

# Hearing Whisper of the Child within the Law's Earshot: An Assessment Made on the Legal Bedrocks and International Obligations of Ethiopia toward Article 12 of UNCRC\*

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## Abstract

Being vulnerable groups of the society, children need specific protection under international as well as national legal instruments. In a country like Ethiopia where the culture has no room for the children, it is expected from the legislature to incorporate and domesticate the UNCRC into its domestic laws. Article 12 of the CRC is a new concept in international law, and posed a challenge to most countries throughout the world, where a culture of listening to children was not widespread or even acceptable. Hearing from the children is not a favor and program; rather it is a right which is grated to them internationally under the United Nation Convention on the Rights of the Child (UNCRC). Thus, children must be considered as knowing subjects to speak out what is going on in their own lives<sup>1</sup>. Moreover, when heard their whisper, children can develop positive self-esteem, easily manage stressful experiences, and less prone to depression, hopelessness and suicide. Therefore, Article advocate that Ethiopia has to incorporate the CRC directly into domestic laws to hear the child's whisper within the laws earshot.

## Keywords

Children, Whisper of the Child, State Parties, Convention on the Right of the Child (CRC), Federal Democratic Republic of Ethiopia (FDRE), Constitution, Revised Family Code (RFC), UNCRC Standing Committee, Official Negarit Gazzeti, Incorporation

\*Notice: The words mentioned for masculine gender shall also apply to the feminine gender.

<sup>1</sup>Children Rights News Letter, "Children's Rights International," 2005, p. 27. This news letter has mentioned unless and otherwise they get the chance tell their internal feeling to the court; it is difficult to realize their justice.

## 1. Introduction

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) specifically has made the children the owner of many rights. However, this Constitution has skipped to entitle them with the right they have entitled under article 12 of the CRC. Article 12 speaks out that it is expected from the state parties to the convention shall ensure children can express their views in any matters that can affect their interests and to be heard in any judicial and administrative proceedings<sup>2</sup>. However, the government of Ethiopia did not incorporate this right under its constitution. In addition; it is expected from the legislature to publish the whole body (contents) of the CRC into Negarit Gazzeta. However, such publication is mandatory; still the government did not publish the full contents to domesticate CRC.

As one of the oldest members of the UN with its admission in 1945 and it has ratified the Convention on the Rights of the Child (CRC) in 1991 without any reservations<sup>3</sup>, it is expected from the government of Ethiopia to incorporate article 12 of the CRC to realize children human rights of having voices and to be heard in both judicial and administrative proceedings. Thus, this Article analyses the place of Article 12 of the CRC under the FDRE Constitution of 1995, and other domestic laws of Ethiopia, and the fulfillment of international obligations the government regarding children's rights to be heard in judicial and administrative proceedings. In addition, I will reflect my view on whether the remarks and recommendations made by the UNCRC Standing Committee to the Ethiopian delegation on those five periodic reports made by Ethiopia since 1993-2011; regarding the incorporation of Article 12 of the CRC into the domestic laws has been implemented or not? This Article has two parts. These are: the legal bedrocks and the international obligations of Ethiopia to implement the right enshrined under Article 12 of the CRC as repeatedly recommended by the UNCRC Committee.

### PART I: Legal Bedrocks of Ethiopia in Light of Article 12 of the CRC

#### 1.1. Ethiopia and the UNCRC

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 (Freeman, 1996), 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” (Tobin, 2008). It has drafted with the vision that children should gain the “special care and assistance” that are unique to childhood<sup>4</sup>. Ethiopia has been a member of the United Nations since 1945. The Country has ratified the CRC during the period of Transitional Government of Ethiopia (TGE) under proclamation No. 10/1992, which, according to its article 4 came into force on January 30, 1992 without any reservations<sup>5</sup>. Article 9(b) of the Charter autho-

<sup>2</sup>See the United Nations Convention on the Rights of the Child, GA Resolution 44/25, UN GA Resolution Supp. No. 49, UN Doc A/44/736 (entered into force 2 September 1990), Article 12 (1 & 2).

<sup>3</sup>Ethiopia, 3<sup>rd</sup> Report (2003): To Committee on the Rights of the Child; 43<sup>rd</sup> Session, p. 2.

<sup>4</sup>The United Nations Convention on the Rights of the Child, GA Resolution 44/25, UN GA Resolution Supp. No. 49, UN Doc A/44/736, Article 3.

<sup>5</sup>Ethiopia, 3<sup>rd</sup> Report, (2003), cited above at note 2, P. 1.

rized the council of representative of the TGE to ratify international agreements and thus it is based on this provision of the law that the convention was made part of the Ethiopian law.

Regarding the status, the CRC in the Ethiopian article 9(4) of the FDRE Constitution states that “All international agreements ratified by Ethiopia are an integral part of the law of the land”. In addition, article 13(2) of the same Constitution states, “The fundamental rights and freedoms specified in this Chapter (Chapter Three, part two) shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia<sup>6</sup>. However, there are two divergent views among the legal scholars of the country regarding the status of CRC with domestic laws of Ethiopia. One group has argued the constitution is above the CRC (Indris, 2000), while the second group has argued that the supremacy of the constitution established under article 9(1) of the same is to be differed as far as the human right instruments are concerned<sup>7</sup> (Bulto, 2009).

In my opinion, article 41, of the CRC and article 13(2) of FDRE Constitution have a solution to those divergent, hot and persistent debates over the status of the CRC along with domestic laws of Ethiopia. Article 41 of the CRC states that if the laws of a particular country protect children better than the articles of the Convention, then those laws should stay; and article 13(2) of the constitution also says the constitution is required to be interpreted in conformity with the concerned international human rights instruments ratified by Ethiopia. In addition, the UNCRC Standing Committee has also stated that if cases of any conflict in legislation may arise, that predominance should always be given to the CRC as pursuant to article 27 of the Vienna Convention on the Law of Treaties of 1969<sup>8</sup>. It is clear that this treaties, provides that, emphatically maintains a part of international treaty, the supremacy of the provisions of the Convention over the national laws a state parties may not invoke its national laws so as to carry out an international conventions. It means, once enters in a Convention on its free will and ratified it, the States have an obligation in good faith (“*Pacta Sunta Servanda*”) to fulfill

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<sup>6</sup>Ethiopian Federal Democratic Republic (FDRE) Constitution, *Proclamation* No. 1/1995, Article 13(2).

<sup>7</sup>There are a hot and persistent debates and controversies among scholars of the country, regarding the exact meaning and interpretation of article 9(4) and article 13(2) of the Constitution and the status of the CRC in domestic legislations and its publication in domestic laws. These debates hold two-tiered competing views regarding the position of CRC in Ethiopia’s domestic laws. The first has argued that the role of human rights instruments envisaged by article 13(2) of Constitution is nothing more than being a mere interpretive guidance and tools. Hence, this view rules out the departure from the provisions of the constitution even where and when it stands in clear contradiction with the terms of human rights instruments ratified or adopted by Ethiopia. Hence, they concludes that whether the constitution provides for a better or lesser protection to individual or groups, its terms prevail over those of human rights instruments to the extent that the latter conflict with the former. The second view holds that, the requirement of article 13(2) that the Bills of Rights of the constitution must be interpreted in conformity with ratified treaties. This view concludes the supremacy of the constitution established under article 9(1) of the same is to be differed as far as the human right instruments are concerned. Hence, they have argued, “infractions the basic human rights are no longer matters of internal concerns, just as sovereignty is no longer an acceptable defence to deprivation of fundamental rights of nationals and other residents of the country.”

<sup>8</sup>The Vienna Convention of the 1969 Vienna Convention on the Law of Treaties, 2003, Para.20, Article 27.

it<sup>9</sup>. Therefore, as to the above analysis, as state party to the CRC, Ethiopia cannot rely only on the provisions of the Constitution or other domestic laws to extricate themselves from their international obligations, except under very exceptional circumstances.

