



**ST.MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW**

LL.B THESIS

**VALID REQUIREMENTS FOR ADOPTION AGREEMENTS IN
THE REVISED FAMILY LAW: CASE ORIENTED ANALYSES**

BY SEIFE RETTA

ADDIS ABABA, ETHIOPIA

JULY, 2008

**VALID REQUIREMENTS FOR ADOPTION AGREEMENT IN THE
REVISED FAMILY LAW: CASE ORIENTED ANALYSIS**

BY SEIFE RETTA

ADVISOR: ATO FILIPOS AYNALEM

**SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR BACHELOR DEGREE OF LAW
(LL.B) AT THE FACULTY OF LAW ST. MARY'S
UNIVERSITY COLLEGE**

Addis Ababa

July 2008

Table of contents

| | |
|---|----|
| Acknowledgements | |
| Introduction | I |
| CHAPTER ONE | |
| 1. Purpose Definition and Historical Development of Adoption | 1 |
| 1.1. Purpose of Adoption | 1 |
| 1.2. Definition of Adoption | 2 |
| 1.3. Historical Development Adoption | 4 |
| 1.3.1. Adoption in Foreign | 4 |
| 1.3.2. Adoption in Ethiopia | 5 |
| 1.3.2.1. Adoption before and after the Proclamation of the Civil Code of Ethiopia | 5 |
| CHAPTER TWO | |
| 2. Legal Requirements for Adoption under the Ethiopia Revised Family Law | 7 |
| 2.1. Best Interest of the Child | 7 |
| 2.1.1 Theoretical Description of Best Interest of the Child | 7 |
| 2.1.2. Best Interest of the Child under the Convention of Rights of the Child & African Charters of Right & Welfare of the Child . | 8 |
| 2.1.3. Best Interest of the Child under the Revised Family Code of Ethiopia. | 9 |
| 2.2. Types of Adoption | 10 |
| 2.2.1. Private Adoption | 11 |
| 2.2.2. Institutional or Orphanage Adoption | 11 |
| 2.3. Elements of Adoption..... | 12 |
| 2.3.1. Age | 12 |
| 2.3.2. Status | 14 |
| 2.3.3. Blood Relatives | 15 |

| | |
|--|----|
| 2.3.4. Nationality | 16 |
| 2.3.5. Physical Capacity | 16 |
| 2.4. Consent to Adoption | 17 |
| 2.4.1 Pre-birth consent | 17 |
| 2.4.2 Minor consent | 18 |
| 2.4.3 Consent of Parents..... | 19 |
| 2.4.4 Total and Guardian consent..... | 20 |
| 2.4.4.1 Basic Features of Guardian and Tutor | 20 |
| 2.4.4.2 Function due to the Guardian and Tutor | 20 |
| 2.4.5 Agency consent to Adoption | 21 |
| 2.5 Procedure of Adoption | 22 |
| 2.5.1 Jurisdiction | 22 |
| 2.5.2 Filling a Petition..... | 22 |
| 2.5.3 Investigation | 23 |
| 2.5.4 Decision Judgment or Order | 24 |
| 2.6 Legal effect of Adoption: General Remark | 25 |
| 2.6.1. Effect of Adoption | 25 |
| 2.6.2. Effective date of Adoption | 26 |
| 2.6.3. Revocation of Adoption..... | 26 |

CHAPTER THREE

The Law and the Practice: Problems Pertaining to Validity

| | |
|--|----|
| Requirements of adoption agreement..... | 29 |
| 3.1. General Remark | 29 |
| 3.2. Practical Problems of Adoption in FFIC: case Analysis..... | 30 |
| 3.2.1. Case no 58250..... | 30 |
| 3.2.2. Case no 62123..... | 33 |
| 3.2.2.1. Omission of Consent as a necessary Requirement | 33 |
| 3.2.2.2. Physical Capacity of the Adopter as a necessary Requirement..... | 35 |
| 3.2.2.3. Repeal law as a basis of decision | 36 |

| | |
|---|----|
| 3.2.2.4. Revocation: a means to maintain best interest of the Child | 37 |
| 3.3. The Effect of Adoption on the Right of Inheritance | 38 |
| 3.4. Legal gap under Article 193 of the RFC | 40 |
| 3.5. The Law and Practice of Adoption Regarding to Tutor and Guardian of a Minor | 42 |
| Conclusion & Recommendation | 45 |
| Conclusion | 45 |
| Recommendation | 48 |
| Bibliography | |
| Annex | |

ACKNOWLEDGMENT

First, and fore most, I would like to praise the almighty God who empowered me for the successful accomplishment of this paper.

Next, I am indebted to express the sincerest gratitude of all to my advisor, Ato Fillpose Aynalem who has exhaustively read the paper, given his comment there on and offered his support and encouragement from the beginning up the end of the writing process.

I have also in valuable thanks to my wife w/o Getensh Tilaye, for her unreserved encouragement and also for her final computer editing of the paper to accomplish my task.

My special thanks also go to my brother Ato Sisay Retta who sacrificed his precious time in reading the hand writing draft of the paper and made worthy correction. His cooperation and unreserved suggestions have added his own input to my paper in making it a reality.

Lastly, I wish to thank all my families to their unfailing support and encouragement.

