



**JIMMA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE**  
**DEPARTMENT OF LAW**

**ANALYSIS OF THE LAW AND PRACTICE GOVERNING THE RIGHTS OF CHILDREN SEPARATED FROM THEIR DETAINED AND IMPRISONED PARENTS: THE CASE OF BUNO BEDELE ZONE, OROMIA REGION, ETHIOPIA.**

**BY: ALEMAYEHU BELAY**

**A RESEARCH PAPER SUBMITTED TO JIMMA UNIVERSITY, COLLEGE OF LAW AND GOVERNANCE, DEPARTMENT OF LAW IN PARTIAL FULFILLMENT FOR THE REQUIREMENTS FOR THE MASTERS OF LAW (L.L.M) IN INTERNATIONAL HUMAN RIGHTS AND CRIMINAL LAW.**

**JANUARY, 2023**  
**JIMMA ETHIOPIA**

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Analysis of the Law and Practice Governing the Rights of Children Separated from their Detained and Imprisoned Parents: The Case of Buno Bedele Zone, Oromia Region, Ethiopia in partial fulfillment of the requirements for the award of Masters of Law (L.L.M) In International Human Rights and Criminal Law.

**By:- Alemayu Belay**

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## **DECLARATION**

I hereby declare that this thesis entitled “Analysis of the Law and Practice Governing the Rights of Children Separated from their Detained and Imprisoned Parents: The Case of Buno Bedele Zone. ” has been carried out by me under the guidance and supervision of Mr. Zelalem Shiferawu (Ass. Professor). The thesis work is original and has not been submitted for the award of any degree or diploma to any university or institutions.

Researcher’s Name

Date

Signature

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## **LIST OF ABBREVIATIONS**

ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter and welfare on children rights
BoWCA	Bureau of Women and children Affairs
CRC	Convention on the Rights of Children
CSO	Civil Society Organization
CPUs	Child Protection Units
CSA	Central Statistics Agency
EU	European Union
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
FDRE	Criminal code Federal Democratic Republic of Ethiopia criminal code
GC IV	Geneva Convention IV
GCAP II	Additional protocol II to Geneva Convention
HoPR	House of Peoples' Representatives
IHRL	International Human Rights Law
ICCPR	International Convention on Civil and Political Rights
ICRC	International Committee of Red-Cross
IBCR	International Bureau Children Rights
ICESCR	International Convention on Economic and Social Cultural Rights
MOLSA	Ministry of Labour and Social Affairs
OAU	Organization of African Unity
RFC	Revised Family Code of Ethiopia
UNICEF	United Nations Children Fund
UN	United Nation
US	United STATES OF AMERICA
UK	United KINKDOM
UDHR	Universal Declaration of Human Rights
MOWCA	Ministry of Women and Children Affairs

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## **ABSTRACT**

Children are more vulnerable to increased insecurity and psychological or mental instability when they are separated from their detained and/or imprisoned parents. Despite their substantial contributions to Ethiopia's economy, social and politics spheres is considerable, the current situation in the country does not seem to support this notion. This study aimed to analyze the laws and practices governing the rights of children who are separated from their parents and imprisoned in the Buno Bedele zone of the Oromia region of Ethiopia as a case study and design a plan to address the problems and contribute to the issues. It was conducted through descriptive survey design by using qualitative study approach .To achieve its objectives, both primary and secondary data were employed. Purposive sampling techniques were used to collect the primary data from in-depth interviews and court cases. Secondary data were gathered from the analysis of documents relevant to children separated from parents who are detained and/or imprisoned, by reviewing national, regional, and international laws, regulations, books, prison administration reports, research abstracts, journals, and internet sources. The findings from the analysis demonstrated that although Ethiopia has taken various measures to ensure the rights of children as a whole, the rights of children separated from their detained and imprisoned parents have not been given attention.This is attributable to the absence of laws that sufficiently recognize the rights of children separated from their detained or imprisoned parents, and there is currently no clear and comprehensive legal framework for the protection of their rights. The study found that the rights of children separated from their detained and imprisoned parents in the study area are not protected in the manner required by international standards .To alleviate this problem, the study suggested that a specific legislation that deal with the rights of children separated from their detained and imprisoned parents should be adopted.

**Keywords:** law and practice governing the rights of children.

## CHAPTER ONE

### BACKGROUND OF THE STUDY

#### 1.1. Introduction

Children separated from their detained and imprisoned parents are subject to significant insecurities as well as psychological or mental instability, as many imprisoned parents may repeatedly cycle in and out of prison.<sup>1</sup> The needs of such children should be a cause for concern especially in a country like Ethiopia where prison population continues to grow. Above all the rights of these children remain largely unacknowledged within criminal justice systems and they fall through the cracks created by inadequate social welfare provisions. The imprisonment of their parents creates conditions under which many of their rights are undermined and this exposes them to the danger of having several of their other rights violated.<sup>2</sup>

The physical and emotional wellbeing of children can be threatened or harmed in a myriad of ways, not the least of which is the absence of a parent from their lives. They have to contend with the break-up of their family and may need to be placed in alternative care, may be more vulnerable to violence, abuse, neglect and exploitation as a consequence, loss of a primary caregiver may result in financial hardship leading to difficulties in accessing health and education services, may experience discrimination and stigma as a result of their parent's status as a suspect, defendant or convicted prisoner.<sup>3</sup>

The international, regional and national principles, rules and standards for the protection of children separated from their detained and imprisoned parents are scattered among instruments on child rights, criminal justice as well as general human rights instruments. Some of these are binding legal instruments, while others are non-binding laws. At the international level, efforts to recognize the rights of children due to their vulnerability and immaturity were first started in the 1920s as evidenced in the adoption of the 1924 League of

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<sup>1</sup> Hagan J & R Dinovitzer, 'Collateral consequences of imprisonment for children, communities, and prisoners' in M Tonry & J Petersilia, (eds) Prisons, crime and Justice, (1999). Chicago: University of Chicago Press. p.125-147.

<sup>2</sup> Ibid

<sup>3</sup> Hagan J & R Dinovitzer, 'Collateral consequences of imprisonment for children, communities, and prisoners' in M Tonry & J Petersilia, (eds) Prisons, crime and Justice, (1999). Chicago: University of Chicago Press. p.125-147.

Nations Declaration of the Rights of the Child until the adoption of the Convention on the Rights of the Child (CRC) in 1989.<sup>4</sup> Both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child sets out legally binding principles that require States to protect children from all forms of violence, to prevent and respond to violence.<sup>5</sup> For instance, Article 2 of the CRC and Article 3 of the ACRWC provide that all rights apply to all children without exception irrespective of their status or the status of their parents.<sup>6</sup> Article 3 of the CRC and Article 4 of the ACRWC indicate that the best interests of the child shall be a primary consideration in all actions concerning children. Article 6 of the CRC and Article 5 of the ACRWC provide the principle that protection from violence, neglect and abuse is crucial for the maximum survival and development of the child.<sup>7</sup> Article 12 of the CRC and Article 7 of the ACRWC implies that the views of children should be considered in decision making, policy making, preparation of laws and other matters.<sup>8</sup>

Moreover, in these treaties there are special provisions relating to children separated from their detained and imprisoned parents. For instance, Article 9 of the CRC requires that parties respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.<sup>9</sup> Article 19 of the CRC and Article 28 of the ACRWC prohibit physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.<sup>10</sup> Article 24 of the CRC and Article 14 of the ACRWC recognize the child's right to the highest attainable standard of health and to facilities for the health care for the treatment of illness and rehabilitation of health.<sup>11</sup>

Besides international protection domestic systems are also the primary fora for the effective protection and implementation of all human rights. The FDRE Constitution, which came into force in 1995, is the supreme law of the land and any law, customary practice or decision of

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<sup>4</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), 1989.

<sup>5</sup> The African Charter on the Rights and Welfare of the Child (entered into force on 29 November 1999) (ACRWC).

<sup>6</sup> Article 2 of the CRC and Article 3 of the ACRWC

<sup>7</sup> Article 3 of the CRC and Article 4 of the ACRWC

<sup>8</sup> Article 12 of the CRC and Article 7 of the ACRWC

<sup>9</sup> Article 9 of the CRC

<sup>10</sup> Article 19 of the CRC and Article 28 of the ACRWC

<sup>11</sup> Article 24 of the CRC and Article 14 of the ACRWC

an official that contravenes its provisions is null and void.<sup>12</sup> The FDRE Constitution addresses the right of children separately under article 36 including right to life<sup>13</sup>,right to a name and nationality<sup>14</sup>,right to know and be cared for by his or her parents or legal guardians<sup>15</sup>,right to not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or wellbeing<sup>16</sup>,right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children<sup>17</sup> In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.<sup>18</sup> Therefore, this all brings to the forefront of exploring what has been achieved so far the plans and tasks a head.

However, the available national and regional laws do not consider or treated the rights of children separated from their detained and imprisoned parents as of other children. The situation becomes more striking when we think of the prevalence of the various factors like poverty, lack of education and inaccessibility of protective and rehabilitative health services in Buno Bedele zone. The government has not provided adequate protection to children whose parents are detained and imprisoned in this area. These children do not enjoy any special rights and needs are not considered when a parent is sent to prison, the child's life might be turned upside down although they have done nothing wrong, they are punished too. The occasion of a parent's arrest is often the very first time a child comes into contact with the criminal justice system and the way the event is handled can permanently affect the child's attitude towards law enforcement and criminal justice officials. The arrest of a parent can be shocking and distressing for children (interviewed children have described the first days and weeks after the arrest as the worst period during parental imprisonment),<sup>19</sup> but if

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<sup>12</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995.

<sup>13</sup> Ibid, Article 36(1)(a)

<sup>14</sup> Ibid, Article 36(1)(b)

<sup>15</sup> Ibid, Article 36(1)(c)

<sup>16</sup> Ibid, Article 36(1)(d)

<sup>17</sup> Ibid, Article 36(1)(e)

<sup>18</sup> Ibid, Article 36(4)

<sup>19</sup>Ria Wolleswinkel (2002) "Children of Imprisoned Parents" in Jan Willems (ed.) *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities* (Intersentia), p.202

handled sensitively can actually lead to increased respect for and toleration of officials by the children. Thus, this study attempted to assess the law and practice governing the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone Prison Center of Ethiopia and suggested possible and plausible recommendations.

## **1.2. Statement of the problem**

Children are dependent on adults as their primary caregivers. Once the parents are sentenced to terms in prison, the children are most devastated. Thus, imprisonment is in practical effect punishment of the children as well. Yet, very little is known or said about the needs of this unique population left behind by the imprisonment of their parents. Without ensuring the inclusion of children in the major agendas of the country and on specific policy, normative and institutional arrangements that could have an effect on the fate of their life and the notions of equality the idea of human rights will not be meaningful values on the ground.<sup>20</sup>

Attempting to estimate the size of the world population of children without parental care is a next-to-impossible task, given that “even in cases where data exist, the indicators used are only rarely comparable across different national contexts, thereby reducing significantly the possibility of making inferences about the broader,” global dimension of children living outside their family environment.<sup>21</sup> With these understandings, the UNICEF estimates indicate that in 2009 there were approximately 153 million children living without one or both parents, of which over 55 million were found in sub-Saharan Africa.<sup>22</sup>

The Government of Ethiopia has expressed political commitment to improve the situation of children, notably through setting up an Inter-ministerial Legal Committee to review national legislation and its compatibility with the provisions of the Convention, and through the establishment of committees on the rights of the child at the national, regional, zonal and woreda levels.<sup>23</sup> The Government has also adopted a National Plan of Action for children and established a ministerial committee to monitor its implementation.<sup>24</sup> In Ethiopia, even though it is apparent that there are significant numbers of children separated from their detained and

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<sup>20</sup> Hagan J & R Dinovitzer, ‘Collateral consequences of imprisonment for children, communities, and prisoners’ in M Tonry & J Petersilia, (eds) Prisons, crime and Justice, (1999). Chicago: University of Chicago Press. p.125-147.

<sup>21</sup> Cantwell & Holzscheiter, 2008, p.3

<sup>22</sup> United Nations Children’s Fund (UNICEF), 2012, p. 103.

<sup>23</sup> Haggstrom,H.(2003).

<sup>24</sup> The Combined 4<sup>th</sup> and 5<sup>th</sup> periodic report, Ibid, p.5.

imprisoned parents, the protection of their rights through promulgation of different laws is insignificant.

There are no laws with specific reference to children separated from their detained and imprisoned parents. However, the FDRE Constitution addresses the right of children under article 36 including right to life<sup>25</sup>, right to a name and nationality<sup>26</sup>, right to know and be cared for by his or her parents or legal guardians<sup>27</sup>, right to not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or wellbeing<sup>28</sup>, right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children<sup>29</sup>

Even if the government of Ethiopia owes obligations emanating from these rights, little attention has been given to this subject, despite the profound and permanent impact such an event has on the child. Applying the Convention on the Rights of the Child to such situations would lead to some clear conclusions about children's rights to be considered when decisions are made about their parents; to be consulted about and alternative care; to maintain contact with their imprisoned parent, including by visiting; to be specially protected and assisted by the state when deprived of parental care; and so on. Despite the seriousness of the problems, limited information and analyses have been carried out and there is no sufficient formulation of sound policy until recently on the protection of their rights of children separated from their detained and imprisoned parents.