### **The Children Rights under Article 12 of the CRC**

*“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>10</sup>

Article 12 of the CRC is a unique provision in a human rights treaty; it addresses the legal and social status of children<sup>11</sup>. In my experiences as a Public Prosecutor for the last three years (2007-2010), I have seen that children were the part of community who lost the justice because of cultural related factors, economical capacity of their families and the non-existence of the translated versions of the international legal instruments on the court bench. 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>12</sup>. Moreover, at the dawn of the 21<sup>st</sup> 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 in society (Freeman, 1996). By enjoying such right children can develop their moral reasoning, competency, and increases children’s satisfaction in their life<sup>13</sup>.

Article 12 of the CRC has mandatory clauses (*shall assure*)<sup>14</sup>, over the state party to implement all the rights enshrined it by either domestication process or by publicizing the full contents of the Convention in its Official Gazeata (Negarit Gazeata). This article allows the children after they express their opinion, the rights to be heard in both judicial and administrative proceedings in accordance with their age and maturity. However, the decision-makers may give a due weight for the views of young child that may be mature beyond his years (Van Bueren, 1995).

Moreover, if this article directly transplanted into the FDRE Constitution, or domestic laws of the country, or if the CRC is fully published into the Negarit Gazeata of Ethiopia, the Children of Ethiopia can enjoy this right in full manner and no judges may wonder to refer CRC to decide over the children’s cases. Thus, this right enables children to contribute to respect for their best interests (Gerison, 2001). In addition, if the children get the right to be heard in judicial and administrative proceedings, rather

<sup>9</sup>Ibid, Articles, 26, 46 and 47.

<sup>10</sup>Children Rights News Letter, cited above, at note 1, p. 27.

<sup>11</sup>See, General Comment No. 12; 51st session, the right of the child to be heard, (2009), Para. 1, p. 5.

<sup>12</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.

<sup>13</sup>Taylor, “What Do We Know about Involving Children and Young People in Family Law Decision Making?” p. 165. Ideally, children’s participation should start early as it has many benefits for the development of personal identity, moral reasoning, competency, and increases children’s satisfaction with the outcome of any decision reached.

<sup>14</sup>The United Nations Convention on the Rights of the Child, GA Resolution 44/25, UN GA Resolution Supp. No. 49, UN Doc A/44/736, Article 12 (1&2).

than realizing the best interests of the child, the outcome of the decision of the court cannot harm them.

Thus, it is an obligation of the state party to realize children's shall be heard in judicial and administrative proceedings directly or indirectly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. As I have mentioned above, since both sub articles of Article 12 of the CRC used the mandatory word "Shall" it is not the choice but it is must for the state party to realize this rights as they are briefly stated under this article of the CRC. Therefore, article 12 of the CRC can be considered as a base in the implementation of all other rights, and as one of the general measures of implementation of the UNCRC<sup>15</sup>.

## **2. The General Consensus on the Implementation and Publication of the CRC in to the Official Negarit Gazeta of Ethiopia**

### **2.1. The General Consensus on the Implementation of the CRC**

Any state that ratifies the CRC has an obligation under international law to implement it. Thus, it is obvious that it is expected from the state party to the convention to take all appropriate<sup>16</sup>, which deemed fit in the fight for the realization of children's rights. To this fact, article 4 of the CRC requires States parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained therein<sup>17</sup>. In addition, it is required from the state parties to make report to the UNCRC Standing Committee regarding the implementation of the CRC in the domestic laws and the practices of the judicial and administrative proceedings.

The existing literature, have underlined that there are two types of measures (legal measures)<sup>18</sup>, (Lundy, Kirkelly, Byrne, & Kang, 2009), and non-legal measures<sup>19</sup>), in implementation of the CRC at a national level. The legal measures can be direct incorporation, indirect incorporation and sectorial incorporation. Direct incorporation means that the CRC itself forms part of national law, is binding on public agencies and can be applied by the courts. Incorporating article 12 of the CRC directly into the domestic

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<sup>15</sup>See General Comment No. 5, Para. 6, p. 2 In addition, at the UN General Assembly Special Session on Children in 2002, States Parties affirmed their commitment to the realization of article 12. See UN General Assembly, *A World Fit for Children*, A/RES/S-27/2, October 2002, p. 11.

<sup>16</sup>See, for example, Human Rights Committee, General Comment No. 3, Implementation at the national level, HRC/GC/1981/3, 1981, Para. 1.

<sup>17</sup>See CRC, Article 4. However, it is up to individual States to determine how to implement the CRC in practices, because the political, economical and social development of the State parties to the Convention is not the same, which in turns has an effect on implementation of these rights either in fulfillment of mechanisms or professionals and expertise.

<sup>18</sup>Legal measures can be direct incorporation, indirect incorporation and sectorial incorporation. Direct incorporation-the CRC is fully transformed into domestic law at either legislative or constitutional level. Indirect incorporation-other legal mechanisms that are used to give the CRC some effect in the domestic legal order (e.g. Child Act). And the Sectorial Incorporation-this is about the transposing relevant provisions of the CRC into relevant sectoral laws, such as those relating to education or family.

<sup>19</sup>Non-legal measure: is to mean the incorporation of the rights described in the CRC, in national strategies and action plans for children; child impact assessment processes to anticipate the impact of proposed laws and the policies or budgetary allocations.

laws provided the children the opportunities for strategic litigation to give their voices and being heard regarding any matters that may affect their best interests. It also could conveyed the strong message about the status of children and their rights, and the knock-on effects for implementation of children's rights principles into domestic law and policy. Hence, the CRC Committee urges for the direct and full incorporation of the CRC into the domestic laws of State parties<sup>20</sup>. That is why some African countries have directly incorporated the CRC into their domestic law. For instance, the law on the rights of the child and protection of children' adopted by Rwanda in 2001 is one of the first implemented by an African nation to recognize the right of the child to be heard in broad, general terms<sup>21</sup>.

Indirect incorporation means another way of legal mechanism that is used to give the CRC some effect in the domestic legal order. This kinds of incorporations entitled children to enjoy rights granted for adults by their status as a citizens of the state party to the Convention. By using this kinds of incorporation Ethiopia, has invoke as children may enjoy the right to express their views under the provisions of the laws which gives such rights for all citizens of the country through their status as "everyone"<sup>22</sup>. However, it is expected from the country to take legal measures to proclaim children related laws, because of children are the vulnerable groups of the society.

In addition, sectoral incorporation means a mechanism of transposing relevant provisions of the CRC into relevant sectoral laws, such as those relating to education or family Ethiopia has made sectoral law reform particularly in family law<sup>23</sup>. However, this kind of incorporation only focuses only on specific areas of children's rights. This means that some rights are neglected and that obligations to respect children's views are recognized only in specific circumstances or contexts, often with inadequate mechanisms to ensure accountability. Moreover, Ethiopia favored indirect and sectorial incorporation of article 12 of the CRC into its domestic laws. Therefore, many efforts are expected from the country to take legislative measures by incorporating the CRC directly to hear the whisper of the child within the laws earshot.

With regard to non-legal measures also, much more obligation is expected from the state parties of the convention. Among these wide rage expected measures some of them are: Establishing children parliaments, child forum, (TV and Radio programs), development of special structures and monitoring institutions. The UNCRC Committee has identified a wide range of non-legal measures that are needed for effective implementation the CRC in domestic levels of the state parties<sup>24</sup>. It is clear that Ethiopia

<sup>20</sup>General Comment No. 5, cited above, at note 15, P. 19.

