

ST. MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW

LL.B THESIS

**THE LEGAL PROTECTION OF CHILDREN AGAINST ABUSE
IN ETHIOPIA: THE LAW AND THE PRACTICE**

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AUGUST 2008

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**Submitted in partial fulfillment of the requirements
for the Bachelors Degree of Law (LL.B) at the
Faculty of Law, St. Mary's University College**

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CHAPTER ONE

INTRODUCTION

Backgrounds on Historical Development of Child Right Law

In the development of human history natural rights characterized as inalienable rights or rights innate or intrinsic to man took ages for its recognition by social institutions classified as states or governments. In most case their recognition is preceded by revolutions and social upheavals. The history of world civilization is full of such instances and happenings. The struggles and wrestling wedged against feudal systems, colonial rules, autocracies and dictatorships are human effort to achieve the recognition of rights, liberties and freedoms for equality and justice. The development of this effort showed rapid progress in the last three hundred years of world civilization since the 17th century.¹

The League of Nations and United Nations are the two international bodies, which made probably the biggest contribution to the development of international law by adopting declarations, conventions, protocol, agreements, treaties and other instruments to address common concern for a better future of humanity.²

The Universal Declaration of Human Rights (UDHR) adopted by General Assembly Resolution 217(III) of December 20, 1948 is global and comprehensive in nature. Its global nature is reflected by the fact that it entitles every human being to all the rights defined under it. It allows no distinction to be made on the basis of race, colour, sex, language,

¹ The legal rights of a children in Ethiopia and its implementation, by Girma Asfaw, March 1993, Addis Ababa, P. 3

² Ibid, P. 5

religion, political or other opinion, national or social origin, property, birth or other status. The comprehensive nature of this declaration stems from the fact that it contains the most profound international bill of human right on economic, social, cultural, political and civil rights. One may consider it to be a constitution of the United Nation Human Rights. As such, all the declarations, conventions and covenants coming after it did not pass without referring to it, minimum, in their preambles.³

The Universal Declaration of Human Right (UDHR) together with the international covenant on economic, social and cultural rights and the international covenant on civil and political rights formed the United Nation organic laws on human rights.⁴

The international convent on political and civil rights adopted by General Assembly resolution 2200A(XXI) of December 16, 1966 is a further definition of the universal declaration of human right on civil and political matters. Hence the right of life, liberty and security of person; freedom from slavery and servitude; freedom from arbitrary arrest; freedom from torture or cruel or degrading treatment or punishment; the right to a fair public hearing; freedom from arbitrary interference with privacy, family, home of correspondence; the right to freedom of movement and all other elements of civil and political rights are laid down it detail.⁵

The international covenant on economic, social and cultural right adopted by General Assembly resolution 2200A(XXI) of December 16, 1966 was an elaboration of the aspect of the Universal Declaration of Human Rights (UDHR) on economic, social and cultural affairs. The right to work and the right to just and favorable condition of work; the right to

³ Ibid, P. 5 & 6

⁴ Ibid, P. 6

⁵ Ibid

organize and join trade unions; the right to rest and leisure, the right to an adequate standard of living; the right to an enjoyment of highest attainable standard of physical and mental health, the right to education, and the right to take part in the cultural life including the enjoyment of the benefit of scientific progress and achievement are all exposed in detail.⁶

There is one other United Nation (UN) conventions and declarations with one designed to specifically do away with existing prejudice and practice done against humanity. International convention on the elimination of all forms of racial discrimination adopted by the General Assembly resolution 2106A of 21 December 1965 was intended to do away with race prejudice. "Apartheid as the worst form of racial prejudice was made crime against humanity by a UN convention in 1973."⁷

The UN adopted a convention, which prevents torture and other cruel inhuman or degrading treatment or punishment carried out against the human dignity by governments in the course of the administration of justice.⁸ A code of conduct for law enforcement officials was adopted by general assembly resolution 34/169 in order to correct UNESCO adopted the prevailing mal-practice in the administration of criminal justice and a convention against discrimination in education on December 14, 1960.

The international legal instruments mentioned above by way of introduction are important landmarks in the development of human rights and progress towards building a community of nations with human value and democratic ideas. Whether they are convention or declarations, ratified or unratified they have definite bearings both on

⁶ Ibid, P. 6 & 7

⁷ International convention on the suppression and punishment of the crime of apartheid adopted by general assembly /UN/ resolution 3068 /XXVIII/ of 30 November 1973.

⁸ Convention against torture and other cruel inhuman, or degrading treatment of punishment adopted by General Assembly resolution 39/46 of 19 December 1948.

the making of subsequent international legal instruments and domestic laws of nations.

The convention of the right of the child is the product of all these instruments. One of the first declaration concerning children was the 1924 Geneva Declaration of the right of the child.

This declaration contains only about five main points with emphasis on the care required for children. The declaration of the rights of the child of 20th November 1959 with its ten cardinal principles was a further development of the Geneva declaration to finally culminate in to convention on the rights of the child of 20th November 1989 after 30 years.⁹

This convention is however, heavily influenced by the Universal Declaration of Human Right, the international covenant on civil and political rights, the international convent on economic, social and cultural right of 1966 and the Beijing rules¹⁰ on the administration of juvenile justice. It may be concluded that the convention of the rights of the child is mixture of all this international instruments cut to the size of the child.

The convention on the rights of the child is divided in three parts containing 54 articles and over 110-sub article. The first part of the convention has 41 articles, which constitutes the main substance of the subject matter. This part of the convention mainly deals with the two main subjects. It defines the civil and political rights as well as the economic, social and cultural rights of the child.

⁹ Declaration the rights of the child adopted by general Assembly resolution 1386/(XIV) of 20 November 1959

¹⁰ United national standard minimum rules for the administration of inuence justice / the Beijing rules/General Assembly resolution 40/33 of 29 November 1985, 96th meeting.

The second part of the convention comprises of four articles dealing with the establishment of convention implementation monitoring committee, mandate and manner of election of such committee.

The third part of the convention covers about nine articles relating to the manner of ratification, amendment, denunciation and authentication of the convention.

And also the African charter on the right and welfare of child the children is divided in to two parts containing 48 articles and four chapters. The first chapter of the charter deals with right and welfare of the children, while the second chapter talks of establishment and organization of the committee on the right and welfare of the child. The third chapter is about mandate and procedure of the committee and the last chapter covers miscellaneous provision. The main difference between the convention and African charter is, the African charter is imposed duty in the children.¹¹

In the protection of children there are four necessary principles. These principles are included in the convention on the right of the child and African charter on the right and welfare of the child, namely, non-discrimination, Best interest of the child, Survival and development and Freedom of expression. Here in after I will try to dwell on this four basic principles.

Non-Discrimination

The convention of the right of child article 2 lays down "state practice shall respect and ensure the right set forth in this convention to each child with out any discrimination of any kind."¹² This similar principle also sighted in the African charter in Article 3. The discrimination

¹¹ KpK=e "nu=Á' QÓ %4li" f Sw,¢ %4eMÖ" SS]Á (unpublished) page 13

¹² Convention of the right of the child Article 2

irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth of other status.

Best Interest of the child

This principle is reflected in the convention by different articles. Specially article 3-sub article 1, article 9-sub article 1 and article 21 lays down respectively.

"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 primary consideration"¹³.

"State parties shall ensure that a child shall not be separated from his or her parents against their will"¹⁴, and also

"States parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child"¹⁵. This similar principle also found in African charter Articles 4, 19 and 24 respectively. The best interest of the children means at times of conflict of interest between the children and public or private the primary concern of welfare institution shall be to protect the child's interest. For example at the time of separation from parents and adoption ensure that the best interest of the children are considered.