The situation is extremely terrible for them while exercising their rights as imprisonment of one or both of parents can result in serious and enduring negative effects including social exclusion, greater financial difficulties and ejection, low self-esteem, decrease in performance and dropped out from school, inadequate food, lack of clothing, exclusion from social engagement, stigma and discrimination, lack of concentration, lack of self-confidence, loneliness helplessness, lack of parental love and affection, Children whose parents are

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<sup>25</sup> The Constitution of the FDRE, Proclamation No.1/1995, Article 36(1)(a)

<sup>26</sup> Ibid, Article 36(1)(b)

<sup>27</sup> Ibid, Article 36(1)(c)

<sup>28</sup> Ibid, Article 36(1)(d)

<sup>29</sup> Ibid, Article 36(1)(e)

involved with the criminal justice system have equal rights to all other children. Their rights should not be affected because of the status of their parent, or because of decisions about their parent. Particularly this can lead to worse behavior and achievement in school and affect the child's mental and physical health. Therefore, the tendency of protecting the rights of those children as members of the society seems far from the mind setup of the public.<sup>30</sup>

Although Ethiopia has taken various measures to ensure the rights of Children as a whole, the rights of children separated from their detained and imprisoned parents do not given attention. Till now, the country does not have laws specifically protects the rights of children separated from their detained and imprisoned parents. There is the absence of laws that sufficiently recognize them and currently no clear and comprehensive legal framework for the protection of their rights and consideration in the handling of cases involving the current practice in the protection of the rights of children separated from their detained and imprisoned parents is as it is limited to all children. There are also no details studies conducted that directly suggest about the protection of the rights of children in such situations as many of them are of related children living with their detained and imprisoned parents. Therefore, this study intended to fill this gap.

### **1.3. Objectives of the study**

#### **1.3.1. General objective**

The general objective of this research was to examine the implementation of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone, Oromia Region of Ethiopia.

#### **1.3.2. Specific objectives**

Specifically, the study tried to achieve the following objectives.

1. To identify problems that hinder the implementation of the rights of children separated from their imprisoned and detained parents in the study area.
2. To evaluate the compatibility of Ethiopian laws with international standards in dealing with children separated from their detained and imprisoned parents in the study area.

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<sup>30</sup> Baker,L. & Cunningham, A.(2005). Invisible Victims: The Children of Women in Prison Voice for Children. Available at <http://www.lfcc.on.ca>, accessed on 4/10/2018.

3. To discuss the duty expected from the Ethiopian government for the protection of the rights of children separated from their detained and imprisoned parents in the study area.
4. To evaluate the measures that the Ethiopian government has taken so far for the protection of the rights of children separated from their detained and imprisoned parents in the study area.

#### **1.4. Research questions**

This research attempted to explain the following basic questions.

1. What are problems that hinder the implementation of the rights of children separated from their imprisoned and detained parents in the study area?
2. Are the existing legal frameworks of Ethiopia compatible to international standards in dealing with children separated from their detained and imprisoned parents in the study area?
3. What is the duty that expected from the Ethiopian government for the protection of the rights of children separated from their detained and imprisoned parents in the study area?
4. What are the measures that the Ethiopian government has taken so far for the protection of the rights of children separated from their detained and imprisoned parents in the study area?

#### **1.5. Literature review**

It is important to note that in the experience of other countries, different authors have made made certain reflections on the rights of children separated from their detained and imprisoned parents. However, most of these articles and publications mainly focus on the situations in their country's perspectives a cultural, economic, attitudinal and legal system differences compared with our country. Even the available literature is on the international and regional context in general ways.

We may consider some articles such as Coping Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health. <sup>31</sup>This is the EU that has funded a three-year project examining children of prisoners and mental health and look at the characteristics of children with imprisoned parents, their resilience and vulnerability to mental health problems

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<sup>31</sup> inter-American Commission on Human rights approved in 2008



in four European countries Germany, Romania, Sweden and the UK. The Inter-American Commission on Human rights approved in 2008 the principles and best practices on the protection of persons deprived of liberty in the Americas, which includes multiple references to families of the detained.

There are also other articles such as Children of Imprisoned Parents <sup>32</sup>which is the Danish Institute of Human Rights is leading a multi-country project. When the innocents are punished a vulnerable group, which will culminate in a series of recommendations to be taken to the European Parliament in 2011 and other related publications are duplicated. However, though these instruments are essential in contextualizing the various documents in responding to the rights of children whose parents imprisoned, there is no specific attention given to the rights of children separated from their detained and imprisoned parents in the documents. All these and other related materials will be valuable as inputs in the whole process of the working of the study towards the approaches to the rights of children separated from their detained and imprisoned parents.

In the domestic sphere, little seems to have been written on the issue of the rights of children separated from their detained and imprisoned parents. Even those limited reflections are mainly focus on the societal impacts towards the rights of children as a whole.

We may consider the article by. This study was based on Assessment on the Condition of Children of Incarcerated Mothers; in the case of Adama Prison Administration, Oromia Regional state, Ethiopia.<sup>33</sup> Despite the increasing number of women in prison who have children, little is known about their children's situation during their imprisonment. This study attempts to assess the condition of children of incarcerated mothers. Survey method, In-depth interview, Focus Group Discussion and Observation tools were mainly used for the purpose of data collection. Accordingly, 32 incarcerated mothers in Adama Prison Administration were asked about the general condition of their 28 children. In addition, five children were interviewed about their condition in the prison. The findings indicated that children of incarcerated mothers live in a very difficult condition deprived of their basic needs and rights. The findings have led to some recommendations that will help to change the conditions of the children who are living imprisoned.

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<sup>32</sup> *ibid*

<sup>33</sup> in the case of Adama Prison Administration

Protection of the rights of children living with imprisoned mothers at the Ethiopian federal prisons.”<sup>34</sup>This study is an investigation of the welfare of children who live in prison with their incarcerated mothers as well as expectant mothers in selected prisons of Ethiopia. Article 36 of the FDRE Constitution provides the best interest of the child to be the primary consideration in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies. This constitutional protection underscores the need for concern and special attention for the best interest of the child in the criminal justice system, in the federal prison administration, and also before other executive organs.

There are also pertinent provisions reflected in the four general principles of CRC, and also in the African Charter on the Rights and Welfare of the Child such as the right not to be discriminated against based on the status of their parents (Article 3), the best interests of the child as the primary consideration in actions affecting children (Article 4(1)), the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 4(2)) and the right to survival and development (Article 5). Hence, taking all these into consideration, the study examines gaps in the policy and legal framework in Ethiopia on the protection of the rights of infants and youths in prison with their incarcerated mother. It also looks at the social, physical and economic conditions of these children in the federal prisons along with the enforcement of laws pertaining to their well-being. The study has employed mainly qualitative research methods, and it has reviewed international laws as well as national laws in the course of exploring the subject matter. Identifying gaps in the full implementation of the child rights, the study eventually forwarded recommendations to improve their conditions.

The Situation of children of imprisoned mothers: the case of Addis Ababa prisons.”<sup>35</sup> This study was based on assessment on the situation of children of imprisoned mothers: despite the increasing number of women in prison who have children, little is known about their children situation during their imprisonment. This study attempts to assess the situation of

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<sup>34</sup> Kaysay Zerabruk (2018) “Protection of the rights of children living with imprisoned mothers at the Ethiopian federal prisons.” Addis Ababa University, (Unpublished MA thesis).

<sup>35</sup> Selamawit Abebe (2006) “The Situation of Children of Imprisoned Mothers.: the Case of Addis Ababa Prison.” Addis Ababa University, (Unpublished MA thesis).

children of imprisoned mothers. Accordingly, 34 mothers in Addis Ababa Prison were asked about the situation of their 61 children. In addition, five children were interviewed about their condition. The findings indicate that children of imprisoned mothers live in a very difficult situation deprived of their basic needs and right. The findings have led to some recommendations that will help to curb the unfortunate situation of the children.

However, none of them address in detail on the law governing the rights of children separated from their detained and imprisoned parents in Ethiopia. Therefore, it is worth reiterating that most of the works have not addressed the issue pertaining to the rights of children separated from their detained and imprisoned parents. Moreover, those works in other jurisdictions have very limited information on the issue as they are more generalized and much comprehensive approach together with the rest of other rights of children.

#### **1.6. Significance of the study**

The findings of this research are believed to bring issues of children separated from their detained and imprisoned parents before policy makers and implementer. It is expected to provide information about the actual implementation of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone. Additionally, it is important in identifying key problems in enacted and existing laws. It shows the proper directions for the future action including: the need to review domestic laws, enforcement of the law makers to give critical attention in line with international standards, promoting the principles those are significant for the protection of the rights of children separated from their detained and imprisoned parents and ensuring their rights as a standard practice throughout the country.

Moreover, it becomes instrumental for further studies in the area by providing researchers valuable information about the realization of the rights of children in general and children separated from their detained and imprisoned parents specifically. The final result of this study may instigate other researchers to conduct further work on the children separated from their detained and imprisoned parents on a large scale as it would be used as sources and serve as springboard.

### **1.7. Scope of the study**

The study comprises both legal and practical analyses with regard to the rights of children separated from their detained and imprisoned parents in the case of Buno Bedele Zone, Oromia Region of Ethiopia. There are many rights of children separated from their detained and imprisoned parents. Since analyzing of all rights at a time is unmanageable, the study tried to limit them only to the implementation of some selected rights such as the right to non-discrimination, the best interests of the child, right to life, right to survival and development, right to be heard, the right to contact with their parents and the right of freedom from torture inhuman, degrading treatment. The target groups of the research were only those prisoners who have children outside Buno Bedele zone prison center and their children. The data was collected from respective informants such as police officers, court judges ,prison administrations, prisoners who have children outside the prison center, children whose parents are detained or imprisoned, women office of the Buno Bedele zone and civil societies were active in the study area.

### **1.8. Research Methodology**

This research paper employed descriptive survey research method which enabled the researcher to collect data in depth on views, opinions practices and impacts. The study also used qualitative research approach. The qualitative research approach provides facility to examine subjects in depth, by providing a unique tool for studying what lies behind or underpins a certain phenomenon.<sup>36</sup> It was selected based on the criteria that are helpful to analyze the problems of children separated from their detained and imprisoned parents and give detail and proper interpretations on examining the implementations of their rights.

To achieve its objectives, the study employed both primary and secondary sources of data. The primary data were gathered through in-depth interview. Interviews are the most important and first hand source of information for this study because such type of studies are about human affairs or behaviors events, and well-informed informants that give important insight into such issues or events and are like guided conversations than structured queries.<sup>37</sup> The secondary data were gathered from analysis of documents relevant to children

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<sup>36</sup> Yin, R.K. (2009). Case Study Research: Designs and Methods (fourth edition). Sage

<sup>37</sup> Yin, R.K. (2009). Case Study Research: Designs and Methods (fourth edition). Sage

separated from parents those are detained and imprisoned. It encompasses reviewing national laws, regional and international laws, regulations, books, the prison administration reports, research abstracts and journals, cases, the study of academic literature, international conventions, domestic laws of Ethiopia, and internet sources. The study utilized purposive sampling techniques to select samples for the interview from concerned informants such as Five (5) police officers, five (5) public prosecutors, five (5) court judges, two (2) officers from prison center administration, one (1) expert from Buno Bedele zone women affairs office, two (2) from civil societies, four (4) parents having children from the outside prison center, and ten (10) children separated from their detained and imprisoned parents. Totally 34 samples were taken as a population of the study. The respondents were selected on the criteria such as relatively longer stay in practice, involved with the cases reported due to their job and those working in relation to children separated from their detained and imprisoned parents. The information obtained from interviews were analyzed through a process of content analysis and categorized into themes. The data collected from documentary sources were presented in the discussions form. Interpretation was made through descriptive method due to qualitative nature of data. At the end the collected data collected was recorded in a convenient way and then analyzed. Based on the results, discussion and findings, the researcher has made a conclusion and forwarded recommendations.

### **1.9. Ethical Considerations**

In conducting this research, some ethical issues were considered. Among these, after the purpose and importance of the study were clearly explained, informed consent was obtained from each participant. Confidentiality of the collected information was insured to the participants to encourage their frankness. More importantly, every consideration involved was respecting the participants' norm, culture and non-disclosure of their identities except for those individuals who consented to their identities.

### **1.10. Limitations of the study**

The researcher was faced with a number of problems. It was difficult to access children participants who fit the criteria set for the study purpose. As a result, the data collection schedules became delayed. But the researcher rearranged other task schedules. There was a problem of getting sufficient resources in relation to Ethiopian laws except some graduate

thesis related to the rights of children imprisoned with their parents . However, the researcher avoided the barrier by using internet sources. Most of the children and some of the parents were not volunteers .They were emotional during the interview session. But the researcher used different refreshing methods to create comfortable environment in which the respondent can settle themselves. Despite the aforementioned challenges, measures were put in place to safeguard against any difficulties that might affect the validity of the study negatively.