<sup>21</sup>Law reform and implementation of the Convention on the rights of the Child, prepared by Innocent Research Centre under the guidance of UNICEF, 2009, P. 13.

<sup>22</sup>FDRE Constitution of 1995, Article 29(2).

<sup>23</sup>See, the FDRE Revised Family Code of 2000. This family code incorporates the legal provisions which entitle children with the rights to be treated on equal footing with adults in general, in a unique way in a particular in the family proceedings.

<sup>24</sup>In 1999, the Committee on the Rights of the Child held a two-day workshop to commemorate the tenth anniversary of adoption of the Convention on the Rights of the Child by the United Nations General Assembly. The workshop focused on general measures of implementation following which the Committee adopted detailed conclusions and recommendations (see CRC/C/90, Para. 291).

also show a drastic improvements in the implementation of the convention by taking a non-legal measures to realize children's rights to be heard in children parliament and through media.

## 2.2. Publication of CRC in Official Negarit Gazeta of Ethiopia

The other Controversial and debatable issue is about the question frequently raised by scholars, whether 'the ratified international human rights convention internally applicable as part of Ethiopian law without being published in Negarit Gazeta; Ethiopian Law Gazette?' These debates are forwarded from legal scholars of the country from two different angles. One is the "Yes" group, while another is on the side of the "No" group.

However, one can get a clear legal based answer for this question under the article 71(2) of the FDRE Constitution of 1995 and Article 2(3) of the Federal Negarti Gazeta Establishment Proclamation No. 3/1995. This provision of the constitution seems that is obliged the presidents of the country to proclaim the laws and the international legal instruments ratified by Ethiopia to shall proclaimed in the official Negarit Gazeta<sup>25</sup>. In addition, the above mentioned provision of the Federal Negarit Establishment Proclamation obliged all the government organs of the country and both physical and juridical persons shall take judicial notice of law published in Federal Negarit Gazeta<sup>26</sup>. Therefore, it obvious since there are the words "shall", these articles the publication of international agreement (legal instruments) ratified by the FDRE government into Negaret Gazeta is an absolute or mandatory requirement in order to give them judicial notice<sup>27</sup>.

However, still Ethiopia did not publish the CRC fully into the official Negarit Gazeta. Following the ratification of the CRC, the government of Ethiopia proclaims a ratification proclamation No. 10/1992 which contains only four articles to meet the mandatory requirement of full and direct publication recommended by the UNCRC Committee. The ratification proclamation made to the CRC by the government only has provisions, which deal with citation, ratification, delegation power and date of enforcement. Therefore, to my suggestions, the ratification proclamation made by the government did not meet the standard the UNCRC Committee urges the state parties to even translate the CRC into local languages<sup>28</sup>.

In both civil and criminal laws of Ethiopia there is the legal maxim which says "*ignorance of law is no excuse*"<sup>29</sup>. This legal maxim enshrined that one cannot escape from the sticks of law for not knowing the existence of the laws. Under the principle of good faith also, there is a need to bring domestic legislations, administrative rules and prac-

<sup>25</sup>The FDRE Constitution of 1995, Article 71(2).

<sup>26</sup>See the Establishment of Negarit Gazeta Proclamation No 1/1942 Article 2(3).

<sup>27</sup>The FDRE Constitution of 1995, Article 71(2), and the Establishment of Negarit Gazeta Proclamation No 1/1942 Article 2(3).

<sup>28</sup>On its 37st meeting, the Committee also suggested that Ethiopia should publish the full text of the CRC in Negarit Gazeta in its local language. The Committee believed that such full publication of the CRC would enable individuals to know about children's rights under the convention and that all the administrative and judicial authorities would also aware of the obligations. *See the Concluding Observations by the Committee on the Rights of the Child at meeting (Fourteenth Session), held on January 24, 1997, p. 7.*

<sup>29</sup>The Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, Article 2035(2).



tices into conformity, with the CRC, which is highly minded legal formulation to ensure such normative compatibility of domestic laws with international instruments. Because, destroys this, says Aristotle and “you destroy the intercourse of man” (De Chazournes & Salman, 2005). However, the requirement of publishing treaties adopted by Ethiopia was not always met in practices. Therefore, I strongly believe in the mandatory requirement, which obliged the state parties to the convention to bring the whole texts of CRC to the attention of the general-public. It is easy for the children’s rights activities as well as for the judiciaries to realize the best interests of the child after hearing such interests from the mouth of the child as well.

Therefore, to implement the right of children’s right enshrined under Article 12 of the CRC in judicial and administrative proceedings, Ethiopia shall incorporate CRC directly and fully into its Constitution or publish the full text of the CRC in the official Nagrit Gazeta. In addition, the National Human Rights Commission has obligation to translate the CRC into vernacular and disperse it to the competent concerned bodies<sup>30</sup>. Thus, the translated copies of the CRC into at least into the national language of the country must be reserved at all the courts of the country to draw the attention of the proceedings toward the implementation of children’s right to be heard in all matters that may affect their interests at any stages of the proceedings.

### 3. The Effect of Article 12 of CRC on the Domestic Laws of Ethiopia

As I have mentioned before, by its status being state party to the convention, it is Ethiopia’s obligation to implement the right enshrined under this article. The word “*shall*” which is stated under this article did not leave a room for Ethiopia not to fully implement this article. In my opinion, the right enshrined under this article can serve as a means to realize all the rights given to the children under the convention. Thus, this article can benefit the children to react on any matters that may affect their interests in court litigations of any kinds. The mere incorporation of this right in a fragmented way under the sectorial laws cannot harmonize this right under the jurisdiction of all courts of the country. Most of the national regional states of the country have their own family law codes which they are exercising under their jurisdiction of the court. However, Addis Ababa and Dire Dawa city courts are using the federal family code of 2000, together with federal courts of the country. These may results children’s right to be exercised differently in a fragmented ways. In addition, in such circumstances the judiciary may not have the same consensus over children’s right to be heard in their proceedings. However, it is not a program, but a right for the children to enjoy this right under the Constitution of Ethiopia or a fully translated and published copy of the CRC. Therefore, the country must to take legislative measures; it is required to harmonize the existing laws in accordance with the CRC. Thus, the legislative measures also must include the clause which entitled the children the right to have the compliant filling procedures<sup>31</sup>, and how to claim remedies if they might disregard by the judiciary to enjoy

<sup>30</sup>The Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, Gaze, Year 6, No. 40, Article 6(8).

<sup>31</sup>See General comment No. 5, Para. 24, p. 7.



their right under article 12 of the CRC.

### 3.1. Under the FDRE Constitution of 1995

*“I do believe that if article 12 of the CRC incorporated directly to the Constitution, it is too easy to realize all the rights enshrined under domestic laws, and national policy.”*<sup>32</sup>

Constitution can be called as a mother law for all domestic laws of the country. That means all the domestic laws of Ethiopia must proclaimed and applied in the manner not contravene with the constitution. Whereas, if any laws, customary practices and a decision made by any organ of the state or a public official which are contravenes the provisions of the constitution has no effect<sup>33</sup>. Because of this, the provisions of the constitution are used as a check light to prove the legality of the subordinate domestic laws.

Thus, the previous literature suggests that incorporation of article 12 of the CRC in to the constitution at the national level is “a high water mark” in realization of other rights for children (Kilkelly, 2011). However, article 12 of the CRC has not incorporated under the Constitution of FDRE. Moreover, the umbrella and leading article of the Constitution, article 36 is the only article which provides comprehensive rights of the child, on right to life, identity, non-discrimination, and best interests of the child, right to protection from cruel, inhumane and degrading punishments and other basic rights from its sub-article 1 up to sub-article 5 of this article. However, all these rights can be realized if and only if there is a law, which entitles children to enjoy the right to be heard in judicial and administrative proceedings and the rights to get a due weight for their voices. But there is no explicit legal provision under the constitution which confer children with the right to be heard. Therefore, under the Constitution of FDRE, the right to be heard of the “Ethiopian children’ remains elusive” (Woldemariam, 2011).

