article17.

¹⁵⁶ Jonathan Todres, cited above at note 21, p.2

Chapter Three

National Legal Framework of Ethiopia on Birth Registration

3.1 Introduction

For effective functioning of birth registration the existence of legislative framework is indispensable. Birth registration can only be achieved within an effective legal framework that harmonizes registration with legislation to safeguard children's rights. States Parties to the human right Covenants have the obligation to adopt laws and policies for the implementation of the right to birth registration. However, effective protection of human rights depends not only on the legislation and statutory measures taken to give them effect, but also on administrative procedures designed to safeguard these rights. Hence, the aim of this section is to discuss the laws dealing with civil registration system in general and birth registration in particular in Ethiopia.

3.1.1 Legislative measures before enactment of Registration of Vital Events and National Identity Card Proclamation NO.760/2012

The civil registration in general and birth registration in particular has been included in Civil Code of 1960 which contains more than 100 articles.¹⁵⁷ Articles 47 to 153 devotes to establishing a system of civil registration. It sets a detailed and compressive rule on civil registration. However, the provisions have never come into force due to a transitory provision in the Civil Code itself which specifies that the provisions pertaining to registers of civil status shall not come into force until a date has been notified by an order.¹⁵⁸ Such an order has never been published. Even though an order to be published in Negarit Gazeta is required, Proclamation No.760/2012 on Registration of Vital Events and National identity proclamation also repealed the 1960 Civil Code of Ethiopia that pertains to the registration of Vital Events.¹⁵⁹

During the Dergue regime there were some efforts made to record birth, marriage and Death in urban dwellers.¹⁶⁰ The intention was to establish a civil registration system through Kebele structure. Proclamations No. 104/1983 and 106/1988 were issued by the previous Dergue

¹⁵⁷ Civil code , cited above at note 8, Article 47-153

¹⁵⁸Id, Article 3361

¹⁵⁹ Proclamation No.760/2012, cited above at note 14 , Article 68

¹⁶⁰ African children policy forum, cited above at note 9, p. 24.

government of Ethiopia.¹⁶¹ Some articles of these proclamations specify that kebeles, the lowest administrative structures in the country, should keep proper registers of houses, the number of residents and records of births, death and marriages in accordance with directives to be issued. However, these directives have not come into existence and these proclamations came to no avail.¹⁶²

3.1.2 The FDRE Constitution

The FDRE Constitution has encapsulated many provisions with regard to human rights. Chapter three of the Constitution is fully devoted to the protection of human rights and democratic freedoms.¹⁶³ Accordingly, the right of children is echoed under Article 36 of the constitution. Article 36 of the FDRE Constitution specifies the right of the child to a name and nationality, as well as the right to know his/her parents.¹⁶⁴

Nevertheless, there is an issue whether the constitution has granted the right to birth registration as Constitutional right of the child. With respect to this there are two lines of arguments. The first line of argument is the constitution clearly states or provides only the right of the child to name and nationality; it has deliberately left out the right of the child to be registered at birth.¹⁶⁵ Proponents of this view base their argument on the doctrine of expression unius, that the enumeration of some rights is a deliberate exclusion of other rights, which are not mentioned.¹⁶⁶ They also corroborate their line of argument based on the progressive (or positive which needs action on the part of the state) nature of the right. That is the intentional omission of this right in the Constitution emanates from the progressive nature of the right.¹⁶⁷

The second line of argument is that the Constitution has recognized this very right of the child.¹⁶⁸ The base of this argument is through interpretation of the constitution. As per the interpretation,

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³ Constitution of the Federal Democratic Republic of Ethiopia 21 August 1995, Article13-44

¹⁶⁴ Ibid, Article36.

¹⁶⁵ Minasse Haile ,The new Ethiopian constitution : its impact upon unity ,Human rights and development ,Suffolk transnational law Review ,Vol.20 No.1.1996.pp 45-49

¹⁶⁶ Ibid

¹⁶⁷ Ibid

¹⁶⁸ African child policy Forum ,national conference on Registration of Vital Events with particular focus Birth registration in Ethiopia from March 13-14.2006 available at <https://unstats.un.org/.../vitalstatkb/...accessed On 27/4/2017>

the right to birth registration is a basis for all other children rights recognized under the constitution.¹⁶⁹ This is to mean that, without recognizing birth registration as a right, other rights of children could be devoid of meaning. More importantly, the constitution has provided under Article 36 (1) (b) (c) the right of the child to a name and nationality, know and be cared by parents. The existence of name and nationality cannot be proved unless there is birth registration. That is, the right to birth registration is subsumed in the rights to name and nationality.¹⁷⁰

Furthermore, the assertion that the right to birth registration is constitutional right is also based on the constitution provision, Article 13 (2), which provides that human rights guaranteed by the constitution shall be interpreted inconformity with international human right instruments ratified by Ethiopia. Accordingly, Ethiopia has ratified the ICCPR, CRC and ACRWC which embodies the right to birth registration of the child. Here when Ethiopia ratified these Conventions, it is accepting the major obligation provided under the convention. So, the status of birth registration under FDRE is to be determined in reference to the ICCPR, CRC and ACRWC by virtue of Article 13(2) of the Constitution.

In general, in light of the above two line of arguments the writer of this thesis is of the opinion that the right to birth registration is a constitutional right of the child. That is, since the FDRE Constitution recognized the right to name and nationality and because these rights are dependent on the existence of the right of the child to birth registration. It is difficult to effectively implement the right of the child to nationality and name if the right of the child to birth registration is not recognized. A person who is deprived of his right to birth registration could not effectively exercise the right to name and nationality. This means denying the child the right to birth registration is denying him some other rights.

The Constitution has impliedly recognized birth registration as a constitutional right of the child. Moreover, since Ethiopia has ratified the ICCPR, CRC and ACRWC which embodies this very right of the Child and Article 13(2) of the constitution provides the human rights provision provided under the constitution to be interpreted in light with international human right instruments ratified by Ethiopia, birth registration is recognized under the Constitution as the right of the Child.

¹⁶⁹ Ibid

¹⁷⁰ Ibid

3.1.3 International human right treaties ratified by Ethiopia

Pursuant to Art 9(4) of the FDRE constitution, international agreements ratified by Ethiopia make an integral part of the law of the land. However, some argue that international treaties are not laws, despite ratification, unless they are published in the Federal Negarit Gazette by virtue of Art 71(2) of the FDRE constitution.¹⁷¹ On contrary others argue that it only tries to indicate the formal requirements, the non-fulfillment of which doesn't necessarily render that particular instrument non-binding as much as the failure and/or refusal of the president to put his signature on the draft bill doesn't stop it from becoming a binding law.¹⁷²

Moreover, as states cannot invoke their laws as defense for failure to conform to international commitments they have entered into, adhering to the earlier arguments would not take us any further since ratification alone would elevate their status from mere agreements to binding laws.

Here if international instruments are regarded as part and parcel of the law of the land, what is their hierarchy in the Ethiopian legal system is also the other question. This mainly arises from the constitutional stipulation of FDRE constitution Article 13(2) which provides the fundamental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights; international covenants on human rights and other international instruments adopted by Ethiopia. In this case, some argue that the wording in "a manner conforming" indicates as the position of international instruments in equal status with Constitution.¹⁷³ Whereas, some argue that the need to conform to those "international standards for the bill of rights" is required only in case of interpretation. Particularly, reference is made when the provisions under the chapter on fundamental rights and freedoms of the Constitution become vague, ambiguous, and equivocal.¹⁷⁴ However, if the provisions under chapter three of the Constitution become clear, the reference to the said instruments is not required. Therefore, Art 13(2) of the FDRE Constitution is there to serve for the sake of clarity but not to create contradiction with the basic principle enshrined under Art 9(1) of the

¹⁷¹Adem Kassie ,Human Rights under the Ethiopian Constitution: A Descriptive Overview, Mizan Law Review Vol. 5 No.1, 2011, p .46.

¹⁷²Gebremlak Gebregios ,The incorporation and status of international human rights under federal democratic republic constitution. Ethiopian human rights law series, Vol.2 ,2009 p.44

¹⁷³Sisay Alemayew ,Justifiability Of Human Right In Federal Democratic Republic Of Ethiopia ,African human right Law journal ,2008,p284.

¹⁷⁴Ibid

constitution. Thus, international human right instruments ratified by Ethiopia and became an integral part of the law of the land are also the governing instruments on birth registration.