### **1.11. Organization of the paper**

This research consists of five chapters. Chapter one introduces the subject and comprises of background of the study, statement of the problem, research questions, objectives of the study, literature review, significance of the study, scope of the study, ethical considerations, research methodology and limitation of the study. Chapter two presented international and regional legal frameworks relevant for the protection of rights of children separated from their detained and imprisoned parents. Chapter three presented national and policy frameworks relevant for the protection of rights of children separated from their detained and imprisoned parents. Chapter four presented the implementation of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone Prison Center of Ethiopia. Chapter five concludes the study and presents recommendations.

## CHAPTER TWO

### **INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF THE RIGHTS OF CHILDREN SEPARATED FROM THEIR DETAINED AND IMPRISONED PARENTS.**

#### **2.1. Introduction**

The chapter is composed of two sections. The first section deals with the international legal frameworks and the second one elucidates the regional legal frameworks for the protection of the rights of children separated from their detained and imprisoned parents in Ethiopia. The international and regional principles, rules and standards for the protection of children separated from their detained and imprisoned parents are scattered among instruments on child rights, criminal justice as well as general human rights instruments. Some of these are binding legal instruments, while others are non-binding laws. The protection of children rights depends on the level of measures taken in order to implement them as it is hardly possible for a state to implement those principles of child rights without establishing the proper legal frameworks.

There are different international and regional legal frameworks that guarantee rights of children separated from their detained and imprisoned parents. At the international level, efforts to recognize the rights of children due to their vulnerability and immaturity were first started in the 1920s as evidenced in the adoption of the 1924 League of Nations Declaration of the Rights of the Child until the adoption of the Convention on the Rights of the Child (CRC) in 1989.

Both the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) sets out legally binding principles that require States to protect children from all forms of violence, to prevent and respond to violence. However, a complete discussion of these instruments is beyond the scope of this chapter and so discussion in this part shall be limited to the most pertinent instruments relevant to the protection of children separated from their detained and imprisoned parents.

## **2.2. Rights of children separated from their detained and imprisoned parents under the CRC and the ACRWC**

The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on November 20, 1989. The treaty came into force on 2 September 1990. The CRC is the first international document, which influenced the world, both in how societies regard children and in how they react to children as people. It is also a landmark in the history of childhood,<sup>38</sup> and the most widely ratified international treaty. It ‘marked the full transformation, and complete emergence, of the idea of children as rights bearers at the international level’.<sup>39</sup> It has drafted with the vision that children should gain the “special care and assistance” that are unique to childhood. Its fundamental principles create “the tension between the public duty to protect children welfare and the tradition of allocating power over children to the private realm of family life.”<sup>40</sup> The CRC does not contain specific rights relating to poverty and does not define the term. As others have noted<sup>41</sup> the CRC outlines rights in relation to children’s well-being that relate to poverty and deprivation, as well as encompassing the right to life, survival and development as a core underlying principle.

The African Charter on the Rights and Welfare of the Child (hereinafter African Children’s Charter) was adopted by the Organization of the African Unity on June 27, 1981 and entered into force on 21 October 1986. The African Children’s Charter is complementary to the Convention on the Rights of the Child. The adoption of the African Children’s Charter was motivated by the need to accommodate the specific realities and circumstances of the African child.

Ethiopia ratified the Convention on the Rights of the Child (CRC) on December 9, 1991 by virtue of Proclamation 10/1992. The adoption of the two instruments marks a paradigm shift since it identifies children as bearers of not only care and protection rights but also civil and political rights as well. Ethiopia also ratified the African Charter on the Rights and Welfare of the Child (ACRWC) on October 2, 2002 by virtue of Proclamation 283/2002. These two instruments are comprehensive treaties which recognize the civil, political, economic, social

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<sup>38</sup> M. Freeman, “Introduction: Children as Persons in Children’s Rights: A Comparative Perspective,” (England: Dartmouth Publishing Company Limited, 1996), p. 1.

<sup>39</sup> J Tobin, ‘The Development of Children’s Rights’ in G Monahan and L Young (eds), *Children and the Law in Australia* (2008), p. 26.

<sup>40</sup> Barbara B. Woodhouse, *Talking about Children’s Rights in Judicial Custody and Visitation Decision Making*, 2002, p. 105 & 108

<sup>41</sup> See Redmond, 2008; Jones, 2005



and cultural rights of children. The two child rights treaties are among the treaties ratified by the country by way of notices of ratification i.e. Proclamations 10/1992 and Proclamation 283/2002.

Some have contended the issuance of these notices of ratification as a sufficient basis for the justifiability of the treaties in Ethiopian courts despite the fact that the full texts of the treaties are not published in the official law gazetta i.e. the Federal Negarit Gazeta.

The Convention on the Rights of the Child (hereinafter the “CRC” or “the Convention”) defines “child” as every human being below the age of eighteen years.<sup>42</sup> The Convention does not provide the minimum age of childhood. Similarly the ACRWC states that, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.<sup>43</sup> Therefore, based on this it is possible to assert that children separated from their detained and imprisoned parents are those who have not attained the full age of 18 years.<sup>44</sup>

Article 4 of the Convention on the Rights of the Child provides obligations of Member States to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights enshrined in the Convention. Similarly, Article 1 of the African Charter on the Rights and Welfare of the Child spells out the obligations of the Member States to recognize the rights and freedoms enunciated in the Charter and to undertake the necessary steps to adopt legislative and other measures necessary for giving legal effect to the provisions of the Charter. Both the Convention and the Charter do not specify particular solutions instead they chart out general measures. Once a State has voluntarily acceded to and ratified a treaty, the State is obliged to adopt the same in good faith.<sup>45</sup>

Both the CRC and the ACRWC are guided by four major principles. These are non-discrimination principle, best interests’ principle, the right to life, survival and development principle and right to be heard principle. Both the CRC and the ACRWC have no articles with specific reference to children separated from their detained and imprisoned parents.

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<sup>42</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 1

<sup>43</sup> The African Charter on the Rights and Welfare of the Child (entered into force on 29 November 1999) (ACRWC) art 2

<sup>44</sup> Article 2 of the CRC and Article 3 of the ACRWC

<sup>45</sup> Charter of the United Nations, Article 1; See also Vienna Convention on the Law of Treaties, Articles 26 and 27

However, it has many provisions of direct relevance for the protection of rights of children separated from their detained and imprisoned parents.

### **2.2.1. The right to non-discrimination**

Article 2 of the CRC and Article 3 of the ACRWC provide non-discrimination principle. It indicates that all rights apply to all children without exception irrespective of their status or the status of their parents.<sup>46</sup> Although the CRC articles are interrelated and should be considered together, the Committee on the Rights of the Child, which oversees the implementation of the CRC, adopts four general principles that should guide all types of protection, support and assistance to children.<sup>47</sup> The Convention on the Rights of the Child requires States Parties to respect and ensure the rights enshrined in the Convention to each child without discrimination of any kind, irrespective of the child's or her 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.<sup>48</sup> In addition, States Parties are obliged to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.<sup>49</sup> The protection against discrimination is also affirmed under Article 3 of the African Charter on the Rights and Welfare of the Child. Specifically, Article 26 of African Children's Charter provides protection against apartheid and discrimination on other various grounds. The principle of non-discrimination is one of the cardinal principles of the Convention which is identified as one of fundamental pillars of the Convention.<sup>50</sup> The term "discrimination" is not defined in the CRC. However, the Human Rights Committee<sup>51</sup> has provided the definition of the term in its General Comment. The term "discrimination" is defined as "any distinction, exclusion, restriction or preference which is based on any ground such as race,

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<sup>46</sup> Article 2 of the CRC and Article 3 of the ACRWC

<sup>47</sup> General Comments No.5, 2003, para. 12.

<sup>48</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 2(1)

<sup>49</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 2(2)

<sup>50</sup> Hodgkin and Newell (n 3) 17

<sup>51</sup> The Human Rights Committee is a treaty monitoring body established based on Article 28 of the International Covenant on Civil and Political Rights.

color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>52</sup>

The phrase in Article 2(1) “shall respect and ensure the rights set forth in the Covenant” shows that the obligation imposed on States Parties is an active one.<sup>53</sup> Therefore, a range of measures are required to be taken for the implementation of the principle including review, strategic planning, legislation, monitoring, awareness raising and information campaigns, and evaluation of measures undertaken to reduce disparities.<sup>54</sup> The principle of non-discrimination implies that State Parties are required to identify individual children and groups of children the recognition and realization of whose rights may call for special measures.<sup>55</sup> The implementation of the principle implies collection of dis-aggregated data, legal reform, appropriate administration, equitable resource allocation as well as educational measures to bring about attitudinal changes.

The principle of non-discrimination enshrined under the CRC needs to be read in conjunction with other instruments affirming the same protection.<sup>56</sup> The obligation to respect implies the negative duty to refrain from any actions detrimental to the rights of children, whereas the obligation to “ensure” implies affirmative obligations to enable individual children to enjoy and exercise the rights enshrined in the Convention.<sup>57</sup> Article 2 under the non-discrimination provision of the ICCPR, explicitly granting all individuals, irrespective of race, colour, sex,

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<sup>52</sup> General Comment No 18, Human Rights Committee

<sup>53</sup> Hodgkin and Newell (n 3) 21

<sup>54</sup> Hodgkin and Newell (n 3) 21

<sup>55</sup> Committee on the Rights of the Child, General Comment No.5, 2003, (CRC/GC/2003/5,para.12)

<sup>56</sup> Article 2 of the International Covenant on Civil and Political Rights requires State Parties to respect and ensure to all individuals in their territories and subject to their jurisdiction the rights recognized in the Covenant. Article 24(1) of the same Covenant stipulates that children are entitled to special measures of protection required by their status as minors. On the other hand, Article 26 of the Covenant affirms the stand alone or autonomous entitlement of equality before the law or equal protection of the law which applies to rights and freedoms outside the purview of the Covenant.

<sup>57</sup> Hodgkin and Newell (n 3) 21

language, religion, political or other opinion, national or social origin, property, birth or any other status.<sup>58</sup>

### **2.2.2. The best interests of the child**

Article 3 of the CRC and Article 4 of the ACRWC provide best interests principle.<sup>59</sup> The provisions state that the best interests of the child shall be a primary consideration in all actions concerning children. The principle of the best interests of the child requires public and private bodies, social welfare institutions, courts of law, administrative authorities or legislative bodies to ascertain the impact on children of their actions with a view to confirm that the best interests of children are taken as the primary consideration in making decisions affecting them. Thus, these bodies and institutions are required to apply the principle of the best interests of children systematically as per the Committee on the Elimination of All Forms of Discrimination that expressed its concern over the fact that the Family Code is not yet applicable by all regions and called upon Ethiopia to ensure all regional governments implement the Family Code.<sup>60</sup> The scope of the principle is very wide.<sup>61</sup> It encompasses all actions concerning children as a group.<sup>62</sup> Article 3(1) of the Convention requires public and private bodies to ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration.<sup>63</sup> The provision stipulates that ensuring the best interests of the child must be the primary consideration in all actions and decisions affecting children. It calls for the consideration of the best interests of the child into national plans and policies for children into the activities of legislative, executive and judicial branches of the government both at national and local levels.<sup>64</sup> The principle requires consideration of, for example, how a proposed or existing law or policy or administrative

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<sup>58</sup> The International Covenant on Economic, Social and Cultural Rights, Adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. Enter into force on 3 January 1976. Art.2

<sup>59</sup> Article 3 of the CRC and Article 4 of the ACRWC

<sup>60</sup> UN Committee on the Elimination of All Forms of Discrimination against Women, Concluding Comments of the

Committee on the Elimination of All Forms of Discrimination against Women: Ethiopia, UN Doc. A/59/38, para. 241

<sup>61</sup> Hodgkin and Newell (n 3) 36

<sup>62</sup> Hodgkin and Newell (n 3) 36

<sup>63</sup> Hodgkin and Newell (n 3) 35

<sup>64</sup> Sharon Detrick (n 19) 85

action or court decision, affect children. The principle of the best interests of the child applies to children .

Considerations of best interests must embrace both short and long-term considerations for the child.<sup>65</sup> Interpretation of best interest of the child must be compatible with the overall objective and purpose of the Convention. The interpretation of the best interests of the child must not be highly influenced by considerations of cultural relativism.<sup>66</sup> The interpretations of the best interests of the child must not put the rights guaranteed under the CRC in jeopardy.<sup>67</sup> For example, the interpretation of the best interests of the child cannot be used to justify practices such as corporal punishment.<sup>68</sup> The views of parents, professionals as to the best interests of a child may vary at times. The consideration of the rights of the child under the Convention makes the interpretation of the concept less subjective.<sup>69</sup> The principle of best interests of the child requires decision be based on the needs and circumstances of the individual child and it is a dynamic concept that must take into account the views and evolving capacities of the child.

