

The implementation of law of evidence regarding the sexual abuse of children in Ethiopia

by

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CCTV	closed-circuit television
ICCIPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OAU	Organisation of African Unity
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCRC	United Nations Convention on the Rights of the Child

GLOSSARY

Ethiopia	Federal Democratic Republic of Ethiopia
Ethiopian Constitution	Federal Democratic Republic of Ethiopia Constitution
Revised Criminal Code	Revised Criminal Code of the Federal Democratic Republic of Ethiopia

ABSTRACT

This mini-dissertation examines the problems in the law of evidence in the implementation of substantive laws regarding sexual abuse. International and regional instruments prohibit any sexual abuse committed with children. Among the international and regional instruments, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child can be mentioned as major instruments ensuring that children's rights are protected from all forms of sexual abuse. The domestic laws of the Federal Democratic Republic of Ethiopia outlaw the crime of sexual abuse of children. Ethiopia also ratified the United Nations Convention on the Rights and the African Charter on the Rights and Welfare of the Child. However, effective implementation of substantive laws requires effective procedural laws.

In this regard, Ethiopia does not have a uniform and codified law of evidence that regulates the administration of evidence in the criminal justice system. This is attributed to the failure of child sexual abuse cases brought before the courts. In order to address this problem, this study discusses and analyses the problems related to composition of law of evidence; evidence adduced in child sexual abuse cases; evidence collection and investigation; the manner in which evidence is presented; and the weight of evidence before court.

This mini-dissertation recommends that Ethiopia should introduce a regulated and codified law of evidence for the effective implementation of laws that ban child sexual abuse. The introduction of regulated law of evidence will avoid irregular and inconsistent practices of evidentiary matters regarding child sexual abuse cases before the Ethiopian courts.

OPSOMMING

Hierdie skripsie ondersoek die probleme wat in die bewysreg voorkom in die toepassing van relevante wetgewing rakende die seksuele mishandeling van kinders. Internasionale en regionale instrumente verbied enige seksuele mishandeling wat met kinders gepleeg word. Onder die internasionale en regionale instrumente, kan die Verenigde Nasies se Konvensie op die Regte van die Kind en die Afrika-Handves van die Regte en Welsyn van die Kind vermeld word as belangrike instrumente wat verseker dat kinders se regte teen alle vorme van seksuele mishandeling beskerm word. Die wetgewing van die Federale Demokratiese Republiek van Ethiopië verbied die misdaad van seksuele misbruik van kinders. Ethiopië het ook die kan die Verenigde Nasies se Konvensie op die Regte van die Kind en die Afrika-Handves van die Regte en Welsyn van die Kind bekragtig. Die doeltreffende toepassing van die gemelde wetgewing vereis doeltreffende prosesregwetgewing.

In hierdie verband, het Ethiopië nie 'n eenvormige en gekodifiseerde bewysreg wat die administrasie van getuienis in die strafregstelsel reguleer nie. Dit word toegeskryf aan die mislukking van gevalle van seksuele mishandeling van kinders wat voor die hof verskyn. Ten einde hierdie probleem aan te spreek, bespreek en ontleed hierdie studie die probleme wat verband hou met die opstel van die bewysreg; getuienis wat in sake van seksuele mishandeling van kinders voorgelê word; die versameling en ondersoek van getuienis; die wyse waarop getuienis van kinders aangebied word; en die waarde van die bewysstukke voor die hof.

Hierdie skripsie beveel aan dat Ethiopië'n gereguleerde bewysreg instel vir die doeltreffende toepassing van wette wat seksuele mishandeling van kinders verbied. Die instelling van gereguleerde bewysreg sal onreëlmatige en teenstrydige praktyke van bewysregtelike aangeleenthede rakende gevalle van seksuele mishandeling van kinders voor die Ethiopiese hof vermy.

1 Introduction and problem statement

Child abuse is a worldwide problem that is related to cultural, economic and social practices.¹ The magnitude of child abuse can vary from one country to the next due to factors such as poverty, lack of education and religious beliefs. Children are often abused by a person who has a close relationship with them, such as a parent, sibling, close relative, teacher or neighbour.²

Sexual abuse is one form of child abuse. It is a subtle, continuous and grave problem all over the world.³ It amounts to any non-consensual activity committed against a child for satisfaction of an adult or older child's sexual interest.⁴ It is an unwanted and unsuitable sexual approach towards, or contact with, a child by an adult.⁵ Child sexual abuse consists of a wide range of sexual activities such as molestation (ie, touching, fondling, kissing and masturbation), rape, child prostitution, child pornography, child sexual exploitation and sexual intercourse (ie, oral, anal and vaginal penetration by a penis, finger or another object).⁶ Sexual abuse causes physical damage such as tearing around the genital area, lacerations, bruising, bleeding, painful urination, and psychological damage such as aggressiveness, extreme fear, self-destructiveness and other complications.⁷

Ethiopia is one of the poorest nations in the world.⁸ Sexual abuse of children is an extensive problem in the country, and is worsened by extreme poverty and societal tradition.⁹ Irrespective of its prevalence, it is seldom reported to law enforcement officials.¹⁰ The problem of reporting is mainly related to cultural and religious attitudes towards the crime of sexual abuse.¹¹ Disclosing child sexual abuse crimes to the police

1 United Nations *Study on Violence against Children* 6.

2 Newton and Gerrits *Child Abuse* 5.

3 Kinnear *Childhood Sexual Abuse* 89.

4 Sanderson *Counselling Adult Survivors* 24.

5 Sanderson *Counselling Adult* 25.

6 Deb and Mukherjee *Impact of Sexual Abuse* 20.

7 Deb and Mukherjee *Impact of Sexual Abuse* 20.

8 According to the Human Development Index, Ethiopia ranks 173rd out of 187 countries: Ministry for economic cooperation and development 2010 http://www.bmz.de/en/what_we_do/countries

9 Jemal 2012 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3437980/>.

10 Government of Ethiopia *Report on Progress* 58.

11 Government of Ethiopia *Report on Progress* 58.

or any other concerned organs is considered shameful and it is offensive to society.¹² Parents, children and other people who know or suspect that a child is being abused prefer to be quiet and hide the crime, this is because of fear of facing the stigma, bad reputation and humiliation on the part of society.¹³

Research conducted on child sexual abuse in Ethiopia showed that children are mostly sexually abused by intimate and close family members.¹⁴ Out of the reported sexual abuse of children cases, in 50% the children were abused by someone who shared a close relationship with them, in 30–40% the crimes were committed by family members and in the rest of the cases 10–20% the children were abused by strangers.¹⁵

The *Federal Democratic Republic of Ethiopia Constitution*¹⁶ (hereinafter "Ethiopian Constitution") consists of provisions that protect children's interests and rights in general. It ensures the rights of children under article 36. Article 36(d) addresses the rights of children to be protected from sexual exploitation. The *Revised Criminal Code of the Federal Democratic Republic of Ethiopia*¹⁷ (hereinafter "the Revised Criminal Code") that came into effect in July 2008 incorporates provisions that outlaw and impose severe penalties for the crimes of sexual abuse.¹⁸ It criminalises various sexual acts such as rape, sexual outrage, commercial exploitation, child trafficking and child prostitution. The Revised Criminal Code elaborates and provides more clarity on the crime of sexual abuse of children than the previous penal law, and the punishments have also been increased in some child sexual abuse crimes such as rape and abduction to enhance the protection of children.¹⁹ For instance, according to the previous penal law, the maximum sentence for the rape of a child was 15 years and also the perpetrator of the rape was released if the perpetrator married the child victim.²⁰ Under the Revised Criminal Code, the punishment has been increased up to 25 years, and rape is now a punishable crime regardless of the marriage between the

12 Jemal *Ethiopian Journal of Health Science* 59-60.

13 Government of Ethiopia *Report on Progress* 58.

14 Jemal *Ethiopian Journal of Health Science* 60-61.

15 Jemal 2012 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3437980/>.

16 *The Ethiopia Constitution proclamation 1 of 2004*.

17 *The Revised Criminal Code Proclamation 414 of 2004*.

18 The Federal Ministry of Labour and Social Affairs *Country Response* 5.

19 A.620 and A. 586 of the *Revised Criminal Code Proclamation 414 of 2004*.

20 A. 599 of the *1957 Penal Code of Ethiopia*.

perpetrator and the victims. Furthermore, the Revised Criminal Code incorporates new crimes against children that had not been addressed in the previous penal code.²¹ This includes harmful traditions that affect the life and health of the child.

Ethiopia ratified the United Nations Convention on the Rights of the Child (hereinafter UNCRC) and the African Charter on the Rights and Welfare of the Child (hereinafter ACRWC) in 1991 and 2002 respectively.²² Both documents acknowledge and ensure that children's rights would be protected from sexual abuse and exploitation.²³ However, there are numerous factors that hinder the implementation of these substantive laws. Some of these hindering factors are lack of reporting of sexual abuse cases, lack of awareness in the community, lack of training of the law enforcers and problems related to lack of evidence that can prove the commission of the crime.²⁴

Ethiopia is a country that follows a continental legal system. However, in some areas of law Ethiopia follows the common law practice; for instance, the country's legal practice on dealing with the law of evidence (which is the focus of this dissertation) has a common law nature. Due to this, many Ethiopian legal scholars prefer to say that Ethiopia follows a hybrid legal system.²⁵

The existence of substantive laws by itself does not make the law effective and practical. There must be comprehensive and effectual adjectival and procedural law for the implementation of substantive laws. Ethiopia does not have a uniform and codified law of evidence. It is found in a fragmented manner in different pieces of legislation.²⁶ Hence, there is no law that regulates the administration of evidence in the criminal justice system of Ethiopia. Evidence is a critical requisite for prosecution and success of child sexual abuse cases before courts. As sexual abuse of children is often committed in private, it is difficult to trace sufficient evidence. Hence, it will be argued that child sexual abuse cases command special attention.

21 Geol *African Journal of Political Science and International Relations* 145-150.

22 Geol *African Journal of Political Science and International Relations* 145-150

23 A.19 of the UNCRC and A.16 of the ACRWC.

24 Geol *African Journal of Political Science and International Relations* 150-155.

25 Faure and du Plessis (eds) *Balancing of Interests* 115.

The legislation is the Revised Criminal Code, the Civil Code of Ethiopia, the Criminal Procedure and Maritime Code.

This mini-dissertation will investigate the composition of the Ethiopian law of evidence, and the administration and relevance of evidence adduced in child sexual abuse cases. This study will deal with the real impact of the shortcomings of the law of evidence in implementing substantive laws de facto, and the retention of evidence and adducing evidence and its value before courts. The impact of the unregulated nature of the Ethiopian law of evidence on the failure of child sexual abuse cases before courts will also be examined.

In order to address the above issues, this mini- dissertation will be guided by the following question: To what extent does the law of evidence hinder the implementation of laws banning sexual abuse of children in Ethiopia?

The dissertation has five chapters. The first chapter introduces the dissertation and provides the problem statement. The second chapter defines important terms that will be used throughout the dissertation, and discusses the nature and effects of child sexual abuse. The third chapter deals with the international protection against child sexual abuse. The fourth chapter discusses evidentiary problems that hinder the implementation of laws banning sexual abuse of children in Ethiopia. The final chapter provides the conclusion and recommendations.

In the next chapter, Chapter 2, the key terms used in this study are defined and the international protection of children regarding sexual abuse is discussed. Thereafter, the law of evidence and its problems for the implementation of laws banning sexual abuse in Ethiopia are discussed. This is followed by a conclusion and recommendations

2 Child abuse in general

2.1 Definitions

In this chapter the terms 'child', 'child abuse' and 'child sexual abuse' will be defined. These definitions will help readers to understand the terminology used in this dissertation. Furthermore, this chapter will deal with the nature and effects of child sexual abuse. Understanding the nature of, and effects of sexual abuse on children is

crucial to prepare those responsible for action and provides ideas for the solutions of the problems related to the law of evidence that may hinder the implementation of laws banning sexual abuse in Ethiopia.

2.1.1 *Child*

The definition of a 'child' is not consistent in all countries because of cultural, religious and socio-economic differences. However, international instruments provide the definition of a 'child' and the extent of the provision of special rights and protection that should be provided within the period of childhood. According to article 1 of the UNCRC, a 'child' is:

Every human being below the age of eighteen years, unless under the law applicable to the child majority is attained earlier.