BIBLIOGRAPHY

I. BOOKS

1. Abebe Mulatu, compiled materials on inter- state conflict of law's in family case in Ethiopia. Unpublished materials, St Mary's University College, Addis Ababa ,Ethiopia,2007.
2. Berihu Teweldebirhan G. The legal protection of children against child labor in Ethiopia: Law and policy. Senior thesis, St. Mary's University College, A.A 2007.
3. Brayn A.Garrer. Black's law dictionary, 8th ed, united state of America,1999.
4. Elias N. Stebek. Law of persons: Teaching Material .Faculty of Law, St, Mary's University College A.A Ethiopia, oct 2007.
5. Filipos Aynalem, judgment writing and decision making (Hand out): unpublished materials .St Mary's University College ,Oct ,2007.
6. Harry D. Krause, Family. In Anutshecll 3rd ed. St. Paulninn west publishing .co 1995.
7. Leo Albert Huard .The law of Adoption .Ancient and Modern, Vanderbilt C.Rev, Vol.9 No 4 (1956).
8. The Holly Bible, The Old and New testament, united bible societies , Berhanena Seleme Printing Enterprise ,A.A Ethiopia .
9. Microsoft & Encarta® 2006, Encyclopedia of Encarta Microsoft ® Corporation.
10. Oliphant E. Rober and Nancy Ver Steep. Family law: Examples and Explanations .As pen publisher New York, 2004.
11. Planiol. M. Treatises on civil law. Vol.1 part II Louisiana state law Institute1959.
12. Tilahun Teshome, The child and the law in Ethiopia: Journal of Ethiopia law, Vol.18 A.A faculty of law, A.A.U 1997.
13. World book encyclopedia .vol.1 Chicago. L: world Book, Inc....2001.

14. SN] [Ç? / [Çf ýâôc' / ¼}hhK“<” ¼u?}cw ÍÓ KSÑ”²w ¼T>[Æ
 ›”Ç”É 'Øx:: 1999 ጊ.U:: pî.2
15. Ç—†“< }eóÂ:: õfl ll”:: uÖpLÃ ð`É u?f ¼ll“f “x,,“ õfl
 ýáËj f ê/u?f ¼}²ÖË ¼T> }U:: lÇ` 1998 ›Ç=e ›uv::
16. jðK? Åc /Ê/ / ¼u?}cw ÍÓ:: uðÈ^M ÖpLÃ ð`É u?f ¼Ø“f
 U`U` lfSf:: ›Ç=e ›uv 1990 ጊ.U

II. Legal documents

A. International and regional

1. African Charter on the Rights and Welfare of the Child, 1990.
2. Convention on the Right of the Child, 1989.
3. International Covenant on Civil and Political Rights /1966/
4. Universal Declaration of Human Rights./1948/

B. National

1. Civil Code of Ethiopia 1960 .Proc: N_o 165.Negarit Gazeta,
 Ordinary: year 1960 No 2.
2. Constitution of the Federal Democratic Republic of Ethiopia, Proc
 N_o 1.1995, Federal Negarit Gazeta, year 1st No. 1
3. Revised Family Code, Federal Negarit Gazeta, and extraordinary
 Issue No. 1/2000 Proc. N_o.213/2000.
4. Federal Courts Proclamation N_o. 25/1996, Federal Negarit Gazeta,
 2nd year No.13

CHAPTER ONE

1. PURPOSE, DEFINITION AND HISTORICAL DEVELOPMENT OF ADOPTION

1.1 Purpose of Adoption

The institution of adoption is established with the purpose of giving several services for society of a given country. The Purpose of adoption is depending upon the social, economic and political condition of the society. Besides, adoption has a vital role in determining the socio-economic and political life of the society in which it functions.

In the early history of human societies, adoption was taken to maintain the continuity of one's family and survival of male-heirs. In the Society, man was considered as a head and responsibly person in one's family because he played a great role for sustainability of his family life. In this Concept, the institution of adoption served for long live of man to sustain a family life.

Another Purpose of the institution of adoption was stressed for the benefit of adoptive Parents. Moreover, adoption was taken as the main instrument to avoid darkness and Sadness from the family. It was not taken as an alternative means for Sustainable life of adopted Child. This Concept is more elaborated by Abebe. Abebe stated that the Purpose of the institution of adoption in the early Society as "to fill up Vacancies Caused by death So that the Person adopted Shall take the deceased Person's place, to confer honor and Cement friendship to bring Profile to the adoptive or natural Parent or both, to recruit the ranks of a failing genes on tribe, and to avert ill-luck or to kick evil Spirits."¹

The destruction and Pain full Consequences of the First World War /here after WWI/ Contributed for the Purpose of adoption in modern Legal system. There was social disorder in many European Countries during the war. Many Children lost their family as a result of this they became homeless and Orphan. Adoption had become a popular appeal due to the increasing number of homeless children and the high rate of illegitimate birth in the end of the war. The main purpose of adoption was providing home for homeless children and improving the existing legal system in the Concept of adoption.²

In the late 20thc, there was Strong desire and a great movement in the prevalence of the Concept and ideas of adoption in many Countries. In this regard the main purpose of adoption was to develop and Strengthen Orphanage which Used for Orphan and homeless Children.³

HIV/AIDS is a great Set back of socio-Economic development of many Countries since the early 1980's. It is the main factor for the increasing number of Orphan Children and illiterate Child. So, HIV/AIDS makes the institution of adoption to improve its purpose. The purpose emphasizes in the finding of School, how the orphan child is continued his/her education.⁴

The State Shall a responsible body for protection of child from all forms of physical and mental Violence, as well as negligent treatment by taking appropriate legislative, administrative, Social and educational measure. Therefore, adoption must be recognized and clearly stated with main objective in the Legal system of States.