The laws of certain countries attempt to shed light on the meaning of the term “best interests”. For example, in Philippines, the term best interests of the child is defined as “the totality of circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development.”<sup>70</sup> In Nicaragua, the phrase “best interests” is defined as “all that favors the child’s physical, moral, cultural and social development, in keeping with the evolution of the child’s capacities.”<sup>71</sup>

The phrase “shall be a primary consideration” in Article 3(1) shows that the best interests of the child will not always be the single, overriding consideration.<sup>72</sup> However, the rights and

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<sup>65</sup> Hodgkin and Newell (n 3) 37

<sup>66</sup> Sharon Detrick (n 19) 86

<sup>67</sup> Hodgkin and Newell (n 3) 37

<sup>68</sup> Committee on the Rights of the Child, General Comment No.8, 2006, CRC/C/GC/8, para. 26)

<sup>69</sup> Hodgkin and Newell (n 3) 233

<sup>70</sup> The Juvenile Justice and Welfare Act of 2006 of the Philippines, RA 9344, Section 2(b) and 4(b)

<sup>71</sup> The Children Code of Nicaragua, Article 10

<sup>72</sup> Sharon Detrick (n 19) 87

interests of children must be actively considered.<sup>73</sup> Therefore, actions and decisions affecting children must amply demonstrate that the interests and rights of children have been actively explored and taken into account as a primary consideration.<sup>74</sup>

### **2.2.3. Right to life, survival and development**

All children have the right to have their basic needs met, not only for survival and for protection but also to be able to develop to their full potential, to participate as members of society and grow up to be caring and responsible citizens. This principle implies that protection from violence, neglect and abuse is crucial for the maximum survival and development of the child. The implementation of this principle requires States Parties to the Convention to take measures to ensure the optimal development of the child.<sup>75</sup> This cardinal principle is also mirrored under Article 5 of the African Charter on the Rights and Welfare of the Child, under the heading “Survival and Development.”

The inherent right to life is affirmed in various international and regional human rights instruments. The protection of the right to life requires not only negative duties but also positive duties.<sup>76</sup> Negative duties or duties of omission implied by the right to life include prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or situations of enforced disappearance.<sup>77</sup> Affirmative obligations of States Parties include measures aimed at reducing infant and child mortality, increase life expectancy, and eliminating malnutrition and epidemics.<sup>78</sup>

Both domestic and international laws have given due recognition and protection to the right to life. Protection for the right to life is found under international and regional human right instruments. Article 3 of the Universal Declaration of Human Rights (here in after 'UDHR')<sup>79</sup>, Article 6 of the International Convention on Civil and Political Rights (here in after ' ICCPR ')<sup>80</sup>, Article 2 of the European Convention on Human Rights (here in after

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<sup>73</sup> Hodgkin and Newell (n 3) 38

<sup>74</sup> Sharon Detrick (n 19) 90

<sup>75</sup> Michael Gose, *The African Charter on the Rights and Welfare of the Child* (Community Law Center, Western Cape, 2002)

<sup>76</sup> Hodgkin and Newell (n 3) 84

<sup>77</sup> Sharon Detrick (n 19) 125

<sup>78</sup> Hodgkin and Newell (n 3) 84

<sup>79</sup> Article 3 of the Universal Declaration of Human Rights (hereinafter 'UDHR')

<sup>80</sup> Article 6 of the International Convention on Civil and Political Rights (here in after ' ICCPR ')

'ECHR')<sup>81</sup>, Article 4 of the American Convention on Human Rights (here in after 'ACHR')<sup>82</sup> and Article 4 of the African

Charter on Human and Peoples ' Rights (here in after ' ACHPR') clearly guaranteed the right to life of every individual.<sup>83</sup>

Article 6 is closely intertwined with Article 24 of the Convention. Article 24 deals with the rights of children to health and health services. Article 24 also requires States Parties to take measures to reduce infant and child mortality. Other implications of Article 6 also include measures to improve perinatal health for mothers and children and create conditions that promote well-being of children.

Article 27(1) of the CRC affirms the right of the child to a standard of living adequate to his or her physical, mental, spiritual, moral and social development.<sup>84</sup> The right to an adequate standard of living enshrined in Article 27 of the CRC echoes the same right as enshrined in Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights.<sup>85</sup>

Article 27 is closely linked with Article 6 of the CRC which lays down the right to life and maximum survival and development. These provisions imply the need to fulfill the basic necessities of the child including nutrition, clothing and housing. Apart from these, it also points to the need for the fulfillment of clean drinking water, health education, good hygiene and sanitation and breastfeeding. Also implicit in the right to an adequate standard of living are measures aimed at prevention of environmental pollution, child accidents and harmful traditional practices.<sup>86</sup>

Article 27(2) stipulates that parents have the primary duty to secure the full development of the child. This provision mirrors the same principle enshrined in Articles 3(2), Article 5 and Article 18 of the CRC. The parental responsibility to secure the full development of the child

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<sup>81</sup> Article 2 of the European Convention on Human Rights (hereinafter 'ECHR' )

<sup>82</sup> American Convention on Human Rights (here in after ' ACHR')

<sup>83</sup> Article 4 of the African Charter on Human and Peoples ' Rights (here in after ' ACHPR')

<sup>84</sup> Article 27(1) of the CRC

<sup>85</sup> Article 27 of the CRC and Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights

<sup>86</sup> Hodgkin and Newell (n 3) 394

is qualified by the phrase “within their abilities and financial capacities.” The provision has also specifically outlined the different aspects of development. Parental responsibility implies the duty of parents to meet the material, emotional, developmental as well as intellectual needs of their children.<sup>87</sup>

However, the Convention is quick to add the responsibility of the State to assist parents when they do not have the skills or resources.<sup>88</sup> Article 27(3) provides that States must provide material and other forms of assistance for parents in their endeavor to secure this right. The support provided by the State may extend to food, clothing and housing. The right of the child to an adequate standard of living is not merely confined to food, clothing and housing. Article 27 links the right of the child to development with the primary responsibility of parents for securing this development supported by the State.<sup>89</sup>

Regarding life, survival and development, the Committee recommended Ethiopia to continue to make every effort to achieve respect for children's right to life, survival and development including through improved economic development, strengthening of social infrastructure and efforts to alleviate poverty. Article 6(5) of the ICCPR recognizes protects the right to life and establishes that ‘persons’ below the age of 18 should not be sentenced to death.<sup>90</sup>

#### **2.2.4. Right to be heard**

The voices of children themselves must be prominent in the exploration of what is going on in their lives- we must approach children as knowing subjects.<sup>91</sup> In 20th century, various attempts were made at international level to protect children’s interests and give protection for their right to be heard in international and regional treaties.<sup>92</sup> Moreover, at the dawn of the 21st century, the ‘voice of the child’ emerges as a live issue that demands our utmost attention and recognized as a full human being who possesses the ability to participate fully

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<sup>87</sup> Hodgkin and Newell (n 3) 453

<sup>88</sup> Hodgkin and Newell (n 3) 395

<sup>89</sup> Hodgkin and Newell (n 3) 394

<sup>90</sup> The International Covenant on Economic, Social and Cultural Rights, Adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. Enter into force on 3 January 1976.

<sup>91</sup> Children Rights News Letter, ‘Children’s Rights International,’ 2005, p.27.

<sup>92</sup> Inter alia Article 19 of the Universal Declaration of Human Rights, Article 19 of the Convention on Political and Civil Rights, Article 9 of the African Charter on Human and People’s Rights, Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights.



in society.<sup>93</sup> Thus, following the UNCRC 1989, listening to the voices of children has become a powerful and pervasive mantra for activists and policy makers worldwide.<sup>94</sup> However, arguably, these rights become the most significant and the most controversial than that of other types of children's rights.

Children lack the full autonomy of adults but they are subjects of rights. Thus, the CRC is an international agreement that protects the human rights of the children under the age of 18. Article 12 of the CRC is a unique provision in a human rights treaty; it addresses the legal and social status of children.<sup>95</sup>

Article 12 of the CRC sets forth the principle of the right of the child to be heard. This principle implies the right of the child to have access to complaints procedure. This access is especially pivotal in cases of complaints concerning violence or exploitation, including sexual exploitation in the family context.<sup>96</sup> The contention that children below a certain fixed age cannot have access to complaints procedure is not supported by the Convention. Article 7 of the ACRWC also stipulates that any child capable of forming a view has the right to express views freely in all matters affecting him or her.<sup>97</sup> States parties are called upon to promote children to form a free view and to create the conditions conducive for children to exercise their right to be heard.<sup>98</sup> The provision implies obligation on States Parties to make a presumption that a child is capable of forming his or her own autonomous opinion. On the contrary, States Parties are not in a position to make the presumption that a child is incapable of forming views and opinions.<sup>99</sup> Consequently, the child is not required to prove that he or she is capable of forming opinions.<sup>100</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC), adopted unanimously in 1990,<sup>101</sup> is the first and the only regional treaty on the rights of the child in

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<sup>93</sup> Freeman, *Children's Rights: A Comparative Perspective* (Dartmouth Aldershot: University College London, 1996), p.3.

<sup>94</sup> Allison J., 'as cited at Supra note 3, Vol.109, issue 2, p. 261-272.

<sup>95</sup> General Comment No.12, as cited at Supra note 39, Para.1, P.5.

<sup>96</sup> Hodgkin and Newell (n 3) 11

<sup>97</sup> Article 7 of the ACRWC

<sup>98</sup> General Comment No. 12, CRC

<sup>99</sup> General Comment No. 12, CRC

<sup>100</sup> General Comment No. 12, CRC

<sup>101</sup> Francis, V., *International Human Rights Law in Africa*, New York, Oxford University Press, 2007, p.261

existence and is the most important for children's rights within the AU human rights system with its own monitoring organ. According to article 4(2) of ACRWC, a child who is capable of communicating his/her own views, should be the opportunity to be heard either directly or through an impartial representative as a party to the proceedings in all matters that may affect his/her interests in all judicial or administrative proceedings.

This article acknowledges children as individuals having distinct interests from the interests of their parents or family member's. It mandating the hearing of a child "who is capable of forming his or her views" and giving "due weight" to the views in accordance with the age and maturity of the child, and advocate the role of the child as an active participant in the promotion, protection and monitoring of her or his rights. In addition, these provisions introduce a dimension to the status of African children by recognizing that they are subjects of rights those demand that children themselves are entitled to be heard, rather than merely recipients of adult protection. This right applies to all children without discrimination and recognizes them as a full human being who possesses the ability to participate fully in society.<sup>102</sup> Therefore, the decision-makers have also the duty to give a due weight for the views of young child that may be mature beyond his or her years.<sup>103</sup>

In addition failure, on the part of the child to communicate verbally cannot be invoked as a bar to militate against the exercise of the right of the child.<sup>104</sup> As a result, the exercise of the right implies the recognition of, respect for, non-verbal forms of communication including play, body language, facial expression, drawing, painting, etc. In particular, children with disabilities need to be provided the support and assistance they need to make their views heard.<sup>105</sup> Moreover, children belonging to ethnic, religious and linguistic minorities and indigenous groups need to be encouraged to express their views.<sup>106</sup> The State Parties are also required to ensure the safety and security of children who express their views on matters affecting them.<sup>107</sup> Moreover, caution must be exercised in that the hearing and interviewing

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<sup>102</sup> Freeman, *Children's Rights: A Comparative Perspective* (Dartmouth Aldershot: (University College London, 1996), p.3.

<sup>103</sup> G. Van Bueren, "The Right of the Child to Freedom of Expression" in *The International Law on the Rights of the Child* (The Netherlands: Martinus Nijhoff Publishers, 1995), p. 131 &136.

<sup>104</sup> General Comment No. 12, CRC

<sup>105</sup> General Comment No. 12, CRC

<sup>106</sup> General Comment No. 12, CRC

<sup>107</sup> General Comment No. 12, CRC

of children must not affect them adversely and the necessary safeguards must be put in place to that effect.<sup>108</sup>

The provision goes on to provide that the views of the child be given due weight based on their age and maturity. The provision does not impose any age limits for the exercise of the principle of respect for the views of the child.<sup>109</sup> Thus, States Parties are barred from setting age limits as a precondition for the exercise of the right to be heard.