Notwithstanding the above-mentioned facts, children can enjoy the right they entitled under article 12 of the convention through the independent lawyer or any other body that may represent them<sup>34</sup>. Thus, though the CRC confer the children to right to be represented by Independent Children Lawyers (ICL) to have voice and be heard in judicial and administrative proceedings<sup>35</sup>, but there is no such kinds of provision under the Constitution of FDRE to gives children the right to be represented by Independent

<sup>32</sup>Interview made for Ato Aliyi Kedir, the Judge working on the family law of the high court of western Hararghe, done at his office on 11/04/2006, 8:00 pm.

<sup>33</sup>The FDRE Constitution of 1995, Article 9(1). This Article 9(4) also states that any treaties ratified or adopted by Ethiopia is a part and a parcel (the integral) law of the land.

<sup>34</sup>See CRC, Article 12(2).

<sup>35</sup>Children have the right to be heard through their best interests’ representative or the Independent Children’s Lawyers (ICL). Thus, article 12(2) of the CRC states that children have the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body’ and ‘have the right to prompt access to legal and other appropriate assistance, deprived of his or her liberty. Consonant to the article 12(2) of the CRC; under Section 28(1) (h) the 1996, Constitution of the South Africa states, “Every child has the right.... (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result;...” See the Constitution of the Republic of South Africa of 1996, Section 28, and “*The Law reform and implementation of the Convention on the rights of the Child, prepared by Innocent Research Centre under the guidance of UNICEF,*” 2007, p. 13.

Children's Lawyer of their best interests. The Independent Children Lawyers (ICL) can also realize children's right to be heard by providing the reports of the voice of children to the court during proceedings. However, the Constitution gives this right only by the status of the word "everyone" only in criminal cases<sup>36</sup>.

In my opinion, unlike adult persons, since children are a vulnerable member of the society, they need specific protections by granting them this right in a separated provision of the constitution. Therefore, I strongly believe that easy to realize and promote all the rights of children that are mentioned under Article 36 of its constitution, if the FDRE incorporate article 12 of CRC into its constitution.

### 3.1.1. Article 36(2) of the Constitution

This Sub-Article of this article put a mandatory obligation over public and private welfare institutions, courts of law, administrative authorities or legislative bodies primarily to realize the best interests of the child in all actions they may determine concerning children. This provision used an adjective word, "*the*"<sup>37</sup> in front of the phrase "*primary*," whereas, the CRC used the word "*a*"<sup>38</sup> in front of such phrase in the realization of interests of the child. Thus, there is no leeway is given under this article for the judges or any organs having concerns with children to put the rights of the child in choice. This means this sub article clearly where there is conflict between the right of an adult and the right of the child, the latter right will prevail.

Thus, as I have mentioned above, to give life for this article the state parties to the convention shall expected to implement article 12 of the CRC directly by incorporating it into their respective constitutions. Moreover, in its General Comment No. 12, the committee mentioned as, "*consultation with the child when established the best interests of the child; have to considered in all action concerning the child and hearing the child's view properly and giving a due weight for his/her view*" are the mandatory steps to realize the rights of children<sup>39</sup>. Therefore, to ensure the best interests of the child in any judicial and administrative proceedings in a harmonized way throughout the country, it is not program, but is an international commitment (obligation) for the government to incorporate right to be heard of children into its constitution.

### 3.1.2. Right of Thought, Opinion and Expression under Articles 29(1&2) of the Constitution vs Article 12 of CRC

During the meeting of UNCRC Standing Committee has invoked that article 29(2) of the Constitution is a provision that is used to fulfill international obligations that Ethiopia is having to realize and promote children's rights to be heard in judicial and ad-

<sup>36</sup>The FDRE Constitution, Article 20(5). This sub article says, accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.

<sup>37</sup>Ibid, Article 36(2). Article 36(2) reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives. Moreover, under article 36(2) of the Constitution children's best interests have the priority than that of adult's rights.

<sup>38</sup>See the CRC, Article 3.

<sup>39</sup>General Comment No. 12, Para. 71-74, p. 18.

ministrative proceedings<sup>40</sup>.

- Article 29(1&2) of the Constitution have stated as follows:
  - *Everyone has the right to hold opinions without interference.*
  - *Everyone has the right to freedom of expression without any interference...*

It clear, this article of the constitution has similarity with article 13 of the convention which entitled the children with the freedom of expression of their views. The single difference that exist between these two provisions is only the word “everyone” which has mentioned under the provision of the constitution. This means while article 29 (1&2) of the constitution gave this right for all human being in general, but article 13 of the convention gave this right for the children in particular. In addition, the UNCRC Committee emphasizes that there is a difference between freedom of expression (Article 13) and right to express views and to be heard (Article 12) of the CRC<sup>41</sup>. Hence, this shows that the rights enshrined under 29(1& 2) of the Constitution of FDRE is not similar with the right enshrined under article 12 of the CRC.

Moreover, unlike article 12 of the CRC, article 13 of the CRC<sup>42</sup>, and article 29(1&2) of Constitution of FDRE are imposes no obligation on States parties to introduce the legal framework, the mechanisms necessary to facilitate active involvement of the children in all actions affecting them, and the obligation to give due weight to those views once expressed. Thus, I strongly suggest that article 29(1&2) of the constitution of FDRE does not constitute the spirit the right of the child which mentioned under article 12 of the CRC. Rather, this provision of the constitution has entitled “everyone” with the freedom of expression. As a member of “everyone”, children can enjoy these rights by status of their citizenship. However, the independent and separate legal provisions are needed to them since they have to enjoy special safeguards and care in any aspects of their life<sup>43</sup>.

Therefore, more effort is expected from Ethiopia to incorporate article 12 of the CRC directly into its Constitution or publishing the full text of the CRC in the official *Federal Negarit Gazeta*-which is a mandatory requirement in the country’s law-making process<sup>44</sup>. In addition to these, consideration should be given for the direct implementation of this right in actions or decisions any organs of the government through fur-

<sup>40</sup>See the Combined 4<sup>th</sup> and 5<sup>th</sup> periodic reports p. 12. The delegation has mentioned, as the country currently takes several new initiatives: children parliament, child club, and effective use of media by children are developed in the country to promote children participation and to have their views heard.

<sup>41</sup>General comment No. 12, Para. 80 & 81, p. 19. The Committee also stated, “freedom of expression asserts the right of the child not to be restricted by the State party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue”. See General comment No. 12, Para. 80 & 81, p. 19.

<sup>42</sup>Ibid, Para. 80 & 81, p. 19.

<sup>43</sup>Under its preamble, the CRC states that bearing in mind as indicated in the Declaration of the Rights of the Child, the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. See CRC, under its Preamble, Para. 10<sup>th</sup>.

<sup>44</sup>The FDRE Constitution, Article 71(2) and Article 3 of the *Federal Negarit Gazeta* Establishment Proclamation 3/1995. Article 14 the law-making procedure for the House of Peoples’ Representatives Proclamation 14/1994.

ther legislations and a compilation works of laws to realize this right for children in judicial and administrative proceedings.

#### **4. The FDRE Revised Family Code (RFC) of 2000**

Children are always busy with the business of thinking and traumatized for knowing for why their families are in disputes. They may feel as they are the reasons for their families' blame game of one another in court proceedings. In addition, in a country like Ethiopia, culture is not child sensitive. Rather, though it is differing from region to region, the cultures are not participatory to the child and not allow hearing from them even on the matters that may affect their interests. Thus, literatures also show that children are the victims in cases of family divorce and unequivocally affected by decisions of the courts. For instance, in its Situational Analysis made on Ethiopia, the UNICEF states that when a child is assertive and argues for participation on issues that affect him/her, the parental reaction is negative, and an assertive child is considered undisciplined<sup>45</sup>.