Based on the above provision, childhood ends at the end of 17 years, unless state laws stipulate earlier attainment of majority. This indicates that if the child attains the age of majority, then he or she is no longer a minor and there is no need for special rights and care. Similar to the UNCRC, the ACRWC bounds the period of childhood at the end of 17 years.²⁷

Ethiopian laws do not have a single definition of a 'child'.²⁸ By way of interpretation, the age limit of childhood in Ethiopia is similar to the one provided by the UNCRC and the ACRWC. Therefore, based on these international instruments, for the purpose of this mini-dissertation, 'child' means a person who is below the age of 18 years.

27 A. 2 of the ACRWC.

28 The *Federal Democratic Republic of Ethiopian Constitution* recognises and ensures children's Rights under article 36 but it does not provide the definition of a 'child'. However, article 13(2) of the Ethiopian Constitution states that the fundamental rights and freedoms specified in this chapter shall be interpreted in a manner confirming to the principle of Universal Declaration of Human Rights, international convention on human rights and other international instruments adopted by Ethiopia. The UNCRC was adopted by Ethiopia. Therefore, article 13(2) of the Ethiopian Constitution makes it possible to construct the definition of a child in line with the UNCRC. Other legislation of the country provides a definition of a child according to its purpose; for instance, the Labour Code set the age limit of the child for the purpose of employment. According to this code, employing persons under the age of 14 years is prohibited. The Criminal Code also set the age limit to determine criminal responsibility of the person. A person below the age of nine years is not criminally responsible for any of his or her acts, whereas any person above the age of nine years shall be held liable. Therefore, the definition of a child in Ethiopian laws is not uniform.

2.1.2 *Child abuse*

It is very difficult to frame a universal definition of 'child abuse'. The concept is related to several fields of study such as medicine, criminal justice, social work and psychology.²⁹ In each field of study, professionals and organisations may develop their own meaning for 'child abuse' to address their particular purpose. Child abuse involves varied mistreatment of children. It is ruthless and coercive treatment of a child, and it predominantly takes the form of physical and emotional abuse.³⁰ It is the harming of a child which, for most of the time, has developed into a series of forced violence.³¹ Child abuse is, therefore, a humiliating and violent crime committed against children.

There are four major types of child abuse: (i) physical abuse, (ii) emotional abuse, (iii) child neglect and (iv) sexual abuse.³² The four types of child abuse are interrelated; for instance, a child who is the victim of sexual abuse can also be the victim of physical and emotional abuse. All forms of child abuse can occur simultaneously or repeatedly against the child.³³

Physical abuse is exposing the child to physical injury as a result of kicking, shaking, burning, punching, beating or drowning.³⁴ Physical abuse occurs non-accidentally and may result in minor (eg, bruises, lacerations) or moderate (eg, scars, abrasions) or severe (eg, broken bones, sprains) damage to the health of the child.³⁵

Emotional abuse is endangering the child's psychological development and wellbeing by threatening, terrorising, humiliating or rejecting the child.³⁶ Unlike physical abuse, emotional abuse is difficult to spot and easy to refute.³⁷ However, the damage results

29 Ellerstein *Child Abuse* 1.

30 Newton and Gerrits *Child Abuse* 8.

31 Tiwari *Child Abuse* 2.

32 Wolfe *Child Abuse* 8.

33 Newton and Gerrits *Child Abuse* 8.

34 Wolfe *Child Abuse* 8.

35 Wolfe *Child Abuse* 8.

36 Krupnimiski and Weike *Death from Child Abuse* 99.

37 Jantz and Murray *Healing the Scars* 12.

in anxiety, depression, fear and the like.³⁸ Most of the time, emotional abuse may result from physical and sexual abuse, but it can also be present on its own.³⁹

Neglect is failing to provide the essential physical (eg, food, clothing, health care), emotional (eg, affection, physiological care) and educational (eg, enrolment at school age, educational materials) needs of the child.⁴⁰ Child neglect may result in physical and psychological complications in the development of the child. However, the determination of the existence of child neglect is highly dependent on the financial capacity of the parents and caregivers, as well as cultural standards and care in society.⁴¹

Sexual abuse is unwanted sexual contact with a child for the purpose of sexual gratification.⁴² It includes contact abuse behaviours (eg, touching the genitals of the child, oral sex, finger or object penetration of the anus or vagina) and non-contact abuse behaviours (eg, exhibitionism, showing child pornography).⁴³ The Committee on the Rights of the Child stated the following in General Comment 13:

Generally, among other things, as per the General comments, short and long-term effects of violence against children include: fatal injury; non-fatal injury (possibly leading to disability); physical health problems including failure to thrive, later lung, heart and liver disease and (sexually transmitted infections); cognitive impairment (including impaired school and work/performance) psychological and emotional consequences (such as feelings of rejection abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self- esteem); mental health problems (such as anxiety and depressive disorders, hallucinations, memory disturbances and suicide attempts); and health-risk behaviours (such as substance abuse and early initiation of sexual behaviours) and early imitation of sexual behaviours.⁴⁴

38 Jantz and Murray *Healing the Scars* 12.

39 Jantz and Murray *Healing the Scars* 12.

40 Wolfe *Child Abuse* 9.

41 Wolfe *Child Abuse* 9.

42 Bolen *Child Sexual Abuse* 135.

43 Cossin *Masculinities* 31.

44 *The UNCRC Committee on the Rights of the Child: General Comment 13: the Right of the Child to Freedom from All forms of Violence par. 15(a),(b),(c).*

2.2 *Child sexual abuse*

It is hard to formulate a universally acceptable definition of 'child sexual abuse'. The definition varies in terms of culture and social practices.⁴⁵ However, it is essential to provide a working definition in order to distinguish between sexual abuse behaviours and non-sexual abuse behaviours. Some of the common definitions are as follows:

According to Kempe,⁴⁶ 'child sexual abuse' is defined as:

[t]he involvement of dependent, developmentally immature children and adolescents in sexual activities which they do not fully comprehend, are unable to give informed consent to and that violate social taboos of family roles.

The Australian Institute of Health and Welfare National define child sexual abuse as:

Any act which exposes a child to, or involves a child in sexual processes beyond his or her understanding or contrary to accepted community standard.⁴⁷

Sgroi⁴⁸ provides another definition:

Child sexual abuse is a sexual act imposed on a child who lacks emotional, maturational and cognitive development. The ability to lure a child into a sexual relationship is based upon the all-powerful and dominant position of adult or older adolescent perpetrators, which is in sharp contrast to the child's age, dependency and subordinate position. Authority and power enable the perpetrators implicitly or directly, to coerce the child into sexual compliance.

The above definitions do not fully describe what sexual acts constitute sexual abuse, but they show that children are not capable of giving informed consent. This means that any involvement of sexual acts with a child is considered sexual abuse.

45 Sanderson *Counselling Adult Survivors* 25.

46 Ruth and Kempe *Child Abuse* 45.

47 Australian *Institute of Health and Welfare Child Protection* 124.

48 Maria and Chahal *Child Sexual Abuse* 3.

For the purpose of this mini-dissertation, 'child sexual abuse' is any sexual act, contact or non-contact, committed against children regardless of their consent that has short- and long-term impact on the health of the child.⁴⁹

Child sexual abuse may occur in a variety of forms, including rape, prostitution, pornography, incest, sexual exploitation and peer sexual violence.⁵⁰ In spite of this, child sexual abuse is mainly divided into two main categories:⁵¹(i) sexual assault and (ii) sexual penetration. Sexual penetration includes rape, incest and buggery.⁵² Child sexual assault involves touching or kissing a child, and the involvement in voyeurism and exhibitionism.⁵³

2.2.1 *Nature of child sexual abuse*

Child sexual abuse is a crime committed against children. It usually occurs in secret and in hidden places.⁵⁴ It is one of the most difficult crimes to detect, prosecute and prove successfully. The reason for this is that mostly there is no eyewitness other than the child victim.⁵⁵ Added to this is the fact that most sexual abuse acts may not result any visible physical injuries.

Children of all ages and either sex are exposed to sexual abuse. However, research reveals that girls are more vulnerable to sexual abuse than boys.⁵⁶ In addition, some group of children such as children who have disabilities, children who are living in extreme poverty and social deprivation, children living without family care and with a family having a history of sexual abuse and violence are more susceptible than others.⁵⁷

49 This dissertation is written in the Ethiopian context and the above assertions are in line with article 626 of the Criminal Code of Ethiopia. Therefore, any sexual act with a child below the age of 18 years can be deemed a crime in the Ethiopian context and is punishable.

50 Maria and Chaha | *Child Sexual Abuse* 3.

51 Driverand Droisen *Child Sexual Abuse* 132.

52 Driverand Droisen *Child Sexual Abuse* 133.

53 Driverand Droisen *Child Sexual Abuse* 141.

54 Maria and Chahal *Child Sexual Abuse* 16.

55 Maria and Chahal *Child sexual Abuse* 16.

56 Maria and Chahal *Child sexual Abuse* 16.

57 Maria and Chahal *Child Sexual Abuse* 4.

The perpetrators of child sexual abuse can come from any socio- economic, racial or religious background, and can be male or female.⁵⁸ However, most researches show that the perpetrators are male.⁵⁹ The perpetrators are not always adults, and children, teenagers and adolescents can also sexually abuse children.⁶⁰

2.2.2 *The effects of child sexual abuse*

Sexual abuse affects children in many ways. The gravity of the effects of child sexual abuse depends on several factors such as the age of the child victim at the time of the abuse; the developmental stage of the child; the repeated incidence of the abuse; the extent of the abuse; the relationship between the child and the perpetrator; the degree of force used during the occurrence of the abuse; the guilty conscience or disgrace experienced by the child victim; and the response of the child victim's parents or caregiver and other professionals who assisted the child when the child disclosed the abuse or any other person who knew about the offence.⁶¹

Children who have been sexually abused can suffer from a wide range of physical and psychological difficulties. There is no definite symptom that all sexually abused children show.⁶² However, some of the physical and psychological problems are common to most children who have been sexually abused.⁶³

2.2.2.1 *Physical effects*

It is evident that sexual abuse creates various physical complications in the health of the child. Some common physical problems are bleeding and tearing around the genital or anal area, itching in the genital area or mouth, painful urination, vaginal or lower abdominal pain, lacerations, bone breaks, unwanted pregnancy, abortion, and sexually transmitted diseases, including HIV/AIDS.⁶⁴

58 Elliott (ed) *Female Sexual Abuse* 16.

59 Elliott (ed) *Female Sexual Abuse* 16.

60 Maria and Chahal *Child Sexual Abuse* 4.

61 Kinnear *Childhood Sexual Abuse* 14.

62 Gimpel and Holland *Emotional and Behavioral Problems* 149.

63 Gimpel and Holland *Emotional and Behavioral Problems* 149.

64 Gimpel and Holland *Emotional and Behavioral Problems* 149.

2.2.2.2 Psychological effects

Unlike physical complications caused by sexual abuse, psychological effects are very difficult to detect. However, psychological effects may cause various long-lasting problems in the mental health of the child. Some of the common psychological symptoms that are associated with sexually abused children are depression, anxiety, low self-esteem, guilt, fear, inappropriate sexual knowledge, over-sexualised behaviour and psychosomatic disturbance.⁶⁵

Additionally, sexual abuse affects children's performance and participation at school and in social activities.⁶⁶ It may cause self-destructive behaviour such as alcohol or drug abuse and anxiety disorders.⁶⁷ Children who have been sexually abused may encounter many difficulties such as sexually related problems, problems being parents themselves and difficulties in building relationship with others when they reach adulthood.⁶⁸ Therefore, the effect of child sexual abuse goes beyond physical and psychological problems in children.

From the above discussion, it is possible to understand how child sexual abuse greatly affects the physical and psychological development of children. Therefore, laws that ban the commission of sexual abuse of children should be implemented effectively to protect children from this form of abuse.

3 International protection against child sexual abuse

There are many ways of protecting children from sexual abuse. Among these are providing effective substantive legislation that outlaws the sexual abuse of children. There are various treaties that ensure that the rights of children are protected at international and regional. Nevertheless, the effectiveness of these treaties depends on the procedural and adjectival laws of the countries that implement them. This

65 Gimpel and Holland *Emotional and Behavioral Problems* 149.

66 Deb and Mukherjee *Impact of Sexual Abuse* 35.

67 Deb and Mukherjee *Impact of Sexual Abuse* 36.

68 Deb and Mukherjee *Impact of Sexual Abuse* 36.

chapter deals with the legal response towards the sexual abuse of children from an international and regional perspective.