3.1.4 The Revised Family Code

The Revised Family Code which was enacted in 2000 has encapsulated a provision dealing with birth registration. Importantly it imposed a duty on the federal government to issue a law on civil registration and to establish the institutional arrangements needed for its implementation within six months of its promulgation.¹⁷⁵ To this end, after a couple of twelve years of the enactment of the Revised Family Code, the federal government has enacted Registration of Vital Events and National Identity Proclamation No.760/2012. Apart from provisions which are directly related to the establishment of a civil registration system, the Revised Family Code contains substantive and procedural rules which directly talk about birth registration. Some provisions underline the importance of civil registration as a means of proof of filiations and proof of age.¹⁷⁶ In particular, Article 154 provides that the record of birth is the principal means of proving both paternal and maternal filiations. Similarly, Article 217 provides that “the age of a person shall be established by his certificate of birth”

3.1.5 The FDRE Criminal Code

The new Criminal Code of Ethiopia which was enacted in May 2005 contains some provisions dealing with birth registration. Particularly, the Criminal Code contains provisions that deal with offences related to the failure to register the birth of an infant before the concerned office and false declaration. Accordingly, Article 656 (1) deals with the criminal liability of omission to register the birth of an infant stating that “whoever fails to declare the birth of an infant, as prescribed by law, to the office of civil status, is punishable with a fine not exceeding five hundred birr, or simple imprisonment not exceeding one month.”¹⁷⁷ Similarly, “whoever finding a new born infant abandoned, fail to report it to the appropriate authority, is liable to

¹⁷⁵ The Revised family Code proclamation No.213\2000, 4th July ,2002,Article 321(1).

¹⁷⁶Tilahun Teshome, Reflection on the Revised Family Law of 2000, May 2001,International survey of family law

p5

¹⁷⁷ The Criminal Code of The Federal Democratic Republic Of Ethiopia ,Proclamation No. 414/2004 , Article 656(i)

punishment.”¹⁷⁸ As per this provision everyone is a duty bound to report or declare the birth of an infant abandoned to the responsible registering organ. Moreover, the criminal code has also enshrined the criminal liability of false registration. As per Article 657 of the code, simple imprisonment is imposed on whoever suppresses or falsifies a fact to be entered in the register of the civil status. In addition to this the particulars that make one criminal are making a false declaration concerning the identity or birth of an infant.¹⁷⁹ However, in aggravated cases a rigorous imprisonment not exceeding five years will be passed on a person who makes false statement concerning the birth of an infant.¹⁸⁰

3.1.6 Proclamation No.760/2012 on the Registration of Vital Events and National Identity Card

In August 2012, the Federal Democratic Republic of Ethiopia issued the Registration of Vital Events and National Identity Card Proclamation No.760/2012, referred [here in after RVENIC] Proclamation which is a compulsory law on registrations of Vital Events in Ethiopia. This law repealed Articles 47 to 153 of the 1960 Civil Code, which were provisions on civil registration that had been suspended indefinitely and therefore never put to any use.¹⁸¹

3.1.6.1 Definition of Vital Event

The RVENIC proclamation has provided a definition for vital event.¹⁸² Vital Event is defined to mean “birth, marriage, divorce or death and includes adoption and acknowledgement and judicial declaration of paternity”.¹⁸³ However, the proclamation does not provide clear and unambiguous definitions of the vital event. Here the proclamation does not provide definition of birth based on UN recommended definition for live birth. Despite the fact the 1960 civil code under Article 4 (1) considers whether a birth is viable or not if the child lives for forty-eight hours, it is not consistent with international definition for live births. According to UN recommended definition on civil registration there is no such requirement of living for forty-eight hours in order to

¹⁷⁸ Id, Article 656(2)

¹⁷⁹ Id, Article657(1)

¹⁸⁰ Id ,Article657(2)

¹⁸¹ Proclamation No. 760/2012, cited above at note 14 , Article65.

¹⁸² Proclamation No. 760/2012 , cited above at note 14, Article2(1)

¹⁸³ Ibid

register birth.¹⁸⁴ It is only the complete expulsion or extraction from its mother of a product of consumption that qualifies a child to be registered.¹⁸⁵ Addis Ababa City health bureau are using the UN standard rule definition of live birth¹⁸⁶ but Addis Ababa VERA bodies never experienced registration of a child born before the 48 hours of the viability period.¹⁸⁷ However the official at VERA body revealed if registration of born child who has not lived for forty eight hours is requested the Agency is obliged to wait the viability period of forty eight hours provided under the Civil code.¹⁸⁸ Here there is obviously a great divergence between the national and international definition of live birth, which needs to be addressed.

3.1.6.2 Scope of applicability of RVENIC Proclamation

Registration of Vital Events as per the RVENIC Proclamation is only to Ethiopians.¹⁸⁹ It does not include provisions for birth registering of a born child from foreign parents in Ethiopia. In chapter two under the caption dealing with the UN standard rule on Vital Events Registration it has been discussed that a birth registration system of any country should include principle of continuity and permanence, confidentiality, universality and compulsoriness. According to the principle of universality the birth registration should comprise the registration of all children born in the country without discrimination. But when we look the RVENIC proclamation it does not provides the birth registration of a born child from foreign parents in Ethiopia and a born child from refugee which is contrary to the international standard.

The refugee proclamation enacted by Ethiopia proclamation No. 409/2004 under Article 21 (1)(d) provides that “every recognized refugee...be entitled to other rights and be subject to the duties contained in the refugee Convention and the OAU refugee convention. To this end, the CRC to which Ethiopia is a party provides “state parties shall take appropriate measures to ensure that a child who is seeking refugee status ...to receive appropriate protection and humanitarian assistance in the enjoyment of the applicable rights set forth in the present

¹⁸⁴ United Nation Department of economic and Social affairs , cited above at note 28, p.45

¹⁸⁵ Ibid

¹⁸⁶ Interview with W/ro Tsedale Adana, Addis Ababa Health Bureau, Senior Human Resource officer, May 15, 2017

¹⁸⁷ Ibid

¹⁸⁸ Interview with W/ro Meskerem Masresha, Addis Ababa City Vital Events Registration Agency Deputy Director, April 13, 2017..

¹⁸⁹ Id, Article3(1)

convention and in other human rights...”.¹⁹⁰ The ACRWC under Article 6 of the convention also without attaching any condition provides “every child shall be registered immediately after birth”. Pertinent to this ACERWC in its general comment has also boldly emphasized that birth of child should be registered irrespective legal status his /her parents.¹⁹¹ From this all articulation it can be deduced that Ethiopia who is party to CRC and ACRWC has the obligation to register the birth of a born child from refugee parents and a born child from foreign parents in Ethiopia.

In sum, the existence of such type of discrimination under the law is contrary to the international obligation to which Ethiopia has adhered.

3.1.6.3 Period to declare the occurrence of birth

The RVENIC proclamation under Article 18 provides a period of declaring birth. Accordingly, it provides compulsory registration of births within 90 days following the date of its occurrence unless there is sufficient cause for delay”¹⁹² Here there is no provision that differentiate late and delayed registrations. Specific provision for late and delayed registration of Vital Events should be made, as it is important to avoid delayed registration of birth.

The law has provided for backlog registration of birth.¹⁹³ Backlog registration of birth is just to enable one to register the birth that was before the enactment of the law. Concerning backlog registration of birth there is no such specified period. Anyone who wants his birth to be registered is only required to apply to the office of civil status. With regard to backlog registration the law provides registration only when requested by the applicant.¹⁹⁴ To ensure the rights of child which mainly relates to birth registration, the law shouldn’t allow registration only when requested by parties. Rather it should be made compulsory registration because is important to clear birth backlogs from the point of view of human rights issue.

¹⁹⁰ CRC , Cited above at note 5 , Article 22

¹⁹¹ ACERWC, Cited above at note 37, para.51

¹⁹² Proclamation 760/2012, cited above at note 14, Article 18(2)

¹⁹³ Id, Article 67(4)

¹⁹⁴ Proclamation 760/2012, cited above at note 14, Article 67

3.1.6.4 Duty to declare birth and place of registration

The RVENIC proclamation imposes responsibility on the father or mother of the child to declare the birth of their child, in their default by the guardian of the child or in default of guardian, by the person who has taken care of the child.¹⁹⁵ Furthermore, the RVENIC proclamation requires declarant of birth to confirm the validity of the declaration by signing or in case when the person cannot sign by affixing his finger print.¹⁹⁶ However it does not provides other mechanism for declaring the birth of a born child from handicapped parents. Handicapped parents because of their physical disability might not be in a position to affix the sign or their finger in declaration form of birth of the child. Thus, unregistering birth of the child based on the status of the declarant is depriving the very right of the child to birth registration and other rights associated with birth registration.¹⁹⁷

Furthermore, the law requires declaration by parents to be normally made to the nearest administrative office of the principal residence of the parents.¹⁹⁸ Up on declaration the Vital Events registering organ is required to record the particulars of birth provided under Article 24 of the proclamation like the “child’s full name, sex, date of birth, place of birth, type of birth (whether single or more) and aid rendered during birth , the child’s parents full name, date and place of birth, principal residence, marital status, citizenship, religion, ethnic origin and, if they are alive, their signatures; where the declarant is other than the parent of the child the declarant’s full name, relation with the child, sex, date and place of birth, principal residence and signature ”