To avert these problems, Ethiopia has revised its family code in 2000 and transformed its institutions of justices in a child sensitive manner. However, still there are legal black whole, lack of child sensitive professionals and skilled experts to ensure the rights of children to be heard in the judicial and administrative proceedings in general and family law proceedings in particular. Therefore, the right of children that enshrined under article 12 of CRC is not incorporated in the family law code in a full and comprehensive manner as prescribed under the convention.

##### **4.1. In Arbitration Ordered by the Courts during Spousal Disputes**

The revised family law of Ethiopia has provisions, which allow the conflicting spouses to settle their disputes arising out of marriage by arbitrators chosen by the spouses. Thus, when the spouses decide to settle their disputes, through arbitration, the court shall make a record forthwith and give direction as to how the reconciliation 'has to proceed and to submit the result of the arbitration or the attempt of reconciliation within three months<sup>46</sup>. However, the arbitrators shall make efforts to settle the disputes only by investigating the disputes only asking the conflicting spouses. If the spouses did not agreed on the arbitrated issues, the law obliged the arbitrators to make report for the court. Here in these articles of the family code, though they are the first victims, the first witness and stakeholders in the family disputes, the law has ignored the children to allow them to give their voices and to be heard in such arbitration processes. Hence, it is expected from the government to create a legal ground for children to be heard in the arbitration process ordered by the courts of law in the family proceedings.

<sup>45</sup>Children's Rights in Ethiopia: *A Situational analysis by UNICEF* (March 2003), p. 27-31, Para. 1. For such Situational analysis, the state of Ethiopia says that the Minister of Labor and Social Affairs (MoLSA) promotes participation of children in family, school and Social life in cooperation with Child-Centered NGO's and concerned government institutions.

<sup>46</sup>See the FDRE Revised Family Code of 2000, Article 120 (1&) and Article 121(1).

## 4.2. In Custody Assessment<sup>47</sup>

Custody assessment is all about to determine the care, control and maintenance of a child, that may awarded to one of the parents of the child during the divorce or separation is on proceedings. Thus, the courts shall determine over the custody matters of the child since, under FDRE revised family code<sup>48</sup>, the custody arrangement usually becomes part of the divorce decree. When deciding over the custody of the child under the family proceedings of the Revised Family Code of the FDRE give the court the power to take into account the income, age, health, and condition of living of the spouses as well as the age and interests of the children<sup>49</sup>. Thus, the question is how the court knows the interests of the child in the assessments of such custody without hearing its own interests from the child or other legal organ that may represent the child in such proceedings. However, the Revised Family Code of the FDRE has no room to hear from the child in assessment of custody when the spouses are running for divorce.

Moreover, the Cassation Division of the FDRE Supreme court has some effort to fill this gap by using article 12 of the CRC into its decision to hear from the child about the assessment of custody. Thus, since its decisions have binding effects under all courts of the country<sup>50</sup>, to fill this legal and practical gap, with regard to the assessment of custody of the child the Cassation Division of the Federal Supreme Court of Ethiopia has passed a landmark decision on Dec. 16/2001, in its file No. 35710. The decision has given on disputes over the custody matter of the child called Nathanael Zenebe. The applicant was the mother of the child and the respondent was his aunty. The appeal has filled over the grievance of the decision rendered by the lower courts of Addis Ababa City Court in its first instance jurisdiction and in its cassation power over the custody of her 10 years old minor called Nathanael Zenebe. Thus, the Cassation division of the FDRE Supreme has heard the child called Nathanael Zenebe in assessment of his custody, by mentioning that Ethiopia is a signatory to CRC in 1989, and the FDRE Constitution has extensive provisions dealing with children rights as it is stated under international instruments. Basing on this precedent the court has also mentioned that nothing is there which hinder the bench not to use article 12 directly into its decision to hear the child in judicial and administrative proceedings.

In addition, the division also stated that “as it is known to everyone, that children are the venerable group, a group of societies that need special and particular protections”<sup>51</sup>. In addition, the division also gave a remark by saying that “it is the duty to the judges working at any levels of the courts in the country to give priority for the best interests

<sup>47</sup>Ibid, under Chapter 12, Section 2, about organs of protections of minors, p. 78.

<sup>48</sup>Ibid, Article 113(1), Article 113(1) and Article 82(5). These articles of the RFC have mentioned that “the court shall, when deciding the dissolution of marriage, also decide as to which spouse shall have custody of the children, care of their education, health, maintenance and the rights of the parents and the children to visit each other.”

<sup>49</sup>The FDRE Revised Family Code, Article 113(2).

<sup>50</sup>See the FDRE Supreme Court, Proclamation No. 454/1997, Article 2(1). Hence, as stated under article 2(2) of this proclamation, the Federal Supreme Court shall publish and distribute these decisions. See The Federal Courts Proclamation Re amendment Proclamation, Proclamation No. 454/2005.

<sup>51</sup>Decision of FDRE Supreme Court Cassation division, Dec.3/2001, file No. 35710, Vol. 8, pp. 243-246.

of the child”<sup>52</sup>. This division has forwarded such remarks to the subordinate courts, by its status of having that its precedents has binding effect to the courts of any levels in the country.

However, the African Child Policy Forum (ACPF) has forwarded its defense on the precedents made by the Cassation made by Cassation Division of Supreme Court the FRDE with regarding to using the international agreements directly into its decision to realize the best interests of the child. It defense of the ACPF promote the duty of the government to incorporate the provisions of the CRC into its domestic laws. Thus, the ACPF stated, “*it remains unclear whether the precedent set by the Cassation division will override the mandatory and absolute requirement to include international human rights obligations in the official gazette (gazeta) requirement to obtain judicial notice and to be binding in the country;*”<sup>53</sup> (Walakira & Onyango, ACPF (2011)). This means, the court’s precedent will not override the mandatory and absolute requirement to include international human rights instruments in official Gazeta since such publication is mandatory to give the judicial notice over the facts for the judges to implement it without any error. Therefore, to harmonize practices of hearing the voices of the child in custody assessment cases throughout the courts of the country, it is expected from the legislative organ of the government of Ethiopia to publish the full text of the CRC into Negarit Gazeta.

### 4.3. In Appointment/Removal of Guardians and Administration of Properties<sup>54</sup>

Regarding whom to appoint as a guardian, or to be removed from the status of guardianship, and with the issue related to whom the child wants to administer his properties, the law shall give the chance to the child to have say and to be heard in the proceedings. However, the Revised Family Code of FDRE has a non-obligatory provision, which may allow the court to hear from the child in determination of these matters. Thus, to hear from the child, the Revised Family Code of Ethiopia has the provision, which cannot oblige the court to hear from the child by using the word “may” which may create a leeway to disregard the child’s voice or not to hear the child. This provision read as “where it thinks fit it (the court) may hear the minor himself”<sup>55</sup>. The code also has a restrictive provision which limit the age of the child to “14 years” to have the

<sup>52</sup>The judges working on family law proceedings of courts of any levels shall have a duty to realize the interests and welfares of children as stated under article 36(2) of the FDRE Constitution. Thus, after determining the age and maturity of Nathnael, the judges presiding over the division, allowed him to participate in proceeding and to be heard over the assessment of his custody. The child has expressed to the judges since his aunty did not have care for him during his stay with her; he has preferred to live with his mother. Hence, the division quashed the decisions given by the Addis Ababa City courts and decided in favor of the applicant’s after hearing the voices of the child. See Decision of FDRE Supreme Court Cassation division, Dec.3/2001, file No. 35710, Vol. 8, pp. 243-246.