3.1 International perspectives

To realise the protection and care of children, various declarations, conventions and protocols have been developed at international level since the twentieth century.⁶⁹

International instruments have set necessary standards that assist the proper protection and care of children. Setting of international standards and their effective implementation may enable children to enjoy their childhood and safely enter into adulthood. Some of the international instruments are general human rights instruments,⁷⁰ while others are specific to children. However, whether these instruments are general or specific to children, they have their own benefits to ensure and protect children's rights.

The first international instrument focusing on the rights of children was adopted by the League of Nations in 1924.⁷¹ It was a non-binding instrument and consisted of five principles. It was the first international human rights declaration by non-governmental organisations.⁷² The aim of the 1924 Declaration on the Rights of the Child was to create necessary conditions for children to be protected and become productive citizens.⁷³ The focus of the declaration was mainly the material needs of children.⁷⁴ The declaration provided mere guiding principles.⁷⁵ It did not mention the responsibilities and obligations of states towards the protection of children against rights granted under the declaration.

69 The Universal Declaration on Human Rights, the UNCRC, the Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography are a few examples.

70 UDHR, ICCPR and ICESCR are a few examples.

71 The 1924 Declaration on the Rights of the Child.

72 Buck *International Child Law* 23.

73 Buck *International Child Law* 23.

74 Zahra *The Lost Children* 236.

75 The Preamble of the 1924 Declaration on the Rights of the Child.

After the 1924 declaration, the Universal Declaration on Human Rights (hereinafter "UDHR") was adopted in 1948.⁷⁶ The UDHR recognises the inherent dignity, and equal and inalienable rights of all human beings.⁷⁷ It is not a child-focused declaration. However, in principle, the rights listed under the UDHR are equally applicable to all adults and children.⁷⁸ Moreover, article 25(2) of the UDHR specifically addresses children's rights.⁷⁹

In 1959 the United Nations (hereinafter "UN") General Assembly adopted another declaration on the rights of a child. In the preamble, the spirit of understanding was mentioned as 'mankind owes to the child the best it has to give'.⁸⁰ This declaration consisted of ten principles and included additional rights that are not mentioned in the 1924 declaration such as the right to education and other developmental rights of children. Adding to the material needs of child, the 1959 declaration gave attention to the immaterial needs of a child such as the right to have a name and nationality.⁸¹ This declaration under principle 9 stated the protection of children against all forms of exploitation.⁸²

The UN General Assembly adopted two international covenants in 1966. These are the International Covenant on Civil and Political Rights (hereinafter "ICCPR")⁸³ and the International Convention on Economic, Social and Cultural Rights (hereinafter "ICESCR").⁸⁴ These instruments contain provisions that recognise the welfare of children.⁸⁵

The ICCPR contained civil and political rights. Owing to their nature, civil and political rights require immediate realisation by the member states.⁸⁶ The ICCPR has some

76 The Preamble of the UDHR.

77 The Preamble of the UDHR.

78 Detrick *A Commentary* 14.

79 A. 25(2) of the UDHR states: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

80 The Preamble of the *1959 Declaration of the Rights of the Child*.

81 Detrick *A Commentary* 14.

82 The Preamble of the ICCPR.

83 The Preamble of the ICCPR.

84 The Preamble of the ICESCR.

85 Ethiopia ratified the ICCPR and the ICESCR on 11 June 1993.

86 Detrick *A Commentary* 14.

provisions that provide children with protection. For instance, article 24(1) of the ICCPR provides as follows:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

The above provision indicates that every child is entitled to special protection without any form of discrimination.

The ICESCR entered into force on 23 March 1976.⁸⁷ It consists of economic, social and cultural rights. The realisation of these rights requires positive intervention by state parties.⁸⁸ It cannot be realised immediately as civil and political rights, but rather it demands gradual steps to realisation.⁸⁹ ICESCR is not a child-focused instrument. However, article 10 of ICESCR provides special attention for children as follows:

Special measures of protection and assistance should be taken 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.

The above provision includes setting a minimum age of employment, and prohibition of harmful and dangerous occupation of children. Added to this, children also have the right to enjoy rights that are incorporated in ICESCR.

The focus of the following subsection is on child-focused international instruments that emphasise protection of children against all forms of sexual abuse.

3.1.1 *The 1989 United Nations Convention on the Rights of the Child*

3.1.1.1 Background

During the 1980s, the international protection of children's rights developed significantly and rapidly.⁹⁰ The United Nations Commission on Human Rights

87 The Preamble of the ICESCR.

88 Detrick *A Commentary* 15.

89 Detrick *A Commentary* 15.

90 Karin *African Journal of International and Comparative Law* 139-160.

(hereinafter "UNCHR") took action in the development of international children's rights in a separate, comprehensive and binding form.⁹¹ Moreover, it also paid attention to the establishment of a committee⁹² that monitored the implementation of children's rights.⁹³

In 1979 the UNCHR established a working group to draft a convention on the rights of the child.⁹⁴ The group immediately began to draw up the convention.⁹⁵ During the drafting process, the working group considered the views, observations and suggestions of member states of the UN, regional inter-governmental organisations, specialised agencies and non-governmental organisations.⁹⁶ The working group took ten years to finalise the draft convention.⁹⁷ The final draft was submitted to the UN General Assembly for approval and adoption. Finally, the UN General Assembly adopted the convention in November 1989. The convention came into force on 2 September 1990. The adopted convention is a major milestone international instrument that addresses special child right-related issues.

At present, more than 192 countries have signed and ratified the UNCRC. No other international human rights treaty has received such positive response and universal ratification as has the UNCRC. The United States of America and Somalia are the only states that have not yet ratified the UNCRC.⁹⁸

The UNCRC recognised a new threshold for the realisation of civil, political, social, cultural and economic rights of children in a comprehensive and binding form.⁹⁹ It proclaimed states' overall obligation for the protection of all children under the age of

91 Karin *African Journal of International and Comparative Law* 139-160.

92 The committee comprises group of independent experts so that they can monitor the implementation of the UNCRC by its state parties. The children's rights committee was formed to follow up the convention and currently consists of 18 experts and meets in Geneva twice a year. This committee reviews state parties' reports on the implementation of the UNCRC and provides recommendations based on the reports of governments, based on articles 44 and 45 of the convention.

93 Karin *African Journal of International and Comparative Law* 139-160.

94 Detrick *A Commentary* 16.

95 Detrick *A Commentary* 16.

96 Detrick *A Commentary* 16.

97 Detrick *A Commentary* 16.

98 Blanchfield *The United Nations Convention* 16.

99 Council of Europe *Protecting Children* 50.

18 years.¹⁰⁰The UNCRC preamble stresses the importance of every child living in an atmosphere of happiness love and understanding. The convention sets and ensures the minimum standards that are significant to children being more protected and respected.

The convention has four core principles that are basic to the implementation of the convention.¹⁰¹ These principles are (i) non-discrimination,¹⁰²(ii) the best interest of the child,¹⁰³(iii) the right to life, survival and development,¹⁰⁴ and (iv) respect for the views of the child.¹⁰⁵ It has 54 articles in three detailed parts.¹⁰⁶

The contents of the convention have been categorised in many ways by different scholars for the purpose of better understanding the provisions.¹⁰⁷At present, all rights that are proclaimed in the convention can be categorised as the four P's.¹⁰⁸ The four P's refer to the (i) provision, (ii) protection,(iii) prevention and (iv) participation rights of children.¹⁰⁹

100 Council of Europe *Protecting Children* 50.

101 Mahery " The United Nations Convention on the Rights of the Child " 309- 315.

102 A 2 of the UNCRC states:

1. State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. State Parties shall 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.

103 A. 3 of the UNCRC:

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

104 A 6 of the UNCRC.

1. States parties recognise that every child has the inherent right to life.
2. States parties shall ensure to the maximum extent possible the survival and development of the child.

105 A 12 of the UNCRC.

1. State parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child; the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

106 The first part (articles 1-41) consists of the substantive rights of the child, the second part(articles 42-45)consists of the implementation and monitoring provisions and the third part (article 46-54) consists of the final clauses.

107 Fortin *Children's Rights* 41.

108 Mahery " The United Nations Convention on the Rights of the Child " 309- 315.

109 Mahery " The United Nations Convention on the Rights of the Child " 309- 315.

'Provision rights' refer to the rights that children have to be provided with services to fulfil their survival needs, which include the right to education, the right to health care ,and the right to food and shelter.¹¹⁰

'Protection and prevention rights' refers to the rights to be protected from abuse, neglect, exploitation, harmful and violent acts or practices, and the prevention of such practices. These rights include protection from economic abuse, trafficking and prevention from abduction.¹¹¹ For the purpose of this dissertation, protection and prevention rights are given due emphasis. These rights will be discussed in the following section from the perspective of child sexual abuse, which is one area of protection and prevention rights.

'Participation rights' refers to rights that enable children to express their views in all matters affecting them by freely forming their view.¹¹²This includes the right to freedom of expression.¹¹³A participation right is an additional right that was not recognised in the earlier declaration on the right of the child. This right makes the convention useful for children and adults to enjoy more equal and mutually rewarding lives.¹¹⁴

3.1.1.2 Obligation on state parties

The UNCRC clearly expresses that the child shall be protected from any form of abuse, including sexual abuse .Article 19(1) of the convention states that:

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

110 A. 24 and A. 26 of the UNCRC.

111 A. 11 and A. 35 of the UNCRC.

112 A. 12 of the UNCRC.

113 A. 13 of the UNCRC.

114 Alderson *Young Children's Exploring* 18

Based on the above provision, states have an obligation to take appropriate measures to protect children from any forms of sexual abuse. The domestic laws of a member state should also be in line with this provision to combat sexual abuse of children and to ensure their protective rights. It also demands strong a mechanism of enforcement of the convention by the ratifying states, which include Ethiopia.

Adding to article 19, article 34 of the convention addresses the protection of children specifically from sexual abuse and exploitation. It states:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Thus, state parties should adopt a variety of measures to combat sexual abuse and exploitation of children according to the above provision. These measures could be the development of laws, drafting of policy and effective enforcement of strategy that uphold the goal of the convention and ensure the welfare of children.¹¹⁵ State parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention.¹¹⁶ This implies that state parties should make their domestic laws such as constitutional and criminal law compatible with the convention to secure the protection of children from sexual abuse. The compatibility between the convention and national laws implies that the text of the national law must not contradict and violate the right of the child. Compatibility also implies that gaps created by the convention must be filled by national legislation. Therefore, the UNCRC urges member states not only to adopt the document and respect its provision, but it also demands from the signatory states that they ensure that their national laws are in conformity with the UNCRC.

115 A. 4 of the UNCRC.

116 A. 4 of the UNCRC.

The Optional Protocol¹¹⁷ of the UNCRC further calls for and acknowledges the protection of children against sexual abuse and exploitation. The optional protocol on the right of the child on the sale of children, child prostitution and child pornography was adopted on May 2000, entered into force in January 2002 and was ratified by 137 states.¹¹⁸ This protocol addresses the problem of sexual exploitation of children and provides clear illustration of the term 'sale of a child', 'prostitution' and 'pornography' under its provision.¹¹⁹ The optional protocol obliges member states to prohibit the sale of children, prostitution and child pornography.¹²⁰

The UNCRC provides the international legal framework to protect children from any forms of sexual abuse. The action that must be taken by member states to protect children from sexual abuse ranges from making the convention an integral part of their national laws in striving for the effectiveness of the convention.

The Ethiopian government's obligation towards the implementation of the UNCRC, will be discussed in a separate section under the title of "The status of international instruments under Ethiopian laws".

3.2 Regional perspective

Regionally, many conventions, treaties and protocols on human rights have been developed.¹²¹ However, this subsection deals with the African Regional Human Rights

117 The protocol is a supplemental document to the original treaty. It addresses a particular issue that was not sufficiently addressed and elaborated on in the original treaty. The protocol is not obligatory because member states of parties to the original treaty are not obliged to ratify the protocols. States that are not members of the original treaty can ratify the protocol.