Survival and Development

Article 6 of the convention lays down "state parties shall recognize that every child has the inherent right to life and survival and development of

¹³ I bid article 3 sub article 1

¹⁴ I bid article 9 sub article 1

¹⁵ Ibid article 21

child"¹⁶. This principles is also sighted in different articles, for example, in article 32 of the convention children are protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education, moral or social development. Article 34 protects the children from all forms of sexual exploitation and sexual abuse. And article 35 prevents the abduction of, the sale of or traffic in children. This similar principle also found in the African charter. These principles are the basis of the other right to the children. This means - death sentences shall not be pronounced for crimes committed by children.¹⁷

Freedom of expression

Freedom of expression is essential to the development of the child's mind. Because of this the African charter on the rights and welfare of the child article 4 sub article 2 lays down that the children who is capable of communicating his or her own views, hare an opportunity to express same either directly or through on impartial representative as a party.¹⁸ The same article in the convention at article 4 state this right while other profession expand to expression notion to rights and freedoms of the nature like conscience, religion, freedom of association, freedom of peaceful assembly and the children has access to the information. The reason for enacted the convention and charter are the child as a special group and physical and mentally immature. As such to protect the ability and freedom of expression.

In Ethiopia the laws before 1900 may be classified as a traditional laws. The Fitha Negest, The Kibre Negast, The Sirate Mengist and huge body of customary laws governing most of social relation. With the introduction

¹⁶ I bid article 6

¹⁷ African charter on the rights and walfare of the child Art 5 sub article 3

¹⁸ I bid Art 4 sub article 2

of modern ideas of western government system after 1900 one can observe the enactment of new laws on various fields. The period after 1950's promulgated the modern code of laws. The penal code of 1957, the civil code 1960, the maritime code of 1960, the commercial code of 1960, the criminal procedures code of 1961, the civil procedure code of 1965 and other body of laws and policies were enacted and proclaimed during this period.¹⁹

The period after 1990's is indicating the new era of legal development in the history of the nation.²⁰

- In July 1991 Ethiopia endorsed the universal declaration of human right to be the law of the land. The council of representative which is the legislative body of the transitional government of Ethiopia ratified the convention on the right of child on January 30, 1992 by issuing proclamation No. 10/1992 on the Negarit Gazeta 51st year No. 5.
- The council of representative on April 20, 1993 at its 67th regular session ratified the international covenant of economic, social and cultural right and the international covenant on political and civil rights. It is further considering the ratification of the convention against torture and other cruel, in human or regarding treatment or punishment as well as protocols additional convention.
- In December 27, 2002 the African charter on the right and welfare of the child was ratified by house of people representative. It is the law of the land on 23 January 2003 according to article 47-sub article 3 of the African charter.

¹⁹ The legal right of children in Ethiopia; op cited at Note 1, P. 10 & 11

²⁰ Ibid

- In addition to the above according to article 9 sub article 4 of the FDRE constitution are stated all international agreement ratified by Ethiopia are an integral part of the law of the land.²¹

The modern codes and other un-codified laws and polices of Ethiopia are highly influenced by various international legal instrument in an indirect way. With the ratification and endorsement of the basic human right instruments, the international bill of right of children will have a direct impact on existing Ethiopian laws.²²

Article 36 of FDRE constitution states that the legal protection of children in detail. This protection also stated the other laws of a country. In criminal code, labour law, revised family law and criminal procedure code.

In the FDRE Constitution

Article 36 of the FDRE constitution lays down that:

1. Every child has
 - To life
 - To a name and nationality
 - To know, and carried for, by his or her parents of legal guardians
 - Not to subject to exploitative labour practice, neither hazardous or harmful to his or her education, health or well being
 - To be free corporal punishment or cruel and inhuman treatment in schools and other institution responsible for the care of children.
2. In all action concerning children under taken by public and private institutions or social welfare, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.

²¹ Federal; democratic republic of Ethiopia constitution Art of sub article 4

²² Ibid, P. 12

3. Juvenile offenders, juveniles admitted to corrective or rehabilitative institutions, juveniles who become wards of the state, or juveniles in public or private orphanages, shall be kept separately from adults.
4. Children born out of wedlock shall have the same status and rights as children born of wedlock.
5. The state shall accord special protection to orphans and shall encourage the establishment of special institutions to promote their adoption. It shall also support institutions that provide for their welfare, upbringing and education.²³

In Criminal Code of Ethiopia

For the purpose of criminal responsibility, the criminal code of 2004 has classified children in the three age groups. These are infants, young person between the age of 9 up to 15 and young person between the ages of 15 up to 18. Irresponsibility is attached with infants only,²⁴ as the law presumes that they are not physically and mentally mature enough to have the intelligence and volition that may exist in adult offender. Between the ages 9 up to 15 are not punishable with the ordinary punishment applicable to adults.²⁵ The court will order for their education and treatment. But those between the ages of 15 up to 18 will be punished like adult offenders.²⁶ This means that, they are children but for the purpose of against crime the children are expected like an adult. However, the court has discretionary power when deciding on the type of punishment and mitigation of the penalty is always permitted. In assessing the sentences, the court may take in to account the age of children and may apply to special penalties specified for young offenders. The death penalty cannot be imposed and the children prisoner should

²³ I bid Art 36

²⁴ The criminal code of the FDRE article 52

²⁵ I bid article 53

²⁶ I bid article 56

be kept separation from adult person in general and dangerous prisoners in particular.

In addition to this the criminal code of Ethiopia claims how to assure the legal protection of children and punish offences against children in the following articles: -

- Maltreatment of minor (Article 576)
- Abduction of minor (Article 589)
- Failure to produce a minor (Article 592)
- Sexual outrages on minors between the age of 13 and 18 years (Article 626)
- Homosexual and other indecent act performed on minors (Article 631)
- Organization of traffic in women and minors (Article 637)
- Protection of minors (Article 644)
- Early marriage (Article 648)
- Omission to register the birth of an infant or to report its abandonment (Article 656)
- Commission committed against life, person and health through harmful traditional practices (Article 561,562,565,and 566)

In the Labour Law Proclamation 377/2003

The law takes in to consideration age and special working condition in reducing the general work time norm. Article 89 and 90 of 377/2003 illustrates working condition of young workers and limits of hours work respectively. According to article 89 the young worker is the person who has attained the age of 14 but it is not over the age of 18 years.²⁷ And it's prohibited to employee person less than 14 years of age.²⁸ In the limits

²⁷ labour law proclamation no 377/2003 Article 89 sub articles

²⁸ I bid Article 89 sub articles 2

of hours of work normal hours of work for young workers shall not exceed seven hours a day.²⁹ But their hours of work for above 18 (adults) are 8 hours a day. Reduced working hours apply to the young workers under 18, because it is deemed essential for psychological reason they are not measure up to adults. They get tired more quickly, have less stamina and need more rest. Moreover, young people combine work and study, which takes up much of their spare time. Therefore, the working hours is set at 7 hours, with out any reduction in pay. It is too good to reduce 1 hour for the children from working hours. Because can we change 1 hour per day to the month (30 days), the children will get 30 rests hours. This means that, children will get free time above 7 working days with in the month. It is too much different for the children.

In Revised Family Law

In the revised family code also there are different kinds of protection allotted to the children.

- Neither a man or a women who attained the full age 18 years shall conclude marriage³⁰ if they do so it shall be dissolved on the application of any interested party or public prosecutor.³¹
- To stipulate the obligation of parents, guardian and tutor about benefit and well being of the protection of children.
- To put the right and well being of the children in all cases, adoption inclusive.
- At the time of dissolution of marriage the court shall forthwith give appropriate order regarding the custody and maintenance of their children.³²

²⁹ I bid Art 90

³⁰ Revised family law Article 6

³¹ I bid Article 31

³² I bid Article 82/5

In the Criminal Procedure Code

Criminal procedure law is the law, which lays down the procedure for the enforcement of the criminal code. This procedural law regarding children follows different procedure from the regular procedural law. Even though it is committed the crime on the children by adults there is no sighted different investigation, sue and judgment procedure in the criminal procedure code. But on the contrary the children involved in an offence the criminal procedure code formulated a distinct procedure regarding process of investigation and related issues.

When the children is suspect of an offense he should be taken immediately to the court,³³ the investigation laid by the order of the court and they have also the right not to imprison by remand, not to prohibited bail bond.

Finally I explained in the above how to protect the right of children based on the law and I explain by whom the right of children are protected. There are two organizational structures to protect the right of the children. i.e. Government structure and Non-government structure.