Article 12(2) entitles children to give their views in any judicial and administrative proceedings affecting him or her. This implies that the child can participate in a variety of settings court hearings as well as formal decision making concerning the child as in the case of education, health, planning, the environment, etc.<sup>110</sup> This principle implies that the child is not merely a passive object of charity, but an active participant in the promotion, protection and monitoring of his or her rights.<sup>111</sup> The principle implies that the views of children should be considered in decision making, policy making, preparation of laws and other matters.<sup>112</sup>

This article 12 of the CRC is a substantive right, saying that children are entitled to be actors in their own lives and to participate in the decisions that affect them. But, as with adults, democratic participation is not an end in itself. It is the means through which to achieve justice, influence outcomes and expose abuses of power. In other words, it is also a procedural right enabling children to challenge abuses or neglect of their rights and take action to promote and protect those rights. It enables children to contribute to respect for their best interests.<sup>113</sup>

It does not impose an obligation on children to participate, but it provides a right, which is one of the fundamental values of the Convention for them to do so. It is not only a freestanding right, but the Committee on the Rights of the Child has identified article 12 as one of its four general principles.<sup>114</sup> In other words, it must be considered in the

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<sup>108</sup> General Comment No. 12, CRC

<sup>109</sup> General Comment No. 12, CRC

<sup>110</sup> Hodgkin and Newell (n 3) 149

<sup>111</sup> Sharon Detrick (n 19) 213

<sup>112</sup> General Comment No. 12, CRC

<sup>113</sup> Gerison L., Promoting children's participation in democratic decision-making. Paper by UNICEF Innocenti Research Center, 2001, p.2.

<sup>114</sup> These general principles are Article 2, on non-discrimination, Article 3, on best interests and Article 6, on the right to life and maximum survival and development.

implementation of all other rights, and as one of the general measures of implementation of the UNCRC.<sup>115</sup> Hence, there has been progress, since the adoption of the UNCRC in 1989, at local, national, regional and global levels, towards putting this principle into effect. At the UN General Assembly Special Session on Children in 2002, States Parties affirmed their commitment to the realization of article 12.<sup>116</sup>

Practices and attitudes, political and economic barriers which perpetuate the image of children as passive objects of charity are contrary to the principle of respect for the views of the child.<sup>117</sup> Consequently, the right of the child to be heard is also referred to as the child's right to participation. The formulation of the right, in particular, the phrase "shall ensure" demonstrates the fact that the specific and concrete obligations arising from the right are mandatory upon States Parties. The exercise of the right of the child to be heard is a choice to the child and not an obligation.<sup>118</sup>

Thus, the child is not obliged to exercise this right. To this effect, States Parties are required to provide the child the information and advice required to make informed decision in the light of his or her best interests.<sup>119</sup> The need to provide children with appropriate information is also a right enshrined under Article 17 of the Convention. States Parties are required to take the necessary measures to give effect to the right of the child to be heard. These include the direct recognition of the right, adoption of laws or the revision of existing ones. The stipulation that the child is entitled to express their view "freely" implies that no pressure, undue influence or manipulation be applied on the child.<sup>120</sup>

Children are entitled to express their views "in all matters affecting them." The term "all matters" encompasses a broad range of issues which may affect children. The provision has opted to employ language which is not imitative.<sup>121</sup> Thus, the right is applicable in regard to family matters, school life as well as community. These may include adoption, expulsion of

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<sup>115</sup>General Comment No. 5, as cited at Supra note 67, Para.6, p.2

<sup>116</sup> UN General Assembly, A World Fit for Children, A/RES/S-27/2, October 2002, p. 11.

<sup>117</sup> General Comment No. 12, CRC

<sup>118</sup> General Comment No. 12, CRC

<sup>119</sup> General Comment No. 12, CRC

<sup>120</sup> General Comment No. 12, CRC

<sup>121</sup> Hodgkin and Newell (n 3) 155

the child under consideration, decision concerning location of playgrounds and or prevention of traffic accidents.<sup>122</sup>

The implementation of the principle of the right of the child to be heard may be direct or indirect. Though affording direct opportunity for the child to be heard may be preferable, it is not the only method. In cases procedural laws may not allow direct implementation, this may take place through representatives. The representatives may include, among others, parents, lawyers or social workers.<sup>123</sup>

One of the mechanisms for the implementation of the right of the child to be heard is national independent human rights monitoring bodies such as the Human Rights Commissions and Institutions of Ombudsman. Accordingly, the Ethiopian Institution of the Ombudsman has facilitated the establishment of model children parliaments in all the regional states as well as in Addis Ababa and Dire Dawa.<sup>124</sup> These model children parliaments have inspired regional states to establish their own children parliaments and student councils in schools. The model children parliaments have proved to be instrumental in the prevention of maladministration and violations of the rights of children. They have also served as a platform for the participation of children on matters concerning them. This provision implies that proceedings involving matters affecting children need to be conducted in an atmosphere of understanding and must afford children sufficient opportunity to express their views and participate.

#### **2.2.5. The right to contact with their parents**

Article 9 of the CRC requires State Parties to ensure that a child shall not be separated from his or her parents against their will. Separation of children from their parents may be justified only in cases where it is in their best interests. Even in these cases, Article 9(1) stipulates that the separation must be sanctioned by competent authorities subject to judicial review. A typical situation may warrant involving the separation of children from parents when the latter abuse or neglect their children. Another circumstance is the situation where parents are living separately and a decision must be made as to the child's place of residence. Article 9(2) provides that opportunity must be given for all interested parties to be given opportunity

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<sup>122</sup> Hodgkin and Newell (n 3) 155

<sup>123</sup> Hodgkin and Newell (n 3) 157

<sup>124</sup> UNICEF, Child Protection Systems Mapping: The Case of Ethiopia, (2010) 30

to participate in proceedings involving separation of children from parents. The cumulative reading of Article 9(1) and Article 9(2) of the CRC hammers home two essential principles.<sup>125</sup> Firstly, children should not be separated from parents unless it is necessary for their best interests. Secondly, all procedures involving separation of children from their parents must be fair.<sup>126</sup>

Article 9(3) requires States Parties to maintain personal and relations and direct contact with both parents on a regular basis unless this is contrary to the best interest of the child. Article 9(4) of the CRC requires States Parties to inform parents and child of the whereabouts of either if the State has caused their separation, for instance, through deportation or imprisonment.<sup>127</sup>

Article 9 makes special mention of two illustrations of when it may be necessary to separate children from one or both parents. These are when parents have abused or neglected the child and, second, when parents live apart. There was also a suggestion to include “where there is a disagreement between parent(s) and child as to where the child’s place of residence”. However, this suggestion was not accommodated in the provision, since the Convention does not attempt to give exhaustive list of circumstances warranting the separation of children from parents.<sup>128</sup> Nevertheless, situations whereby parents agree between themselves where the child should live or how parental access needs to be organized without the consent of the child remain deeply vexing.<sup>129</sup>

#### **2.2.6. The right of freedom from torture, inhuman, degrading treatment**

Article 19 of the CRC concerns itself with the right of children to protection from all forms of violence. It prohibits physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The scope of Article 19 is broader in that it requires protection from all forms of physical or mental violence while in the care of parents or others.<sup>130</sup> The provision is also construed to include the prohibition of

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<sup>125</sup> Hodgkin and Newell (n 3) 121

<sup>126</sup> Sharon Detrick (n 19) 169

<sup>127</sup> Article 9 of the CRC

<sup>128</sup> Hodgkin and Newell (n 3) 122

<sup>129</sup> Sharon Detrick (n 19) 170

<sup>130</sup> Hodgkin and Newell (n 3) 249

corporal punishment and other cruel or degrading punishment or treatment of children.<sup>131</sup> It emphasizes the right of children to full respect for their dignity and physical and personal integrity.<sup>132</sup> The provision is closely linked with the right to life, maximum survival and development.<sup>133</sup> Article 19(1) requires states to take a myriad of measures to ensure the protection of children from all forms of violence including legislative, administrative, social and educational measures. Article 19 (2) goes on to state that such protective measures should include effective procedures for the establishment of social programmes to provide adequate support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment. Legislation, which apologizes or authorizes for corporal punishment is not compatible with the CRC and ACRWC. “Mental violence” includes humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm.<sup>134</sup>

A number of other provisions in the CRC also address violence and exploitation against children. Article 17 of the CRC provides for protection of children from harmful information.<sup>135</sup> Article 24(3) of the CRC provides for protection of children from harmful traditional practices prejudicial to their health.<sup>136</sup> Article 19 of the CRC also prohibits treatment causing “injury or abuse, neglect or negligent treatment”. Neglect may be intentional or unintentional as in the case of inability on the part of the family, community or the State to provide for the child. The term “negligent treatment” in the provision is closely linked with accidents to children.<sup>137</sup> This notion is also dealt with under Article 24(2)(e) of the CRC. Regardless of the fact that the primary responsibility rests with parents, it is also incumbent upon the state to take action to prevent accidents. The prohibition of maltreatment

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<sup>131</sup> General Comment No. 8

<sup>132</sup> Hodgkin and Newell (n 3) 249

<sup>133</sup> Sharon Detrick (n 19) 318

<sup>134</sup> Hodgkin and Newell (n 3)

<sup>135</sup> Article 17 of the CRC

<sup>136</sup> Article 24(3) of the CRC

<sup>137</sup> Hodgkin and Newell (n 3)

or exploitation including sexual abuse in Article 19(1) shows the comprehensive nature of the Article.<sup>138</sup>

The term “maltreatment or exploitation” embodies any other adverse treatment not necessarily involving physical or mental violence or defined as abuse. Article 28(3) of the CRC requires school discipline to be consistent with the child’s human dignity.<sup>139</sup> Article 34 of the CRC provides for protection of children from sexual exploitation and sexual abuse including organized abuse and involvement of children in prostitution and pornography.<sup>140</sup> Article 35 of the CRC addresses protection of children from sale, trafficking and abduction.<sup>141</sup> Article 36 prohibits other forms of exploitation.

Article 37 underlines protection of children from torture and other cruel, inhuman or degrading treatment or punishment. Article 38 stresses the need to protect children from the adverse effects of armed conflict on children. It prohibits the infliction of acts of torture, other cruel, inhuman or degrading treatment or punishment, capital punishment, life imprisonment without possibility of release and unlawful or arbitrary deprivation of liberty. The provision mirrors comparable entitlements in Article 5 of the Universal Declaration of Human Rights (UDHR)<sup>142</sup>, Article 7 of the International Covenant on Civil and Political Rights (ICCPR)<sup>143</sup> as well as the International

Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).<sup>144</sup>

The risk of violence is heightened in particular in regard to certain categories of children including children with disabilities, children infected or affected by HIV/AIDS, unaccompanied or separated children, etc. Articles 19, 28(2) and Article 37 of the CRC affirm the right of children to protection from corporal punishment and other cruel or degrading forms of punishment. Physical violence has been defined by the Committee on the Rights of the Child in its General Comment No 8 as “any punishment in which physical force

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<sup>138</sup> Sharon Detrick (n 19) 319

<sup>139</sup> Article 28(3) of the CRC

<sup>140</sup> Article 34 of the CRC

<sup>141</sup> Article 35 of the CRC

<sup>142</sup> Article 5 of the Universal Declaration of Human Rights (UDHR)

<sup>143</sup> Article 7 of the International Covenant on Civil and Political Rights (ICCPR)

<sup>144</sup> International Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)



is used and intended to cause some degree of pain or discomfort, however light” whereas mental violence is said to include humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm.<sup>145</sup>

The ICESCR under Article 10(3) deals with families, and requires States Parties to take “Special measures of protection and assistance on behalf of: ‘all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.’”

The 1948 UDHR proclaims that children are entitled to special care and assistance and asserts that they should be protected by law without any discrimination, among other things, based on sex (Arts. 1, 2, 7 & 25.2). Furthermore, Article 24.1 of the International Covenant on Civil and Political Rights (ICCPR) states “every child shall have the right to such measures of protection as required by his status as a minor, on the part of his family, society and the State”. The Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child both provide that the family environment affords the best environment for the harmonious and full development of the personality of the child. This position is also warranted by many cultures which cherish the solidarity within the family or in the community. Children are entitled to live safe and secure life.

The CRC makes the presumption that children are better off within their families.<sup>146</sup> However, if children are deprived of their family environment for whatever reason they are entitled to special protection and assistance. Article 20(1) of the CRC provides that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.” The inability of children to live with their parents and families can be attributed to several structural, underlying and immediate causes

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<sup>145</sup> UN Committee on the Rights of the Child (CRC), CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8, available at: <http://www.unhcr.org/refworld/docid/460bc7772.html> [accessed 23 May 2019]

<sup>146</sup> Sharon Detrick (n 19) 330

including death of parents' abandonment or displacement, removal from custody due to unworthiness of guardians.<sup>147</sup>

The provision stresses that such children are entitled to “special protection and assistance”. This conveys the message that if parents cannot meet the needs of their children, then children have a moral claim upon society.<sup>148</sup> In other words, Article 20 imposes on Member States the obligation to ensure that children deprived of family environment are receive appropriate care. Moreover, Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support.<sup>149</sup>

Article 20(2) of the Convention on the Rights of the Child provides for the right of children to an alternative care in case where they are deprived of family environment. This right is also affirmed in the 2010 UN Guidelines for Alternative Care of Children. Article 20(3) of the CRC outlines the different forms of alternative childcare. In particular, the provision sets forth four types of forms of alternative care, namely, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. The same provision underlines the need to ensure continuum of care while considering the different options of alternative care for children.