118 The optional Protocol on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.

119 A. 2 of the Optional Protocol of the UNCRC:

Sale of children: means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

Child prostitution: means the use of a child in sexual activities for remuneration or any other form of consideration;

Child pornography: means any representation by whatever means, of a child engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purpose.

120 A. 1 of the optional protocol of the UNCRC.

121 These regional human rights instruments are the American Convention on Human Rights and its protocols, European Convention on Human Rights and its protocols, Asian Convention on Human Rights, the Africa Charter on Human and People's Rights, and the ACRWC.

instruments, with particular emphasis on the African Charter on Human and Peoples Rights, and the ACRWC.

The African Charter on Human and People's Rights (hereinafter "ACHPR") was adopted by the then Organisation of Africa Unity (hereinafter "OAU") Assembly of the heads of the state and government in 1981.¹²² It entered into force on 21 October 1986. This charter was ratified by 53 OAU member states. The ACHPR covers a wide spectrum of rights, which includes civil, political, economic, social and cultural rights. It recognises and ensures the rights of every individual and person living on the African continent. In addition, the ACHPR established a Human Rights Commission for the promotion and protection of human and people's rights.¹²³ Unlike other international instruments, the ACHPR provides the duty of individuals towards their family, society, state and other legally recognised communities, and the international community.¹²⁴ This makes the charter unique from other international and regional human rights instruments.

In principle, the provisions of the ACHPR are applicable to both adults and children. In addition, the ACHPR provides specific protection for children's rights under article 18(1) it states that:

The State shall ensure the elimination of all discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

122 The Preamble of the ACHPR.

123 A. 30 of the ACHPR.

124 A. 27 of the ACHPR. The duties of the individual listed under article 29 of the charter. It states that The individual shall also have the duty:

29(1) To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;

29(2) To serve his national community by placing his physical and intellectual abilities at its service;

29(3) Not to compromise the security of the State whose national or resident he is;

29(4) To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

29(5) To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;

29(6) To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

29(7) To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral wellbeing of society;

29(8) To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

It is argued that the above provision recognises children's rights, including the protection from sexual abuse which is also stipulated under the UNCRC and other international instruments as previously discussed.

3.2.1 *The 1990 African Charter on the Rights and Welfare of the Child*

3.2.1.1 Background

The ACRWC makes Africa the only continent with a region-specific children's rights instrument. As a result of the limited African country participation in the drafting process of the UNCRC, problems related to children that are pertinent to the African situation remained unanswered under the UNCRC.¹²⁵ It was also believed by the draft committee of the ACRWC, as opposed to the UNCRC which reflects Western culture and values, that African culture and values should be given paramount importance and be addressed clearly by the ACRWC.¹²⁶

The ACRWC was adopted by the Assembly of Heads of States and Government of the Organisation of African Unity in July 1990 and entered into force on 29 November 1999.¹²⁷ With the exception of eight member state of the African Union (hereinafter "AU"),¹²⁸ all member states have signed and ratified the ACRWC as of November 2010.¹²⁹

125 Viljoen "The African Charter on the Rights and Welfare of the Child " 331-350.

126 Viljoen "The African Charter on the Rights and Welfare of the Child" 331-350. The following reasons were the identified issues: The conditions children were living under in the apartheid era were not addressed; female genital mutilation and circumcision were not adequately and clearly expressed; the concept of the society's responsibilities and duties towards the content was neglected; the role of the family to bring up the child, adoption and foster care were not given attention in the UNCRC. The position of children in prison and expectant mothers were not covered. Socio-economic-related problems of the content were not considered.

127 The Preamble of the ACRWC.

128 The AU member states who have signed but not yet ratified the ACRWC are the Central African Republic, Democratic Republic of Congo, Saharawi Arab Democratic Republic, Somalia, São Tomé and Príncipe, Swaziland, South Sudan and Tunisia.

129 ACRWC <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child>.

The ACRWC has 48 provisions. Many of the provisions are similar to the provisions of the UNCRC. However, the ACRWC provides wider protection of children than the UNCRC.¹³⁰

With regard to protecting children from sexual abuse and other types of abuse, the ACRWC reaffirms the provisions of the UNCRC under articles 16 and 27 of the ACRWC. The ACRWC imposes a duty on the member state of the OAU, currently the AU, to protect children from sexual abuse and other forms of abuse.¹³¹ To realise this, the charter obliges state parties to adopt specific legislative, administrative, social and educational measures in their jurisdiction.¹³² The ACRWC requires state parties to protect children from all forms of sexual abuse and exploitation.¹³³

3.2.1.2 Obligation on state parties

The ultimate purpose of all international treaties is implementation by signatory states. Therefore, signing international instruments obliges the state to respect and ensure all rights stipulated in the signed instruments. Like the UNCRC, the ACRWC puts an obligation on signatory states. To this effect, article 1 of the ACRWC discusses the obligations of state parties. It states the following:

1. Member States of the Organization of African Unity Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realisation of the rights and welfare of the child

130 The ACRWC prohibits the recruiting of a child to become a soldier and take a direct part in hostilities under article 22(2), while the UNCRC provides that a child can be recruited as a soldier at the age of 15 years in accordance with article 38(2) and (3) of the convention. The ACRWC also prohibits child marriages and sets out the age limitation for marriage clearly under article 21 (2), while the UNCRC does not address this issue. The age at which a child is considered a child is also stated without exception, which is below 18 years under article 2 of the charter. The UNCRC makes provision for an exception under article 1. In the case of child refugees, the ACRWC extends protection for the internal displacement which is mentioned under article 23(4).

131 A.16 of the ACRWC.

132 A.16 of the ACRWC.

133 A.27 of the ACRWC.

- contained in the law of a State Party or in any other international convention or agreement in force in that State.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Upon ratification, the state parties have the obligation to protect, promote and fulfil the rights enshrined under the ACRWC. To ensure that the ratifying states are living up to their promises, the ACRWC requires member states to report on the implementation of the provisions.¹³⁴ This reporting mechanism is one means of monitoring compliance of the state with its children's rights obligations.

According to articles 16 and 27 of the ACRWC, state parties are obliged to protect children from sexual abuse and exploitation by taking measures that include legislative, administrative, social and educational measures that help the states to protect the rights of children to be free from all forms of sexual abuse and exploitation.

The international and regional laws discussed above clearly stipulate children's rights and outlaw child sexual abuse that a member state should strive for in their effective implementation. All child-related international instruments are used to guarantee basic children's rights, hence they are described as substantive laws. Substantive rights granted in international instruments should be backed by procedural laws for their effective implementation; in this regard evidence can be mentioned as procedural law, which plays a great role in combating child sexual abuse.

What follows is a discussion of the status of international instruments under Ethiopian laws, and the obligations of the Ethiopian government towards implementing the UNCRC and ACRWC.

3.2.1.3 Status of international instruments under Ethiopian laws

All international instruments are meant to be put into practice by the signatory parties who gave their consent to their effective implementation. To this effect, Ethiopia is

¹³⁴ A. 43 of the ACRWC.

party to many international and regional human rights instruments. This is recognised under article 9(4) of the Ethiopian Constitution.

The Ethiopian Constitution states that "All international agreements ratified by Ethiopia are an integral part of the law of the land." This implies that all international instruments that the country has adopted have the same status with nationally adopted legislation. Hence, the UNCRC was ratified under proclamation No. 10/1999. Every child has the right to enjoy and invoke his or her rights, which is proclaimed under the UNCRC domestically. Ethiopia also ratified the ACRWC on 2 October 2002.¹³⁵

In addition, Chapter 3 of the Ethiopian Constitution deals with the fundamental rights and freedom of peoples. Article 13(2) of the constitution states that

The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner confirming to the principles of the universal declaration of human rights, international conventions on human rights and international instruments adopted by Ethiopia.

The above provision indicates that rights proclaimed under Chapter 3 of the constitution should conform to international instruments to which Ethiopia is a party. Since Ethiopia ratified the UNCRC and the ACRWC, they have become an integral part of Ethiopian law by virtue of article 9(4) of the Ethiopian Constitution. Therefore, the UNCRC and the ACRWC are important for the interpretation of the rights of the child, which are listed under article 36 of the Ethiopian Constitution. This means that the interpretation of article 36(1)(d) of the Ethiopian Constitution, which stipulates that sexual exploitive practices should be in accordance with articles 19 and 34 of the UNCRC and articles 16 and 27 of the ACRWC. Articles 9(1) and 13(2) of the Ethiopian Constitution show the commitment of the Ethiopian government to realising the rights of children as ensured and recognised in the UNCRC and ACRWC.

¹³⁵ ACRWC <http://acerwc.org/the-African-charter-on-the-rights-and-welfare-of-the-child>.

4 Ethiopian laws

4.1 Background

At national level, many African countries that have ratified the UNCRC and ACRWC addressed children's rights, including the right to be protected from sexual abuse under their national laws.¹³⁶ The countries harmonised their national laws such as their constitution, penal code, family code in accordance with the UNCRC and ACRWC.¹³⁷

At present, in Ethiopia child abuse issues, which include sexual abuse, neglect and exploitation, are becoming an area of concern. Though most of the contributing factors for violation of the rights of children are present in Ethiopia, harmful traditions, poverty and ignorance are the major factors that exacerbate violation of the rights of children in Ethiopia.¹³⁸

Despite the proliferation of the problem of children's rights violation, Ethiopia does not have a single comprehensive law that deals with the rights of children. Children's rights are addressed in various laws in Ethiopia. Ethiopia has ratified a number of international instruments and regional treaties; among which, the UNCRC and the ACRWC.¹³⁹ The Ethiopian government has taken measures to harmonise the laws of the country according to the UNCRC and the ACRWC; for instance, the criminal law and family law of the country are revised in accordance with the UNCRC and the ACRWC. Some sexual offences that were not covered under the old penal code are addressed in the Revised Criminal Code¹⁴⁰. Laws banning female genital mutilation and abduction can be mentioned as examples.

136 Kaime *The African Charter* 88.

137 For instance, the South African government ensures and protects children's rights under s28 of the 1996 Ethiopian Constitution. It also provides protection for children from maltreatment, neglect, abuse or degradation.¹³⁷ In addition to this, sexual offences committed against children are briefly addressed under the Sexual Offences Acts and Related Matters Amendment Act 32 of 2007, the Children Act of 2005 and Films and Publications Act 65 of 1996.

138 Hailu *Sexual Abuse* 2.

139 In this regard, see Chapter 3 for a discussion.

140 The Preambles of the Criminal Code and the Family Law of the Federal Democratic Republic of Ethiopia.

In this subsection of this dissertation, the Ethiopian Constitution, the Revised Family Code and the Revised Criminal Code will be discussed with special emphasis on the protection of children from sexual abuse.

4.1.1 *Constitution of the Federal Democratic Republic of Ethiopia.*

The Ethiopian Constitution was adopted in 2001 and entered into force in 2002. It contains basic principles and guidelines that regulate the country and its citizens. The Ethiopian Constitution is the supreme law of the country.¹⁴¹ Any law, administrative decision or customary practices that contradict the constitution will have no legal effect.¹⁴²

The Ethiopian government is a federal system consisting of the federal government, and nine ethnically based regions and two federal cities, namely (i) Addis Ababa and (ii) Dire Dawa. The official name of the government is the 'Federal Democratic Republic of Ethiopia'.¹⁴³

The Ethiopian Constitution contains the provisions that deal with children's rights under article 36.¹⁴⁴ Article 36(1)(d) ensures the protection of children from exploitative

141 A. 9 of the *Ethiopian Constitution*.

142 A. 9 of the *Ethiopian Constitution*.

143 A. 1 of the *Ethiopian Constitution*.

144 A. 36 (1) states that

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 or guardians,
- (d) Not to be subject to exploitative practices, neither to be required 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 and inhuman treatment in schools and other institutions responsible for the care of children.