A) Government Structure

- Special court related to criminal act and legal protection of children organized in each sub city police station.
- Ethiopian Human Right Commission.
- Ombudsmen.
- Ministry of women affairs are mentioned.³⁴

B) Non-governmental Organization

There are non-governmental organizations, which are devoted to give legal advice, study the solution of different problems, brought awareness in the people.

³³ Criminal procedure code Article 172

³⁴ [%4lf" f ulÓ %4;\[ÖÑÖL†"< cw~© Sw," Øun-%oo†"<' KTe}T\]Á %4k\[u îG<δ \(unpublished\) P. 10s](#)

CHAPTER TWO

2.1 Definition of "Child"

The term "child" does not have a generally accepted definition. According to the Black law dictionary, the term "child" means a person between about 18 months and 10 to 13 years of age.¹ Childhood is one of the major stages in a person's development. At 18 month of age, children have just begun to outgrow baby clothes, through many must still wear diapers. By the age of 13, most boys and girls have nearly doubled in height and quadrupled in weight. They will also start to develop sexually. But growing up involves for more than physical growth and development. It also involves significant changes in a child's behaviour, thought processes, emotions and attitudes. This psychological changes largely determine the kind of adult that a child will become. "Strictly speaking, a child in any one who is not yet and adult"². According to the concise Oxford Dictionary a child is a young human being who has not reached at the age of discretion, i.e. the age at which one is fit to manage one's own affairs.³ According to the oxford dictionary a child is a human being up to the age of puberty. The age of puberty varies, depending on climate, race and individual.⁴ According to Longman dictionary of contemporary English, a child, is a young human being from the time of birth to the completion of bodily development.⁵

Article 1 of the convention on the rights of the child defined a "child" as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.⁶ The wordings of the

¹ World Book Encyclopedia, 2001

² Ibid

³ Concise Oxford Dictionary, 7th edition, 1982.

⁴ Oxford Dictionary, 1970

⁵ Longman Dictionary of Contemporary English, 1987

⁶ Convention on the Right of the Child, Article 1

definition seem to be a result of a compromise. This may be due to the reason that majority is attained at 18 in a number of countries; and it is reached earlier in some countries and latter in some other countries. To reach an international agreement on the age of majority was not considered possible.

Article 2 of the African charter on the right of welfare of the child states that, for the purpose of this charter, a child means every human being below the age of 18 years.⁷ The majority age attained of the African charter is the same to the UN convention. But in the African charter the majority age of the children is attained at 18 years in the signatory countries but not possible to less the age of 18.⁸

In the countries old Ethiopian legal code, "Fitha Nagast" it is indicated that "majority, of the man reached with the completion of the twentieth or twenty fifth years of and for the woman, with the twelfth or fifteenth years of age". The age of 20 years was for the sons of wealthy families who are supposed to be learned enough at the age. The age of 25 years was for the poor and unlearned young men. The same reasoning applies to the ages given for women.⁹

The modern law of the country, the Ethiopian civil code of 1960, defines a child (minor) as "a person of either sex who has not attained the full age of eighteen years"¹⁰ and the same definition in the Revised Family Code. The age majority given to be 18 years in the Civil Code and Revised Family Code may however vary for different proclamation in different purpose. In the labour law proclamation No. 377/2003 prescribes minimum age for employment in the formal sectors and conditions of work for young workers. Thus, employing persons under

⁷ African Charter on the Right and Welfare of the Child, Article 2.

⁸ ጥቅም ላይ የውሰደው ጽሑፍ ስም "የግል ግብይት ስርዓት" (unpublished) P. 12

⁹ Definition of Child, October 1997, P. 2.

¹⁰ The Ethiopian Civil Code, Article 198, 1960

14 years of age is prohibited (Article 89/2). And also in the criminal code of 2004 prescribes minimum age for the purpose of criminal responsibility, classified children in the three ages groups as I mentioned in chapter one.

2.2 Definition of Child Abuse

The word "child abuse" includes a broad definition of child abuse and neglect. According to the Black's law dictionary

"Child abuse" is intentional or neglectful physical or emotional harm inflicted on a child, including sexual molestation; especially a parents or care giver's act or failure to act that results in a child's exploitation, serious physical or emotional injury, sexual abuse, or death.¹¹

The nature of child abuse first began to be investigated in the early 1960s. The investigators were predominantly physicians, who looked at the psychopathology of the abusers. They discovered that a high proportion of abusers suffered from alcoholism, drug abuse, mental retardation, poor attachment, low self-esteem, or sadistic psychosis. Some researchers pointed out that abusive parents did not know how to discipline children or for that matter, even how to provide for basic needs, such as nutrition and medical attention.¹²

The other factor of child abuse is a disproportionate number of children, lower income (poor), single parent families or death. Abuse and neglect reflect the interplay of many contributing factors involving the family, the community and the large society.¹³

¹¹ Black Law Dictionary, 8th edition

¹² Criminology, 4th edition, P. 301

¹³ A Child World, 9th edition, P. 226

Most parents are living and nurturing, some cannot or will not take proper care of their children, and some deliberately hurt or kill them.¹⁴ Maltreatment takes several forms. Child maltreatment occurs when a parent or parent substitute (eg. a day care provider) abuses or permits the abuse of the child. Maltreatment includes physical abuse, sexual abuse, emotional abuse (eg. verbal assaults), physical neglect, emotional neglect (inadequate nurturing), and educational neglect. Physical abuse involves injury to the body through punching, beating, kicking or burning. Sexual abuse is sexual activity involving a child and other person. Emotional maltreatment includes acts of abuse or neglect that may cause behavioural, cognitive, emotional or mental disorders. It may include rejection, terrorization, isolation, exploitation, degradation, radical or failure to provide emotional support, love and affection.

Emotional maltreatment is hard to identify; its effects may not surface immediately and may be difficult to distinguish from signs of emotional disturbance and other development problems.¹⁵ Emotional maltreatment is more subtle than physical maltreatment, and its effects may be harder to pin down. It has been linked to lying, stealing, low self-esteem, emotional maladjustment, dependency, under achievement, depression, aggression, learning disorder, homicide, and suicide, as well as to psychological distress later in life. Most abused children do not grow up to abuse their own children. Abused children who grow up to be non-abusing parents are likely to have had someone to whom they could turn for help, to have received therapy, and to have good marital or love relationships. They are likely to have been abused by only one parent and to have had a loving, supportive relationship with the other.¹⁶

¹⁴ Criminology, Op cited at Note 12, P. 301

¹⁵ A Child World, Op cited at Note 13, P. 227

¹⁶ Ibid, P. 229

The first case of child abuse actually prosecuted occurred in New York City in 1874. An eight-year old girl named Mary Ellen was found to have been severally abused. Her abusers were prosecuted under the law for prevention of cruelty to animals, since no law protecting children existed.¹⁷ Child abuse was first recognized as a medical concern in 1962, when Dr. C. Henry Kempe introduced the medical concept of battered child syndrome.¹⁸

Abuse may begin where parent who is already anxious, depressed or hostile tries to control a child physically but loses self-control and ends up shaking or beating the child. When parents who had troubled childhoods, think poorly of themselves, and find negative emotions hard to handle have children who are particularly needy or demanding, who cry a lot or who are unresponsive, the likelihood of maltreatment increases. These children's greater needs may stem from poor health, difficult personalities, or physical disabilities. They are more likely than non-abused children to have been preterm or low-birth weight babies; to be hyperactive, mentally retarded or physically handicapped; or to show behavioural abnormalities.¹⁹

Many abusers are lonely, unhappy, anxious, depressed, angry, or aggressive. They tend to have low self-esteem and poor impulse control and coping skills.²⁰ Abusive parents tend to have marital problems and to fight physically. Their households tend to be disorganized, and they experience more stressful events than other families. Many abusive parents cut themselves off from others, leaving them with no one to turn to in times of stress and no one to see what is happening.²¹