After declaration of birth the declarant is entitled to the issuance of birth certificate up on the payment of prescribed service fee.”¹⁹⁹ The existence of fee for issuance of birth certificate is against the spirit of human right instruments which provides free birth registration and free issuance of birth certificate. The CRC Committee under its general comment NO.10 stated that

¹⁹⁵Id, Article26

¹⁹⁶ Proclamation No760/2012 , Cited above at note 14 , Article 22 and 23

¹⁹⁷ CRC, Cited above at 5, Article 2

¹⁹⁸ Id ,Article 28

¹⁹⁹ Id, Article 47(5)

“Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age”.²⁰⁰

In case of abandoned child or his parents are unknown the proclamation imposes duty on any person who knows such condition to report to the nearest police or other relevant government organ.²⁰¹ The police or any government organ who received report has the duty to declare birth to the office of civil status within three days from the date of receipt of the report.²⁰²

With regard to birth occurring in a health institution, the head of the institution is required to register and prepare a certificate containing the particulars of records of birth like full name of the child , sex , date of birth , place of birth , type of birth , child parents full name , date and place of birth.²⁰³

Moreover, the RVENIC proclamation provides a mechanism for Ethiopians living abroad to register the birth of the child. Accordingly, it is stipulated that the Ethiopian embassies and consulates serve as administrative office for Ethiopians residing in foreign countries; and the head of the consulate or an embassy staff assigned by the ambassador act as an officer of civil status.²⁰⁴ In case where there is no Embassy or consulate it is provided as registration of Vital Events to be carried out in accordance with directive to be issued.²⁰⁵ In addition, it is provided that an Ethiopian ship shall serve as administrative office for the registration of birth or death that occurs on board.²⁰⁶

3.1.6.5 Institutional organization for birth Registration

The RVENIC proclamation provides a decentralized way of Vital Events registration. The proclamation envision the establishment of a central office for the registration of vital events, which coordinates , facilitates and support the registration of Vital Events throughout the country

²⁰⁰ CRC Committee, General Comment No 10: Children’s rights in juvenile justice, UN Doc. CRC/C/GC/10 (2007), Para. 39

²⁰¹ Ibid

²⁰² Id, Article 26

²⁰³ Id , Article 29

²⁰⁴ Id ,Article 4

²⁰⁵ Id ,Article 5

²⁰⁶ Id ,Article 8

through a directive to be issued by council of minister.²⁰⁷ To date the Federal Vital Events Registration Agency is established through Council of Ministers Regulation No.280/2014.

The proclamation also under Article 5 envisions the establishment of regional organs with the task of directing, coordinating and supporting registration of Vital Events at regional level. So far the nine regional state governments and the two city administrations have established an agency that deal with the supervision and coordination of Vital Events registration.²⁰⁸ As per the proclamation regional organs are required to transfer the Vital Events records to the federal organ mainly to FVERA.²⁰⁹

Furthermore, the RVENIC proclamation imposes obligation on regions to assign Officer of civil status at each administrative office.²¹⁰ An Officer of civil status assigned is required to discharge his/her obligation in accordance with the provisions of this Proclamation and regulations and directives issued there under particularly , to register vital events, send copies of records of Vital Events to the relevant organs, issue a certificate of registration of vital even to the concerned person, properly preserve records of vital events, secure their confidentiality and create awareness among the community on the registration of vital events.²¹¹ The fact of preserving confidentiality of Vital Events provided under the proclamation is line with the principles of Vital Events registration provided by UN standard rule on Civil Registration which is discussed under chapter two of this thesis.

3.1.6.6 Sanctions

The UN standard rule on civil registration provides any civil registration should include provision concerning on non-compliance with the law²¹². In line with this the RVENIC Proclamation imposes civil as well as criminal liabilities on those who fail to comply with the proclamation. Accordingly, whosoever fails to declare Vital Events or fails to observe any other requirement provided for in relation to the registration of vital events, falsifies or conceals a fact

²⁰⁷ Proclamation No.760/2012, Cited above at note 14, Article 7(1)

²⁰⁸ Interview with W/ro Meskerem Masresha, Cited Above at note 188, April 13, 2017

²⁰⁹ Id , Article 7(2)

²¹⁰ Id , Article6

²¹¹ Ibid

²¹² United Nations Department of Economic and Social Affairs Statistics Division (1998), Cited above at note 28, page 188.

in declaring a Vital Event, which makes use of forged or falsified certificate of registration of Vital Events shall be punishable by fine and rigorous imprisonment.²¹³ The one who falsifies data collected in relation to registration of Vital Events by altering, modifying or deleting its content or damages, destroys, suppresses or unlawfully accesses the data collected in relation to registration of Vital Events or national identity card is enshrined to be guilty of an offence and be punishable with rigorous imprisonment from ten to twenty five years.²¹⁴

3.1.7 Regulation No. 280/2014 Vital Events Registration Agency Establishment Regulation

The Council of Ministers issued Regulation No. 280/2014 which established the Federal Vital Events Registration Agency accountable to the Ministry of Justice [here in after FVERA].²¹⁵ According to the regulation the objectives of agency is to direct, coordinate and support the registration of Vital Events at national level and centrally organize and keep records of Vital Events.²¹⁶ Among other FVERA have power and duties to ensure the proper registration of Vital Events and the issuance of certificate of registration and to collaborate with and provide assistance to the appropriate regional organs in the preparation and distribution of registers of civil status to be used by the regions.²¹⁷

In organizational level the FVERA regulation provides Vital Events Registration Council and board of management. The council has mainly the power to oversee and coordinate the works of the agency, assist regional organs, conduct awareness creation, education and training, conduct survey on quality and coverage of Vital Events registration, facilitate the application of Vital Events registration and forward policy ideas on Vital Events.²¹⁸ Whereas, Vital Events Board of management oversee the activity of FVERA and also tasked with co-coordinating relevant organs relation with the activities of the agency.

²¹³ Proclamation No.760/2012, Cited above at note 14 , Article 66

²¹⁴ Ibid

²¹⁵ Regulation to provide for the establishment of the Vital Events regulation agency regulation No. 278/2012, Article3 reg.no.13, Fed . Neg. Gaz., 2012.

²¹⁶ Id , Article 5

²¹⁷ Id , Article 6

²¹⁸ Id , Article 9

Chapter Four

Implementation of birth registration laws in Addis Ababa and Its implication for realization of the right of the Child

4.1 Introduction

Implementation of birth registration starts from enacting law and establishing institution that deal with the task of registering birth.²¹⁹ The Municipality of Addis Ababa started birth registration in 1942.²²⁰ But the municipality was not following the conventional procedures of civil registration. They are part of the administrative exercise. They are not compulsory, continuous and permanent.²²¹ To date, Ethiopia has enacted a Vita Events Registration proclamation No. 760/2012 which is compulsory, continues and permanent. Based on this the Addis Ababa City Administration has established Vital Events Registration Agency that deals with the task of facilitating and monitoring Vital Events within the city administration. Accordingly, this chapter examines the implementation of birth registration in Addis Ababa city and its implication for the realization of the right of the child.

4.2 Legal and Institutional frameworks for birth registration in Addis Ababa City

4.2.1 Addis Ababa City Vital Events Registration Agency establishment regulation No. 63/2013

4.2.1.1 Addis Ababa City Administration Vital Events Registration Agency

Addis Ababa City Administration Vital Events Registration Agency [here in after Addis Ababa City VERA] was established by regulation no. 63/2015 based on the mandate given by the RVENIC Proclamation. The agency is the highest body dealing with Vital Events Registration of the Addis Ababa City and has the objective to co-ordinate, direct and support registration of Vital Events at city level and to transfer the records of Vital Events to federal Vital Events Registration Agency.²²²

²¹⁹Yamile Mackenzie , cited above 140, p.538,

²²⁰Tilaye Geressu, Gender statistics and the status of civil registration and Vital Statistics in Ethiopia, Central Statistics Agency, December 2007, available at <http://un/status.un.org/.../8.2ethiopia.pdf>. accessed on April 4, 2017

²²¹Ibid

²²²Regulation on Addis Ababa City Vital Events Registration Agency establishment regulation No. 65/2013, Article 5(1) Reg.No.13, Fed. Neg. Gas, Year 7