A. 2: 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.

A. 3: Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults.

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

A.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.

practices, and from cruel and inhuman treatment. The Ethiopian Constitution also ensures the best interest of children.¹⁴⁵

4.1.2 *The Criminal Code of the Federal Democratic Republic of Ethiopia*

In combating the crime of sexual abuse of children, the Ethiopian government has been taking different measures. In addition to ratifying international human rights instruments, the criminal law of the country outlaws the crime of sexual abuse of children.¹⁴⁶ This crime was addressed under the old penal code and the Revised Criminal Code of Ethiopia.¹⁴⁷

The Revised Criminal Code clearly stipulates that sexual abuse of children is a punishable crime.¹⁴⁸ Rape is one type of sexual abuse crime against children and it is punishable under the criminal code.¹⁴⁹ According to article 620(2) of the Revised Criminal Code, when a young woman between the ages of 13 and 18 years is raped,

Articles 626 and 627 of the Revised Criminal Code also deal with crimes of sexual outrages against children. Since the age limit of childhood is 18 years of age, article 626 intends to protect a minor who is between the ages of 13 and 18 years. According to article 626, sentencing ranges between three and fifteen years when the child who was induced to engage in sexual activities is between the ages of 13 and 18 years. Article 627 protects minor under the age of 13 years against sexual crimes. It prescribes imprisonment ranging between thirteen and twenty-five years for a person guilty of inducing a child below the age of 13 years to engage in sexual activities.

The reasons for differentiating between the above-mentioned age categories is the severity of the consequence of the abuse perpetrated against the child. Sexual crimes

145 A. 36 (2) of the Ethiopian Constitution provide that:

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 interest of the child.

146 A. 620, 626, 627, 631 and 632 of the *Criminal Code of Ethiopia*.

147 The 1964 Penal Code of Ethiopia was revised in 2005. Before Revised Criminal Code of in 2005 came into effect the 1957 Penal Code served for a long period. However, the 1957 code applies to acts committed before the Revised Criminal Code entered into force in April 2005.

148 The provisions of the new Criminal Code, which criminalises the offence of sexual abuse of children are found under Title IV of the Criminal Code with caption crimes against morals and the family.

149 A. 620 (2) of the *Revised Family Code*.

committed against infants incur harsher penalties than sexual crimes committed against minors.

4.1.3 *The Revised Family Code*

Between 1960 and 2000, the Civil Code of Ethiopia defined children's social status and society's responsibility towards children. However, in 2000 the provisions of the Civil Code of Ethiopia that dealt with children were repealed by the Revised Family Code of Ethiopia.¹⁵⁰ As is clearly stipulated in the preamble of the Revised Family Code, it has become necessary to amend the existing law in such a way that it gives priority to the wellbeing, upbringing and protection of children in accordance with the Ethiopian Constitution and international instruments. The main focus of family law is on regulating and governing family relations by law, and imposing the responsibility on society and the state to protect the family.

When it comes to the main focus of the current research, the Family Code of Ethiopia is among the laws that play a protective role against child sexual abuse. As dissolution of marriage may expose children to sexual abuse, family law provides protection for the wellbeing of children at the time when the family is dissolved.

For the most part, the Ethiopian Family Code deals with the rights of minors. It begins by defining a 'minor' and places a maximum limit on who should be considered a minor. As there is no single article that directly discusses child sexual abuse in the family code, it could be said that the code gives children indirect protection against sexual abuse by generally protecting the wellbeing of children. It clearly stipulates the organs that should protect minors and sets out their major responsibilities. It also defines the relationship between children and families, tutors and guardians.¹⁵¹ Generally, it could be said that the protection of children from sexual abuse starts with creating a safe place in which a child will be brought up in a legally defined environment. In this regard, the Revised Family Code is playing a monumental role.

¹⁵⁰ A. 319 of the Revised Family Code.

¹⁵¹ A. 2 of the Revised Family Code.

4.2 Law of evidence

4.2.1 Definition and nature

In the preceding chapter of this dissertation the research dealt with child sexual abuse and substantive laws that are meant to protect and safeguard children from sexual abuse. Substantive laws by their nature are meant only to define rights and duties; for example, the right to be free from any form of sexual abuse.¹⁵² However, for substantive law to come to an end or execution, procedural laws are used as a means.¹⁵³ The law of evidence, categorised as being an adjective or procedural law, helps in the enforcement of substantive laws. Before dealing with the law of evidence, it is important to define the term 'evidence' from a legal point of view. Though it is difficult to find a formulated definition for 'evidence', authorities have defined it in different ways. *Black's Law Dictionary* define evidence as follows:

Evidence, broadly, is the means from which an inference may logically be drawn of the existence of a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptance, the term 'evidence' includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproves. Evidence has also been defined to mean any species of proof legally presented at the trial of and issue, by the act of the parties and through the medium of witness, records, documents, concrete objects and the like.¹⁵⁴

'Evidence' is also defined as

oral testimony by witnesses presented before the court upon its permission in relation to matters of fact under inquiry or presentment of all documents before the court, including electronic records, for the inspection of matters under dispute.¹⁵⁵

This definition is narrow in a sense that it only incorporates two types of evidence, namely, (i) oral and (ii) documentary evidence. From the above definitions it can be

152 Gulshan *Business Law* 15.

153 Praranjape *Studies in Jurisprudence* 157.

154 Garner(ed) *Black's Law Dictionary* 1677.

155 Retan and Dhiraj *The Law of Evidence* 8.

summarised that evidence is any testimony (ie, eye witness, expert and/or hearsay) or document (eg, medical or the declaration of experts) presented before the court of law to prove or disprove the existence or non-existence of an alleged fact. The purpose of the law of evidence can be inferred from the definitions listed above. For a court to pass fair judgment, it has to prove the occurrence or non-occurrence of a certain fact exactly as it occurred in reality at the time it is alleged to have occurred.

There are different types of evidence that are currently in use in all legal systems. They can generally be classified as direct and indirect (circumstantial) evidence.

Direct (testimonial) evidence is evidence that has a first-hand relationship with the disputed fact under adjudication or the fact finder is called upon to draw no inferences from the testimony.¹⁵⁶ Facts are said to be established by direct evidence, that is, it has been testified to by witnesses as having come under the cognisance of their senses, and the truth of which there seems to be no reasonable doubt or question.¹⁵⁷ Eyewitnesses and judicial admissions can be mentioned as direct or positive evidence.

Circumstantial evidence, as opposed to testimonial evidence, is indirect evidence that is proof of a chain of facts from which it could be deduced that another fact exists.¹⁵⁸ All evidence that does not fall in the category of direct evidence is circumstantial. Fingerprints, medical evidence, and materials found on a crime scene are some of the examples of circumstantial evidence. Jurists debate about the admissibility and weight that have to be given to circumstantial evidence. As evidence, circumstantial evidence has equal importance with direct evidence but, as proof, the latter directly establishes the commission of the offence, while the former does so by identifying circumstances that lead to the irrefutable inference of guilt.¹⁵⁹ However, some proponents of circumstantial evidence such as fingerprints justifiably inspire greater confidence than direct eyewitness accounts.¹⁶⁰ It is difficult to conclude that one has greater importance than the other as the weight and admissibility of evidence must be assessed on a case-by-case basis.

156 Letwin *Evidence Law* 21.

157 Wingmore *Evidence in Trials* 99.

158 Retanlal and Dhirajlal *Law of Evidence* 21.

159 Retanlal and Dhirajlal *Law of Evidence* 12.

160 Letwin *Evidence Law* 22.

4.2.2 *Relevance and admissibility*

In the common law system 'relevant fact' means that which is logically probative. In addition, what is logically probative is not determined by rule of law. The test is the reference to logic and principle of reasoning. "Relevance is an affair of logic and not of law";¹⁶¹ in other words, it is the judge or jury who determines what is and is not relevant just by using ordinary logic, common sense and experience. Admissibility turns on whether a given item presented as evidence is good enough to be considered by the fact finder.¹⁶² Admissibility comes after the evidence has passed the relevancy test; In other words, to be admissible it must first be relevant and something more. It has to satisfy all the auxiliary tests and extrinsic policies.¹⁶³

Admissibility of evidence by the fact finder does not imply sufficiency, it only suffices as relevancy. The sufficiency of evidence that is admitted due to its relevancy is offered by the court and is proved in the course of litigation.¹⁶⁴ Generally speaking, whatever has a tendency or relevancy to prove a material part of the issue is admissible. Once evidence has passed the admissibility test, the next process is the weight, proof and demonstration of evidence. These terms have no application until all the evidence is introduced before the jury.¹⁶⁵

4.3 *Law of evidence in Ethiopia*

The introduction of codified law in Ethiopia dates back to 1931, when the first written constitution of Ethiopia was ratified during the imperial regime.¹⁶⁶ Following the first constitution, Ethiopia enacted different pieces of legislation. The penal code of Ethiopia was ratified in 1957. After serving for nearly five decades, it was replaced with the Criminal Code of Ethiopia in 2004. As discussed in Chapter 2 of this dissertation, the Criminal Code of Ethiopia dedicates various articles in criminalising child sexual abuse. Beside this code and other codes that exist in the country, the 1961 Criminal

161 Wigmore *Evidence in Trials* 298.

162 Letwin *Evidence Law* 2.

163 Wigmore *Evidence in Trial* 296.

164 Letwin *Evidence Law* 4

165 Wigmore *Evidence in Trial* 13.

166 Newman *Crime and Punishment* 75.

Procedure Code has played its part in giving full effect to those rights guaranteed in the Criminal Code of Ethiopia and other substantive laws. At present, in reforming the administration of the criminal justice system of Ethiopia, the government of Ethiopia launched a series of campaigns that is manifested by the issuance of, among other things, a draft criminal policy and draft criminal law.¹⁶⁷

The law of evidence in Ethiopia is among the least-developed laws of the country. The current law of evidence in Ethiopia has the nature of both common law and civil law.¹⁶⁸ There are also civil law features in the present Ethiopian law of evidence. Although the law of evidence is categorised as adjectival law, in Ethiopia rules of evidence are found in substantive law provisions. In Ethiopia there is no comprehensive body of evidence rules, but rather evidence rules are scattered through the codes.¹⁶⁹ The Civil Code, the Revised Criminal Code, the Maritime Code, and the Criminal Procedure Code are few examples of the rules of evidence found.¹⁷⁰

167 *Wada Journal of Ethiopian Law* 80.

168 Melin *Evidence in Ethiopia* 13.

169 Melin *Evidence in Ethiopia* 13.

170 Some of evidence rules found under the Revised Criminal Code, Criminal Procedure Code, and Civil Code are listed as follows:

A. 51 (1) of the Criminal Code: When there is a doubt as to the responsibility of the accused person, whether absolute or partial, the Court shall obtain expert evidence and may order an enquiry to be made as to the character; antecedents and circumstances of the accused person. Such evidence shall be obtained; particularly when the 'accused' person shows signs of a deranged mind or epilepsy, is deaf and dumb or is suffering from chronic intoxication due to alcohol or due to drugs.

A. 136 of the Criminal Procedure Code:—

Opening of case and calling of witnesses for prosecution

- (1) After the plea of the accused has been entered, the public prosecutor shall open his case explaining shortly the charges he proposes to prove and the nature of the evidence he will lead. He shall do so in an impartial and objective manner.
- (2) The public prosecutor shall then call his witnesses and experts, if any. The witnesses and experts shall be sworn or affirmed before they give their testimony.
- (3) They shall be examined in chief by the public prosecutor, cross-examined by the accused or his advocate and may be re-examined by the public prosecutor.

A. 137 of the Criminal Procedure Code: Form of questions put in examination-in-chief

- (1) Questions put in examination-in-chief shall only relate to facts which are relevant to the issues to be decided and to such facts only of which the witness has direct or indirect knowledge.
- (2) No leading question shall be put to a witness without the permission of the accused or his advocate or the public prosecutor, as the case may be.
- (3) Questions put in cross-examination shall tend to show to the court what is erroneous, doubtful or untrue in the answers given in examination-in-chief. Leading questions may be to a witness in cross-examination.

A. 5 of the Civil Code : Proof of life or death of person:—

- (1) Whosoever, for the purpose of exercising a right, alleges that a particular person is or was alive on a certain day, or is dead, shall prove the allegation.
- (2) The proof that a person is or was alive shall be made by producing the person himself or by the evidence of three witnesses or any other reliable evidence.
- (3) The proof of death shall be made in accordance with the provisions of Chapter 3 of this Title (art. 47).

4.4 Evidence adduced in child sexual abuse cases

Investigation results are submitted to the public prosecutor for trial, after the police have investigated a crime and are satisfied with the sufficiency and credibility of the collected evidence. In so doing, evidence is always instrumental. The availability of evidence depends on the nature and the complexity of the crime under investigation. Child sexual abuse is among the crimes that are complex in nature and presentation of evidence needs special attention. Sexual abuse ranges from non-contact to the rape of minors.