¹⁷ Black Law Dictionary, Op cited Note 11

¹⁸ Ibid

¹⁹ Child World, Op cited Note 13, P. 227

²⁰ Ibid, P. 227

²¹ Ibid

2.3 Types of Child Abuse

It has been stated that "child abuse" is a broad terminology encompassing various forms. For the purpose of my senior paper I focus is rendered to the following as they come at the forefront of child abuse discussions in literatures:-

- 1) Maltreatment
- 2) Child trafficking and
- 3) Child labour

2.3.1 Maltreatment

Not all injuries to children are accidental. Maltreatment refers to instance of harm to children that are non-accidental and avoidable, whether from abuse or neglect. Abuse can be physical, sexual or emotional in nature and often involves some combination of these. Neglect is categorized, as a failure to provide for the Childs physical, educational, or emotional needs.²² Here in after a look at these two distinctions will be provided: -

ABUSE

- a) **Physical Abuse:** - is any non-accidental physical injury to a child caused by an adult which results in or threatens serious injury. Often adults who physically abuse children do not intend to seriously injure the children but get carried away by anger and frustration in their own lives.²³

²² The Child, Nancy J. Cobb, 2001, by Mayfield Publishing Co. P. 281-282

²³ Brochure, Diocese of Wilmington, Child Abuse and Neglect

The signs of physical abuse involves:-

- A child has burns, bruises, broken bones, and internal injuries.
- A child has fading bruises after an absence from class or regularly scheduled activity.
- A child shrinks from the touch of adults or appears usually fearful.
- A child reports injury by an adult.²⁴

- b) **Sexual Abuse**:- is any physical contact with a child by an adult or older child in a position of power over the child for the sexual gratification of the adult or older child. Other terms for sexual abuse include child molestation, incest (if the abuser is a member of the child family), or child pornography. Usually, child sexual abuse is not violent, and the child knows the abuser.²⁵

The signs of sexual abuse involves:-

- A child exhibits change in behaviour such as loss of appetite, nightmares, in ability to sleep or withdrawal from usual activities and peer relationships.
- A child returns to bedwetting or thumb sucking.
- A child has genital pain, itching, swelling or bleeding.
- A child indicates fear of a person or an intense dislike of being left somewhere or with a particular person.
- A child shows unusual interest in or knowledge of sexual matters, expressing affection in ways inappropriate for a child of his or her age.²⁶

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

- c) **Emotional Abuse**:- is an important factor in all forms of child abuse. To be hurt so much by someone who should care and protect is very damaging to the emotional development of a child. Adults who do not physically harm a child may cause emotional harm by using words, which threaten, harshly criticize, ridicule or harass.²⁷

The signs of emotional abuse involves:-

- A child shows extremes in behaviour.
- A child is either inappropriately adult or infantile.
- A child is delayed in physical or emotional development.
- A child reports lack of attachment to parents.²⁸

NEGLECT

- d) **Neglect**:- is in general the failure of a parent or guardian to provide a child with adequate food, clothing, shelter, medical care, education or supervision. Neglect is a chronic problem often resulting, not from poverty, but from lack of knowledge as to the proper care required for children.²⁹

The signs of neglect involves:-

- A child is frequently absent in school or keeping a child home to care for other siblings.
- A child begs/steals food or money.
- A child lacks medical or dental care, glasses and immunizations.
- A child is consistently dirty, has severe body odor.

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

- A child lacks sufficient food.
- A child abuses alcohol or drugs.
- A child states that no one provides care.³⁰

The effects of maltreatment can produce grave consequence-not only physical, but emotional, cognitive and social. Maltreated children often speak late. They are more likely to repeat a grade, to do poorly on cognitive tests, and to have behaviour problems in school. They often have disorganized distorted self-concepts. Deprived of early positive social interactions. They do not develop social skills and have difficulty making friends. Chronic neglect during early childhood has especially negative effects on later school performance, social relationships, adaptability, and problem solving.³¹

Maltreated children may become either overly aggressive or withdrawn. Physically abused youngsters tend to be fearful, uncooperative, less able to respond appropriately to friendly overtures and consequently, less well liked than other children.

Although most abused children do not become delinquent, criminal, or mentally ill abuse makes it likely that they will. Teenagers who were abused when they were younger many react by running away, which may be self-protective or may abuse which is not.³²

The effects of sexual abuse both the immediate and long term, are especially marked. Among the more common immediate effects are fearfulness, problem in sleeping, distractedness, depression, anger and sexually inappropriate behaviour. Long-term effects frequently persist in a adulthood and anxiety, anger, depression, lowered self esteem, self destructive behaviour, substance abuse, and sexual problem. Children

³⁰ Ibid

³¹ A Child World, Op cited Note 13, P. 228

³² Ibid

of either sex respond to sexual abuse in similar ways, with the exception that girls are somewhat more likely to be depressed and boys to be more aggressive. ... children who had been sexually abused showed more disturbed behaviour, had lower self esteem and were more depressed and anxious than were a non abused comparison group of children.³³

2.3.2 Child Trafficking

The protocol to prevent, suppress and punish trafficking in persons, especially women and children defines child trafficking as follows:-

"Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of person, by means of the threat or use of force or other forms of coercion, of abduction, or fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices. Similar to slavery, servitude or the removal of organs"³⁴.

Trafficking in persons is a concerning human rights violation, which has become a lucrative industry that involves exorbitant annual profits amounting to billions of dollars. In practice trafficking of women and children in to force sexual exploitation and bounded labor has now

³³ A Child, Op cited at Note 22, P. 286

³⁴ The UN protocol to prevent, suppress and punish trafficking in person, especially in women and children, Article 3, November 2002.

become the third largest source of profit in organized crime after drugs and guns. This serious crime is usually committed against female children and women in the form of bonded domestic labor and sexual exploitation. After getting entrapped in "white slavery" in the name of migrant laborers, women and children suffer all types of abusive and violent treatment. This includes physical and emotional violence resulting from sexual exploitation, overwork and physical violence that end up in severe injury and even homicide.³⁵ Trafficking of female children for the sake of involving them in sexual exploitation and pornography is one of the worst forms of transgressions committed against the most vulnerable members of society. The UN population fund estimated the two million female children between the ages of five and fifteen are introduced in to commercial sex market for sexual exploitation every year. Due to their vulnerability all these children can be considered to have been trafficked.³⁶

It is also documented that trafficking of children for sexual exploitation is on the rise in many African countries. A report, by the Molo Songololo group in South Africa, estimated that there were about 38,000 child sex workers in 2000, with girls as young as four being sold to South Africans and tourists for sex work. According to this report, most of these children are lured from Angola and Mozambique but there were also children who were trafficked from as far as Senegal, Kenya, Ethiopia and Uganda.³⁷

In our country over the past years, horrifying cases of trafficking have surfaced to indicate that Ethiopia is one of the countries of origin for internationally trafficked persons, specially women and children. Luring

³⁵ Preventive and support programme against child trafficking, by forum on street children Ethiopia (FSCE) P. 1 & 2

³⁶ Ibid

³⁷ Ibid

women and children across national borders has recently become a common trend. Most are recruited for domestic work in the Middle East, particularly in Lebanon, Bahrain, Saudi Arabia and the United Arab Emirates. The number of Ethiopian women who are living and working illegally in Lebanon alone was estimated to be about 15 to 20 thousand.³⁸ According to the study of IOM and USAID in 2003, the magnitude of women and children trafficked outside Ethiopia; Ethiopian victims of external trafficking suffer various human right violations including starvation, confinement, and long hours of work and denial of salary. They also experience sexual abuse and exploitation, emotional and physical abuse including physical torture, false accusation, incarceration and even homicide. Many cases of insanity and trauma were reported to authorities. The most terrible fact of all is that a total of sixty-seven death cases were reported during the two-year period between 1997 and 1999.³⁹

2.3.3 Child Labour

Generally speaking child labour is the employment of children of less than a specified legal age.⁴⁰ But this is not universally accepted definitions of child labour varying definition of the term are used by international organizations, trade unions and other interests groups. Writers and speakers do not always specify what definition they are using and that often leads to confusion. Some may randomly list different explicit or implicit definition. Such as:

- Workers that a harmful to children.
- Wage employment by children.
- Economic participation by children.