Articles 19, 24 and 25 of the African Charter also encourage the establishment of alternative care systems for children deprived of their family environment. Article 25(3) states that, “When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child’s upbringing and the child’s ethnic, religious or linguistic background”.

Article 20(2)(a) of the ACRWC carries a provision not found in the CRC, by stating that State Parties must “assist parents and other persons responsible for the child and in case of need provide material assistance and support programmers particularly with regard to nutrition, health, education, clothing and housing”, clearly advancing “the status of socio-economic rights beyond the traditional confines of rights which are considered only

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<sup>147</sup> Hodgkin and Newell (n 3) 277

<sup>148</sup> Sharon Detrick (n 19) 331

<sup>149</sup> United Nations General Assembly, 1959, Principle 6

attainable by ‘progressive realization.’<sup>150</sup> The provision of alternative childcare must be guided by the subsidiarity principle. The subsidiarity principle is enshrined in various instruments including in Articles 4 and 17 of UN Declaration on Social and Legal Principles, relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. Article 21(b) of the United Nations Convention on the Rights of the Child.

The Hague Convention is a key international instrument when considering the conditions that must be met if children living without adequate parental care are to be adopted abroad. Due to its permanent character, formal adoption is seen as a potentially appropriate solution only for children who could never, for whatever reason, be brought up by one or both of their parents. When adoption is envisaged outside the child’s habitual country of residence, it is often considered one of the ‘last options in a range of possible care arrangements for such children.

Article 4(b) of the Hague Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption. The subsidiarity principle requires giving due emphasis on the benefits of a permanent solution for the child: first domestically, and then internationally. The subsidiarity principle submits that it is in the best interest of children to be raised by the family or kin. If immediate family or kin is unable, or unavailable, domestic placement with a foster or adoptive family is the next best option. If neither of these alternatives is viable, then placement in an appropriate family in another country through inter-country adoption or placement with in an institution temporarily.

Article 25 of the CRC stipulates the right of children to periodic review of treatment. It underlines the need for periodic review of treatment and situation of children placed by the authorities for their care, protection or treatment of their health. The placements envisaged in this provision include placement in foster families or institutions, adoption, children homes, refugee camps, homes for children with disabilities, sick or mentally ill children, children in residential schools, children deprived of their liberty, children in rehabilitative care and other placements.<sup>151</sup> Article 25 is closely related to Article 3(3) of the CRC, which requires states

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<sup>150</sup> Olowu, 2002, p. 130.

<sup>151</sup> Hodgkin and Newell (n 3) 379

parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities.

## CHAPTER THREE

### NATIONAL AND POLICY FRAMEWORKS FOR THE PROTECTION OF THE RIGHTS OF CHILDREN SEPARATED FROM THEIR DETAINED AND IMPRISONED PARENTS.

#### 3.1. Introduction

In this chapter, an attempt is made to analyze national policy frameworks for the protection of the rights of children separated from their detained and imprisoned parents that are relevant for effective protection of their rights in Ethiopia. Ethiopia does not have comprehensive child law in the form of a Children's Act or Proclamation. The main instruments are the Family Code, the Criminal Code and policies which address child rights.

This chapter is presented under different sections. The first section analyzes the FDRE Constitution for the protection of child rights in Ethiopia and analyzes comparatively in relevant to the rights of children separated from their detained and imprisoned parents. The chapter then turns to the most important pieces of legislation for the protection of child rights including the Federal Revised Family Code, the Criminal Code and Labor code and policy framework governing the protection of child rights ,children separated from their detained and imprisoned parents in Ethiopia.

#### 3.2. National policy frameworks

##### 3.2.1. The Constitution of the Federal Democratic Republic of Ethiopia

The Constitution of the Federal Democratic Republic of Ethiopia affirms the rights of all persons including men, women and children alike. One of the pillars of the Constitution is the right to equality and non-discrimination.<sup>152</sup> It provides that race, nation, nationality, or other social origin, color, sex, language, religion, political, or other opinion, property, birth or other status as prohibited grounds of discrimination. Consequently, children have the same rights save certain age-related exceptions including in the sphere of the right to stand for election. The Ethiopian Constitution recognizes the vulnerable position of children including children separated from their detained and imprisoned parents and guarantees their right to protection. The Constitution also stipulates that human rights and freedoms, emanating from

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<sup>152</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Federal Negarit Gazeta, 1st Year, No.1, Article 25

the nature of mankind, are inviolable and inalienable.<sup>153</sup> The FDRE Constitution stipulates important provision on the rights of children. The Constitution devotes special section specifying rights pertaining to children solely. In particular, the Constitution incorporates rights of children in the supreme law of the land<sup>154</sup> as follows:1. Every child has the right:

(a.) To life

(b.) To a name and nationality

(c.) To know and be cared for by his or her parents or legal guardians;

(d.) Not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;

(e.) To be free of corporal punishment or cruel or inhuman treatment in schools and other institutions responsible for the care of children.

2. In all actions concerning children undertaken by private and public institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.

3. Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who became wards or who are placed in public or private orphanages, shall be kept separately from adults.

4. Children born out of wedlock shall have the same rights as children born of wedlock.

5. The state shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education.

Therefore, the FDRE Constitution recognizes the rights of children to life, to name and nationality, and to know and be cared for by his or her parents. It provides the right of children to live a life protected from violence, neglect, exploitation and abuse. In particular, the provision affirms the right of children to life and bans exploitative practices against

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<sup>153</sup> FDRE Constitution, Article 10(1)

<sup>154</sup> FDRE Constitution, Article 36

children and their engagement in work which could be prejudicial to their health and well-being. Article 36(1)(e) also prohibits the infliction of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children. Article 36(2) of the FDRE Constitution enunciates the principle of the best interest of the child and provides that “in all actions concerning children undertaken by private and public institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.”

### **3.2.2. The Revised Family Code of (RFC) and Oromia family code**

The RFC of Ethiopia (Proclamation No. 213/2000) comes into force in the year 2000. The Code replaces the family law provisions of the Civil Code of 1960.<sup>155</sup> It was enacted recognizing the need to amend the former family law in order to better protect the family that is recognized to be the natural basis of society. Article 215 of the Family Code provides that a minor is a person of either sex who has not attained the full age of 18 years.<sup>156</sup> Therefore, based on this it is possible to assert that children separated from their detained and imprisoned parents are those who have not attained the full age of 18 years.

The RFC incorporates a number of provisions that make up the principle of the best interests of the child. Article 82 of the Revised Family Code provides that the court needs to take in to consideration the interests of children when giving orders relating to the maintenance of the spouses, custody and maintenance of children and the management of the property of the spouses. Article 113(2) of the Revised Family Code also provides that the court shall take into account the income, age, health and living condition of the spouses as well as the age and interests of the children as to which spouse shall have custody of the children when giving decision on the dissolution of marriage. Thus, courts of law must consider the interests of children in relation to decisions concerning custody following pronouncement of divorce. Likewise, Article 194(2) of the Revised Family Code also requires courts of law to verify whether or not adoption is in the best interests of children before approving adoption agreements. Article 188(2) of the Revised Family Code also requires the court to take into

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<sup>155</sup> The Revised Family Code of Federal Democratic Republic of Ethiopia, proclamation No. 213/2000.

<sup>156</sup> The RFC, Article 215.

consideration the effects of other children of the adopter on the well-being and best interests of the adopted child.

According to Article 113(1) of the RFC, the parent who is not entitled to custody is still entitled to visitation rights. The visitation right of the absent parent is justified by the rights of the children to maintain contact with their parents and to be cared for by them. The court has realized that the children are not happy when the respondent is not accompanying them during times of visitation and it has shortened the time available for their studies.

Article 291 of the RFC also provides that the tutor shall consult the minor in all important acts concerning him, unless the latter is lesser than 14 years old.<sup>157</sup> Article 249(2) of the RFC asserts that the court shall consult the minor before making decision as to appoint or remove a person as guardian or tutor of the minor. However, it appears that negative traditional values concerning the participation of children remain to be obstacles to the implementation of this right.

Oromia family code article 127 ratifies the courts have to decide the fate of children that might be violated in rights of food, maintenance, education health etc.<sup>158</sup>

### **3.2.3. The Criminal Code of Ethiopia**

The Criminal Code which entered in to force in 2005 also introduced various changes and addressed several gaps of the previous Penal Code with a view to ensure compatibility with the provisions of international and regional instruments ratified by the country. Accordingly, the Criminal Code proscribed several harmful traditional practices inimical and prejudicial to the rights and welfare of children. To this effect, the Criminal Code has devoted a separate chapter on Harmful Traditional Practices (HTPs) in its Book Five.<sup>159</sup>

The Code prescribed several provisions for the protection for children against all forms of malicious treatment and exploitation by parents, guardians or other members of society, protection of children from violence including homicide, domestic violence, violence against children including abduction (article 587-590);<sup>160</sup> harmful traditional practices (articles 561-

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<sup>157</sup> The RFC, Article 291.

<sup>158</sup> Oromiya family code article 127.

<sup>159</sup> The Criminal Code of 2005, Proclamation 414/2004, Articles 561-570

<sup>160</sup> Ibid Articles 587-590



563 and 567-570); female genital mutilation (articles 565 and 566),<sup>161</sup> early marriage (article 649), rape and sexual outrages (articles 620-628);<sup>162</sup> trafficking in women and children (articles 597 and 635);<sup>163</sup> physical violence within marriage or in an irregular union (article 564)<sup>164</sup> and the like.

Article 52 of the Criminal Code provides that infants who have not attained the age of nine years shall not be deemed to be criminally responsible. It goes on to state that the provisions of the Criminal Code shall not apply to this categorization of children referred to as infants by the Code. In particular, the Committee on the Rights of the Child urged Ethiopia to raise the minimum age of criminal responsibility at least to 12 and to ensure that children aged 15 to 18 years are accorded the protection of child justice provisions and are not treated as adults.<sup>165</sup>

The Criminal Code provides that where the crime is committed against children, the punishment shall be rigorous imprisonment from ten years to twenty years. For example, Article 576(1) of the Criminal Code prohibits the maltreatment of children. It stipulates that “Whosoever, having the custody or charge of a minor, ill-treats, neglects, over tasks or beats him for any reason or in any manner is punishable with simple imprisonment not exceeding three months.”<sup>166</sup>

#### **3.2.4. The Labor Proclamation**

Children are protected from economic exploitation by the labor law that was proclaimed in 2003. This proclamation sets the minimum age for work as 14 and categorizes workers of ages 14-18 as young workers.<sup>167</sup> Article 89(2) of the Labor Proclamation (Proclamation 377/2003) stipulates that it is prohibited to employ persons less than 14 years of age. One of the reasons for this stipulation is the need to prevent children from work which interferes with their education. By virtue of Article 48(2) of the same Proclamation, the prohibition on admission to employment of children below the age of 14 applies to contracts of

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<sup>161</sup> Ibid Articles 565 and 566

<sup>162</sup> Ibid Articles 620-628

<sup>163</sup> Ibid Articles 597 and 635

<sup>164</sup> Ibid Article 564

<sup>165</sup> Committee on the Rights of the Child, Concluding Observations, ETHIOPIA CRC/C/15/Add. 1434, Para. 29

<sup>166</sup> Ibid Article 576

<sup>167</sup> Labour Proclamation No. 377/2003

apprenticeship. Though children between the age ranges of 14 to 18 are not totally banned from employment, the Labor Code provides various restrictions on their condition of employment and work.

Accordingly, children separated from their detained and imprisoned parents as young workers are entitled to special protective measures. This minimum age corresponds with the absolute minimum age under international standards which is allowed as an exception taking into account the economic development of the country. The Proclamation further regulates the working conditions of such young persons. It prohibits employment in a work that may endanger their life or health and specifies permissible working hours.

### **3.2.5. The National Child Policy of Ethiopia**

Ethiopia has developed Comprehensive National Child Policy with due consideration of the principles and provisions of the CRC and ACRWC to guide the work of various actors dealing with children and promote the rights of children. The policy emphasizes on three central strategies

1) Development and growth      2) prevention and protection 3) rehabilitation, care and support.

Thus, the strategic objectives of the Policy Framework focus on, establishing coherent governance, program implementation structures for Early Childhood Care and Education (ECCE) and mainstreaming it in all relevant national policies and programs.<sup>168</sup>

The policy promotes the development of accessible, equitable and quality ECCE services for children particularly to those with special needs and marginalized children; protecting young children from abuse and harmful practices; promoting and strengthening partnerships and collaboration among all stakeholders required for mobilization of the necessary resources and ensuring effective delivery of services and programs for young children.

The country also developed the National Plan of Action for children, which was drafted by MOLSA, in collaboration with the concerned organizations, for the period 2003-2010 and beyond. The NPA emphasizes on the principles of putting children first, eradicate poverty,

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<sup>168</sup> See the Combined 4th and 5th Periodic Reports submitted to the UN Committee on the Rights of the Child by FDRE Government (2006-2011), p.3.

leave no child behind, care for every child, educate every child, protect children from harm and exploitation, protect children from war, listen to children and ensure their participation, and protect the earth for children. The major Components of the NPA are,<sup>169</sup> providing quality education; providing health facilities, clear water, sanitation, food and nutrition; combating HIV/AIDS, and protecting children against abuses, exploitation and violence.