In child sexual abuse crimes there are two indicators that prove whether or not a child has been abused, namely (i) physical and (ii) behavioural indicators.¹⁷¹ Physical indicators are those indicators that have left signs, injuries, pain and other abnormalities around the genital and oral areas, and the behavioural indicators are those that are related to changes in the behaviour of the victim.¹⁷² Since child sexual abuse crimes are most often committed in the absence of a third-party witness, circumstantial evidence also plays an important role. The following topics deal with major evidence adduced to prove sexual abuse crimes on children and their relevance:

4.4.1 Child testimony

The first-degree witness in child sexual abuse cases is the child victim. The law does not impose an age limitation on the eligibility of an eyewitness. The testimony of a child witness should not be rejected outright, but it is to be scrutinised with greater caution.¹⁷³ One can rely upon evidence of a child witness corroborated by the evidence of other witnesses and medical evidence.¹⁷⁴ The age of the child and the immediacy with which the child narrates the incident are the factors that matters for the reliability of child testimony. In Ethiopia there is no law that bans a child from testifying before a court of law. Owing to the simplicity of the minds of minors, child witnesses should not be treated on the same footing as adult witnesses.

171 Porter (ed) *Child Sexual Abuse* 67.

172 Porter (ed) *Child Sexual Abuse* 68.

173 Retanlal and Dhirajlal *Law of Evidence* 25.

174 Retanlal and Dhirajlal *Law of Evidence* 25.

Testifying in court is a harrowing experience for children. The best interest of the child demands that the courtroom be made a more hospitable environment for the young and, hence, other approaches should be followed to structure the mode of interrogation of young witnesses in ways that would facilitate the giving of their testimony.¹⁷⁵ Details regarding how to deal with child witness will be discussed in due course.

4.4.1.1 Closed-circuit television

In cases of child sexual abuse, there are two parties whose constitutional rights the law should strive to protect. One is the child victim, who is demanding justice, and the other is the suspect, who is presumed to be innocent until proven otherwise. Unlike the suspect, the child victim has some privileges granted by national and international legislation. In any criminal case the accused has the basic right to confront witnesses testifying against him or her for the purpose of cross-examination.¹⁷⁶ However, in cases of child sexual abuse the perpetrator loses such a right in the best interest of the child. A special procedure for testifying is followed where the child victim is left outside the courtroom. Sexually abused children get confused and depressed when they confront their abusers face to face.¹⁷⁷ This is due to the psychological trauma they suffered from the abusive experience. This problem is intensified when the sexual abuse is perpetrated by those who are known to the child. Unfortunately, most sexual abuses perpetrated against children are committed by those who are known to the children. Another problem that creates a psychological impediment for the child victim in confronting his or her abuser in court is that the sexual abuse is more often than not committed through enticement with gifts, accompanied by threats against disclosure. Therefore, the child can be terrified about confronting his or her abuser and testify before the courts. However, his or her testimony before the court is indispensable for the pronouncement of a guilty plea on the perpetrators of child sexual abuse. To avoid problems related with the testimony of the child witness, closed-television circuit television (hereinafter "CCTV") plays a major role.

175 Letwin *Evidence Law* 366.

176 Gaines and Miller *Criminal Justice in Action* 243.

177 Sigel and Welsh *Juvenile Delinquency* 303.

CCTV allows the child's live testimony to be broadcast from another room into the courtroom through television monitors that the judge and others can observe.¹⁷⁸The establishment of CCTV should be accompanied by the presence of social workers and child psychiatrists.¹⁷⁹Social workers and child psychiatrists help with the questioning of the child who is giving testimony through CCTV, using a language that the child can easily understand.¹⁸⁰The use of CCTV has its advantages and disadvantages. Among the advantages are that the child can testify in a more relaxed environment than the courtroom and in the physical absence of the jury, defendant and spectators, the court can get the direct testimony from the child's own wording, whereas in the absence of CCTV testimony, the child may be unable to testify in the presence of the defendant or in open court.¹⁸¹The expense involved in the technology and a televised image of the child victim not being as effective as a child's live testimony are among the disadvantages.¹⁸²Thus, the use of CCTV is regarded as having more advantages than disadvantages.

In Ethiopia it is apparent from cases presented before courts that most child sexual abuses are perpetrated by those who are known to the child, the family members of the child, members of the extended families and by their caregiver, which creates fear in children about testifying in an open courtroom.¹⁸³ The Ethiopian Constitution and the UNCRC, to which Ethiopia is a party, guarantee that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be given paramount importance. Therefore, the use of CCTV in taking the child's testimony can be said to be in line with the principle of the Ethiopian Constitution and other international instruments concerning children.

CCTV is currently in use in courts, which have established child-friendly benches. In Ethiopia child-friendly benches assisted by CCTV were established in 2004. However,

178 APRI *Investigation and Prosecution* 454.

179 Sigel and Welsh *Juvenile Delinquency* 304.

180 Sigel and Welsh *Juvenile Delinquency* 304.

181 APRI *Investigation and Prosecution* 455.

182 APRI *Investigation and Prosecution* 455.

183 Jemal *Ethiopian Journal of Health Science* 50-89.

their effectiveness and establishment in most or all courts that have jurisdiction to hear child sexual abuse cases is in question.

4.4.2 *Medical evidence*

It is a legal principle that no one can be convicted on the uncorroborated evidence of a child.¹⁸⁴As discussed above, the victim's child testimony is of the most important evidence adduced before the court of law hearing sexual abuse cases perpetrated against children. Its importance goes to the extent of taking the child victim's word outside of the courtroom using CCTV, assisted by professionals in the area. However, this does not, by any means, indicate that the child's testimony is conclusive evidence for a court to decide the matter. A child's testimony, whether through CCTV or in court, always requires corroboration. Medical evidence is one of the main forms of evidence that corroborate the sexual abuse of children.

There are two indicators that alert professional on the possibility of abuse:(i) physical and (ii) behavioural (psychological) indicators.¹⁸⁵ Whether or not a child has been exposed to sexual abuse in the form of one of the two indicators, or both, will be exhibited on his or her person. Most of physical indicators become known after the victim has been examined by physicians. Medical evidence provides convincing information and is a better ground for corroboration. Medical evidence, proven by physical and psychological indicators, most of the time tells the court what happened and not who inflicted the abuse. However, DNA tests through blood, saliva and other body parts, such as hair, may help identify the offender.¹⁸⁶ As it appears, collecting medical evidence and examining the sexually abused child seem to be a purely medical issue, but for a reliable medical examination to be yield evidence, it is important to co-ordinate the community's prosecutors, police, child protective services work, hospitals and doctors.¹⁸⁷ All these stakeholders should work in co-ordination for the effectiveness of medical examinations. Hospitals, forensic institutes and police stations are among the probable places where medical forensic examinations are

184 Porter (ed) *Child Sexual Abuse* 6.

185 Porter (ed) *Child Sexual Abuse* 6.

186 APRI *Investigation and Prosecution*116.

187 APRI *Investigation and Prosecution* 104.

usually carried out.¹⁸⁸ The police, after receiving a report of abuse, should bring the abused child to the attention of a physician as soon as possible. Delay in examination may result in the loss of samples due to the speed with which the abused areas heal.¹⁸⁹ It is believed that examination of sexual abuse victims should commence within 72 hours from when the most recent assault has occurred.¹⁹⁰

Most sexual abuse cases lack corroboration by medical evidence. The reason for this is, first, that the abusive act may not have caused any injury as many forms of sexual abuse take a form of non-contact sexual abuse. Second, the genital area heals quickly. Third, delay in reporting and scheduling an examination will result in untimely examination, which results in the unsuccessfulness of finding evidence.¹⁹¹ These reasons are currently regarded as hampering the success of presenting medical evidence before courts. When a male child is sexually abused and the penetration is made through the anus, the success of finding medical evidence is difficult. In the cases of repeated anal penetration, the anus appears to be perfectly normal.¹⁹² Any evidence or material found near the victim's body is expected to be presented for investigation. The questions are; who should conduct the examination? and What procedures should be followed? A doctor who conducts a medical examination in cases of alleged child sexual abuse should be in possession of sufficient training, experience or interest to perform effective and thorough medical evaluation. The physician who conducts the medical examination may appear before the court for further investigation and elaboration of some of the medical facts. For instance, in South Africa any healthcare worker who has examined and collected evidence from a victim is allowed to testify before the court.¹⁹³ Medical evidence helps the court in determining different legal aspects related to child sexual abuse. Therefore, while investigating the sexually abused children, the medical evidence must help the investigator understand what happened.¹⁹⁴ The medical examination must range from identifying the age of the sexually abused child to examining the extent of injury

188 Du Mont and White *Uses and Impacts* 11.

189 APRI *Investigation and Prosecution* 107.

190 APRI *Investigation and Prosecution* 122.

191 APRI *Investigation and Prosecution* 109.

192 APRI *Investigation and Prosecution* 109.

193 Du Mont and White *Uses and Impacts* 16.

194 APRI *Investigation and Prosecution* 107.

inflicted as a result of the abuse. Generally, the medical examination must reveal the existence of physical and psychological indicators of sexual abuse.

In Ethiopian courts the presentation of medical evidence in cases of child sexual abuse is minimal.¹⁹⁵ The main causes mentioned by those who work on child sexual abuse (ie, the police and public prosecutors) are the lack of budget for medical examinations and less-sophisticated technology; for example, DNA examination is only available in a few hospitals and is expensive. Most of the time, child sexual abuse investigators do not visit the place where the child is victimised and collect forensic evidence for further medical examination. Most doctors find it exhaustive and tiresome to explain incidents of child sexual abuse before courts; for example, in Addis Ababa most doctors who conduct medical examinations show reluctance to appear before courts for further explanation of their patients' conditions.¹⁹⁶ Though the results of medical examination are corroborative evidence of child sexual abuse allegations, physicians' priority must be in helping the abused child with the physical and psychological trauma that result from the abuse.

In a country such as Ethiopia, where registering a child's birth at the municipal offices is not common, it is difficult to find children's birth certificates. Therefore, the age of a child victim is the result of medical examination. Medical evidence also helps in aggravating and mitigating punishment. It is obvious that non-contact sexual abuse and child sexual abuse that involves penetration do not entail the same punishment.

195 Interview conducted with child sexual abuse investigator in Addis Ababa: The reason for the poor practice of corroborating child sexual abuse with medical evidence is lack of medical centres that are specialised and assigned to work with child sexual abuse cases. It was only in 2012 that the Justice Centre for Coordinated Care of Women and Children became operational in Gandhi Memorial Hospital, Addis Ababa. However, the centre only provides minor treatment using simple technology; for example, DNA testing is not available in the centre, it also services more than 4million people, not only the inhabitants of the capital, Addis Ababa, but patients from regional cities also visit the centre. Regional cities in Ethiopia, in which the majority of people live seems to be ignored and child sexual abuse victims are receiving treatment in health centres that are incompetent which results in distortion and ineffectiveness of the results of medical evidence.

196 Interview conducted by the researcher with a child sexual abuse investigator.

4.4.2.1 Evidence of injury

Evidence of injury may be found if the abuse is perpetrated violently, in such case there may be injuries reflecting the force used such as bleeding, abrasions, bruised, bite mark and broken bones.

4.4.2.2 Vaginal findings

As most sexual abuse is committed through the vagina, the findings on the vagina after the abuse are crucial. Contrary to popular opinions, which usually hold that sexual abuse leaves obvious and lasting vaginal findings,¹⁹⁷ the actual result of a medical examination may not reveal what really happened. If the police succeed in bringing the child victim to the attention of physicians within 48 hours, superficial wounds can be found.¹⁹⁸The sperm of the perpetrator, wound marks around the vagina and hymnal indication can be the major vaginal findings.