³⁸ Report women's Affairs sub sector in the prime minister's office and IOM, June 2000.

³⁹ Ibid

⁴⁰ The new Encyclopedia Britannica, Volume 2, 15th edition, P. 839

- Work that violates national labour or custom.
- All work of any type performed by children.⁴¹ etc.

However, to define child labour is not an easy task since it could have different meanings in different context, perspectives and theories. Some may believe that children need to work but some may not. Some define it from the angle of socio economic and other in other angle.

Children who were orphaned through the death or poverty of their parents become to responsibility of the parish in they lived and were apprenticed to local crafts men or, alternatively placed in special workshops where they would also learn trade.⁴²

Millions of children are deprived of their childhood and their dignity, their education and acquisition of a better skill, their health and development rights. Children are more vulnerable to the effect of occupational accidents and illness than adult because of physical and/or moral factors.⁴³ Children are also exposed to accidental and non-accidental harms at work.⁴⁴ Such harms include general child injuries and abuses, sexual abuses, physical abuses, emotional neglect, lack of schooling and computation with adult workers.

The nature of child labour refers to two scenarios. The first is when children under the legal minimum age are working in different sector as relevant and suffer in this situation. The second scenario is when children above the legal minimum age are working under exploitative and abusive condition.⁴⁵

⁴¹ Ibid

⁴² BOB Franklin (ed), The right of children, Basic Black Well, New York, 1986, P. 126

⁴³ ILD/IPEC Child labour; what is to be done.

⁴⁴ MOISA (2006) in depth analysis of child labour survey

⁴⁵ Senior Thesis, St. Mary's University College, the legal protection of child labour in Ethiopia, by Berihu Tweldebrihan G. July 2007, P. 16

Causative factors identified as implicated in the incidence of child labour include demand for cheap labour, malleable labour and employer poverty, ignorance, lack of social service facilities, large house hold size, peer influence, orphan hood etc. Different justification may be given for why children are involved in exploitative practice. However, as a common generalization both push factors on the supply side and pull factors on the demand side are the major reasons.⁴⁶

The other factors, which are at the forefront of child labour, may include a child's special interest to involve in to work and not to go to school, population growth, lack of education opportunities, migration and lack of awareness of the consequence. Generally the combination of the mentioned factors are the prevent causes for child labour.⁴⁷

There are different types of child labour. Child labour not only includes factory work, mining, quarrying, agriculture, and helping in the parents business, but also many other tasks. Work ranges from taking care of animals and planting and harvesting food, to many kinds of small manufacturing, auto repair, and making of foot wear and textiles. However, it is better to classify child labour in to three based on their nature and feature. Such as labour with in family, labour out side the family and bonded child labour.⁴⁸

The consequence of child labour; children represents the future generation. They have to grow up properly physically, intellectually and psychologically. If not and they involve in to full time work, it harms their education, health physical and mental development of the child and the general development, prosperous and future existence of the society/state as a whole. When children start working at early stage or

⁴⁶ Ibid, P. 18

⁴⁷ Ibid, P. 23

⁴⁸ <http://www.tnchildlabour.tn.gov>

their young age they remain illiterate, unskilled and unable to demand their rights for equal wages and better conditions of work. In addition, they are usually exposed to accidental and non-accidental harms at work. Often there will be unexpected and expected risks, abuse and hazards in most conditions. Working long hours, they burn themselves out and their health and overall development are severely impaired. As adults they are often in debt and lack skills. So, the downward spiral of exploitation and poverty is perpetuated.⁴⁹

⁴⁹ Senior Thesis, Op cited at Note 45

CHAPTER THREE

3.1 The Civil and Political Right of Child

The civil and political rights recognized by international bill of human rights. The convention on the right of the child has under Article 6, 12, 13, 14, 15, 16, 35, 37 and 40, addressed itself to all these major civil and political rights of the child. The same provision is also contained in the African charter of the right and welfare of the child.

This chapter, however, limits itself to those aspects of the convention of the right of the child and African charter on the right and welfare of the child dealing with the right of the child identity.

3.1.1 The Right of the Child Identity

A person may be identified by a multiple of factors. He could be identified by colour, size, hair, cultural marks or any other designation. Identification by name, age group and origin of birth or nationality is found to be one of the most fundamental distinguishing features of a person.¹ It is in recognition of this basic rational that the United Nation Convention of the child and African charter of the right and welfare of the child requires the right to name and acquisition of the nationality. Classification of a child to a certain age group is a requirement established under Article 1 and 2 of the United Nation Convention of the child and African charter of the right and welfare of the child respectively.

A child who is the subject of right under the convention of the right of the child is defined by age of as a human being below the age of 18 years unless, under the law applicable to the child, majority is attained

¹ The legal right of child in Ethiopia, by Girma Asfaw, March 1993. P. 15

earlier.² And the African charter of the right and welfare of the child defines a child as a human being below the age of 18 years.³ The attainment of majority signifies the beginning of the period of adulthood. In legal terms, it means that the child is fully responsible in all that concerns the care of his person and the management of his pecuniary interests. As a general rule, the age of attaining majority under Ethiopian law is 18 years.⁴ However, under two circumstances a child could attain majority at the age earlier than 18 years. One of such circumstances is marriage and the other is authorization by the family council.⁵

In Ethiopia there are also other laws, which fit various age levels for specific purpose defined by such laws. These laws do not affect the principle of attainment of majority established by the civil code. For example the criminal law in view of effecting early reform to child offenders prescribes primary and intermediary penal responsibility ages. In principle, penal majority is the same as the age of majority. The labour law in order to prevent child labour prohibits the employment of children under certain ages.

Age reference requires the proof of age. Article 7 of the convention of the right of the child and Article 6 sub article 2 of the African charter on the right and welfare of the child makes it an obligation that a child should be registered immediately after birth.⁶

The Ethiopian Civil Code covers all-important major issue on the registration of birth. According to Article 101 of the civil code the birth of the child is required to be declared by the father of such child in default

² Convention of the right of child, art 1

³ African charter on the right and welfare of the child, art 2,

⁴ The civil code of the empire of Ethiopia, art 197

⁵ Ibid, art 329 & 330

⁶ The UN convention and African charter, art 7 and 6(2) respectively

of whom the mother should assume this responsibility, were in her default the person who had taken the responsibility to care of child should make the declaration.⁷ Under Article 37 of the civil code it has been provided that the declaration should be made to the officer of the civil status registration within 90 days of the act of the birth.⁸ And also according to the civil code, article 200/1/ states that the age of the person shall be established by his record of birth.⁹ In the absence of record of birth, the age may be established by producing an act of notoriety signed by reliable witnesses.¹⁰ For the purpose of records of birth, the civil code also stipulates that in each urban or rural commune, a person shall be appointed who shall carry out the duties of officer of civil status (Article 48/1/) and a record of birth ... shall be kept for each commune and in each consulate (Article 74).¹¹ The particulars of the record shall show, among other things, the day, month and year of the birth of the child.¹²

Under Article 623/1/ of the penal code and Article 656/1/ of the criminal code, it is indicated that omission to register the birth of an infant entails criminal responsibility. It reads respectively:-

"Relatives, doctors, mid-wives or directors or administrative officers of medical institutions or clinics who fail to register the birth of new born infant with the appropriate civil authority, are punishable with a fine not exceeding five hundred birr or with simple imprisonment not exceeding one month" ¹³ and

⁷ The civil code; op cited at note 5, art 101

⁸ Ibid, art 37

⁹ Ibid, art 200(1)

¹⁰ Ibid, art 200(2)

¹¹ Ibid, art 48(1) and art 74 respectively

¹² Ibid, art 99/A/

¹³ Penal code of Ethiopia, art 623(1)

"Whoever fails to declare the birth of an infant, as prescribed by law, to the officer of civil status, is punishable with fine not exceeding five hundred birr, or simple imprisonment not exceeding one month"¹⁴

The practice of birth registration and desks vital statistics must be strengthened in the country since failure to do so entail many consequences determinant to the child. According to one comment:

"Children who are not registered do not officially exists. On an individually level, this can complicate enrollment in school and expose them to illegal adoption, trafficking, exploitation as cheap labour, or involvement in prostitution and criminal activities. Lack of a complete registration system means that government, not knowing the true number of its citizens is hampered in planning for their needs."¹⁵

The Problem of Birth Registration

I fail to narrate the practical problem that result of failure to register. A public prosecutor who prefers anonymity in lideta branch states no parents or any of the persons aforementioned were found charged of a criminal offense for failure to register a newborn child. As a reason for such he accelerates lack of registering center in Ethiopia. There has been no case of such offense registered too. Other prosecutors and judges also give the same opinion.¹⁶

As I mentioned in the statement of problem the stakeholders have no awareness of the use of birth registration and they are not provided with

¹⁴ The criminal code of FDRE, art 656(1)

¹⁵ ILO, EAMAT; report of the national workshop on child labour in Ethiopia

¹⁶ Interview

proper education and practice by the government and/or non-government organs. Because of these the law and the practice have a gap. But birth registration is essential to protect the children right to identify legal personality.