However, in my opinion, the child policy fails to lay the necessary guidelines for taking measures to create the protective environment for children in family law proceeding.<sup>170</sup> In addition, the African Child Policy Forum (ACPF) set forward as though there is vast progress made by Ethiopia in framing child policy, but still there are numerous challenges, bottlenecks and gaps in policy to realize children rights. These are the absence of a single and comprehensive policy that deals with the issue of children's rights to be heard, general directive regulating the form of assistance to be delivered and the failure to translate the official text of the CRC and the African Charter into the official working languages of the different regional states.<sup>171</sup>

However, the aforementioned central policies mainly focused on the rights of children as a whole there are no provisions that specifically devoted to children separated from their detained and imprisoned parents. However, in line with the principle of non-discrimination since children separated from their detained and imprisoned parents should enjoy equal rights to all other children in the country those related provisions should also be applied inclusively to protect their rights.

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<sup>169</sup> The Combined 4<sup>th</sup> and 5<sup>th</sup> periodic report, Ibid, p.5.

<sup>170</sup> See, Articles 561-570 of 1994 new Criminal Code of Federal Democratic Republic of Ethiopia. The new criminal code reinforces the constitutionally guaranteed human rights of women and children by protecting them from traditional practices that are known to be harmful to their health and wellbeing. Inter alia, Female genital mutilation, early marriage, the abduction of young women and other forms of sexual violence.

<sup>171</sup> Eddy J. Walakira, and Gilbert O. Onyango, "Laws, Policies and the Reality for Ending Violence against Children in Ethiopia, Kenya and Uganda, Addis Ababa. The study made on existing gaps in legislation to end violence against children, study presented on ACPF (2011), P.16

## CHAPTER FOUR

### THE IMPLEMENTATION OF SOME SELECTED RIGHTS OF CHILDREN SEPARATED FROM THEIR DETAINED AND IMPRISONED PARENTS IN BUNO BEDELE ZONE

#### 4.1. Introduction

The study conducted in Buno Bedele Zone which is one of the zones in Oromia Regional state of Ethiopia. The capital town of Buno Bedele Zone is Bedele, which is located 480 km far from Addis Ababa, the capital city of Ethiopia.

This study examined the actual conditions of children separated from their detained and imprisoned parent's vis-à-vis different provisions of international, regional and national conventions pertinent to protection of their rights. These selected rights specifically examined the practice of protection of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone prison center. In addition it discloses issues facing children when their parents or primary caregivers come into conflict with the laws.

#### 4.2. Analyzing the implementation of some selected rights

##### 4.2.1. The right to non-discrimination

The principle of non-discrimination implies any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

Article 2 of the CRC and Article 3 of the ACRWC provide non-discrimination principle. It indicates that all rights apply to all children without exception irrespective of their status or the status of their parents.<sup>172</sup> Although the CRC articles are interrelated and should be considered together, the incontestability on the Rights of the child, which oversees the implementation of the CRC, adopts four general principles that should guide all types of protection, support and assistance to children.<sup>173</sup> Under Article 2 of the non-discrimination provision of the ICCPR, explicitly granting all individuals, irrespective of race, color, sex,

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<sup>172</sup> Article 2 of the CRC and Article 3 of the ACRWC

<sup>173</sup> General Comments No.5, 2003, Para. 12.

language, religion, political or other opinion, national or social origin, property, birth or any other status.<sup>174</sup>

Additionally, article 30 of the African charter on child rights and welfare stated that Children whose primary caregivers are involved with the criminal justice system have the same rights as other children and these rights should not be affected because of the status of their parent caregiver.<sup>175</sup>

When we come to the implementation of the right to non-discrimination of children separated from their detained and imprisoned parents in Buno Bedele zone, it is clear that children separated from their detained and imprisoned parents are subject to significant insecurities as well as psychological instability in their area when one of or both of their parents are detained or imprisoned.

Mr. Gezahgne Waldee, an expert of woman affairs in Buno Bedele zone stated that “In this area even if the principle of non-discrimination prohibits any distinction, exclusion, restriction or preference which is based on any grounds they do not get recognition. The enjoyment or exercise as equal as other children who are living with their parents are not respected. We have numerous problems to take immediate measures.”<sup>176</sup> The researcher has also observed and ratified that children separated from their detained and imprisoned parents in Buno Bedele zone are subject to discrimination.

Two of the children named Lidetu Teferi, and Samira Nura whose their mother is imprisoned in Buno Bedele zone prison center noted that “After our mother was imprisoned, our father marries another woman. Despite we were fourth and fifth grade students respectively; we cannot get basic necessity materials for learning process; even in the school our friends always told us that your mother is a criminal. Sometimes we went to the school with no food. The people who are living around our residence insulted us saying “your mother is criminal, she is a killer etc. we fear of competing with our friends, Unlike other students. We were not attend a class for a five consecutive days. Life became a burden for us and the problems we faced exposed us to be discriminated in the society and school

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<sup>174</sup> The International Covenant on Economic, Social and Cultural Rights, Adopted and opened to signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. Enter into force on 3 January 1976. Art. 2

<sup>175</sup> Article 30 of African charter on the rights and welfare of the child

<sup>176</sup> An interview with Gezahanyi Walde, expert of Buno Bedele Zone women’s affairs office, May 2020, at 8:00 pm., Bedele town.

community.”<sup>177</sup>

Additionally, the children named Mebrate Tamiru, Gamachu Taye and Misku Ahimad whose their fathers were imprisoned in Buno Bedele zone prison center noted that “Since our fathers were imprisoned, we did not get adequate educational materials like text books, sporting activities; there are no sufficient resources to move and relax like other children. we have no uniform clothes as other elementary school students. we do not make gathering ceremonies and sing national anthem in the morning as practiced when national flag is placed. we do not feel as we are in school. Some Teachers insulted us pronouncing as the child of thief and unwanted citizen.”<sup>178</sup>

As per the articles specified above on CRC and ACRWC respectively, indicates that all rights apply to all children without exception irrespective of their status or the status of their parents. They require State Parties are obliged to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.<sup>179</sup> However, based on data collected, the researcher found that, children separated from their detained and imprisoned parents in Buno Bedele zone did not access adequate educational materials like text books, sporting activities; there are no sufficient resources to move and relax as equal as children who are living with their parents.

There is no concerned governmental body specified by law that specifically facilitate the rights of children whose parents are detained and imprisoned.

The General Comment No.1 on article 30 of African charter given by African Committee of Experts on the Rights and Welfare of the Child ,provided that “If a parent/caregiver is imprisoned, then States must ensure that a child is placed in appropriate alternative care. The

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<sup>177</sup> An interview with Lidetu Teferi, and samira nura age 14, a children separated from imprisoned parent, May,2020, at 10:00 pm., Bedele town.

<sup>178</sup> An interview with Mebrate Tamiru, age 14, a child separated from imprisoned parent, May,2019, at 3:00 pm., Bedele town.

<sup>179</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 2(2)

Committee recommends that the UN Guidelines for the Alternative Care of Children are consulted and followed.”<sup>180</sup>

One of the key informants named Dagu Ambisaa who is living in Bunnoo Beddele city describes the principle of non-discrimination.<sup>181</sup> He said, “After my mother is imprisoned, my father marries another woman. Despite I am fourth grade; I cannot get necessary resources to go to school; even in the school my friends always told me that your mother is a criminal and some teachers also do not teach properly. I have no additional shoes, clothes, sometimes I went to the school with no food. Some of the Teachers said that since your mother is criminal, killer, so do you. I fear of competing with my friends. Unlike other students, I didn’t learn for a five days. My life situation is without adequate sources and I am totally forgotten and discriminated in the school.”<sup>182</sup>

Likewise, the FDRE Constitution affirms under Article 25 race, nation, nationality, or other social origin, color, sex, language, religion, political, or other status is prohibited grounds of discrimination.

Consequently, children separated from their detained and imprisoned parents have equal rights to all other children to get treatment required whenever needed. As far the practice in Buno Bedele Zone prison center is concerned on to the implementation of the right For the purpose of analyzing the practice of courts in entertaining cases of the right of children separated from their detained and imprisoned parents to be protected from violence, abuse and neglect.

In order to implement the rights of children separated from their detained and imprisoned parents, the government should guarantee that a child is placed in suitable alternative care; the justice system also must consider or bear in mind the principle of best interest of the child before giving the proper sentence and parents or care givers to have regular contact with their children.

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<sup>180</sup> A short guide to General Comment No.1 on article 30 of a The African Committee of Experts on the Rights and Welfare of the child in november 2013,

<sup>181</sup> An iinterview with Lidetu Teferi, a child separated from imprisoned parent,Bedele woreda, May 2019.

<sup>182</sup> Interview conducted from Dagu Amase.

#### **4.2.2. Right to contact family**

Article 9 of the CRC requires that state parties respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.<sup>183</sup> Article 9(3) requires States Parties to respect of the rights of children to maintain personal relations and direct contact. Article 7 of the CRC provides that children have the right to know and be cared for by their parents. Similarly, Article 19(2) of the ACRWC stipulates that “every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.”<sup>184</sup>

This suggests that separation due to parental incarceration cannot include conditions or circumstances that preclude regular contact, except where such contact is not in the child's best interests. Whether visitation is beneficial for children or for incarcerated parents is highly dependent on the specific dynamics in each family and the conditions of each visiting facility. It also requires States Parties to inform parents and child of the whereabouts of either if the State has caused their separation, for instance, through imprisonment.

These rights make it necessary to provide visitation rights to the non-custodial parent unless this is deemed to be not in the best interests of the child. Accordingly, the Revised Family Code also provides that courts of law can make orders for child support, custody as well as visitation rights of the parties. Visitation rights of the custodial parent are instrumental to realize the rights of the child to parental knowledge and to maintain contact to the custodial parent. This in turn fundamentally contributes to the full and healthy development of the child.

Governments must do everything possible to ensure that children enjoy all their inalienable rights and develop in a safe and free society. Governments should prioritize child rights when considering any major policy. Even If the laws of a country protect child rights better than the UN Convention on the rights of the Child, those laws take higher priority. Governments should make active efforts to inform children about their rights.

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<sup>183</sup> Article 9 of the CRC

<sup>184</sup> . Article 7 of the CRC and Article 19(2) of the ACRWC



As per the researcher conducted an interview with two(2) members of Buno Bedele police officers named commander Marjeja Abdu and inspector Fasil Ahimad, and two(2) persecutors named, Tsegaye Didha and Girma Chewaka were stated that "while we were investigating criminal acts we didn't consider the rights of children of detained parents they also suppose that , the rights of children whose parents are detained and imprisoned is actually abused.so that of no rules and regulations to govern such activities."<sup>185</sup>

Additionally Mr.Fiqadu Teshome (Abbaa Gada) ,Mr., Firew Teka (from league of youth),Almaz Tolosa (from woman assocision ), Ato Genet Jimaa (from protestant) and she/Ahimadiin Bashir (from muslim religion) intervned by the researcher and explained that "children in our sounding in Bedele town kebele 02 those their father and mother were imprisoned are exposed for addiction and theft due to lack of visitation ."so that they recommended that,to save those vernalable chidren the government must establish or organise legal system .<sup>186</sup>

#### **4.2.3. Right to life, survival and development.**

All children have the right to have their basic needs met, not only for survival and protection but also to be able to develop their full potential, participate as members of society and grow up to be concerned and responsible citizens. Article 6 of the CRC and Article 5 of the ACRWC provides that protection from violence, neglect and abuse is crucial for the maximum survival and development of the child.<sup>187</sup> Article 20(1) of the CRC provides that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.

Article 24 of the CRC and Article 14 of the ACRWC recognizes the child's right to the highest attainable standard of health and to facilities for the health care for the treatment of illness and rehabilitation of health.<sup>188</sup> Article 25 of the CRC underlines the need for periodic review of treatment and situation of children placed by the authorities for their care,

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<sup>185</sup> Interview conducted with police officers.

<sup>186</sup> An interview conducted with civil society .

<sup>187</sup> Article 6 of the CRC and Article 5 of the ACRWC

<sup>188</sup> Article 24 of the CRC and Article 14 of the ACRWC

protection or treatment of their health.<sup>189</sup> Moreover, Article 15 of the FDRE Constitution assures the right to life of every person.<sup>190</sup> Additionally, under article 41 recognizes the obligation of the state to allocate ever increasing.<sup>191</sup> Similarly, Article 257(1) of the Revised Family Code provides that the guardian shall look after the health of the minor.<sup>192</sup>

These principles implies that protection from violence, neglect and abuse ,are crucial for the maximum survival and development of the child. The implementation of these principle requires states parties to the convention take measures to ensure the optimal development of the child.<sup>193</sup> For the purpose of analyzing the practice in-depth interview was conducted with different key informants.