In General, the Prevalence and Practice of adoption is recognized as one of the right of children. It is guaranteed in the international human rights documents which of Creating better environment for children; fulfill the interest of children and Providing home for Orphan and homeless Children. Ethiopia also ratified the international human rights declaration and adopts as part of its law by considering the importance of adoption in order to sustain the life of Children.

1.2 Definition of Adoption

As adoption is the most and widely accepted practice among the world society. Its definition & given by different legal scholars but they have similar idea on the Concept of adoption.

Black Law dictionary defined adoption as “the Creation of a Parent Child Relationship by judicial order between two Parties who usu. are Unrelated, the relation of parent and child created by law between persons who are not in fact parent and child. This relation ship is brought about only after a determination that the child in an Orphan or has been abandoned, or that the Parents' Parental right have been terminated by court.⁵

According to the World Book Encyclopedia, adoption is a legal Process by which people take as their own son or daughter a person not born to them⁶

The Black Law dictionary and World Book Encyclopedia define adoption in different Ways but they have similarity interims of Concept and Contextual interpretation.

Adoption can also be defined by some legal scholars. One of those Scholars is Les Albert Huard. He defines adoption as “fiction Creation of blood relationship between persons who are not so related.”⁷ The Concept of this definition is that adoption Creates artificial biological relationship between adopted child and adoptive parents.

On the Other hand, Robber E. Oliphant and Nancyver Steph define adoption as “adoption is viewed as Completely severing ties of a child with the Childs biological Parents.”⁸ They said that adoption is not favorable for adopted child because he/she doesn’t get full and equal right as a child who live with his/ her original family.

The definition of adoption for warded by planiol. He tried to give more elaboration about the concept of adoption. There was similarity between planiol definition and the 1960 Ethiopian Civil Code under the Concept and interpretation of adoption

Adoption for Planiol a solemn Contract submitted to judicial approved which Creates relation between two persons analogous and those flossing from legitimate filiation. The fictitious Parentage which is the effect of adoption, resembles, never the less veritable Parentage, but in a very imperfect way. Its...destroy the relation ship of filiations which the adopted person derives from its birth. The fictitious Parentage that it Create is super imposed to these relation ships with out replacing them. It is a contract performed after deep thought with the approval of the child in to the artificial family, which is analogous to the natural Parent as regards to the right and Obligations of the child. Planion was Conscious as to the extinction of the rights and a duty of child to wards its natural Parents.

He said adoption does not destroy relation ship of filiation, which the adopted persons derive from birth. But the fictitious parentage Created by way of contract is super imposed to these relation ships with out replacing them¹⁰ this means the mere fact of adoption does not cut the blood tie created due to birth and the child has some reserved rights to wards his biological Parents.

According to Article 796 of the Ethiopia C.C adoption means that” a bond of fillations may be created artificially by a Contract of adopted child what we understand from this article is that adoption is Created by the two parties Contract in due Process of Law. In Other wards, adoption is processed and Legalized in accordance with the Ethiopian Civil code.

The Ethiopia C.C and Ethiopia RFC describe the providing of adoption in different ways. According to Ethiopia the C.C adopted Child and adoptive Parents Contract is the main factor that making adoption. On the other hand RFC define, that, adoption is agreement by which a person and a child and create artificial filiations “.¹¹ It is on agreement, which confers legal Statues of parent and child on a person and a child who are not so rated.¹²So RFC, Stated that adoption can be realized through the agreement of the two parties. However, the agreement must be confirm in the judicial system.

In General, most of the scholars have defined adoption in different ways, however, they have similar feature. In this regard, adoption is one legal instrument to create artificial parent hood or to provide relation ship between adopted child and adoptive Parents.

1.3 Historical Development of Adoption

1.3.1 Adoption In Foreign

The historical emergence and evolution of adoption was not cleared known in the history of human societies. However, the concepts and practices of adoption extend further into pervious historical periods. Some of the concepts that Contributed for the development of adoption practices belong to ancient Babylon, Egyptians, Hebrews, Greeks, Romans, Hindus and recent historical events such as WWI, and epidemic diseases like HIV/AIDS.

The Hebrew and the Egyptians Practiced adoption, which may be inferred from the Biblical account of the episode of Mosses and Pharaoh’s daughter. According to Bible, Pharaoh’s daughter went to the Nile River base with her servant. When she walked around the river bank, she saw the basket which moved on the river with a great grace. She ordered her servant to bring that basket. When the Servant brought the basket, she took and opened it. She could not believe her eye when she saw a crying baby. Then. She took and raised the baby as her own son. Pharaoh’s daughter called this new baby as Mosses. Moses meant that” I drew him out of the water.¹³ In this regard, people had started adoption by taking children since the ancient time. But Children Were adopted in order to making a legal heir of one’s family

According to World Book Encyclopedia view,¹⁴ adoptions was a statute in the history of human societies. Although it was found and recognized in the civil law of ancient and modern societies, it was unknown at common law. More over, there was the concept of adoption in the Hindu Laws of many as early as 200 B.C¹⁵

The law of Hammurabi /1700 B.C/ was Claimed as the first written law in the world It was introduced by Hammurabi who was a king of ancient Babylon. The idea and practice of adoption was explained in the law of Hammurabi. The law of Hammurabi Stated that adoption is “If a man adopts a child as his son, and after he has taken him, he transgresses against his faster father.”¹⁶ In this regard adoption was legal in Babylon under the law of Hammurabi Children had no right to go back to a house where they were earlier since they were adopted. More over, adopted children became a member of adoptive family in a legal order.