3.2 The Economic, Social and Cultural Right of the Child

The economic, social and cultural right is one of the major categories of the international bill of human rights. The right to work, the right to a standard of living adequate to effect the right to education the right to rest and leisure and the right to participate in the cultural life of the community are highlights of the economic, social and cultural rights.¹⁷

The new convention on the right of the child has contains under Article 6, 24, 26, 28, 29,30 and 31 the economic, social and cultural rights of the child. The same provisions are also contained in the African charter on the right and welfare on the child. For the purpose of my senior thesis will be focusing on the health, education and social security aspect of the rights of child.

3.2.1 The Right to the Child to Health Care

Article 24 of the United Nation Convention of the child and Article 14 African charter of the right and welfare of the child defines what constitutes the right of the child to health care, and prescribes the measures needed to be taken in order to realize this right. According to the provision of Article 24 of the United Nation Convention of the child, the main objective of recognizing the right to health care is the treatment of illness and the rehabilitation of health.¹⁸ And Article 14 of the United Nation Convention of the child as main objective recognize the right to

¹⁷ The legal right of child in Ethiopia; op cited, note no. 1, p. 26

¹⁸ Convention on the right of the child; op cited, note no. 3, art 24

enjoy the best attainable state of physical, mental and spiritual health.¹⁹ In order to materialize this objective, the convention of the right of child and African charter on the right and welfare of the child provisions requires the states to take:

a) Concrete measures to:

- Diminish infant and child mortality
- Ensure medical assistance
- Apply and use readily available technology
- Provide adequate nutritious foods
- Provide clean drinking water
- Develop preventive health care
- Develop guidance for parents and family planning education
- Abolish traditional practice prejudicial to the health of children

b) Appropriate measure to raise the awareness of the community regarding:

- Child health and nutrition
- The advantage of breastfeeding
- The environmental sanitation
- Prevention of accidents.²⁰

After defining the objective and depicting the measures to be taken to realize the objective, Article 24 of the convention remains conscious of the financial capacity of states to an immediate and full implementation of this right. Hence it calls for the promotion of international cooperation with a view to achieve progressively the full realization of the right of the child to health care.

¹⁹ African charter on the rights and welfare of the child; op cited, note no. 3, art 14

²⁰ The UN convention and African charter; op cited, note no. 6, art 24 and 14 respectively

In view of the highlights of Art 24 of the United Nation Convention of the child and Article 14 of the African charter of the right and welfare of the child to health care I need to briefly examine the policies of Ethiopian public health laws regarding children in Ethiopia.

In Ethiopia there are numerous legislations on public health since 1940's municipal public health rules on water, food, refuse, vaccination, venereal diseases, communicable diseases, sanitation rules, regulation on pharmacy, organization rules on malaria eradication, rabies control rules and quarantine rules can be mentioned in this regard.²¹

One of those early legislations is proclamation number 91 of 1947 issued on matters concerning public health in Ethiopia. Under this law the ministry of public health is duty bound under Article 7 to:

- a) Devise measures for the promotion of healthy standards of living.
- b) Take adequate measures for the protection and safeguard of the public health in general.
- c) Supervise and control the enforcement of public health legislation.²²

The minister of public health has issued many subsidiary legislations to discharge his responsibilities under this proclamation. Legal notice number 156/1956 is one of those subsidiary laws declaring some of the communicable diseases in Ethiopia which required particular attention. Some 35 of such diseases were declared to come under the operations of this law for their prevention and abolition from the country. Cholera, yellow fever, typhus, small pox, malaria, diphtheria, whooping cough, measles, tuberculosis, trachoma, tetanus and anthrax were among these diseases.

²¹ The state of the world children, UNICEF, 1991

²² Public health proclamation no. 91/1947

To date an immunization programme the ministry on the basis of this law is carrying out providing vaccination against the six child killing diseases namely tuberculosis, measles, diphtheria, pertussis, tetanus and poliomyelitis. The latest issue of law on public health is proclamation number 8/1987. This proclamation defines the responsibilities of the ministries of the Ethiopian government of which the ministry of health is one. According to article 35 of this proclamation the ministry of health have the responsibilities to:

- a) Take appropriate measure to guarantee all Ethiopians the right to get health care.
- b) Carry out vaccination programmes to eradicate communicable diseases.
- c) Carry out studies to determine the nutritional value of foods and certify the safety of food for consumption.
- d) Provide and regulate publication services.

Whether under the earlier or the recent legislation, the ministry of health has been given wider powers and responsibilities to ensure the health standard of the people, which includes that of home and street children.

According to UNICEF, 539,000 children die annually in Ethiopia. Under 5 mortality rates in Ethiopia in 1960 was 294 per 1000, in 1989 after a period of nearly 30 years the figure stood at 226. Infant mortality rate in 1960 was 175 by 1989 it was reduced only to 133.²³ In all cases both mortality rates remain one of the highest even within the group of the fourth world itself. Out of the population of Ethiopia only 16% have access to safe drinking water.²⁴ According to the estimate of the ministry of health for the year 1980 up 1996 about 43% of the total population have access to health services. Of those do not have access to health services and safe drinking water children would remain the majority.

²³ The state of the world's children; op cited note no. 21

²⁴ Ibid

3.2.2 The Right to the Child Education

The United Nation convention of the right of the child and the African charter on the right and welfare of the child of the right of the child outlines the aim and types of education to be provided. Under Article 29/1 the convention of the right of the child and Article 11/2 of the African charter on the right and welfare of the child defines the aim of education. According to these provision education should develop the personality, the talents, the mental and physical abilities of the child. It should cultivate the child to develop respect for human rights and fundamental freedoms, respect for the child's parents, his own cultural identity, language and values, national values of the country in which he lives; civilizations different from that of his own and his environment. Education should in addition enable the child to be prepared for responsible life with the spirit of understanding, peace, tolerance and friendship among people.

The convention expects the mass media to play an important role in disseminating information and material of social and cultural benefit to help achieve the aim of education. The convention has clearly stated this duty of states to work towards such objective.²⁵

Article 28/1 of the convention of the right of the child and under article 11/3 of the African charter on the right and welfare of the child requires the state in making primary education compulsory and available free to all. The state is also expected to encourage different forms of secondary education like general secondary educational and vocational secondary education with the aim of making education available and accessible to every child. It is expected to act the same time to take appropriate measures in introducing free education and offering financial assistance for the needy ones etc.

²⁵ Convention on the right of the child; op cited, note no. 2, art 17

Existing laws and policies on education in Ethiopia focuses on the following five main principles. The introduction, step by step of compulsory education for all school age children by the state is one of them. Devising ways and means to provide free education for all citizens is the other. It has been made an assumed obligation of the state to establish promote schools of various type levels. The other obligation of the state is to maintain the necessary quality of education. The encouragement and supervision of kindergarten and adult education programme is one of those five cardinal principles.²⁶

According to the forum on street children in Ethiopia (FSCE) report during the last three years 1407 children (467 females and 940 males) have received support that enabled them to continue their education in government in public school. As I interviewed the street children in different place in Addis Ababa most of children are want to continue their education. But in different problems they can't continue their education. The major problems of the street children to continue their education is school material, school uniform and school fee. Because of social and economical problem the state cannot give primary education to all. On the contrary the convention of the right of the child and African charter on the right and welfare of the child are stated primary education compulsory and available free to all.