<sup>53</sup>On existing gaps in legislation, to end violence against children, the study has presented on The African Child Policy Forum, ACPF (2011), Para.3, p. 8. NB: On such the country research teams, Ethiopia: Deliver Partners Institute for Consultancy.

<sup>54</sup>See the FDRE Revised Family Code, Articles 249(2) & 291(1).

<sup>55</sup>The FDRE Revised Family Code bid, Article 249(2).

right to consult with the tutor<sup>56</sup>.

Moreover, after the decision of divorce has given by the court, both divorced spouse may compete to get the custodianship right of the child as a guardian. Thus, it is the power of the court to decide over the right guardianship of the child by seeing all the circumstances of the spouses competing to get this right. However, as to the provision of the Revised Family Code of the FDRE<sup>57</sup>, there is no mandatory clause to hear from the child in family proceedings. However, the basic questions under this heading are whether a child's right to be heard in the judicial proceeding is mandatory one or not? Whether limiting children not to be heard in the court proceedings by their age though they are competent to speak over the facts as to the wording of article 12 of the CRC or not? On the other hand, what are the fates of the children those have denied by this law to be heard over the assessment in the court proceedings?

Thus, to answer these questions, first I would like to assess what article 12 of the CRC is talking about. It obvious that article 12 of the CRC has a mandatory clauses "*the state parties shall assure...*", and "*the child shall in particular be provided the opportunity to be heard...*"<sup>58</sup>, which make the implementation of this right and to hear from the child in judicial and administrative proceedings are a mandatory to the state party to the convention. In general, both article 12 (1) of CRC and General Comment No. 12 of the Committee on the Rights of the Child used the phrase "*shall*"<sup>59</sup>; which shows a mandatory clause to hear from the child in family law proceedings<sup>60</sup>. Thus, it is expected from the government to incorporate the mandatory word "shall" into the family code.

In relation to disregarding the voices of the child by the age limit, not to be heard in to the court proceeding, the convention remains open by using the clause, "*...child who is capable of forming his or her own views...*"<sup>61</sup>. This means wording of the convention is not to set the age limit to give this right for children, but to create the ground for the court to hear from the child based on the child's capacity. In addition, the Committee on the rights of the child, emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages State parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him<sup>62</sup>. In general, though children have extensive rights under the RFC, but still its provisions are discriminate children in age and also do not mention the methods to hear the voices of the child which in turn create a leeway to the

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<sup>56</sup>Ibid, Article 291(1). This age limitation is also found under Article 191(3) of the RFC also states, where one of spouse will not give his/her consent in adoption case and if the child is 10 years old or above, the court may decide over the adoption of the child by hearing the opinion of the non-consenting parent and the child. In addition, article 191(4) of the RFC stipulates, where the child is not capable of consent the court may decide on the taking into account the interest of the child.

<sup>57</sup>Ibid, Code of 2000, Article 249(2).

<sup>58</sup>See the CRC, Article 12 (1&2).

<sup>59</sup>General Comment No. 12, Para.19, p. 8.

<sup>60</sup>See the Black Law Dictionary, "*Parenting plan time is a time when a parent exercise their duties concerning to his or her child, including the right to educate, and discipline the child and the right to control the child's earnings and property*" p. 1156.

<sup>61</sup>The CRC, cited above, at note 58, Article 12(1).

<sup>62</sup>General Comment No. 12, Para. 21, p. 9.



judges not to hear the child's voice in family law proceedings. Therefore, as I have mentioned above, it is also expected from the government of Ethiopia to look after the revision of provisions which disregard the child's voice in family law proceedings by limiting the age.

With regarding the third question, though the convention allows the child to enjoy this right either directly, or through a representative or an appropriate body<sup>63</sup>, the Revised Family Code of the FDRE skips this matter in a silent mood by leaving the issue for the court<sup>64</sup>. In my suggestions, the legislature of Ethiopia has tried to incorporate this right in fragmented ways, age limiting way, and in incomplete ways. Therefore, realize, the child's right to be heard in the family proceedings under the jurisdiction of Ethiopian courts, as it has stated under article 12 of the CRC, a great job is expected from the legislature of the country to incorporate this article as it is into the Revised Family Code. Thus, children shall enjoy this right in a clear manner in custody assessment, appointment/removal of guardian and administration of property as well as concerning parenting time<sup>65</sup>.

## 5. In Administrative Law

Administrative laws are the laws that apply in administrative proceedings. Like the court, Administrative proceeding can determine facts, draw conclusions from the issue brought before it, and take an official action like determination of remedies, imposing legal penalties, affecting legal rights, imposing duties or giving privileges to the specific parties to the litigation<sup>66</sup>. However, there is no administrative procedure governing administrative decision-making or delegated legislation, either at the federal or state level in Ethiopia. Because, there are only few administrative courts poorly organized, highly subject to executive control and ineffective due to lack of expert administrative judges and absence of clear guidelines. Thus, in the present administrative law structure, the need for such a developed system is beyond necessity. Therefore, the question of the administrative proceeding is still an unanswered question for the citizens of Ethiopia.

In addition, the practice of administrative law is differing from one regional state to another in Ethiopia. The constitution also envisages, for the establishment of the executive branch at the state level as one organ of government, it is be up to the states to formulate their own administrative law. Therefore, the decision making and rule-making procedure of one regional state may be different from that of the other state, or even from that of the federal state.

Moreover, though article 12 of the CRC allows children to have voice and to be heard

<sup>63</sup>See the CRC, Article 12(2).

<sup>64</sup>See the FDRE Revised Family Code of 2000, Article 191(4). This article states that where the child is not capable of consent the court may decide on the custodianship, taking into account the interest of the child.

<sup>65</sup>Ibid, under the code article 113(1) of the RFC, gives children the right to visit and to be visited by their parents after the order of divorce has given. However, this article does not mention how the court can give such order. In addition, this article does not make clear whether the court may hear the voice of the child before giving such order or not.

<sup>66</sup>See for instances, Federal Civil Service Proclamation No 515/2006 and Federal Civil Servants Disciplinary and Grievance Procedure Regulation No. 77/2002.

under any administrative proceedings on the matters that may affect their interests. But one cannot come across with any of legal provisions as well as guidelines that may allow this right to children under the administrative justice paradigm. Because, as I have stated above, there is no consolidated act or code and administrative law that are dealing with children's right, to be heard in matters that may affect their interests. In another word, the right of children that is enshrined under article 12 of the CRC is far from reality under the administrative proceedings of the country. However, it is an international obligation of Ethiopia to show commitment toward the realization and implementation of this right into its administrative proceedings. Therefore, it is expected from the government take legislative action to realize children to have voice and to be heard in its administrative proceedings in harmonized way in regional and federal levels.

#### **PART II: International Obligations of Ethiopia**

As state party to the Convention, Ethiopia shall undertake all appropriate legislative, and all measures deemed necessary to implement all the rights of the child. Therefore, Ethiopia has an international obligation to make a periodic report on the undertaken action and progress made on the implementation of the rights of the child under CRC in general, that of article 12 of the CRC in particular to the UNCRC Standing Committee<sup>67</sup>.

### **6. The Committee's Recommendations on the Periodic Reports of Ethiopia (1997-2015)**

The periodic report is the primary mechanism for enforcing and monitoring the implementation of the CRC by the state parties in their respective jurisdiction<sup>68</sup>. All the States parties to the Convention has the duty to report every five years<sup>69</sup>. Thus, one of International obligations of Ethiopia is periodically to report to the UNCRC Committee on the progress made on the enjoyment of children's rights in general, and the measures that have been taken or adopted by the country to give effects to article 12 of the CRC in particular. The report also includes, the stage that provide a forum for a constructive dialogue between the delegation of Ethiopia and an independent group of experts regarding the implementation and realization of the children's right as stated under article 12 of the convention.