Since the Late 19th and 20th c, adoption emerged as main issue in many countries of the world due to several man made and natural factors. For instance, war, civil strafes, epidemic diseases like HIV/AIDS occurred in many Countries in which Children were suffered more than any other Social group. In addition, they lost their family and it forced them to become homeless children. Therefore, in modern Sense adoptions has taken as a major instrument to maintain the sustainability of children life through providing home for homeless children.

1.3 Adoption in Ethiopia

1.3.1. Adoption Before and After the Proclamation of the Civil Code of Ethiopia

From the viewpoint of the historical development of adoption in Ethiopia though its concept exist in the Holly Bible and man’s earliest code of law / i.e. Code of Hammurabi). It was not mentioned in the provision of Fetha Negest that was the traditional legal document.

Accordingly, as same written literature¹⁸ shows adoption or “Guddifachae” is and institution an indigenious and generation old in Oromo society, and it is believed to be that the legal concept of adoption and its practice was originated in the through the course of time the practice of “Guddifachae” was adopted in the Amhara Society Custom.

The Amhara Called their Version “Yemar-Liji” (Honey body), or “Yetut LiJi” (Breast body) in some areas of their region. But its feature and importance is different from that of the Oromo’s Society, and it does not Constitute and fulfill the legal definition of adoption.

The 1960 Civil Code of Ethiopia was introduced to achieve civil matter issues including adoption. Since then, adoption become a judicial act with a serious legal Consequences, Accordingly, to this Condition before the kind of adoption is seemed, for all purpose the act should Consider the general purpose of adoption and such purpose should be for the interest of or the benefit of the adopted child depending on article 805 of the C.C.

Similarly as it already Stated under the article of the 2000 Revised Family Code of Ethiopia¹⁹ government or private orphanages before giving the child foe adoption, provide sufficient information to the government organ having authority to follow up the well being of the Children as to the identify of the child, how the orphanage received him and about the Personal, social and economic position of the adopter. Furthermore, as it is stated under article 194 of the RFC, the Court before approving the agreement of adoption, Shall be decisively verify that the adoption into the best interest of the child, and then after, the adopted child shall be for all purposes be deemed to be the child of the adopter.

Accordingly, What we understand from these provisions of the RFC is that, the adopted child is purposely taken from his natural parent for the sake of making to be the natural child of the adoptive family, and that adopted child shall have, the full rights and duties which the natural child should have, i.e. in herit them, to continue their Parental line or generations, for the sake of be maintained at their old age and similarly for the propose of the hold or shoulder the whole effects of adoption, which the natural child should hold or shoulder. Generally, any adoption agreement shall be made between the adopter and the guardian of the child in accordance with the RFC of Ethiopia. Besides, adoption shall be of no effect unless the Court approves it.

CHAPTER TWO

2. LEGAL REQUIREMENTS FOR ADOPTION UNDER THE ETHIOPIAN REVISED FAMILY LAW

2.1 Best Interest of the Child

2.1.1 Theoretical Description of Best interest of Child

Children are builders of the nation of tomorrow. That is the children of today shape the future of any country. Children have human rights those rights are emanating from the nature of humanity. They have also moral rights since the concept of human right is related with morality and ethics, which shall be fostered in a legal right.¹

Parents are primarily responsible for up bringing children. Children shall to live and grow with better care and happiness. Besides, a harmonious relationship between parents and children is important to understand and fulfill what children need as well as to create optimistic children. Of course, guardians of children have responsibilities for up bringing and better care of children.

The right of child has been addressed in international and regional conventions apart from adults. It has been given recognition in the Convention of the Rights of the Child (CRC), the African charter of Right and Welfare of the Child (ACRWC), the Universal Declaration of Human Right (UDHR), the International Convention of Civil and Political Right (ICCPR). Those convention and charter state that all actions concerning children undertaken by any person or group, the primary consideration shall be the best interest of the child. After the convention of the Rights of the Child and the African Charter of Right and Welfare of the child had issued the right of child. Ethiopia assumed child right instruments distinctly from adults providing protection to children since the 1990's. However, our codified laws, which were enacted over thirty years before the adoption of the CRC mention some rights of children.³ Ethiopia adopted and ratified as part of its law.⁴ In Ethiopia, the right of Child provides as the main instrument for protection of child distinctly from adults. Under those conventions and Ethiopian laws, the right of child holds the best interest of the child as the main element.

Generally, the best interest of child is the main concept and instrument for protection of the right of child under international human rights Convention and regional convention as well as

Ethiopian laws. The best interest of the child must be respected and protected regarding with Children.

2.1.2 Best Interest of the Child under the Convention of the Rights of the Child and African Charter of Right and Welfare of the Child

Human rights are basic and fundamental right of human beings. Children deserve to have simply because they are human beings. Human rights of children are respected and protected under the four principles of convention of the CRC. The CRC four principles are the best interest, survival, development and participation of the child.⁵The best interest of the child is the basic and guiding principle to provide other provisions concerning the children in CRC. But, this guiding principle is not widely used and interpreted in any other laws.

In the convention of the CRC, the best interest of child is the fundamental requirement for protection of the right of child. CRC article 3 stated that in all actions the best interest of child shall be primary consideration. Besides, children deprived of liberty shall be distinct from adults unless the best interest of the child is violated. Detained children shall also have the right to keep contact with their family through correspondence or visiting unless there are exceptional circumstances.