One of the key informants named Adisu Girma describes “I am 12 years old and the second child for my family having four children. My mother was died when I was 9 years old after my father has been detained; I feel no comfort in my life. I am of grade five student, though I am not attending the classes on a regular basis due to workload. In addition, I have no uniform, pens, pencils, exercise books and the like. However, the court order nothing on our custody matters, particularly, about our education, food, clothes, health and our right to visit my father in the prison. Moreover, I have caught with fear and did not sleep for several nights, since hyenas come to our home at night to eat our domestic’s animals. However, my brother is striving to keep at night from hyenas. I love my father too. Therefore, I wish my father may release from prison and our problems will come to an end.”<sup>194</sup>

The other informant named Kamal Amoshi described that “I am 8 years old and student of grade two. She has no words to express easily about the consequences of such imprisonment happened in the life of her parents. Rather she likes to cry when remembered the situations resulted the disintegration to her family due to the crime they committed. She was too familiar with and has created such familiarity since she comes to the office for several times for search of a solution. She responded by saying, “I do not know the reason why my parents create such conflict with the law. I lost sleep and feel sad. I remember, the judge has called

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<sup>189</sup> Article 25 of the CRC

<sup>190</sup> The Constitution of the FDRE, Proclamation No.1/1995, Article 25

<sup>191</sup> The Constitution of the FDRE, Proclamation No.1/1995, Article 41

<sup>192</sup> The RFC, Article 257(1)

<sup>193</sup> Michael Gose, The African Charter on the Rights and Welfare of the Child (Community Law Center, Western Cape, 2002)

<sup>194</sup> Interview conducted with adisu girma

me to the proceeding and only asked me how old I am. However, I was not interviewed on the court regarding my interests in custody assessment and visiting time plan.”<sup>195</sup>

Accordingly, the interview of the key informants was almost similar. They confirmed that, children separated from their detained and imprisoned parents are subject to significant problems concerning their basic needs, not only for survival and for protection but also to be able to develop to their full potential, to participate as members of society and grow up to be caring and responsible citizens. They are not protected from violence, neglect and abuse. They are not entitled to special protection and assistance provided by the state. Children separated from their detained and imprisoned parents do not get right to the highest attainable standard of health and to facilities for the health care for the treatment of illness and rehabilitation of their life.

The General Comment No.1 on article 30 of African charter given by African Committee of Experts on the Rights and Welfare of the Child provided that “If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.

As per the case rendered in November 5, 2009 by Buno Bedele high court: Ato Abdu Yadata And his wife W/ro Ramat Faji were living in Buno Bedele zone Bedele wereda, in Digeja Mariyam kebele. They were accused in Buno Bedele high court and penalized rigorous imprisonment for 5 years on the file number 02406 for the case of Ato Tashale Abera’s residence burned and distracted. The arrested family have three (3) children: their name Alemu Yalata: ten years old, Kamal Yadata : eight years old and Maku Yadata: six years old

<sup>196</sup>

As the researcher interviewed two of the children namely Alemu Yadata and Kamaal Yadataa, they said that “we do not have any closer relatives in surrounding, who treat us after our parents imprisoned we exposed for different problems such as lack of food, clothing, guidance and supporter, etc. Due to this we immediately terminated our education. We started to enjoy bad habits such as smoking cigarette and chewing chat, drinking

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<sup>195</sup> interview conducted with Kamal Amoshi.

<sup>196</sup> Criminal bench of Buno Bedele high Court on November 5, 2009, file number 02406

alcohol. Specifically, our sister named Maku Yaadata faced for gender violence, she was raped by Ato Abdala Ahimed, While she was serving him in his residence.”<sup>197</sup>

Generally, this implies that the judgment decided by mentioned high court for such cases, due to lack of the laws and procedures which enforce the court, so the court didn't consider the appropriate steps to ensure the children adequately cared, for survival and development.

#### **4.2.4. Right to be heard**

The Right to be heard implies that the child can participate in a variety of settings and court hearings as well as formal decision making concerning the child as in the case of education, health, planning, environment, etc. The child is not merely a passive object of charity, but an active participant in the promotion, protection and monitoring of his or her rights. Their views should be considered in decision making, policy making, preparation of laws and other matters.<sup>198</sup> Article 12 of the CRC and Article 7 of the ACRWC implies that the views of children should be considered in decision making, policy making, preparation of laws and other matters.<sup>199</sup> Moreover, the FDRE constitution under article 21(2)<sup>200</sup> of the FDRE Constitution that provides that all persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel.<sup>201</sup> Article 291(1) of the Revised Family Code stipulates that the tutor shall consult the minor in all important facts concerning him, unless the latter is less than fourteen years old.<sup>202</sup> Article 249(2) of the Revised Family Code asserts that the court shall consult the minor before making decision as to appoint or remove a person as guardian or tutor of the minor.<sup>203</sup>

Three of the judges in Buno Bedele Zone high court named Mr. Tamsgeen Amba, Mr. Bililiny Mandefiroo and Mr. Natol Alamayehu interviewed by the researcher. Two of the three judges were stated that “the children have the right to be heard in family law proceedings” where as

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<sup>197</sup> Interview conducted with Alemu Yalata & kamal yadata

<sup>198</sup> Children Rights News Letter, 'Children's Rights International,' 2005, p.27.

<sup>199</sup> Article 12 of the CRC and Article 7 of the ACRWC

<sup>200</sup> The Constitution of the FDRE, Proclamation No.1/1995, Article 21(2)

<sup>201</sup> The Constitution of the FDRE, Proclamation No.1/1995, Article 25

<sup>202</sup> The RFC, Article 291(1)

<sup>203</sup> The RFC, Article 249(2)

one of the three judges was stated that “children have not the right to heard in family law proceedings” On the other way the two judges named Mr. Emana Fekadu and Ejigu Tadesse those working in the above high court stated that “ while rendering criminal sentence we do not consider the fate of the child remained at home because no laws and procedures that guide us specifically in this concern ”<sup>204</sup>

The key informant named Abdi Sutuma described that“When my family has been sentenced to prison in 2008, I was 8 years old child. The judge in the court has called me to the proceeding before the order has given on the petition of my parents. The judge did not allow me to express my views regarding on my custody, maintenance and my right to visit my parent. At that time, though I was 8 years old child, the judge told me that, as I am not capable to give my voice and to be heard. Therefore, by denying me the right to express my heart grievance and to be heard, the judge gave the order and decided, as I have to live with my uncle. No one has also ordered to pay maintenance for my education, food, clothes, health and the like.”<sup>205</sup>

As the researcher evaluated, the law that enforce the right to be heard of children was not enacted as a mandatory law and also attention was not given by the government.

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<sup>204</sup> Interview conducted with Buno Bedle High court judges

<sup>205</sup> Interview conducted with Abdi Sutuma

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1. Conclusions

The study generally examined the implementation of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone Prison Center of Ethiopia. The notion of protecting the rights of children has got birth and successive development 19th century. However, the land mark is the ratification of the 1989 CRC that gave further impetus to the development of the notion among states of the world. In Ethiopia it has developed since the ratification of the Convention in 1991 as the country is not an exception from this reality. To this end the study has explored that the international, regional and national standards on the rights of children separated from their detained and imprisoned parents. Gaps of children's rights, though they are stipulated in law, are observed in the course of executions.

The rights that are granted include the right to education, the right to health, the right to child development, the right to health among others. Nevertheless, when considering Ethiopia as a developing country with relatively less skilled human resources and budget, the overall implementation assessment of the rights of children separated from their detained and imprisoned parents can be fall under fair category of handling and interpretation of the law. However, the realization still requires a concerted effort among stakeholders to make the existing situation better.

Although Ethiopia has taken various measures to ensure the rights of children as a whole, the rights of children separated from their detained and imprisoned parents do not given attention. This is basically attributed to the absence of laws that sufficiently recognize them and currently no clear and comprehensive legal framework for the protection of their rights. Therefore, based on the findings, the researcher comes with the following conclusions.

- From the findings, it is clear that, although Ethiopia has taken various measures to ensure the rights of Children as a whole, the rights of children separated from their detained and imprisoned parents do not given attention. This is basically attributed to the absence of laws that sufficiently recognize them and currently no clear and comprehensive legal framework for the protection of their rights. Further, Ethiopia does not recognize the

concept of children separated from their detained and imprisoned parents that is backed by law.

- Regarding the problems of children separated from their imprisoned and detained parents in Buno Bedele Zone Prison Center of Ethiopia, the study depicted that children separated from their detained and imprisoned parents are invisible when it comes to surveys about children in Ethiopia. What little national census data is available; it clearly understates the number of children separated from their detained and imprisoned parents. Without accurate data it is difficult to plan and allocate resources. Overall even where there is adequate legislative framework, negative attitudes, lack of awareness and limited funding mean that the laws and policies are not put into practice in a child friendly manner. Therefore, it is easy to scrutinize how far those instruments are not effectively implemented yet.
- Concerning the compatibility of Ethiopian laws with international standards in dealing with children separated from their detained and imprisoned parents in Buno Bedele Zone Prison Center of Ethiopia, analysis of the findings shows that the existing legislative and policy frameworks are inadequate and do not fully comply with the international standards to be able to ensure the realization of the rights of children separated from their detained and imprisoned parents.
- Children have the rights to non-discrimination, rights to life, rights to survival and development and rights to be heard. This study discusses the duty expected from the Ethiopian government for the protection of the rights of children separated from their detained and imprisoned parents in Buno Bedele Zone Prison Center of Ethiopia. It revealed that for effective child rights protection in Ethiopia are the very existence of laws as well as their continuous revision and also institutions as well as their efforts like taking part in the law making process via conducting impact assessment and impact evaluation, organizing children parliament and giving training in order to protect the rights of children. Therefore, taking into consideration of all the above findings, the author suggests some of the plausible measures in the next section with a view of alleviating the existing problems that are hindering the protection of the rights of children separated from their detained and imprisoned parents.

- The main problems hampering the implementation of the Charter lie in the poor socio-economic conditions of the country and the lack of adequate and effective implementation mechanisms. The main factors hampering the implementation of the CRC and the ACRWC are economic underdevelopment, scarcity of resources, limited administrative structures and harmful traditional practices and customs. In this effort, the Ethiopian government has received continued support and assistance of international agencies and non-governmental organizations during the past years.
- The research findings also illustrates that due to this fact Ethiopia is supposed to take legislative measures in order to implement and subsequently enhance protection of the rights of children separated from their detained and imprisoned parents. The analysis of the data shows Ethiopia is taking promising legislative measures. With regard to this, in line with the four key principle of the Convention Ethiopia has granted Constitutional protection applicable in the context of the rights of children separated from their detained and imprisoned parents because of its Constitutional inclusion of guarantee of rights for “everyone”.
- However, by virtue of Article 62 (1) & 83 of the Constitution the ultimate power to interpret the Constitution is given for House of Federation. Thus, judges feel as they have little role in interpreting the Constitution they cannot frequently refer it while adjudicating children’s case. Second, Ethiopia has also given protection to the rights of children under the revised the Family Law, Criminal Code and national child policy in compliance with CRC. Beside, again gaps are identified in Family law after its revision in 2000, the Criminal Procedure code of 1961 is being revised in order to make these codes in conformity with the CRC and also Proclamation 454/2005 has enacted in order enhance the implementation of the CRC in Ethiopian domestic legal order.

## **5.2. Recommendations**

The following recommendations are proposed based on the study's findings:

- The country needs to enact specific national laws on the protection of the rights of children separated from their detained and imprisoned parents. This is the primary task that the country must comply. On the one hand, as a party to the CRC, a national



legislation is required for better implementation of the innovative ideas stipulated in the convention on what is to mean by the right on the protection of the rights of children separated from their detained and imprisoned parents. The existing national laws the FDRE constitution, the RFC, Criminal Code and national child policy which are framed in the general context to “every children” are not ensuring the practical exerting of the right by these people. This legislation can specify the primary duties of all responsible organs and it can prescribe the details of the rights in the context of the children separated from their detained and imprisoned parents

- The government should create and implement law and policy to ensure that the best interests of the child are a primary consideration in relation to all actions that may affect children separated from their detained and imprisoned parents. The implementation of the best interest of the child is closely linked to child participation, especially in the determination of what constitutes the best interest of children in general or that of a specific child. This should take effect at all stages of judicial and administrative decision-making including arrest, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community.
- In order to protect the rights of children separated from their parents imprisoned, the responsible bodies such as women’s and youth affairs, ministry of health, ministry education, ministry of Justice etc. must give attention and work jointly.
- The prison administration should make an effort to enhance parent-child visiting program in a way that benefits children as well as parents and provide a suitable place for meeting, longer time and frequent contact of the parents and children.
- Finally, the study recommends that a detailed and comprehensive study in the research site should be undertaken, documented and disseminated to investigate and further strengthen the protection of the rights of children separated from their detained and imprisoned parents in Buno Bedele zone prison center of Ethiopia as a whole. As well as to have accurate and precisely researched statistical data that can best prescribe the numerical status of children separated from their detained and imprisoned parents in the country.

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