3.2.3 The Right of the Child to a Standard of Living

The right to health and the right to education cannot materialize with out the means to achieve a certain standard of living.²⁷ The full achievement of these rights requires a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Without going beyond their means parents have primary responsibility to secure the

²⁶ The legal right of child in Ethiopia; op cited, note no. 1, p. 33

²⁷ Ibid, p. 36

conditions of living necessary for the child's development. States, on the other hand have the obligation to take measures to assist parents to implement this right. In case where the need arises, the state is under the obligation to provide material assistance and support programmes particularly with regard to nutrition, clothing and housing. The convection of the right of the child attaches two conditions of this obligation. The first one is consider the national condition and the second one is to look for the availability of resources. Where the national conditions do not permit and the resources are unavailable the state would not be obliged to carry out its obligation of extending assistance to parents.

The looks at the Ethiopian concept of standard of living reveal another story. As I mentioned in chapter 2 particularly, child trafficking Ethiopia horrifying cases of trafficking have surfaced to indicate that Ethiopia is one of the countries of origin for internationally trafficked person, specially women and children. In addition to this in country trafficking of children is becoming a serious problem in Ethiopia because of to expect to help themselves and change the better life of the families by socially and economically problem. The finding of the study on the magnitude of women and children trafficked with in Ethiopia (USAID, 2003) revealed that most of the trafficked respondents were children aged 10 to 18.²⁸ They were victims of coercion or deception that resulted in exploitative working conditions. Brokers and/or pimps traffic young girls from rural areas to gain income from bar owners or brothel owners who exploit the girls by engaging them in sex work. Children also migrate from the rural areas in search of educational opportunities and a better life while some are taken to urban centers and promise to be taken care of by relatives or friends of their parents. Moreover, female children having run away from family violence, arranged marriages or intolerable

²⁸ Prevention and support program against child trafficking, by fourm on street children (FSCE), p. 3 & 4

marriages through abduction or early marriage, are also found in urban settings. However, when these children reach their destination, many are faced with agonizing conditions that include emotional and physical abuse, hunger as well as sexual abuse and exploitation. A large number of female children who migrate in cities end up as housemaids and obliged to toil for long hours. In fact, their employers as well as being denied of their salary physically and emotionally maltreat most of these children. Many also experience sexual abuse by the male members of the households they serve from which they finally run away to the streets.

Finally police records have also revealed that children who become victims of abduction get maimed and impaired for the sole purpose of begging. Others are held in bondage and forced to work against their will. Those children are exposed to starvation, confinement, physical violence and over work. In the case of girls the most distressing experience they face is sexual abuse and exploitation.

3.3 The Right of the Child to Parental Care and Legal Protection

One of the concerns of the United Nations Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child is child upbringing. The United Nations Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child advocates that the child should remain with his parents unless an occurrence of forced circumstance causes separation.²⁹ Where separation results the United Nations Convention on the Rights of the Child and African Charter on the Rights and Welfare of the Child puts an obligation on states to ensure alternative care for such a child.³⁰ The

²⁹ The UN convention and African charter; op cited, note no. 6, art 9 and 19 respectively

³⁰ Ibid, art 20

United Nation Convention of the child has made child upbringing the primary responsibility of parents or legal guardians and the state to render assistance to them in discharge of their child rearing responsibilities.³¹ In addition the state is supposed to device measures be it legislative, administrative, social or educational to protect the child from all forms of violence, abuse, negligent treatment, maltreatment and exploitation, while in the care of parents, guardians, or any other person who has take care of the child.³² The same provision is also contained in the African charter of the right and welfare of the child.

The Revised Family Code of 2003 Ethiopia has adequate provision on the responsibility of child upbringing; the spirit of providing guidance in child rearing; states supervision over parental obligations and alternative child care institutions. The criminal code of Ethiopia, on the other hand, has prescribed in to offenses those acts or omissions that are against the proper upbringing of the child.

3.3.1 Civil Measures

Like the United Nation Convention of the child and African charter of the right and welfare of the child, the revised family code makes child upbringing the primarily responsibility of both parents. Where one of the spouses is under disability, absent, abandons his family or is a way or, for any other reason, is not in a position to give his consent, the other spouse shall alone carry out the duties to perform the function.³³

The father and the mother are during their marriage, joint guardians and tutors of their children who did not attain majority.³⁴ Where divorce results, the family council appoints a guardian or a tutor to serve as an

³¹ Convention on the right of child; op cited, note no. 2, art 18

³² Ibid, art 19

³³ The revised family code art 50 and 51

³⁴ Civil code; op cited, at note no. 4, art 204

alternative care for the child.³⁵ Where a child remains an orphan and no valid appointment is made, the function of the guardian and tutor shall devolve on the relatives of the child as in order indicated in article 210 of the civil code.³⁶ Where the court finds it necessary, it has the option to entrust the function of a guardian and tutor to an institution of assistance.³⁷

The family code has also established the institution of adoption to provide the child with a better advantage be it wealth, family or better upbringing. Adoptive filiation may be created by an agreement between a person and a child.³⁸ The child to be adopted need not necessarily be an orphan. It can be done on a child of living parents. The consent of the parents of the family council, where there are no ascendants is required for the adoption. The contract has to be approved by a court of law.³⁹ The court approves the adoption where it is proved to its satisfaction that there exists good cause for its making and the adoption offers advantage for the adopted child.⁴⁰ Once the formality is complete, the contract of adoption may not be revoked for any reason other than where the adopter, instead of looking after the adopted child as his own child, handles him as a slave, or in conditions resembling slavery, or makes him engage in immoral acts for his gain or handles him in any other manner that is detrimental to his future, the court may revoke the adoption.⁴¹

Under the civil code parents, guardians, institutions of assistance and adopters assume the function of child upbringing with a view to preparing children for their better future. In order to fulfill this objective, parents or guardians are entrusted with the responsibility of fixing the

³⁵ Ibid, art 205 and 206

³⁶ Ibid, art 210

³⁷ Ibid, art 214

³⁸ The revised family code; op cited, note no. 31, art 180

³⁹ Ibid, art 191 and 194

⁴⁰ Ibid, art 194(2)

⁴¹ Ibid, art 195

residence of the child, ensuring the health of the child, directing the education of the child, supervising the social contracts of the child and where the child has income the guardian receives such income and use it in the interest of the child.⁴² For the purpose of ensuring the education of the child parents and guardians are authorized take the necessary disciplinary measures. The meaning of this disciplinary measure is according to the amended civil code to inflict light bodily punishment. It should be noted that all this power over the child is given to the parents or guardians to be exercised in the best interest of the child.

3.3.2 Criminal Measure

The Ethiopian state has introduced penal legislation since 2004 to afford protection to children against all forms of malicious treatment and exploitation by parents, guardians or other members of society. Offenses against the person and health of a child are punishable under the law. Basically, parents or guardians are authorized by law to take correctional and disciplinary measures against their children to ensure proper upbringing.⁴³ However, such acts like ill-treatment, deliberate neglect, over tasking or beating in such a way as to effect or endanger gravely the physical and mental development or health of children under 15 years of the age done in the name of proper upbringing is punishable by imprisonment with a probable deprivation of family rights.⁴⁴ A parent or a guardian shall be punished with imprisonment, where he intentionally exposes or abandons a child under his custody by putting him in imminent danger of life or health. According to Article 574 of the criminal code such a parent or guardian may have his family rights suspended.