In addition, article 19 of the CRC further provides where parents, legal guardians and any person who has responsibility in the case of child do not provide any necessary support, treatment and so on for children, the state shall have responsibility to take the lead in respecting and protecting the right of child concerning with the best interest of child. Besides, the state shall take appropriate legislative, administrative, social and economic measure for protection of the child from all forms of violence including mental, physical and negligent treatment. African Charter of Right and Welfare of the Child (ACRWC), as the same as CRC, asserts the best interest of child. It states, “In all action concerning the child undertaken by any person or authority the best interest of child shall be the primary consideration.”⁶There fore, the best interest of child must be respected and protected by the state and others who have relationship with children.

2.1.3 Best Interest of the Child under the Revised Family Code of Ethiopia.

One of the fundamental principles of the FDRE constitution is the respect to human rights of citizens. The constitution has given recognition to the right of child as one of the fundamental human rights. The Federal constitution has incorporated the fundamental human rights that are found in the international human rights documents and conventions. These international documents and conventions are adopted and ratified by Ethiopia as part of its law in accordance with article 9 of the constitution. The right to child, besides one of international human rights, has enshrined in the Federal constitution. Article 36 of the constitution (FDRE) tells us the right of child. In this regard, the state shall have the responsibility and duty to respect and protect the right of child.

The protection of best interest of the child is one of the fundamental right of child under the civil code of Ethiopia. As human beings who have human rights since they are born the right of child shall be respected and protected in any circumstances or conditions. The civil cod of Ethiopia explicitly states that the best interest of child shall be respected in all actions concerning children.

Parents have primary responsibility for up bringing children.⁷ Since children are born. Of course, guardians and tutors of children are responsible for better care and is bringing of children. However, children may not get better care and protection as a result of death, disability, unworthiness, divorce of parents. In this regard, adoption is a better choice for sustaining children lives. Hence, the law of adoption should be provided and implemented regarding fundamental rights of children and best interest of the child.

The RFC and international convention provide the establishment of adoption institutions as an alternative method for protection and fulfillment of the best interest of child. The RFC and international conventions if adoption is a bond of filiations created artificially through the agreement of adoption between the adopter and adopted child.⁸They also provide the right, duty and authority of stoke holder in adoption including the effect of legitimate adoption.

Adoption is legally recognized and issued regarding the principle of the best interest of the child. Adoption provides better opportunity including education, treatment, support, placement for adopted child. Thus, local and inter country adoption should be allowed concerning the best

interest of the child. Inter country adoption is completely different from local adoption, because adoption agreement takes place between persons who have different citizenship. It is also difficult in some extent for adopted children as a result of new environment, culture, custom and traditions. An agreement of adoption between foreign adopter and adopted child may make without the consent and interest of adopted child; thus, the adopted child expose to social exclusion. Of course, both local and inter country adoption has been given recognition in the RFC.⁹ Generally, adoption is simply enforced to maintain and protect the best interest of the child.

2.2 Types of Adoption

There are different types of adoption according to different literature and writers. Oliphant¹⁰ is one of those writers. He classified adoption into eight types. These are

- Agency adoption
- Independent adoption
- Step parent adoption
- Near-relative adoption
- Open adoption
- Subsidiary adoption
- Domestic adoption, and
- International adoption

On the other hand, the Encyclopedia of Encarta¹¹ classifies adoption into four types. These four types of adoption are

1. Relative or step parents
2. Agency and private placement adoption
3. Intermediaries and materially assisting person
4. Open and closed adoption

The RFC Ethiopia has clearly defined the agreement of adoption that may make based on the two types of adoption. These two types of adoption are private adoption and institutional adoption. I try to elaborate more the two type of adoption in the following subsection.

2.2.1 Private Adoption

Private adoption is the most common and simple type of adoption. Private adoption may make simply through the agreement of natural parents of adopted child and adopter. In private adoption, the parents of the child and the adopter agree to create artificial parent child relationship between the adopted child and the adopter.

Private adoption is also argued by Kruse. He said that private adoption (he called independent adoption) may not challenged than other types of adoption that arranged by professionals. Because private adoption does not provide more investigation about the capacity of adoptive parents.¹² In other words, private adoption is more easy and faster than agency adoption in the process and agreement of adoption. In addition, private adoption has some advantages for natural parents of adopted child like they may participate in the choice of adoptive parents.

The Revised Family Code of Ethiopia has given recognition to private adoption. In private adoption, both the father and mother have the right to make adoption according to Article 191(1) of the RFC. The court shall not approve the adoption where the agreement of adoption may made without the consent of parents. In general, private adoption is the most common and simple type of adoption.

2.2.2. Institutional or Orphanage Adoption

Institutional or orphanage adoption is replaced in agency adoption under many writers. In agency adoption, the institution licensed by appropriate government authority carries out every negotiation or arrangement including placement and choice of the adopter.

In modern sense, the agreement of adoption is processed and made through the agency of adoption. Oliphant explained agency adoption as “agency adoption involve the placement” of a child with adoptive parents by a public agency, or a private non-profit agency licensed or regulated by the state.¹³ “What we understand from Oliphant explanation is that licensed agency provide adoption including the placement of adopted child and choice of adopters. Agency adoption has some advantages regarding the agreement of adoption. Some of the advantages of agency adoption are

- Professional investigation and approval of the adoptive parents and their home
- Continuity supervision of the time following the adoption and
- Maintenance of confidentiality concerning the natural and adoptive parent’s identity¹⁴

Hence, the agency will conduct the background of adoption application, the identity of parents and to screening the criminal activity. Of course, most investigators usually examine the applicant's personal relationships, social attitudes, medical records and financial status. If all the above mentioned information should be authenticated by the agency, then seek to locate a child available for adoption.