4.4.2.3 Anal findings

When the sexual abuse is perpetrated against a male child or even a female child but through the anus, the investigator should examine findings in the anal area. In most cases the anus appears perfectly normal after penetration.¹⁹⁹However, the appearance of the anus after abuse is determined by the use of lubricants, the amount of force used and the number of penetrations. The result of a medical examination may reveal reflex relaxation of the child's anal sphincter, complete or partial loss of sphincter control, the loss of normal skin folds around the anus, thickness of the skin mucous membranes, and skin tags or fan-shaped scars in the anal area of a child who has been sodomised.²⁰⁰

This is not the only evidence that the investigators ought to collect but it is the major evidence and may be used as a point of departure. Sometimes looking for other

197 APRI *Investigation and Prosecution* 107.

198 APRI *Investigation and Prosecution* 108.

199 APRI *Investigation and Prosecution* 109.

200 APRI *Investigation and Prosecution* 109.

evidence such as fingernail scrapings, foreign material and foreign debris is the next step. When collecting evidence, the police should be assisted by physicians, social workers and forensic experts, and all evidence must always be labelled, preserved, packed and stored properly. Investigation is all about assessing the collected evidence and relating it to the perpetrator in a way that shows his or her criminality. Most of the time, collection of evidence and investigation are done simultaneously.

After the investigation process is completed and the public prosecutor believes that the evidence has the capacity to show the accused has in fact committed the crime, the case will be ready for prosecution. In the prosecution stage it is the public prosecutor who explains the case and presents all the necessary evidence collected and investigated during the investigation process to court.

4.4.3 *Indirect (circumstantial evidence)*

As discussed at the beginning of this chapter, all evidentiary facts are classified into two groups, namely, (i) direct (testimonial) evidence and (ii) indirect (circumstantial) evidence. The child's testimony on his or her case of sexual abuse can be taken as direct evidence. It is direct because it proves directly the point in issue, without any logical inference or reasoning involved. All evidence that does not fall under the category of direct evidence is circumstantial. Circumstantial evidence proves the existence of fact in an issue by logical inference.²⁰¹ The very nature of this class of evidence is that the evidentiary facts in combination or as a whole form the basis for the existence or non-existence of the fact needed to be proved. This topic is about what circumstantial evidence can be adduced to prove child sexual abuse. In child sexual abuse litigation circumstantial evidence plays a great role. In some instances, it may be more credible than the testimony of a witness (direct evidence). Circumstantial evidence may outweigh direct evidence, and there are also cases where the reverse is true.²⁰² Therefore, evidence, direct or circumstantial, has to be weighted on a case-by-case basis. As it is impossible to discuss all kinds of

201 *Secundum Criminal Law* 161.

202 *Wigmore Evidence in Trial* 403.

circumstantial evidence here, this topic focuses on circumstantial evidence that has relevance to child sexual abuse case.

4.4.3.1 Finger nail scrapings, finger prints, boat marks, footprints, bite marks, *hair samples and foreign debris*

These are the very frequently used items in identifying a perpetrator. If samples are gathered from the crime scene that correspond to the suspects, it provides strong circumstantial corroboration of the child's allegation. Presentation of circumstantial evidence before courts plays a major role in proving whether or not the abuser is guilty. However, investigators of child sexual abuse in Ethiopia seem to have ignored the relevance and weight of circumstantial evidence that would have been brought to the public prosecutor's attention. The reasons for this range from the absence of legally binding guidelines that give direction on how to deal with circumstantial evidence to lack of technology. As opposed to the poor practice, in Ethiopia there is no law that bans the admissibility of circumstantial evidence before courts; for instance, the Federal Supreme Court Cassation, which decides cases under file numbers 75922 and 75980, emphasises the importance of circumstantial evidence in criminal cases.

4.4.4 *Hearsay*

In cases of child sexual abuse with exceptional circumstances, evidence that is based on hearsay may be used to corroborate other evidence presented before the courts. Even though hearsay evidence is categorised as circumstantial evidence, the researcher prefers to discuss it as a separate topic because in the majority of cases Ethiopian criminal justice organs pay little attention to hearsay for the sole reason that it is an out-of-court statement but its importance is far beyond expectation. The admissibility and acceptance of hearsay evidence is always controversial among legal experts and in the criminal justice system of a given country. The controversy begins with defining the term 'hearsay' itself. 'Hearsay' is defined as every statement made other than by a witness on the stand, when offered to prove the truth of the matter stated.²⁰³ From this definition it can be inferred that hearsay is written or spoken words

203 Letwin *Evidence Law* 183.

out of court. Information gained directly from a person who claims to have seen the commission of a crime is likely to be more accurate than information gained from that person through an intermediary.²⁰⁴ If hearsay is admitted, the party against whom it is offered obviously has no chance but to cross-examine the original declarant. The court has little opportunity to ascertain the degree of responsibility exercised by the original declarant in making the statement, and the court's time may be wasted with matters that have very little weight.²⁰⁵ It is for the above-mentioned nature of hearsay evidence that its applicability and admissibility before courts should be scrutinised with caution. The general principle is that hearsay evidence is not admissible.²⁰⁶

In child sexual abuse cases hearsay evidence has an immense role to play. For example, a sexually abused child tends to speak about his or her sexual abuse encounter to those who are of his or her age rather than before court or even to his or her family. In many circumstances the abused child has not spoken to about his or her situation to anyone; in such cases his or her word can be found informally from social workers, psychiatrists, peers and others whom the child trust most. In the aforementioned scenario hearsay plays a greater role. A medical report that a doctor submits to a court without being present in the court is also taken as hearsay.²⁰⁷ In this case the medical reports can reveal the injury of sexual abuse but they are regarded as hearsay.

There are exceptional circumstances in which hearsay is admissible and the law regards as rendering trustworthy assertion. Written or verbal statements of relevant facts made by a person, who is dead, cannot be found, incapable of giving evidence or whose attendance cannot be procured without unreasonable delay or expense are precondition for accepting hearsay as an exception.²⁰⁸ The person's statements can be relevant if it is related to the cause of the death, a statement made in the course of business, declaration against interest, statement of opinions to the existence of a public or general right or custom, statements of pedigree, statements contained in documents, expressions of crowds, evidence given in prior proceedings, interns in

204 Wigmore *Evidence in Trial* 55.

205 Melin, *Evidence in Ethiopia* 199.

206 Retanlal and Dhirajlal *Law of Evidence* 243.

207 Melin, *Evidence in Ethiopia* 199.

208 Retanlal and Dhirajlal *Law of Evidence* 244.

public statements in maps, charts, and plans made under authority of the government, and statement of facts of a public nature made in an official government publication.²⁰⁹ Among these circumstances listed in which hearsay may be admitted before courts as an exception are conditions that directly play a role in child sexual abuse. For instance, when the sexually abused child dies due to the abuse and has informed someone near to him or her of the abuse at the time before his or her death, the testimony of the person who had the word of the child, even though it is a hearsay, may be presented before the court. It can be generalised that hearsay evidence is acceptable before the law in exceptional circumstances. One of the exceptions is when it is difficult to find the direct written or verbal statement of the person whose testimony is relevant.

In child sexual abuse cases the testimony of the child victim is considered to be the most relevant. However, as a result of the simplicity of the mind of the minor, the unfriendly court environment and out of fear of the abuser the child victim refuses to speak before the court of law. The abused child can also distort some of the facts related to his or her abuse, and for these reasons the investigating officer has to look for hearsay evidence. The probable hearsay evidence can be found from what the child victim has the liberty to narrate about the abuse without any fear. In this regard, hearsay evidence found from the social workers, psychologists, teachers and parents has greater importance in proving the commission of a child sexual abuse crime.

4.5 Manner of evidence collection and investigation

Once the commission of child sexual abuse is reported to the police,²¹⁰ it is the main responsibility of the police and the public prosecutor to bring the perpetrator to justice. The police, as part of the criminal justice investigation team, are responsible for

209 Retanlal and Dhirajlal *Law of Evidence* 244.

210 Though A .11 of the Criminal Procedure Code of Ethiopia imposes obligation to report a crime, currently most sexual abuse crimes are under-reported. There are many factor for the under-reporting: it ranges from the poor public awareness on the child sexual abuse crimes to lack of trust in the criminal justice system. As most child sexual abuse crimes are inter-familial in their nature, the duty to report such crime rests on one of the members of the family in which the abuse is committed, if not reported by those outside the family members who learnt of its commission, in which case, members of the family give priority to the pride of the family rather than the right of the abused child. Economic reasons can also be mentioned for under-reporting. Since most abusers are those who are the guardians or breadwinners of the family their probable arrest would endanger the families' economic survival. Therefore, it is clear that such fear discourages reporting.

detecting and apprehending violators of the law.²¹¹ The effectiveness of the criminal justice system will greatly depend on the quality of initial work done by the police.²¹² In child sexual abuse crimes the initial work by the police begins once the complaint or information about the crime is received. Police are expected to collect and investigate all possible evidence that would help with the prosecution. According to article 9(d) of the Ethiopian Criminal Procedure Code, it is the power and duty of the police to prosecute an offence in which the police are appointed as public prosecutor. Among the departments in the offices of the police, the focus of this dissertation is on the division that has responsibility for investigating crime. In the previous topics the possible evidence that could be adduced in cases of child sexual abuse are discussed in detail. Thus, here, the discussion concentrates on how the criminal justice system is dealing with that evidence and related problems.

Upon receiving a complaint or information on a child sexual abuse crime, the police are left with complete responsibility for investigating offences and for making the initial decision to start criminal proceedings. At this stage, the police are to caution people instead of prosecuting them or to take action. It is clear that the police must have sufficient reason for not taking further legal action or suspend prosecution. Once the police are of the opinion that criminal proceedings are to be lodged, the next step is to decide who should conduct the investigation and to get support from organisations in the area of child sexual abuse. Child abuse is an emotive subject; it raises complex issues that can only be resolved by a competent police investigator. Other agencies such as the office of the public prosecutor, governmental and non-governmental organisations that work with children can give support on the investigation process.²¹³ Investigation of child sexual abuse cases must be run by a special department designated for such purpose; the police officer who conducts such investigation should also be trained and acquainted with issues of child sexual abuse. At present, in Ethiopia child sexual abuse cases are investigated by any staff in the crime investigation department assigned for investigating all types of crimes. Therefore, the lack of a special child sexual abuse investigation department and police officers

211 Tesfaye *Crime Problem* 4.

212 Tesfaye *Crime Problem* 10.

213 Porter (ed) *Child Sexual Abuse* 103.

assigned specifically for child abuse cases are creating inconsistency in achieving successful investigation.

When the police realise that a child sexual abuse crime has been committed, they start an investigation. Sexual abuse crime evidence may be lost if the police do not act right away; for example, medical evidence may be lost if not acted upon within 72 hours, a child's memory, which is the first-degree witness, may fade within a few days. Therefore, the police need to act immediately. As "the best interest of the child" principle is at the heart of children's rights, the police must comply with this principle. One of the obligations of the police is to prevent the occurrence of further crime.²¹⁴ Therefore, the police, after collecting all the appropriate evidence related to the alleged crime of sexual abuse, must take measures that ensure the creation of a safe haven for the abused child, which helps in avoiding the occurrence of further crimes. The police have two options in this regard: (i) separating the child from the abusive environment and (ii) arresting the abuser.

The next step the police need to take is to collect and investigate all the evidence that can be adduced before courts that will hear such a case. Before starting the investigation, there are immediate measures that need to be taken by the police, which are as follows:

- When receiving information that a child has been the subject of an act of abuse the police must know that it is their duty to investigate the allegation.²¹⁵ Knowing their duty helps the police to understand what the public is expecting from them; not only for the police, it is also the duty of the public to safeguard the child from crimes of sexual abuse.
- The investigation of an alleged crime of child sexual abuse must be carried out by experienced police officers.²¹⁶ Experienced officers are those who have worked on child sexual abuse cases for a long period or who are trained in how to investigate child sexual abuse cases.

214 Tesfaye *Crime Problem* 32.

215 Porter (ed) *Child Sexual Abuse* 37.

216 Porter (ed) *Child Sexual Abuse* 37.

- All agencies concerned must be informed immediately and the meeting must be arranged as urgently as possible.²¹⁷ The agencies should include social workers, child psychiatrists and physicians who will conduct the medical investigation.

Though not exhaustive, the above-mentioned are the immediate measures that the police must take upon receiving information on child sexual abuse. After taking these immediate actions, the police will take subsequent actions during investigations.