The agency has the power and duties to ensure proper registration of Vital Events,²²³ create awareness on birth registration through different methods²²⁴ and conduct survey on coverage of Vital Events.²²⁵ Moreover, the agency has Vital Events Council which composed of nine members who have the mandate to review the performance report of the agency and branch offices Vital Events Registration and give recommendations for implementation problems.²²⁶ Practically the Vital events Council which envisaged in the law was established in the year 2016.²²⁷ Since its establishment the Council has held one meeting.²²⁸ During its meeting the Council envisages and recommends to fully implementing registration of Vital Events the existing human power is not sufficient that the necessary trained human power should be assigned at each Wereda Vital Events registering Office.²²⁹ The Council also identified resource constrains hinder the functioning of civil registration and recommends office of Vital Events to be equipped with basic materials.²³⁰

4.2.1.2 Vital Events Registration Office at Sub City and Wereda levels

With view to register Vital Events the Vital Events Registration Office is established at Sub City and Wereda level.²³¹ Sub City Vital Events Registration Office was established with the mandate to follow up the implementation of RVENIC Proclamation.²³² Sub City offices could also play an important role in the Vital Events registration process, in particular by providing support, monitoring and evaluation of the operation of Weredas' Vital Events registration.²³³ At Sub City level there is Sub City Vital Events Registration Assembly which is accountable to the Addis Ababa City VERA council.²³⁴ The Assembly has power and duties to review the Sub City Vital Events Registration plan and forward recommendation for improvement.²³⁵

²²³ Id , Article 6(2)

²²⁴ Id , Article 6(5)

²²⁵ Ibid

²²⁶ Id, Article7

²²⁷ Interview with W/ro Meskerem Masresha , cited above at note 188, April 13, 2017

²²⁸ Ibid

²²⁹ Ibid

²³⁰ Ibid

²³¹ Id ,Article14

²³² Id, Article18(4)

²³³ Ibid

²³⁴ Id, Article15

²³⁵ Id , Article16

The Addis Ababa city VERA regulation requires the registration of Vital Events to be carried out at the Wereda level.²³⁶The Wereda offices are the cornerstones for the Vital Events registration system. At Wereda level there is Wereda Vital Events Registration Assembly which is accountable to the Sub City Assembly.²³⁷ The Assembly has power and duties to review the Wereda Vital Events Registration plan and forward recommendation for improvement.²³⁸ There is also the Officer of Civil Status who has the obligation to register Vital Events, issue a certificate of registration to the concerned person. The officer is required also to preserve records of Vital Events and secure their confidentiality.²³⁹ Up on the establishment of Addis Ababa City VERA, Vital Events Registration at Wereda level commenced on August 06, 2016²⁴⁰

4.3 Analysis of implementation of birth registration law in Addis Ababa city

4.3.1 Birth registration and time of registration

4.3.1.1 Birth registration within Ninety days

It has been discussed that international human right treaties provide birth registration of a child shall be “immediately”. Even though what an immediate registration is to mean is not provided under human right treaties, general comments of respective treaties and commentaries given by scholars depicts as immediate registration to mean registration within days and weeks.²⁴¹ The ACRWC provides for registration of every child immediately after birth.²⁴² The ACERWC interprets “immediately” to mean “as soon as possible, with due regard to cultural and local practice related to maternity and infant rearing”²⁴³. Accordingly, the RVENIC Proclamation which is the parent law for Addis Ababa City Vital Events Registration has provided registration to be within 90 days.²⁴⁴ This legally prescribed period in light with international human right instruments it seems sound. This is because as discussed above the ACERWC provides cultural,

²³⁶Id , Article 24(2)(A)

²³⁷ Id , Article 20

²³⁸ Id, Article 21

²³⁹ Id , Article 24 (2)

²⁴⁰ Interview with W/ro Meskerem Masresha , cited above at note 193, April 13, 2017

²⁴¹Ineta Ziemele, cited above at note 22, p.21

²⁴² ACRWC, cited above at note 17, Article 6(2)

²⁴³ ACERWC , Cited above at note 37, Para.52

²⁴⁴ Proclamation No.760/2012, Cited above at note 14 , Article 18 (2)

local practice, maternity and infant rearing to be taken in account in fixing period of registration. The religious practice pertaining to baptism of a child where boys are baptized 40 days after birth and girls 80 days after birth particularly in Ethiopian Orthodox Church has its own effect in fixing the birth registration period.²⁴⁵

The researcher has tried to assess the existing birth registration practice in Addis Ababa City since the Vital Events Registration Agency commenced oppression. Birth registration starts from declaring the birth of the child. Practically the declaration is made by the parents of the child and guardians.²⁴⁶ The birth declaration is normally made through appearing before the office of civil status. If both parents of the child are alive, they have to appear in person.²⁴⁷ But this requirement hindered the right to birth registration of the child. Particularly when one of the alive parent is not residing within the vicinity of registering organ or living abroad the birth of the child is not registered.²⁴⁸

With view to ease this problem a directive was issued by FVERA which enable one of the alive parent who unable to appear before the office civil status to give power of attorney to the other a live parent for the purpose the of declaration of the birth of the child only.²⁴⁹ However, the directive issued provides only a live parent to give power of attorney to the other a live parent for declaring the birth of the child. It does not allow either a live parent or both of them to give power of attorney to third party for declaring the birth of their child. Practically a third party who is given the power of attorney to declare the birth of the child from live parents has approached Addis Ababa VERA.²⁵⁰ But the Agency declined the request of the applicant for the fact that the law does not allow for declaration of birth by third party while both parents are alive.²⁵¹

The writer of this thesis is of the opinion that a declaration by third party through proxy should be allowed even though the child parents alive. Since that the best interests of the child shall be the primary consideration in all actions concerning the child undertaken by any person or

²⁴⁵ African children policy forum ,cited above at note 9, p 24.

²⁴⁶ Interview with W/ro Tsedal Eshetu , Gulele Sub City Wereda 08 officer of Civil status , April 28,2017

²⁴⁷ Proclamation No.760/2012, Cited above at note 14 , Article 24(2).

²⁴⁸ Interview with W/ro Meskerem Masresha , Cited above at note 193, April 13, 2017

²⁴⁹ Revised Directive on Vital Events Registration Implementation Directive No. 4/2009 E.C, Federal Vital Events Agency, Article 7(a)

²⁵⁰ Interview with W/ro Meskerem Masresha , Cited above at note 188, April 13, 2017

²⁵¹ Ibid

authority all laws, policies and programs related to the improvement of the birth registration system must be in conformity with the best interests of the child.

Moreover, the researcher has tried to assess the number of birth registered within the legally prescribed period, which is in ninety days. Since Addis Ababa VERA starts its normal function of registration there is no consolidated and well organized data on birth registration. Despite the absence of consolidated and well organized data, the researcher gleaned the six month work performance report of Addis Ababa city VERA. As per the report the number of born children registered within the legally prescribed period of 90(ninety) days within Addis Ababa City are only 96(ninety six) which is very low.²⁵² Thus, the implementation conveys the registration within ninety days is minimal. As per the interview with Addis Ababa VERA deputy director the main problem for low birth registration is lack of awareness creation.²⁵³ According to the deputy director “there is little awareness-raising and mobilizing to increase registration. The general population has low level awareness of the existence of birth registration law and importance of birth registration for child rights.”²⁵⁴ The Vital Events Registering organ has not under taken awareness-raising on birth registration towards the general population. According to the deputy director “to give awareness creation budget and human resource is yardstick. However, the agency has inadequate staffing to conduct awareness creation and also budget constraint is other factor for lack of awareness creation ”²⁵⁵ So far the Addis Ababa VERA gave awareness to the Vital Events Registering personnel’s mainly to officer of civil status, some government organs ,community elders, kebele leaders and idir leaders.²⁵⁶ Thus, for parents to register the birth of their children awareness has a vital importance.

The other factor for low birth registration is attributed to absence of coordination between the Agency and responsible organs like health institution, police and notifiers which are established at each wereda level²⁵⁷. According to the data obtained from Addis Ababa Health Bureau the total number of live birth from August 1,2016 to April 1, 2017 at health centers are 87987 (eighty

²⁵² Six month work performance report of Addis Ababa VERA, 2017 (unpublished), Addis Ababa April, 2017

²⁵³ Interview with W/ro Meskerem Masresha , cited above at note 188, April 13, 2017

²⁵⁴ Ibid

²⁵⁵ Ibid

²⁵⁶ Ibid

²⁵⁷ Ibid

seven thousand nine hundred eighty seven).²⁵⁸ But the Vital Events Registration Agency have no mechanism of following the birth registration of the child at health institution.