There is no clear vision or explanation about agency adoption in RFC. Article 192 of the RFC of Ethiopia states that Orphanages, either governmental or private that may arrange adoption. The same article provides for a possibility institutional adoption. On the other hand, the possibility of agency adoption seems to be ruled out. Some researchers say that article 192 of the RFC has not given full recognition for either institutional or agency adoption. Because it is only orphanages that may arrange adoption of child and also they can be licensed by appropriate government authority. Currently the authority following the adoption is the Ministry of Women Affairs (MWOA). In short, institutional or orphanage types of adoption is important in the arrangement of adoption including placement.

2.3 Elements of Adoption

In the Revised Family Code of Ethiopia, there are essential elements, which must be fulfilled by adopter and adoptee. These elements are discussed in the following section.

2.3.1 Age

Age is one elements of adoption. Any person who wants to adopt a child must attain a certain minimum age that is enshrined in the RFC. There are two justifications to set a minimum age requirement. Firstly, adoption a judicial acts that a minor may not perform it. Secondly, it arises from the nature of the rights and duties that may be created in adoption agreements and from the purpose of the institution of adoption.¹⁵

When we come to the law of adoption of Ethiopia, in the C.C of Ethiopia, there is no clear provision that explain the minimum age limit of the child to be adopted. However, as to the age of the adoptive parents, article 797(1) of the C.C asserts the age of adopters. It states that adoption may make by any person where he/she is majority. Besides, when the adopter is married, one of them must be majority. What does majority mean? Article 198 of the C.C may inter the word majority related to minor. It says that a person shall be deemed to be majority when he/she has attained the full age of eighteen years. As a general obligation, a person who

has attained full age of eighteen years is capable to conclude a valid adoption agreement where as if he/she may not be majority, he/she is not capable to enter into agreement based on article 1678 of the C.C. However, the civil code of Ethiopia is not applicable in adoption agreement. Since the agreement of adoption is made in accordance with currently operational law of adoption i.e. the Revised Family Cod of Ethiopia.

The Revised Family Code of Ethiopia has clearly dealt with the age of adoptive parents or adopters. But it like the civil Code does not provide the maximum age of the adopter. As it has been mentioned above, the civil code says that the person who attains majority may adopt a child while the Revised Family Code states that the minimum age limit of the adopter is twenty-five years. Article 184 says that the adopter must not be less than twenty-five years of age. Where two spouses make an adoption, it is sufficient that one of them be of the full age of twenty five years. Hence, currently adoption agreement is made depending on the concept of this article.

Why the legislature raised the age of the adopter to twenty-five years? In the opposite of the civil Code. Perhaps, the best interest of the child that is the fundamental purpose of adoption may be the main reason for raising the minimum age limit of the adopter to twenty-five years. The argument of the legislature is that a person below the age of twenty-five years is not mentally and physically mature enough to shoulder the responsibilities required by adoption agreement and to maintain the best interest of the child. Another argument for raising the age limit may be viewed in the light of high demand of adoption in the current social and economic condition of Ethiopia. It means many Ethiopian children are living in difficult circumstances because of different reason, particularly HIV/AIDS. In addition, adoption may be challenged by lack of awareness of the people towards the institution of adoption and lack of employment opportunity which enable many young Ethiopians, even they attain majority become dependent on their parents for shelter, food and other things.

The question is, however, why the person who attains full age of eighteen years is not fully competent to bear responsibilities that may result from adoption agreement according to the RFC? As it has been mentioned above, the main reason of the RFC for pitching the minimum age limit of the adopter to twenty-five is that the adopter below the age of twenty-five may not perform the duties and responsibilities that may be created in adoption agreements, even though he attains the full age of eighteen years. However, the concept of article 7of RFC may disprove

the capability of adopter who has been recognized under article 184 of RFC to adopt the child. Article 7 of RFC says that a person shall be deemed to be capable to raise and rear children be gotten from the marriage when he/she attains the full age of eighteen years. According to this article, such a person is materially, socially, and mentally ready to rear a child whether begotten from marriage or from adoption agreement. With this regards, the person who attains majority but below twenty-five years is capable to promote the welfare and the best interest of the child despite the fact that there are other external factors that enable a person to be incompetent to adopt a child. Therefore, why the RFC fail to ensure a person who attains majority shall be deemed to be capable to raise and rear the adopted child as his/her own natural child? There is no clear answer to say that he is unable to raise the adopted child. Moreover, article 184 of the RFC discourages the potential of adoptive parents on adopters who are below the age of twenty five years.

2.3.2 Status

In many states, adoption is allowed for either married couples or unmarried one. In Ethiopia, any person whether he/she is single or married may adopt a child in accordance with article 797 of the C.C of Ethiopia. The status of the perspective adopter or adoptive parents is concerned as legitimate factor for protection of adoption. In other words, the status of adopter is essential to protect the welfare of the child and to approve the agreement of adoption in the court.

When we come to the civil code of Ethiopia, it emphasized more regarding to the status of married couples including age, common desire and capacity of the two spouses. According to article 797(2) of the C.C of Ethiopia, two spouses make an adoption agreement if one of them attains full age. In this regard age is one status for two spouses to adopt a child. The two spouses should have common desire in a contract of adoption. It means that a contract of adoption may not be made unless the two spouses conjointly adopt the child.¹⁶ Thus; in the agreement of adoption, the two spouses shall be in a similar position to manifest their will. Moreover, the agreement of adoption relates with the welfare of the child. Adoption agreement may not take place, unless it provides better opportunity to maintain the welfare of the child¹⁷ In this regard, the married couples or the two spouses shall have capacity to discharge responsibilities and to care a child. Therefore, the economic status or the capacity of the two spouses enables them to raise and care of the child.