Ethiopia has made five periodic reports (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, the combined 4<sup>th</sup>, and 5<sup>th</sup>) to the Committee on the Rights of the Child from the years 1993 to 2015. Thus, the CRC Committee made five concluding observations on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, the combined 4<sup>th</sup>, and 5<sup>th</sup> as well as, on the list of issues in relation to the combined fourth and fifth periodic reports of the country. However, progress has made in many aspects of children rights; there are a number of general remarks or recommendations given by the Committee on these five periodic reports to the delegation of Ethiopia.

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<sup>67</sup>See the CRC, Article 44.

<sup>68</sup>See the CRC, Article 44(1 & 6).

<sup>69</sup>Ibid, Article 44(1(b)).

### 6.1. Under the Initial Periodic Report (1997)

Under this report, Ethiopia has mentioned that children's rights to be heard in family law proceeding is enshrined under articles 14 (1) and 304 (1) of the Civil Code of 1960. However, the UNCRC Committee has mentioned, there were serious violations of children's rights in Ethiopia<sup>70</sup>. Thus, the Committee forwarded its concern to the delegation Ethiopia, that the full text of the Convention must be published in official Negarit Gazette and training manuals incorporating the text of the Convention must be published for the professionals groups working with or for children<sup>71</sup>.

Hence, as a defense to this and a response to the Committee's concern, Ethiopia invoked the legacies of the military regime', chronic underdevelopment and extreme resource constraints facing the country<sup>72</sup>. As I have mentioned above, since the way in which children's rights to have say and to be heard is not incorporated under the FDRE Revised Family Code is not as to the obligation expected from the state parties under the convention. The convention obliged the state party to directly incorporate its provisions into the domestic laws or full publication of the body of the CRC into the official Negarit Gazeta of the respective country. Therefore, the Committee has given its recommendation to the delegation of Ethiopia that the greater efforts be made to promote the participation of children in all matters that may affect their interests<sup>73</sup>.

### 6.2. Under the Second Periodic Report (2001)

This report was made to the UNCRC, during the country was in war with Eritria. Thus, the right of children to have voice and to be heard in proceedings, were remain under the auspice of provisions of the constitution of the FDRE. Save as the factors that might impend the country not to realize all measures, the progress of an implementation of the rights under the convention without have sought in this report. However, the country did not take an action during this period to incorporate the CRC into its domestic laws or publish the full text of the convention into its official Negarit Gazeta. To this fact the Committee also aware through this report as the country has did not any step to publish the CRC into its Official Negati Gazette after the initial report was made in 1997<sup>74</sup>. Therefore, the Committee also has forwarded its recommendation to take step toward the publication of the CRC into its Official Negarit Gazette. That means, it is expected from the state party, to take all necessary actions regarding what were recommended and come with the next report. Therefore, the delegation of the government of

<sup>70</sup>The Committee on the Rights of the Child, 2001, pp. 36-37.

<sup>71</sup>The 3<sup>rd</sup> Periodic report of Ethiopia: CRC/C/129/which covers the period 1999-2003/04, Para. 228, p. 63.

<sup>72</sup>First Periodic report of Ethiopia: CRC/C/8/Add.27, on 14<sup>th</sup> Session, 9-10 January 1997, Para.228, p. 54. As to the response of the delegation, the chronic problems, which hamper the country to implement the Convention, were related to the difficulty of socio-economic situation, the lack of the requisite man-power and institutional framework, infrastructure in many parts of the country, lack of public awareness regarding on the CRC as well as harmful traditional practices.

<sup>73</sup>General Comment No. 12, Para.43, p. 18.

<sup>74</sup>See the 2<sup>nd</sup> Periodic Report of Ethiopia, CRC/C/70/Add.7, 26<sup>th</sup> Session, 2000, Para. 43, p. 3. Thus, the UNCRC Committee is concerned also that the Convention has yet to be published in the Official Gazette, as recommended in the Committee's concluding observations on the State party's initial report.

Ethiopia accepted the recommendations of the Committee regarding further international assistance to realize the children's right to be heard in judicial proceedings.

In my view, trying to realize other rights of children without allowing them to have voice and to be heard in their own justice, is remain value less effort. Therefore, it is expected from the government to take all legislative actions to incorporate this right and to publish the CRC as recommended.

### **6.3. Under Third Periodic Report (2006)**

Under this report, by invoking article 29(1) of the Constitution, the country's delegation has argued on the forum that by the statues of their citizenship, children can express their views. However, special laws are required to fit the special protections that have to make for them, the right of children to express their views and to be heard is roped in the general rights with the status of "everyone"<sup>75</sup>, as mentioned under the fore mentioned provision of the constitution. In addition, the country also included into this report that action has made with regard to the rights of children to express their views in medias<sup>76</sup>.

However, in this report also the action that expected to be taken with regard to the legislation processes and publication of the CRC into Official Negarit Gazette has done yet. To this fact, the Committee urges for the third times that Ethiopia have to publish the full text of the Convention in the official Gazette and ensuring its translation in all national languages. It is obvious, the concern of the Committee is to reaffirm article 12 of the CRC into the domestic laws including the in to the Constitution of the country<sup>77</sup>. The country has also the obligation to bring domestic laws into the full compliance with the Convention. In addition to the above recommended matters, it is expected from the country to make a systematic legislative review and adopt a comprehensive Children's Code.

### **6.4. Under the Combined 4<sup>th</sup> and 5<sup>th</sup> Periodic Reports (2006-2011)**

These combined reports were made after taking into consideration the recommendation, made by the UNCRC Committee in the previous three periodic reports. Thus, in this report Ethiopia has mentioned that as the legislation measure concerning the child's right to have heard in family law proceedings has taken<sup>78</sup>. In addition, the country has mentioned that currently there are several new initiatives in realizing freedom of expression for children i.e. children's parliaments, to promote the participation of children and to have their views heard<sup>79</sup>.

However, the Committee forwards its concern over this report too. The Committee

<sup>75</sup>See the FDRE Constitution of 1995, Article 29(1).

<sup>76</sup>The 3<sup>rd</sup> Periodic report, Para. 90-93, p. 23. See also, *under Page 23, Para. 94.*

<sup>77</sup>*Ibid*, Para. 90-93, p. 23.

<sup>78</sup>See the FDRE Revised Family Code of 2000, Article 804 and Article 194. For instance, the Ethiopian Family Law requires a court before which an application of adoption is submitted to consider the opinion of the child in question.

<sup>79</sup>Combined 4<sup>th</sup> and 5<sup>th</sup> Periodic Reports, as cited at *supra* note 166, P. 13, above note 1, 2, 3 & 5. Moreover, children are enjoying right to be heard by child forum.

has mentioned that still there is traditional societal attitudes appears to limit children freely expressing their views in any matters that may affect their interests. Thus, on the forum of the 4<sup>th</sup> and 5<sup>th</sup> times, the Committee recommends that it is expected from Ethiopia to publish the full text of CRC it into the official Negarit Gazeta and translates it into the local languages, in order to make it accessible for the stakeholders.

The Committee has recommended the government to strive more for the realization of children's rights to be heard to its "maximum available resources of the country, and in co-operation with NGOs"<sup>80</sup>. That means, to fulfill its international obligations with regarding to the rights of children enshrined under article 12 of the convention in a full manner, it is expected from the country to get the financial, and professional aids from the UN agencies.