4.3.1.2 Late and delayed registration

It was discussed that any birth occurrence should be registered within ninety days.²⁵⁹ However, with view to reach those children who cannot register within this period of time the Federal Vital Events Registration Agency came with a directive that encapsulates late and delayed registration.²⁶⁰ The African Committee of Experts on the ACERWC also encourages states to undertake birth registration immediately after birth but, at the same time, to allow free of charge late birth registration as well.²⁶¹ The period recommended by the Committee should last one year starting from the moment of the birth.²⁶²

Accordingly, Directive no.2/2008 issued by FVERA provides under Article 11 (2) & (3) late and delayed registration respectively. The late registration is from the 91st days to 365 days. The delay registration is one year following the Vital Events. Since the commencement of the office of civil status throughout Addis Ababa City, only twenty eight children are registered as late registration.²⁶³ Yet there is no delay registration since the operation of birth registration law is less than one year. Practically late registration has no any consequence. The officer of civil status did not impose any penalty for late registration.²⁶⁴ Even the law does not provide penalty for late birth registration.²⁶⁵ According to the view of the researcher not imposing any penalty for late registration is in line with human rights instruments which advocate free late birth registration.

4.3.1.3 Backlog registration

In Addis Ababa City there is a practice of registering backlog of birth. It has been discussed that the RVENIC Proclamation has created a room of registration for those who have not registered

²⁵⁸ Interview with W/ro Tsedale Adana ,cited above at note 186 ,May 15,2017.

²⁵⁹Id, Article18(2).

²⁶⁰ A directive on Vital Events Registration Implementation, Directive No. 02/2008 E.C, Federal Vital Events Registration Agency, Article11(2) and (3)

²⁶¹ ACERWC , Cited above at note at 37, para.33

²⁶² Ibid

²⁶³ Six month performance report of Addis Ababa VERA, cited above at note 252 , April 26, 2017

²⁶⁴ Interview with W/ro Tsedal Eshetu Cited above at note 246, April 28,2017

²⁶⁵ Ibid

their birth based on the laws and customary practices before the enactment of the proclamation.²⁶⁶ Practically the highest number of registration prevailing is the backlog registration birth.²⁶⁷ The researcher mainly tresses this fact from the number of birth registered as backlog within the last six month in Addis Ababa City Administration.²⁶⁸ As per the six month performance evaluation of Addis Ababa City VERA the number of birth registered as a backlog is 11,395 (eleven thousand three hundred ninety five).²⁶⁹ However this is no consolidated data that shows how many children are registered below the age of eighteen in backlog registration. The reason for high number of backlog registration is attributed to the fact that the applicants appear before the officer of civil status in need of birth certificate for social services like for passport purpose. In most cases, the officer of civil status is registering birth and issuing birth certificate based on the age indicated on the kebele identity card, medical certificate, School certificate and baptism certificate presented by the applicant.²⁷⁰ Backlog registration is registered only when the applicant applies but to ensure the right of the child which relates to birth registration, registration should not only be made when requested by parties rather backlog registration should be made compulsory registration.

4.3.2 Birth registration and Non discrimination

As it was discussed one of the principles of birth registration is the principle of Universality which requires the birth registration of every born child without discriminating based on nationality, sex and race.²⁷¹ The international human right system provides that every born child has the right to birth registration. Particularly, the CRC under Article7 provides as child has to be registered immediately after birth. In the implementation of birth registration law in Addis Ababa City, Vital Event Registering Offices are not registering the birth of born child from foreign parents and refugees parents. As the researcher tried to assess the practical situation in Addis Ababa City VERA bodies, he has been informed that there is usual request from foreigners for

²⁶⁶ Proclamation No. 760/2012 ,Cited above at note 14, Article47(4)

²⁶⁷ Interview with W/ro Meskerem Masresha ,Cited above at note 188, April 13, 2017

²⁶⁸ Six month performance report of Addis Ababa VERA, cited above at note 252, April 26, 2017

²⁶⁹ Ibid

²⁷⁰ Interview With Ato.Musa Endeshaw, Gulale Sub City Wereda 07 Vital Events Registration office , Officer of Civil status, May 2, 2017

²⁷¹UNSD,Cited above at note 25, P.296

birth registration of the child.²⁷² Particularly, in Gulale Sub city Wereda 08 Vital Events Registration Office, a person who has Congolese nationality has requested the office for registration of birth of his child.²⁷³ But the office simply rejected the request on the fact that the law does not provides for registration of a born child from foreign parent.²⁷⁴ The main reason for not registering the birth of a born child from foreign parent emanates from the very stipulation of the RVENIC Proclamation. The RVENIC Proclamation on its face values is discriminatory to registration of the birth of child from foreign parents. The law is inconsistent with the international human right system. Under Article 3, it excludes the registration of birth of foreign born child in Ethiopia. The law provides only birth registration for Ethiopians. Even in the practice three officers of civil status have been punished in disciplinary measure for the fact they have registered the birth of born child from foreign parents.²⁷⁵

As the experience of other countries shows, particularly South African, regulations on birth registration provides a born child from foreign parents who is residing in South Africa is entitled to birth registration in the same way as South Africans parents ²⁷⁶ Hence, with the view to ensuring the right to birth registration of a born child from foreign parent the practice of other countries should be adopted and also it should be in line with the international obligation to which the country has adhered.

4.3.3 Birth registration and presentment of Parents Identity card

In the implementation of birth registration in Addis Ababa city, parents who appear before the officer of civil status to declare a birth of the child are mainly required to present identity card. An interview conducted with Gulale Sub City Wereda 07 officer of civil status asserts that presentment of Parents Kebelle Identity card is requested just to proof their identity and also to proof whether the parents are living within the vicinity of registering office.²⁷⁷ Also the Directive

²⁷² Interview with Ato Woldesilasei Tesfaye, Gulele Sub City Wereda 08 Vital Events Registering Office Head, May 2, 2017

²⁷³ Ibid

²⁷⁴ Ibid

²⁷⁵ Interview with W/ro Meskerem, Masresha, cited above at note 188, April 13,2017

²⁷⁶ Paula prodlock (ed), cited above at note 70, p.25

²⁷⁷ Interview With Ato.Musa Endeshaw, Cited above at note 270, May 2, 2017

issued by FVERA, Directive No.2/2008 requires the officer of civil status just to ensure the parents have Identity Card.²⁷⁸

According to Article 2 of the Convention on the Rights of the Child, any right guaranteed by the convention, including the realization of the right to registration immediately after birth should not be dependent upon the status of the child or his/her parents. In this respect, problems connected with registration in Addis Ababa arised in those cases when the child's parents did not have the required Kebelle Identity documents. In the absence of Kebelle identity documents, the registering body unequivocally rejects birth registration since the application for registration is not complete and, consequently, does not correspond to the requirements of the law.²⁷⁹ Here the right of a child to birth registration is at stake for the mere fact that his/her parents don't have the required Kebelle Identity card.

The Handbook on Civil Registration approved by the UN Statistical Commission which aims to serving as a guideline for the UN Member States to improve their civil registration system provides that the registering body shall verify the identity of the person making a declaration of an act or a case subject to registration and record it on the basis of the birth certificate or other official identity documents.²⁸⁰ However, the UN Handbook provides in the absence of identity documents, declarations by two witnesses shall be sufficient for the identification of the person making the declaration.²⁸¹ From experience of some countries for instance, Italy it is provided that "the registering organ cannot refuse to register a birth, if the child father or mother is unable to present identity document. In such cases, data are entered on the basis of sworn statement of witnesses, who guarantee the identity of the father or mother."²⁸² Thus, the Addis Ababa VERA bodies should not have to decline the birth registration of the child for mere fact that the parents don't have identity card rather other mechanism of proofing the identity of the parents as what UN Hand book recommended and experience of Italy should be employed not to jeopardize the right to birth registration of the child.

²⁷⁸ Directive No. 2/2008 E.C, Cited above at note 260 , Article 14(1)

²⁷⁹ Interview with W/ro Tsedal Eshetu Cited above at note 231 , April 28 ,2017

²⁸⁰ United Nations Department of Economic and Social Affairs Statistics Division (1998), Cited above at note 28, page 177

²⁸¹ Ibid

²⁸² Commision Internationale De l'Etat Civil (2010) ,persons deprived of civil status and identity document , page 17-22 , available at <http://ciec1.org/Etudes/Fraude/SansPaiers-ENG-FINAL.pdf> accessed on May 03,2017

4.3.4 Birth occurrence in a health institution and implementation of birth registration

Pursuant to the law in case when the birth took place in a health institution, the head of the health institution is required to provide a certificate of birth containing particulars of registration like child's full name, sex, date of birth, type of birth and aid rendered during birth and date of registration, the child's parents full name, date and place of birth, principal residence, marital status, citizenship, religion, ethnic origin and, if they are alive, their signature and give it to the person having the duty to declare birth of the child.²⁸³ The health centre at which the researcher assessed the practice, Addis Ababa City Health bureau Gulele Sub-city Wereda 08 Health Center, the practice of recording and issuing birth certificate is regardless of the law. The health institution when it is requested by parents it issues birth certificate containing the fact of birth of the child noticing the place of born, child's name, address, mothers and fathers name, date and time of birth, weight and height of the child but what recorded is not as per the requirement of the law, the particulars of record what the law has provided is not being recorded and the health institution is not issuing birth certificate as a duty.²⁸⁴ As per the interview with the head of Gulele Sub City Wereda 08 Health Centre "the health center is issuing birth certificate which evidences the birth of the child when requested by parents not for the reason it is obliged by the law, even we don't have awareness on the law which oblige us to record the birth of the child."²⁸⁵ Here the fact of no recording the birth of the child and not issuing birth certificate forth with is inconsistent with the law that it could make difficult to realize the right of the child which needs registration of birth as a proof.