If the police do not know the techniques involved in investigating crimes of child sexual abuse, they usually rush to close these cases pursuant to article 42(1)(a) of the Criminal Procedure Code.²¹⁸ Most child sexual abuse cases, especially non-contact sexual abuse, are closed at the earliest stage of investigation for the lack of sufficient evidence.²¹⁹

More often than not, the success of a child sexual abuse investigation is determined by the personal quality and interest of the investigative police officers assigned to the investigation. To avoid such insufficiency and ineffectiveness in dealing with sexual violence against women and children, the Ethiopian Minister of Justice prepared guidelines and the protocol on crimes committed against women and children.²²⁰ Therefore, it is the researcher's opinion that these documents (the guideline and the protocol), even though they have their own problems in regard to child sexual abuse

217 Porter (ed) *Child Sexual Abuse* 37.

218 A.42(1) (a) of the Ethiopian Criminal Procedure Code. It states that no proceedings shall be instituted where the public prosecutor is of the opinion that there is no sufficient evidence to justify a conviction.

219 Interview conducted with one of the senior investigative police officers who works on sexual abuse cases. In Ethiopia it is difficult to get data on such matters; one of the reason for this is that there is no specific police department on child sexual abuse cases. The other reason is that data is kept in general terms, in which case it is difficult to differentiate the age of the sexually abuse victim. This is in contradiction of the requirement demanded by international instruments, to which Ethiopia is a party, regarding how data has to be kept.

220 Even if guidelines and protocols are available in Ethiopia, the police, public prosecutor and others who are expected to work in line with such protocols and guidelines have no knowledge of the same. The reason for this problem is that these documents are not accessible to all stakeholders, which always results in inconsistent implementation. These documents are also not legally enforceable and there is no accountability for non-implementation.

crimes, the documents can help the police and public prosecutor who work on crimes of child sexual abuse if compliance is mandatory.²²¹

4.6 Manner of presentation of evidence and its weight before the courts

Collecting and investigation all relevant evidence that shows the defendant has really committed the crime of sexual abuse of a child does not always lead to conviction. It is the court that decides on acquittal or conviction. Therefore, public prosecutors should present their evidence in a manner that corroborates the allegation and clearly proves to the court the guilt of the defendant. The court, on its part, should be accessible, convenient and near. Among the reforms that are required in Ethiopian courts the ability to access them is the major one. Accessibility is manifested by how customers are dealt with, participation, a speedy trial and effectiveness in judgments. Children, owing to their mental development which is the result of their age, need special protection, both inside and outside the courtroom. When a child's appearance before the court is necessary, courts must take his or her simplicity of mind into consideration and respect all the basic principles of the child's rights. In cases of child sexual abuse the testimony of the child before the courts, in most cases, is regarded as being indispensable. Taking the child's testimony is not an easy task for the courts. As for the perpetrator, it is difficult for the child victim to feel comfort in a regular court environment. Article 176(2) of the criminal procedure code stipulates that where the young person is brought before the court, all proceedings shall be conducted in an informal manner. This article helps in creating an environment friendly to the child to testify freely before the courts and to be examined. Therefore, among other things, for a court to be friendly and informal for children, it has to meet the following requirements that facilitate presentation of evidence in child sexual abuse cases:

4.6.1 Expert aid

For a child's needs and interests to be protected, the court must create a conducive environment in which children can express their ideas freely. As a result of their mental

²²¹ Since the focus of this dissertation is only on matters related to evidence, the researcher does not go into depth in assessing the guidelines and the protocol.

and physical development, children face difficulty in expressing their ideas and testifying against their attackers. The court should not ignore their silence. The effort on the part of judges and public prosecutors in dealing with children's testimony may not always be effective. There are experts who help children with testifying before courts and also in treating their traumatic experience. These experts can be child psychologists, social workers and paediatricians.

4.6.2 Court guidelines that prioritise children's interest

If judgments²²² rendered by courts in child sexual abuse cases are in a manner that prioritises the child's best interest, it is an indication that the courts and other criminal justice are effective. In this regard, guidelines help direct and assess whether children's best interests are given paramount importance while entertaining child sexual abuse cases. Therefore, the absence of court guidelines in child sexual abuse creates irregularity and inconsistency in the hearings of child sexual abuse cases by courts.

4.6.3 A speedy trial

A speedy trial is not a right that must only be respected in child sexual abuse cases, it is a constitutional right of all litigants in all cases. If a case takes too much time to reach a decision, one of the parties will be disadvantaged for witnesses may die or disappear; physical evidence may deteriorate, get partially or totally damaged; and memory may fade.²²³ Speedy trials are discussed in this dissertation from the evidence point of view. In child sexual abuse cases, evidence must be collected and presented to the court in the quickest possible time. If the court delays the hearing of the child's testimony, the child's memory may fade and the court may also lose the chance of witnessing the wounds and physical marks of the abuse.

Absence of a speedy trial may also affect the child's psychological wellbeing. The child's frequent appearance before court to testify about his or her alleged abuse

222 Since case law is not binding in the Ethiopian legal system, it is not worth mentioning specific cases in this dissertation.

223 Wada *Journal of Ethiopian Law* 50-89.

forces a child not to forget the traumatic experience. Therefore, trials in child abuse cases should not be delayed so that physical evidence will not disappear, and the child will not be subjected to reminders of the crime by the time he or she has already started to heal from the abuse. That means, speedy trials help in fast-tracking the child's healing from the trauma.

After the public prosecutor has presented all possible evidence believed to show the criminality of the defendant, it is up to the court to determine relevance, admissibility, and weight or persuasiveness of this evidence. The court should maintain a balance between presumption of innocence and prevention of crime. The ultimate purpose of courts is to serve justice. The standard of proof required in criminal matters is different from that required in civil matters. In criminal cases it is commonly stated that the prosecution has to prove its case beyond a reasonable doubt in order for a defendant to be convicted.²²⁴ In Ethiopian law, the concept of reasonable doubt is not stipulated clearly, but it is a common law concept that is acceptable in the country. In cases of child sexual abuse the public usually shows its anger in different ways: this may pressurise the court while interpreting evidence may violate the accused's right. The court should judge only by that evidence presented before it and not by any other pressure put upon it. Given the problems mentioned in this dissertation regarding technological deficiency, the lack of evidence rule, and absence of effective and binding guidelines and a protocol regarding evidence, it is difficult to determine that courts are passing guilty judgements in child sexual abuse cases after proving the cases beyond reasonable doubt. The ultimate purpose of courts is not to convict the defendant, but to serve justice.

5 Conclusion and recommendations

This mini-dissertation, firstly, dealt with the problem of child abuse. Child abuse, which takes the form of emotional abuse, neglect, physical and sexual abuse, is a problem that has proliferated all over the world. However, the magnitude of the problem is not the same in all countries. In poor countries, such as Ethiopia, the problem of child abuse is far beyond expectation.

²²⁴ Wada *Journal of Ethiopian Law* 50-89.

This mini-dissertation concentrated on one segment of child abuse, namely sexual abuse. 'Child sexual abuse' can be defined as any act that exposes a child to a sexual process beyond his or her understanding or contrary to accepted community standards. Child sexual abuse may include rape, prostitution, pornography, incest, sexual exploitation and peer sexual violence. One can also categorise child sexual abuse as contact and non- contact abuse based on the perpetrator's act and the physical damage sustained by the victim child.

Poverty, lack of awareness in the community, and lack of proper implementation of laws that outlaw sexual abuse of children can be mentioned as major contributing factors of child sexual abuse in Ethiopia.

At present, internationally, regionally and at the national level, there are different laws that are aimed at protecting children from all forms of child sexual abuse. There are child-specific instruments at international and regional level. In this regard, the UNCRC and the ACRWC may be mentioned.

According to articles 19 and 34 of the UNCRC and articles 16 and 27 of the ACWRC, state parties are obliged to adopt appropriate measures to protect children from sexual abuse and exploitation. Ethiopia has ratified both documents and has an obligation to take appropriate measures to protect children against sexual abuse and exploitation. In this regard, the government of Ethiopia has been revising domestic legislation that does not comply with the UNCRC and the ACWRC (see chapter four, Ethiopian laws, page 36-38). The implementation of the procedural laws should also be taken into consideration; in order that the Ethiopian government can fulfil its obligations on protecting children's rights based the UNCRC and the ACWRC.

In Ethiopia, in addition the efforts mentioned above, there is no single and comprehensive law dedicated to only for children. However, the absence of child-specific laws does not imply that the rights of children are neglected in Ethiopia. Provisions on the rights of children generally and laws banning sexual abuse of children specifically can be found scattered in other laws, such as the Ethiopian Constitution, Criminal Code and Family Code of the country. In addition to adopting

international and regional child right instruments, Ethiopia needs to have a specific law that contextually protects the rights of Ethiopian children in a detailed manner.

As the main purpose of substantive law is only to define rights and duties, it should be backed by adjectival laws to effectively implement defined rights and duties. One such adjectival law is the law of evidence. The law of evidence is a body of law that determines what constitutes evidence, and the relevance and admissibility of such evidence. After the commission of a certain crime what comes into the picture is what evidence proves the commission of the alleged crime and how the government organs designated to deal with the criminal matter can effectively convict criminals. In this dissertation, it is discussed that Ethiopia does not have a codified and well-articulated law of evidence which, in effect, has created inconsistency and hampers the effectiveness of cases of child sexual abuse brought before the court.

This absence of law of evidence forces law enforcers (ie, police, public prosecutors and courts) to look for other laws that have elements of the law of evidence and their own inconsistent practices, especially in cases of child sexual abuse, which are extremely sensitive and require extra caution.

It is suggested that Ethiopia should take immediate initiative to introduce a regulated law of evidence. Needless to say, this would potentially avoid inconsistent practices in evidentiary matters while hearing cases of child sexual abuse.

The probable evidence that can be adduced to prove the commission of child sexual abuse can be the child's testimony, medical evidence and other circumstantial evidence which otherwise proves the commission of sexual abuse. All evidence that is adduced to prove the commission of sexual abuse of the child is not equally important; for example, the testimony of the child, who is the first-degree witness, should be given priority and scrutinised carefully. That is why in most instances, such as child witnesses, out-of-court testimony is admissible. In Ethiopia CCTV is used while taking children's testimony in sexual abuse cases. However, this does not mean that all Ethiopian courts are child-friendly. The usage of CCTV and setting up child-friendly benches are only concentrated in courts that are found in bigger cities of the

country. This indicates that the majority of Ethiopian children who live in rural areas do not benefit from such facilities.

The application of medical evidence in child sexual abuse cases is also minimal and ineffective. The factors that contribute to the ineffectiveness are lack of technology and working guidelines while dealing with medical evidence. The establishment of medical centres and training for health professionals is crucial in this regard. The police do not always succeed in finding direct evidence. In such cases they are forced to look for indirect evidence. The relevance of circumstantial evidence such as fingernails, scrapings, fingerprints, boot marks, footprints, bite marks, hair samples, foreign debris and hearsay are discussed in the dissertation. Owing to lack of work guidelines and manuals that help the justice system in using this circumstantial evidence, the police and public prosecutors are forced to adopt their own ways of administering, collecting and investigating circumstantial evidence, which results in inconsistent practices. Therefore, the discrepancies that occur while administering evidentiary matters can be remedied by preparing clear, binding and countrywide guidelines and working manuals for the police, public prosecutors and health professionals who work on the sexual abuse of children. Even though the Ethiopian Ministry of Justice prepared guidelines and a protocol, their usage is only limited to Addis Ababa, the capital, though not in all prosecution offices of the city, and compliance is not mandatory. While collecting evidence for investigation, the police and public prosecutor must work in conjunction with parents, social workers, medical professionals and, above all, with the victims. After the evidence has passed all the hurdles mentioned throughout this dissertation, it is at the discretion of the court to weigh the evidence and pronounce judgment. Courts that try child sexual abuse cases have to be friendly to children and clearly know the words used in a trial.

In as much as the court cares for the child victim, the constitutional rights of the accused should also be protected. Given all the legal limitations listed throughout the dissertation, it is hardly possible to say Ethiopian courts are effectively serving justice in this regard. Enactment of court guidelines on sexual abuse generally and on evidentiary matters specifically can resolve the problem of irregularity and inconsistency seen in Ethiopian courts. In cases of child sexual abuse it is not only enough to render judgment but the judgment should be rendered promptly. Speedy

judgment helps in proper handling of volatile evidence and in immediate recovery from psychological trauma sustained by the victim child.

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