In general, under these combined reports the Committee:

- regrets the absence of a systematic legislative review in order to bring domestic laws into compliance with the Convention and is concerned that a comprehensive Children's Code has not yet been adopted<sup>81</sup>.
- recommends that Ethiopia should strengthen measures regarding dissemination of and training on CRC for all relevant professional groups in several local languages and undertake child rights awareness-raising initiatives to reach vulnerable groups<sup>82</sup>, and
- ensure the incorporation of this right into all laws, policies and programmes relating to children, particularly relating to judicial and administration of justice<sup>83</sup>.

Moreover, as mentioned above, the court is implementing this right under its proceedings in un harmonized way by those legal provisions which are scattered in the domestic laws. However, these provisions are also negating elements of article 12 of the Convention.

### **6.5. Concluding Observations on the Combined Fourth and Fifth Periodic Reports after the Inclusion of List of Issues Are Ordered (June 2015)**

Before making this concluding observation, Ethiopia is requested in 22 October 2014<sup>84</sup>, to submit in writing additional, updated information, if possible before 15 March 2015. Thus, the Committee welcomes the written replies to the list of issues which allowed for a better understanding of the situation of children's rights in Ethiopia in 5 June 2015. Hence, the Committee expresses appreciation for the constructive dialogue held with the high-level and multi sectoral delegation of the country<sup>85</sup>. However, under the five

<sup>80</sup>The CRC, Article 4.

<sup>81</sup>The Committee welcomes the submission of the combined fourth and fifth periodic reports of the State party (CRC/C/ETH/4-5) and the written replies to the list of issues (CRC/C/ETH/Q/4-5/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multi-sectoral delegation of the State party.

<sup>82</sup>See CRC/C/ETH/CO/4-5, ADVANCED UNITED VERSION, 3, June 2015, Para, 18, p. 4.

<sup>83</sup>Ibid, Para 32, p. 7.

<sup>84</sup>See, CRC/C/ETH/Q/4-5, adopted by the Committee at its sixty-ninth session (18 May-5 June 2015). p. 1.

<sup>85</sup>Ibid.

periodic reports the Committee gave its recommendation the country as there are the absence of a systematic legislative review in order to bring domestic laws into compliance with the Convention and is concerned that a comprehensive Children's Code has not yet been adopted<sup>86</sup>, the recommendation of the Committee is not implemented as it is. Therefore, under this concluding observation, the Committee also repeats its previous recommendation, and recommends that Ethiopia must bring domestic law into full compliance with the Convention, and design and adopt a comprehensive Children's Code which will incorporate all the provisions of the Convention<sup>87</sup>.

In addition, the Committee gave its recommendation under its previous periodic reports, except for the specific provision in the Revised Family Code concerning the adoption process; there is no information on other legal provisions guaranteeing the respect of the right of the child to be heard in judicial and administrative proceedings of Ethiopia<sup>88</sup>. Thus, the Committee recommends that the Ethiopia take all appropriate measures to ensure the incorporation of this right into all laws, policies and programmes relating to children<sup>89</sup>. In general, as the State party to the Convention, it is expected from the country to take legislative measure to incorporate article 12 of the CRC into its domestic laws to hear the whisper of the child within the laws earshot.

## 7. Conclusions

The present Ethiopia is in a better position in relation to giving due respect for the rights of children, when compared with the previous regimes. The country has undertaken important steps towards ratification of the CRC, and administratively smashes up practices any cultures that undermine the children. However, many more activities are expected from the government in making the justice institutions workers of justice's organ child sensitive. Child can speak only in the child friendly environments. The government has also developed a policy on the Developmental Social Welfare Policy (DSWP), enacted in 1996. The police is limited the rights of children to have say only in their social life. Thus, it is not the policy which can fill the legal black hole regarding the right to hear the voices of children in judicial and administrative proceedings, rather it is expected from the legislature to transplant laws or incorporate the related legal provisions from the international legal instruments.

As State party to the Convention, incorporating article 12 of the CRC into its domestic laws or publishing the whole texts of the CRC into the Official Negarit Gazzete is one an international obligation which is expected from Ethiopia. That is why the UNCRC has forwarded its recommendation successively in each periodic reports made by the country. The delegation of the country admits throughout these reports on the concerns of the Committee on the issues of the incorporation provision dealing with children's right to be heard in judicial and administrative proceedings and also imple-

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<sup>86</sup>Ibid, p. 2.

<sup>87</sup>Ibid, p. 3.

<sup>88</sup>Ibid, p. 7.

<sup>89</sup>Ibid, p. 7.

mentation of this right accordingly. However, as I have assessed above, this provision is not incorporated under the 1995 Constitution of the FDRE government. However, the legislature has made an attempt to incorporate this article in a fragmented ways, and in age limited ways. Therefore, it is expected from the legislature of the country to incorporate article 12 of the CRC in its full messages.

Thus, there are problems in realize and implement children's right to be heard in judicial and administrative proceedings in harmonized manner in the country because of:

- Failure to publish the full texts of the CRC in to official *Federal Negarit Gazeta*, which is a mandatory requirement in the country's law-making process, and consideration of its implications for domestic legislations<sup>90</sup>. In addition, such publication makes the provisions of the CRC to get judicial notes and easily used by judges in any matters regarding children rights in general, children's right to be heard in judicial and administrative proceedings in particular.
- Lack of taking direct legal measure: international community opts for the independent laws, which is tailored to the best interests of children due to their vulnerability and since they need special protections and treatments both in laws and in practices<sup>91</sup>. However, Ethiopia did not directly incorporate and re-affirm article 12 of the CRC in its domestic laws as it is mentioned under the CRC. Therefore, implementing this right is one of international obligation of Ethiopia; it is not a program, but an obligation to the country to incorporate this legal provision in its domestic laws too. Thus, it is expected from the country to take legal measures to incorporate article 12 of the CRC directly into its constitution and other domestic laws fully as it is mentioned under this provision of law.
- Lack mandatory provisions which allow children to be heard in family proceedings. Thus, the CRC is used the word "*shall*" which shows that hearing from the child in judicial and administrative proceedings is a mandatory obligation of the country to realize the implementation this rights under their jurisdictions of proceedings. However, under its provisions, the FDRE Revised Family Code of Ethiopia used the word "*may*" which implies as it is not mandatory to hear from the child in these proceedings<sup>92</sup>. Therefore, it is expected from the legislature to re visit this code in light of article 12 of the CRC, with regarding to issues related to the rights of children to have say and to be heard in family law of proceedings.
- Failure to translate the text of CRC and the General Comment No. 12, into the local languages and disseminate to the courts, and competent concerned organs found in

<sup>90</sup>The FDRE Constitution, Article 71(2), Article 3 of the federal Negarit Gazeta establishment proclamation 3/1994, and Article 14 the law making procedure for the House of Peoples' Representatives proclamation 14/1994.

<sup>91</sup>See the preamble of the CRC and ACRWC, Para. 8, & 9, and Para. 6 respectively. The CRC and African Charter on the Rights and Welfare of the Children (ACRWC), gives children the right to enjoy special legal protection since they are the vulnerable group of the society.

<sup>92</sup>See Revised Family Code, 2000, article 113(1), article 191(3), article 249(2), article 291(1), and article 249(2).



all respective regional states<sup>93</sup>. This may help the children as the right to be heard and the stakeholders, the judges, the families and others professional having contact with children easily to know their obligation to realize this right of children in laws and practice as well.

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<sup>93</sup>See the third periodic report of Ethiopia (CRC/C/129/Add.8) at its 1162nd and 1164th meetings (see CRC/C/SR.1162 and 1164), held on 12 September 2006, and adopted, at its 1199th meeting (CRC/C/SR.1195), held on 29 September 2006, Para. 9. See its 1162nd and 1164th meetings (see CRC/C/SR.1162 and 1164), held on 12 September 2006, and adopted, at its 1199th meeting (CRC/C/SR.1195), held on 29 September 2006. Para. 20.



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