The other practical problem envisaged, there is no link between Addis Ababa City VERA and the health institutions. Addis Ababa VERA does not overview the fact of birth registration at health institution.²⁸⁶ Health institutions don't send records of births to the relevant registering organ.²⁸⁷ When we see the practice of Kenyan unlike Ethiopian the health institution has the duty

²⁸³ Proclamation No. 760/2012, Cited above at note 14, Article 29

²⁸⁴ Interview with Ato Melaku Tsegaye, Gulele Sub-city ,Addis Ababa City Health bureau, Wereda 08 Health Centre Head, May 25 ,2017

²⁸⁵ Ibid.

²⁸⁶ Interview with W/ro Meskerem, Masresha, cited above at note 188, April 13,2017

²⁸⁷ Interview with Ato Melaku Tsegaye, Cited above at note 284, May 25, 2017

to notify the birth of the child to civil registry, not to issue birth certificate.²⁸⁸ The fact of notification creates link between the registering organ and health institution. Therefore, to rectify the practical problem envisaged in the health institution, health institutions should rather have the status of notifying birth of the child and send directly birth notification to Vital Events Registering Office.

4.3.5 Birth registration of foundling

It has been discussed that in case of abandoned child or his parents are unknown the law imposes duty on any person who knows such condition to report to the nearest police or other relevant government organ.²⁸⁹ The police or any government organ who received report has the duty to declare birth of foundling to the office of civil status within three days from the date of receipt of the report.²⁹⁰ With the view to know the practical situation, the researcher has interviewed Police officer at Addis Ababa Police Commission Crime Investigation Department and Child Protection Unit Affairs. The interview with Police officer reveals that when there is foundling child peoples are reporting to the police and the Police after recording the name of the reporter is handling over the foundling to the orphanage center.²⁹¹ According to the police officer “since the beginning of 2009 E.C around 187 foundlings are reported to police and handled over to Kibebbe Tsehay Orphanage Center, the age of most foundlings is estimated to be less than one year.”²⁹² However, Police are not declaring the birth of the child to the Officer of civil status as per the requirement of the law.

As per the interview with police officer the main problem for not declaring the birth of the foundling is “Police officers do not know the existence of law which imposes obligation on us to declare the birth of foundling.”²⁹³ Police as law enforcing body should have to know the existence of birth registration law which imposes duty to declare birth of foundling up on them.

²⁸⁸ Kenyan Birth and Deaths Registration Act, 1972, Article 11 , available at <http://www.africanchildforum.org> accessed on May 24,2017

²⁸⁹ Ibid

²⁹⁰ Id , Article 26

²⁹¹ Interview with Inspector Alemnesh Demise , Addis Ababa Police Commission Crime Investigation Department And Child Protection Unit Affairs, May 26 ,2017.

²⁹² Ibid

²⁹³ Ibid

The researcher also tried to check the fact of birth registration of foundlings from Kibebe Tsehay orphanage center. During the time interview with Administrator of Kibebe Tsehay Orphanage was conducted, the foundlings found at the center were around 178 (one hundred seventy eight).²⁹⁴ The interview with the centre reveals that the orphanage center took over the foundlings from the Addis Ababa Police commission but none of the foundling's birth was registered.²⁹⁵ From the experience of some countries like Kenya Orphanage centers are obliged to declare the birth of foundling.²⁹⁶ Thus, to rectify the existing problem and not to jeopardize the rights of the child Orphanage centers also should be specifically obliged to declare the birth of foundling.

4.3.6 Birth registration fee

Realization of right to birth registration requires an effective registration system that is free of charge and universally accessible. The CRC Committee under its, general comment NO.10 stated that “Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age”.²⁹⁷ In this regard when we see the practice in Addis Ababa City VERA birth certificate fee of birr 50 (fifty) is levied up on bodies who declared birth²⁹⁸. It is said that it is based on the stipulation of the RVENIC Proclamation, Article 47(5) which provides the issuance of birth certificate up on the payment of prescribed service fee.”²⁹⁹

In 2012, the Human Rights Council also adopted a resolution on birth registration and the right of everyone to recognition everywhere as a person before the law, calling upon “State to ensure free birth registration, including free or low-free late birth registration, by means of universal, accessible, simple, and expeditious and effective registration procedures without discrimination

²⁹⁴ Interview with W./ro Elsabet Ejigu, Kibeb Tsehay Orphanage Center Administrator, May 26, 2017.

²⁹⁵ Ibid

²⁹⁶ Birth and Deaths Registration Act, 1972, Kenya, Article 11, available at <http://www.africanchildforum.org> accessed on April 24, 2017.

²⁹⁷ CRC Committee, General Comment No 10, cited above at note at 182, at Para. 39

²⁹⁸ Interview with Ato Woldesilasei Tesfaye, Cited above at note 272, May 02, 2017

²⁹⁹ Ibid

of any kind.”³⁰⁰ In sum, requiring fee for issuance of birth certificate is against the requirement under the international standard. Thus, birth certification fee should not be levied.

4.3.7 Birth registration and penalty

It has been discussed whosoever fails to declare Vital Events or fails to observe any other requirement provided for in relation to the registration of Vital Events, falsifies or conceals a fact in declaring a Vital Event, who makes use of forged or falsified certificate of registration of Vital Events shall be punishable by fine and rigorous imprisonment.³⁰¹

So far in the implementation of birth registration in Addis Ababa City no one is punished for the failure to declare birth of child.³⁰² The interview with Addis Ababa VERA deputy director depicts that “the absence of penalty is not for the fact that there is no failure to declare birth of the child but the agency is intentionally leaving it for a while since the awareness creation on birth registration is not given to the general population in a way the public will adhere to the law”³⁰³. As it is discussed under chapter two, UN Hand Book on Civil Registration provides to ensure the fulfillment of the requirements of the registration system failure to register should be punishable, penalties may also be a deterrent to registration. So for effective implementation of birth registration the penalty clause provided under the law should be enforced.

4.3.8 Measures taken to ensure birth registration of the child

Under human right treaties states have the obligation to ensure that every born child is registered.³⁰⁴ In view of vulnerability of children and special protection that they are entitled to as a result, the state not only has the obligation to establish a legal framework that allows for the registration of a child after birth, but it has also to actively ensure that children are registered, since this helps to provide their security and guarantee the enjoyment other child rights.³⁰⁵

³⁰⁰UNhumanrightscouncilresolutionA/HRC/RES/19/9, April3,2012availableathttp://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/9 accessed on April24,2017

³⁰¹ Proclamation No.760/2012, cited above at note 14 , Article 66

³⁰² Interview with Mekesrem Masresha , Cited above at note 188, April 13,2017

³⁰³ Interview with Mekesrem Masresha , Cited above at note 188, April 13,2017

³⁰⁴ CRC committee concluding observation, UN doc , CRC/C/15/Add.56,1996

³⁰⁵ Ibid

The RVENIC Proclamation requires parents of the child, in their absence guardian or by the person who has taken care of the child the duty to declare birth and in case of abandoned or parents are unknown police or any government organ who has received birth of foundling have the duty to declare the birth to registering organ.³⁰⁶ Apart from the declarant provided by the law, practically with the view to ensure the right of the child to birth registration the Addis Ababa City VERA has attempted to use notifiers.³⁰⁷ Here there are notifiers who notify when birth of a child took place within the jurisdiction to the registering organ.³⁰⁸

These notifiers are person who are required to notify the officer of civil status the occurrence of an event apart from those required by law to declare birth of the child to the responsible organ.³⁰⁹ As per the interview conducted these notifiers are various community leaders, Idir leaders, Kebelle leaders and priests who perform religious function relating to birth.³¹⁰ They are not expected to perform any registration related functions that are assigned to the registering organ. Notifiers are required to notify when birth of a child took place within the jurisdiction to the registering organ and give awareness on birth registration within the locality they are living.³¹¹ Even though the Addis Ababa VERA tried to ensure birth registration of born child in Addis Ababa city through notifiers, the notifiers are not indulging their duty as needed one.³¹² The problem is there is no follow up and co-ordination with the notifiers.³¹³

Similar to this practice the researcher has tried to assess the practice of some countries like Kenya. Kenyan, with a view to ensuring every child birth registration, has adopted home to home registration system.³¹⁴ There are assigned assistant chief officers who register the birth of the child going home to home.³¹⁵ When there is home to home registration the probability not to be registered is rare. And again it is an effective mechanism to realize the right of the child which requires birth registration. Though the mechanism adopted by Addis Ababa City VERA to

³⁰⁶ Proclamation No.760/2012, as cited above at note 14 , Article 26

³⁰⁷ Interview with Ato Weldesilasei Tesfaye , Cited above at note 272, May 02, 2017

³⁰⁸ Ibid

³⁰⁹ Ibid

³¹⁰ Ibid

³¹¹ Ibid

³¹² Interview with Ato Weldesilasei Tesfaye , Cited above at note 272, May 02, 2017

³¹³ Ibid

³¹⁴ UN Committee on the right of the Child (2001), state party report Kenya .16/12/2001/CRC/3/Add.62

³¹⁵ Ibid

ensure the birth registration of a child is appreciable, to more birth registration more accessible, it could be better to adopt the Kenyan practice of home to home registration mechanism.