Similarly, the Revised Family Code of Ethiopia asserts the agreement of adoption regarding married couples. Article 180 of the RFC states that where the adopter is married, an agreement of adoption may not be made unless the two spouses Conjointly adopt the child. The willingness of one of the spouses to adopt a child is not sufficient to approve the agreement of adoption. Thus, both spouses should be parties to the agreement of adoption.

In short, the agreement of adoption is concluded by any person who attain full age whether he/she is married or unmarried one. Of course, the capability of adopter is important to adopt a child. There is also an opportunity for married couples to involve in the agreement of adoption if they fulfill the requirement set for concluding adoption agreement.

2.3.3 Blood Relatives

Blood relative is another element of adoption although nowhere in the Revised Family Code or the Civil Code of Ethiopia has been discussed adoption between blood relatives.

In most jurisdiction the absence, in ability or in capacity of the natural parents to provide and care for their children has promoted other relative to step forward to assume the benefits and responsibilities of that role.¹⁸

Adoptions by blood relatives such as aunts, uncles, brothers, or sisters are generally easier to arrange than adoption by people who are not biologically related to the child. Of course, many children already live with the relatives who seek to adopt them.¹⁹ However, in most cases people do not analyze the blood relative adoption because the concept of adoption presupposes transplanting a child to a family to whom he does not naturally belong.

2.3.4 Nationality

Adoption is made without concerning the nationality of adopter and adopted child.²⁰ In Ethiopia, an Ethiopian child can be adopted by a person whether he/she is an Ethiopian or not. The Revised Family Code of Ethiopia has now clearly dealt with the issue and states under article 193 that a foreigner may adopt an Ethiopian child. The Concept of foreign national can adopt an Ethiopian child under 193 is similar with the United Nation Convention of the rights of child which was ratified by Ethiopia in 1989.²¹

According to the RFC adoption should be made in conformity with the best interest of the child and with respect (protect) for his/her fundamental rights as recognized in international law.

Hence, a foreign national may adopt an Ethiopian child concerning the best interest of the child through inter-country adoption. Inter country adoption shall be permitted as a last option when there is no possibility in local adoption that is the other kind of adoption.²² In inter-country adoption, there are some basic requirements that should be met before approving adoption by foreigner.²³ This information should be provided by a competent authority before the court approves the adoption. The authority has been given for Ministry of Women Affairs (MOWA) since the recent time. The MOWA holds the issue of adoption and provides procedure regarding an adoption of Ethiopian child by foreigners.

2.3.5 Physical Capacity

The civil code of Ethiopia article 192 provides that “every physical person is capable of performing all acts of civil life unless he/she is declared incapable by the law. “It meant that anyone has the capacity to acquire and discharge his duties and responsibilities. He is also capable to perform judicial acts where as he is incapable to perform judicial acts in accordance with the declaration of the law.

As it has been mentioned above, adoption is a judicial act with serious legal consequences. In this regard, the physical capacity of adopter is the main element of adoption agreement. This is because; adoption agreement confers on the adopter parental rights and imposes duties and responsibilities. The adopter is required to up bring the child in a safe family environment which foster the welfare and best interest of a child.

The capability of the adopter should be determined in terms of the mental physical, economic and social condition of the adopter. Besides, the best interest of the child is the guiding principle of adoption agreement, it may be respected and protected when the adopter is capable to raise and care of the child and to bear the responsibilities that may result from adoption agreement. This essential element of adoption does not clearly stated in any provision of the RFC and the C.C. However, the RFC article 199(3) says that the court shall take into consideration the capability of the adopter to raise and take care of the child before making its decision. This article enables us to say the physical capacity including mental, economic and social condition of adopter is inalienable to promote the welfare and interest of the adopted child. In other words, the capability of adopter shall be considered to achieve the fundamental purpose of adoption i.e

the best interest of the adopted child in adoption proceedings. Therefore, the agreement of adoption may be made based upon the physical capacity of the adopter. The court shall also make sure that the adopter is capable to handle the adopted child as his own child and to achieve the principle of adoption in accordance with article 194(3) before approving the adoption agreement.

2.4 Consent to Adoption

One of the elements that have been fulfilled before the contract will be enforced is the consent of the contracting parties. Consent is not only enough to make a contract but a person should have ability and also he/she must be capable of contracting and giving his/her consent. This is sustainable in the law.²⁴

In adoption, consent is an essential element for the formation of adoption. Whose consent is required in the agreement of adoption depends upon the type of adoption. Let me explain the consent of some organs in adoption agreement in the following sub-section.

2.4.1 Pre-birth Consent

The human person is the subject of right from its birth to its death.²⁵ There are some exceptional cases in which the conceived child shall be considered to be born. The interest of the conceived child may be considered only after birth. Its right is also protected by the law.²⁶ In the case of adoption, the conceived child may be adopted depending on the will of the natural mother. Because, she may be revoked the agreement of adoption concerning the conceived child within six months following the birth of the child.

According to Oliphant, pre-birth child is permitted to adopt. He says that "All state mandate that consent to adoption be obtained from the natural mother after the birth of the child unless her rights are terminated. This is to ensure that the consent is a fully deliberative act on the part of the biological parent and to provide a legal framework within which a future adoption can be undertaken with reasonable guarantees of permanence and with human regard for the rights of the child; the natural mother, and the adoptive parents consent is obtained prior to the birth of the child, the child is born and adopted and the birth mother seeks to void the adoption on the ground of Pre-birth consent may be revoked."²⁷

In our law of adoption, the Pre-birth consent of adoption is similar meaning and concept with the above statement. According to our law, the mother of the conceived child must give her consent

to the adoption prior to the birth of the child. Simultaneously, the adoption agreement may be revoked unilaterally within six months following the birth of the child based up on the mother's right.²⁸ Therefore, a conceived child, like other adopted child, may be adopted with the consent that is obtained prior to the birth of the child of biological mother.