⁴² Ibid, art 265, 267, 268 and 270

⁴³ Criminal code of FDRE 2004, art 68

⁴⁴ Ibid, art 576

Failing in certain basic family duties has been made an offence against the family. Where a parent fails without good cause in his obligation to supply maintenance towards his natural child, he is punishable either with fine or simple imprisonment where the victim so complains.⁴⁵ The failure of parents to bring up children has also a penal consequence under the law. A parent or one who is entrusted to exercise parental authority (guardian) shall be subject to a punishment of imprisonment where he grossly neglects such children under his custody and abandons them without due care to their moral and physical danger either because of gain for himself or in declaration of duty.⁴⁶

The criminal code also prohibits the exploitation of the immorality of others particularly that of children. Any person including a parent and guardian who engage foreign in trafficking of children under the age of 15, whether by seducing, enticing, procuring or inducing them to engage in prostitution or to let them out for prostitution shall be punished with rigorous imprisonment up to ten years with fine not exceeding 20,000 birr.⁴⁷

The providing for the protection of children from all sort of abuse, neglect, maltreatment and exploitation, the penal legislation of Ethiopia have sufficiently covered almost all foreseeable conditions to safeguard the right of children in Ethiopia.

3.3.3 Measures Against Child Labour

The convention urges to fit minimum of age for admission to employment and to regulate conditions of employment by legislation. In view of

⁴⁵ Ibid, art 658

⁴⁶ Ibid, art 659

⁴⁷ Ibid, art 635 and 636

securing effective enforcement, it requires a legislation to provide penalties and sanctions for violations.⁴⁸

In order to protect the child against economic exploitation, the labour law that has been proclaimed in Ethiopia in 377/2003 incorporates quite substantial provisions. This law forbids the employment of a child under the age of fourteen.⁴⁹ However, the same law categorizes those children who are over 14 and less than 18 years of age are categorized by the same law as young workers.

Under the law, young workers could directly undertake employment or enter in to a contract of apprenticeship to serve the employer in consideration of wages with the objective of acquiring a skill in specific trade. The labour law forbids to require young workers and apprentices to work overtime and to carry on work after 10 P.M. The employer is prohibited not engage young worker in dangerous trade not to leave apprentices to work alone in dangerous activities.⁵⁰

The Problem of Parental Care

According to one of the head in child protection units (CPUs) in Addis Ababa, traditional values have predominated the day-to-day lives of the people for centuries. Many of the cultural values related to children consider them as properties of their parents, having no rights of their own. Children are expected to be obedient. They are supposed to engage in hard labour beginning the tender years. Cultural practices encourage physical punishment of children, particularly by parents, older siblings, teachers and other adults. These and other related socio economic and cultural factors have led to the abuse and neglect of a large number of

⁴⁸ The legal right of child in Ethiopia, op cited note no. 1, p. 48

⁴⁹ Labour proclamation no. 377/2003, art 89(1)

⁵⁰ Ibid, art 89(3)

children in almost all settings, including homes, schools and neighborhoods. He added that in addition to the physical abuse, sexual abuse and exploitation is common in many parts of the country. However, it is not usually reported to the police. Instead, the victim child or her parents for fear of social stigma hold it as a secret. Research and little information available to the police have confirmed the prevalence of the problem of sexual abuse and exploitation of children in the country. Female genital mutilation, early marriage and abduction are some of the other forms of the gender-based violence, which are widely practiced in Ethiopia, particularly in rural areas. According to the child protection units a total of 1634 abused children (810 females and 824 males) were reported to the child protection units in Addis Ababa from 2000 up to 2002.⁵¹

⁵¹ Advocacy and child protection program, 2003

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

The paper has endeavoured to assess the issue of child abuse in the context of international and national instruments. This paper has attempted to examine major Ethiopian laws on the rights of children vis-à-vis the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child to which Ethiopia is a signatory state.

Some of the major Ethiopian laws like the Civil Code of 1960 and the revised Family Code define the rights of the child extending to the time of conception. Childhood itself is defined in terms of age. During the period of childhood, parents and other legal institutions with parental authority are authorized to exercise these rights on behalf and in the best interest of children.

The Criminal Code of Ethiopia of 2004 has on the other hand two major functions in the area of child upbringing. The first is the function of protection and the second is the function of rehabilitation. Parents or legal institutions with parental authority are permitted by law to take correctional and disciplinary measures against their children or children under their parental responsibility in order to ensure proper upbringing. This authorization, however, does not permit child abuse acts like maltreatment, deliberate neglect, beating, or overwork which seriously affects the physical and mental development of children. Certain traditional attitudes, customs, and harmful practices of early marriage, discriminatory social attitudes against vulnerable groups of children such as the girl child, prevailing particularly in the rural areas is

hampering the effective implementation of the provision of the law. This law protects children not only against their parents but also against all offenders who do harm and corruption on the moral and physical well being of children. The criminal code incorporates grave measures of penalty against such offenders.

Child labour exploitation is the sphere of labour law regulated under the labour proclamation no. 377/2003. This law forbids the employment of children under the age of 14 years. Those that are over 14 and under 18 years of age are differently treated in certain aspects of labour conditions to ensure the safety of young workers against labour hazards in tender age. So far the problem with these laws is failure in their meaningful implementation. Resource limitation and cultural factors on the part of the state could be account for failure in meaningful implementation of these laws.

To change the picture and bring about satisfactory results in implementation, negative cultural factors should be overcome by raising the level of consciousness of the people through various means. The state should put up achievable plan and programmes to gradually bring about the full realization of the laws with in a given period.

4.2 Recommendation

The main point of the research is to give salutations for the research problems. The writer of this thesis has identified some problem and has recommended the respective solution as follow:

1. Efforts should be made to promote the participation of and expression of views of children in family, school, social life and judicial proceedings to the effective enjoyment of their fundamental freedoms.

2. To give an awareness through mass media, community, and Ider to the society the use of birth registration. Birth registration is effective system should be developed and guaranteed at the "kebele" and hospital level in urban areas and at "woreda towns" in rural areas, to ensure the full enjoyment of the fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data in the assessment of prevailing difficulties and in the promotion of progress.
3. Abusive parents did not know how to discipline children or for that matter, even how to provide for basic needs, such as nutrition and medical attention. Such efforts like education should be pursued with governmental and/or non-governmental organization.
4. Efforts should be made to abolish traditional practices prejudicial to the health and well being of children, such as early marriages and teenage pregnancies. Such efforts should be pursued in close cooperation with community and religious leaders and non-governmental organization, at all levels of the state, i.e. Federal, Regional, Zonal and Woreda levels actively involve them in prevention endeavours.
5. With the goal of the implementation of Article 19 of the united nation convention of the right of child and Article 16 of the African charter on the right and welfare of the child, a system of complaints aimed at children victims of any forms of violence, abuse, including sexual abuse, neglect, maltreatment of exploitation even while in the care of their parent should be established as a means to ensure the protection and respect of their rights. Cases of abuse of children should be properly investigated, sanctions applied to the perpetrators and publicity given to the sanctions applied to such crimes and the police and public prosecutors have sufficient power and they are used effectively.

6. Appropriate measures should be adopted with a view to reflect fully article 32 of the united nation convention of the right of child and article 15 of the African charter of the right and welfare of the child in legislations and practice and Ethiopia shall ratify ILO convention no. 138 on minimum age for admission to employment.
7. Raise the awareness of school children about the prevalence of child abuse and mechanisms of prevention and reporting through mini media and mass media.
8. Facilitate the participation of children in the awareness raising endeavors, in reporting any violations of child rights, playing the role of activities of child rights, supporting abused children and use children as active sources of support for abused children in school and out of school.

ACKNOWLEDGMENT

First of all, I would like to thank the almighty God and his mother they empowered me for successful accomplishment of the paper.

Next to this, sincere and heart full gratitude to my family for their unreserved encouragement morally and materially to support in all the ways in my life.

And then, I am indebted to express the sincerest gratitude to my advisor Ato Binnyam Ahmed who has exhaustively read the paper, given him comment thereon and offered his support and encouragement from the beginning up to the end of the writing process.

Finally, I am very much grateful, to all my close friends for their constructive suggestion and to those who helped me in finding material to my research and particularly the person who, interviewed and thereby have supplied me with valuable pieces of information deserve special thanks.

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STATEMENT OF DECLARATION

I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name: _____

Signed: _____