4.3.9 Implication of birth registration for the realization of the right of the child and impact of non-registration on child rights

The right to birth registration is closely linked to the realization of many other rights, and has profound consequences for children's enjoyment of their Rights. Birth registration is a right which supposed to be the basis for realization of most of the right of the child. This is to mean the rights of child are better protected and realized if the right of the child to birth registration is effectively implemented.

The implementation of birth registration reveals the existence of low birth registration rate. When birth of the child is not registered the rights of the child particularly which presuppose birth registration could not be realized pertinently the rights of foundling is at risk. In Addis Ababa City government the birth of foundling is not declared by police. When the birth of birth of foundling is not declared the constitutional guaranteed right of the child like the right to name , the right to acquire nationality , and the right to know and be cared parents is jeopardized. More importantly when birth of foundling is not registered the right of the child to life, survival and development is not realized. Proof of identity through birth registration system helps to protect foundling from harmful practices that particularly threaten children whose identity cannot be established.

The fact of birth registration is yardstick to realize the right of the child particularly for those age based rights like protection against sexual exploitation, child trafficking, protection in the juvenile system, protection against child labor, protection against early marriage and protection against Children in armed conflicts.

Child sexual exploitation is one of the problem prevailed in Ethiopia³¹⁶. As per the 2008 study of Ministry of Labor and Social Affairs the problem of sexual abuse and exploitation of children is a growing phenomenon.³¹⁷ Under Article 627(1) of the FDRE Criminal Code it is provided that sexual intercourse with a minor who is under the age of 13 years is punishable with rigorous imprisonment from thirteen years to twenty- five years. In this case proving that the girl child is below age thirteen is required. Here the fact of birth registration protects the child against sexual exploitation through proof age. When it is not registered it leads to violations of such rights.

None registration of birth has an impact on the right of the child in the juvenile justice system. In the criminal justice system for purposes of criminal liability, the Criminal Code classifies child offenders into three distinct age groups such as infant below 9 years age,³¹⁸ young offenders between the age of 9 years and 15 years³¹⁹ and Criminal majority above the age 15.³²⁰ Here proof of age requires great consideration. Thus, the fact of birth registration is important in determining the age of the child and birth registration may help to ensure that a child will not be prosecuted as an adult.

Child labor is one of sensitive issue in Ethiopia. Ethiopia has one of the highest rates of child labor in the world.³²¹ As per survey by the Ministry of Labor and Social Affairs, the Central Statistics Agency and the ILO showed that about 84 per cent of the country's children are engaged in activities that may be regarded as child labor.³²² When birth of a child is not registered it is difficult to protect the right of the child against child labor. Birth registration protects a right of the child in child labor through providing proof of age. Under the Labor Proclamation it is enunciated that "no one can employ a child below the age 14".³²³ In addition children aged 14 -18 years are not allowed not to engage in hazardous activities.³²⁴ This makes birth registration prerequisite for the implementation of protection against child labor.

³¹⁶ UNICEF, Child protection, p.30 ,available at <https://www.unicef.org/ethiopia> accessed on May 19,2017

³¹⁷ *Ibid*

³¹⁸ FDRE Criminal code , cited above at 177, Article 52

³¹⁹ *Id*, Article 53

³²⁰ *Id*, Article 56(4)

³²¹ UNICEF, Cited above at note 316 , p.29

³²² *Ibid*

³²³ Labor proclamation No. 377/2003, Article 89(2) Procl.12,Fed. Neg. Gaz, Year 10.

³²⁴ *Id* ,Article 91(1)

In protecting the child right against early marriage, birth registration has tremendous effect. In the absence of birth registration it is difficult to defend child's early marriage. According to the Family Code (Article 7(1), a person who has not attained the full age of 18 years may not contract marriage. The marriage is invalid when it is contracted below the minimum age. For verifying the age of the child in such circumstance the recordings of birth are important.

When birth of the child is not registered protecting the child's right against participation in armed Conflict cannot be realized. Under Ethiopian law a person below the age of 18 years may not be recruited in armed conflict.³²⁵ So to protect the child from participation in armed conflict birth has to be registered.

Furthermore, none registration of birth has also a negative impact on the right to education of the child that to enroll school at the right age. The education policy of Ethiopia documents follow a system parallel to school age for pre-school (ages 3-6), primary (ages 7-14), and secondary (ages 15-18) grades.³²⁶ Hence, when birth of the child is not registered it is difficult to enable child to attend school at the right age which the fact of birth registration has a paramount importance. Yet, there is no statutory minimum age set for the compulsory completion of primary education.

When the birth of the child is not registered it leads to the denial of all the benefits that he would have derived by his name and it would also be violation of the constitutional right of the child. Under FDRE Constitution it is enshrined that the child has the right to name.³²⁷ The Civil code also distinguishes between three kinds of names like family name, first name and patronymic name.³²⁸ The name inscribed in the register of birth will consists of a given name and surname or family name. The family name thus determines the relationship of the child to its father and its mother. Under the birth registration law birth registration guarantees that the child is given a name and he or she is legally recognized. Particularly in practice the birth of foundling is not declared by police and its birth is not registered. In this situation it jeopardizes the right to name of the foundling.

³²⁵ FDRE Criminal code , cited above at 177, Article 270 (m)

³²⁶ Combined Initial, First, Second And Third Periodic Report On The Implementation Of The African Charter On The Rights and Welfare Of The Child Federal Democratic Republic Of Ethiopia June 2013

³²⁷ FDRE Constitution, cited above at note 163, Article 36(1)(a).

³²⁸ Civil code , cited above at note 8, Article 32

Birth registration plays a pivotal role in preserving the child right to family identity. Under FDRE constitution it is enshrined that “every child has the right to know and be cared for by his parents or legal guardians.”³²⁹ In the registration of the birth of the child, child’s parents name, principal residence and nationality etc is recorded. Thus, for this right to be realized the fact of birth registration have paramount importance.

Lack of birth registration deprives the right of the child to acquire nationality. In the practice it is envisaged none registration of birth of a born child from foreign parents and foundlings. Birth registration is an effective legal mechanism that can be used to prove a child’s nationality. Because when the birth of the child is registered the particulars to be registered are like the nationality of the parents. Ethiopian legal regime on nationality follows the blood rule mainly jus sanguinis.³³⁰ That is a child’s nationality is to be determined by his parents nationality. A born child from Ethiopian parents is eligible for Ethiopian nationality.³³¹ Furthermore, in line with the CRC and other international instruments, the nationality proclamation accords Ethiopian nationality to abandoned children found in the territory unless it is proved that such children have foreign nationalities.³³²

³²⁹Ibid, Article 36(1)(C)

³³⁰FDRE Constitution Article 6(1) in tandem with Nationality Proclamation no. 378/2003 , Article 3(1), Fed.Neg.Gaza.Year 23,2003

³³¹ Nationality Proclamation no. 378/2003 , Article 3(1), Fed.Neg.Gaza.Year 23,2003

³³² Ibid

Chapter Five

Conclusion and Recommendation

Conclusion

Birth registration is one of the main Vital Events recorded within a comprehensive civil registration system. Birth registration as a right is enshrined under many human right treaties like ICCPR, CRC and ACRWC. Under these treaties it is provided that the child should be registered immediately after birth and shall have the right from birth to a name, to acquire a nationality and be cared by his/her parents. The respective committees of the human right treaties also provide as birth registration should be universal, free of charge and accessible to all. State parties to the convention are required to implement the right to birth registration according to their national laws, to abolish discriminatory laws and practices with regard birth registration.

The UN standard rule on civil registration also provides four principles of civil registration in general and birth registration in particular such as Universality, compulsoriness, Confidentiality and Continuity.

Ethiopia who ratified ICCPR, CRC and ACRWC has enacted a compulsory legislation on Registration of Vital Events and National identity Card Proclamation no.760/2012 and Vital Events Registration Agency Establishment Regulation No. 278/2012. As per the proclamation the regional states are also required to enact a regulation establishing Vital Events Registration agency dealing with the task of coordinating and overseeing Vital Events Registration .Accordingly, the city of Addis has enacted a Regulation no.63/2015 Establishing Addis Ababa City Vital Events Registration Agency.

This paper analyzed the issue of implementation of birth registration in Addis Ababa and Its implication for realization of the right of the child. The core assertion of this paper is the implementation of birth registration in Addis Ababa is unsatisfactory. For effective implementation of birth registration much has not been done. So far since Vital Events Registering agency commenced its oppression the number of children birth registered within the legally prescribed period and late registration is low. At the heart of the problem of

implementation lack of awareness is one. The interview with Addis Ababa VERA bodies, police and health institution reveals as there is low level of awareness creation. Police who is required to declare birth foundlings to the registering organ has no awareness of the existence of birth registration law. Health institutions where birth also took place has no awareness on the fact of existence of birth registration law which obliges us to register the birth of the child. In sum inadequate staffing and budget constraint is identified as a main factor for not creating awareness by the agency.

The researcher has envisaged as the birth of foundling is not registered as per the provision of the law. As per the law police was required to declare the birth of foundling to Vital Events registering organ within three days from the day it is reported to the police. But practically police is not discharging its duty as per the law. The police simply handle over foundlings to orphanage center mainly to Kibebe Tsheday. Even the assessment at Kibebe Tsheday orphanage center reveals as the birth of foundling is not registered. When birth of foundling is not registered it is difficult to realize the very rights of the child which requires registration.

Furthermore, the researcher noted that birth of the child is not registered as per the requirement of the law at health institutions. They are issuing birth certificate when requested by parties only. But the law does not require them to issue birth certificate only when requested by parties, they are required to issue birth certificate when the fact of birth occurs. Even the particulars provided in the birth certificate issued are not the one provided by the law. The interview with Gulele Sub City Wereda 08 health institution head conveys this very fact. Moreover, it is envisioned as there is no coordination between Addis Ababa VERA and health institution. The agency has no mechanism of following birth registration at health institution. From the practice of other countries like Kenya health institutions have only the status of notifying birth to the registering organ. They have no the status of issuing birth certificate. Thus, health institutions should not have the power to issue birth certificate but better to have the status of notifying birth that Addis Ababa VERA would oversee and follow up health institutions.

In the implementation it is seen discriminatory practice of not registering birth of a born child from foreign parent. This discrimination arises mainly from the very application of Vital Events

Registration law. The Vital Events Proclamation applies only to Ethiopians and does not include provisions for registering a birth of a born child from foreign parents. It has been discussed that one of the principle of birth registration provided by UN Standard Rule on Civil registration is the principle of universality which accounts to the principle of non discrimination. The principle of Universality advocates the Civil Registration law of any county should be designed to register every new born child in the country. Thus, the existence of such discriminatory practice is against to the principle of birth registration mainly the principle of universality and also against to human right treatise to which the country has adhered.

Issuing birth certificate up on payment of the prescribed fee is also the other incompatible practice envisaged. Committee on the CRC and ACREWC require states to abolish registration fee and birth certificate fee. But the practice by Addis Ababa VERA bodies is inconsistent with this.

The requirement of the presentment of parent's kebele Identity Card for registration is also seen as an impediment to birth registration. Under CRC not implementing the right of the child based on any status of the child or his/her parents is prohibited. From the experience of other countries for instance Italy, if parents don't have identity card it is provided to sworn in the presence of two witnesses and register birth of the child. Thus, not registering birth of the child for the mere reason that the parent's don't have the required kebele Identity card is against the right of the child to birth registration and an impediment for the realization of child rights which presupposes registration. Thus, not to violate the right of the child other mechanism of proofing identity of the registering parents should be employed from the experience of other countries.

Moreover, the researcher envisaged the measure taken to ensure birth registration of the child unsatisfactory. For the purpose of registration the agency has employed notifiers. People who notify the existence of birth to officer of civil status within the vicinity they are living. However little efforts put in place it suffers in effectiveness due to absence of mechanism of following the notifiers. Interview with Gulele Wereda 07 and 08 Vital Events Registration head reveals this fact. These all hampers the agencies effort to ensure birth registration of children born in Addis Ababa.

Finally, from the existing number of birth registered the researcher noted to realize the right of the child yet much has to be done. The fulfillment of the right to be registered at birth is closely linked to the realization of many other rights. In particular when the birth of the child is not registered it is difficult to realize the right of the child like protection against sexual exploitation, protection in the juvenile system, child trafficking, protection against child labor, protection against early marriage and protection against armed participation.

Recommendations

In order to ensure a better implementation of birth registration, to realize the right of the child and to overcome the practical problem envisioned, it will be imperative to make some recommendation. Accordingly,

- For a better implementation of birth registration and to realize the right of the child, Addis Ababa VERA should educate the public in general, police officers and health institutions in particular on birth registration law. Establish local level awareness-raising campaigns on birth registration to parents, institutions and birth attendants. Also should provide information to communities on birth registration procedures.
- Without sufficient budgeting and allocation of resources implementing birth registration and realizing the right of the child is impossible. To this end, the government should allocate sufficient budget, equip Vital Events registering offices with the necessary resource and human power.
- The research reveals that police is not declaring the birth of the foundling as per the requirement of law. To ensure birth registration of foundling's police up on receiving report from the public must declare the birth of foundling to Vital Events registering organ. The agency should have to also overview regularly that police is declaring birth of foundling. More importantly orphanage centers should legislatively be obliged to declare the birth of the foundling and also be obliged to verify the birth registration of the foundling while taking over the foundling from police.

- Better co-ordination between the various departments involved in birth registration such as office of civil status, health institutions and police. The Vital event registering organ should have a close link with these institutions; follow up and overview whether they are indulging their duty as per the law.
- To ensure that the right of the child is not jeopardized by a mere reason that the registering parents don't have the required kebele identity document for registering the birth of the child, it is necessary to legislatively define procedures for registering birth of the child in the absence of kebele identity documents, for example, to define that in the event of absence of kebele identity documents a sworn statement of two witnesses confirming the identity of a person making a declaration on birth registration is sufficient to register the birth.
- To rectify the practical problem envisioned in relation to record and issuing birth certificate by health institution, the status of health institution should rather be notifying birth of the child than being one who issue birth certificate. For this purpose the Vital Events law which authorizes health institution to issue birth certificate should be revised.
- Vividly, some provisions of Registration Vital Events and National identity card proclamation No.760/2012 hindered the implementation of birth registration. State must review these laws and ensure that they are consistent with the spirit of the human right treaties and principles of birth registration provided by UN. Particularly, the discriminatory provision which registers only birth of Ethiopian born parents should be amended. A born child from foreign parents should be registered. The law should comprise the principle of universality and in line with the human right instruments to which the country has ratified. To meet the human right instruments requirement of free birth registration and free issuance of birth certificate, the provision dealing with birth certificate fee should be abolished. Moreover, with view to realize the right of child which presupposes birth registration backlog registration shouldn't be conducted only when applied by the parties rather it should be made compulsory for children to register in backlog registration. To this end, the provision which provides backlog registration of birth when requested only by the parties should be amended.

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Appendix A

Interview Guide Questioner

I am Gemechu Tarekegn, LL.M student at Law School, AAU. I am doing my LL.M thesis on a topic entitled: Implementation of birth registration laws in Addis Ababa: implication for realization of the right of the child .The purpose of the interview is to get deep insight on whether or not the newly promulgated birth registration law is effectively implemented. Accordingly, the actual problem will be identified and solution will be suggested for better future endeavor.

A. To Addis Ababa VERA Bodies.

1. Would you introduce yourself, occupation, position?
2. Would you briefly tell us the organizational structure of Vital Events Registration .
3. Are people aware of the presence of birth registration?
4. What mechanisms are used to aware the public on birth registration?
5. How many children's birth is registered since the agency commenced registering?
6. Is police declaring birth of the foundling ? Does the office check whether police is declaring the birth of the foundling?
- 7 Do you cooperate on a regular basis with other responsible organ in the birth registration of the child birth? For instance with police, health institutions?
- 8.Is the birth registration free?

B. To Police.

1. Are people reporting the birth of foundling? How many are reported so far?
3. Is police declaring the birth of foundling?
4. What are practical challenges in declaring the birth of foundlings?

C. To Health Institutions

1. Is Health institution registering the birth of the child?
2. Does the institution issue birth certificate forth with?
3. How is Birth certificate issued? What are Particulars of recording birth?

Thank You!