2.4.2 Minor Consent

The Ethiopian Civil code article 198 defines the word the minor, as "a minor is a person of either sex who has not attained the full age of eighteen years."²⁹ There is also identical definition of the word minor in the Revised Family Code of Ethiopia. This age limit may be reduced into fifteen years because of the decision of family council or father where the minor is married.³⁰ A minor may be emancipated due to several reasons that are introduced in the law.

The law presumed that the minor is incapable to perform judicial acts and of exercising the functions of guardian, in such circumstance the care and protection of minor resides to specified organs. The law also lays down procedure for removal of such organs of protection a minor. Some of the reasons for removal of those organs are, when they are incapable to perform their functions, when the minor does not receive the care, which his condition requires, when the minor attains majority, etc.

However, there are some exceptional cases in which a minor may act like a capable one and exercise some rights without protection or organs. Some of these cases are

- A minor may perform an act of every day life under the tacit authorization of tutor
- The court may hear a minor himself to appoint or to remove organs of protection of minor
- When a minor attains the age of fifteen years, he shall receive the income deriving from his work, he shall be consulted on all the important acts concerning him, and he may make a will alone
- A minor may conclude a contract of marriage with the consent of representative before he attains majority
- A minor who is over ten years may give his consent to the adoption. And also a minor may made an adoption agreement with the adopter where he attains the age of fifteen years.

Although the law protects the interest of the natural parents in adoption proceedings, there are circumstance where their consent may be dispensed with. The court may, for example, approve the agreement of adoption with hearing a minor who is over ten years of age where the natural parents are not alive, known and willingness in a position to manifest their will and where a minor has no ascendant susceptible of giving his consent.³¹ There for, there are some exceptional cases in which the court protects the consent of minor who is over ten years of age in adoption agreement, although he has not attained majority.

2.4.3 Consent of Parents

Since the child is born, any person, particularly the natural parents, is responsible to up bringing the child.³² The agreement of adoption requires the consent of natural parents of the adopted child where they are alive and known. Both natural parents of the child must give their consent to the adoption before adoption agreement is approved by the court.³³ There fore, the consent of natural parents of the adopted child to adoption agreement is one of the essential elements of adoption.

2.4.4 Tutor and Guardian Consent

Guardian and tutor may be appointed by the court for protection of minor as a result of death, unknown or incapable of the natural parents of minor. Once they were appointed for a minor, they may exercise several functions including care, and protect. In adoption agreement, whether guardian or tutor may or may not give his consent to adoption where the natural parents of a minor are died or unknown.

2.4.4.1 Basic Features of Guardian and Tutor

Elias Stebek ³⁴explained some major features of guardianship and tutorship.³⁵ According to Elias, primarily guardianship and tutorship are gratitude function that involves in a free discharge services. Secondly, functions are not only voluntary but also they are obligatory, because a person may appoint for such functions in which he should perform it. Such a person can apply to the court to be received owing to particular difficulties but he may not abandon his duty until a new person has been appointed. The court shall also appoint a new person to exercise such functions. Thirdly, they have personal functions which do not devolve on to the heirs of the guardian or tutor of a deceased minor, the heirs of the latter are not expected to assume of functions of the deceased.

2.4.4.2 Function due to the Guardian and the Tutor

As a rule or principle, the function of the guardian or tutor is vested in one person.³⁶ But, there are some cases in which such functions may be given for two different persons. Some of these cases are the court may not appoint one person for both functions of a guardian and a tutor, the father or the mother may exercise the function of a guardian while they may appoint a tutor to a minor, and the court may appoint a person as tutor other than guardian.³⁷

However, guardian and tutor have different functions where their function is vested for two different persons. The function of guardian is mainly associated with the proper care of a minor.³⁸ For example, residence, health, education and social contacts of a minor shall be placed under the function of a guardian. A guardian may receive income which shall be delivered by a tutor to maintain the health and education of a minor. Where as, a tutor of minor has its own function. A tutor has much more function that is related to in all civil matters of a minor. A tutor shall represent a minor in matters concerning his pecuniary interests and the administration of his property. In addition, a tutor shall represent a minor in all legal translation and judicial proceedings.³⁹

When we see the RFC of Ethiopia, it provides certain functions of a guardian and a tutor of a minor except consent and agreement concerning the interest of a minor. It says that neither a tutor nor a guardian may give consent and enter into agreement including adoption agreement concerning the interest of a minor.

However, there is a legal gap between the law of adoption of Ethiopia and adoption practice under the Federal First Instance court concerning the consent of a tutor and a guardian to adoption and making an adoption agreement on behalf of a minor. Of course, this point will be discussing more in the next chapter.

2.4.5 Agency Consent to Adoption

Under the agency adoption, the people should contact the state agency or the state licensed agency when they need to adopt the child and make an adoption agreement. The state agency will also conduct and make a detail investigation to gather relevant information about the personal, social and economic position of the applicants.⁴⁰ In such type of adoption every

negotiation or arrangement including placement and choice of the adopter is carried out by the institution licensed by appropriate government authority. Although there are licensed child care institutions whose function it is to arrange adoptions and placement for children with the adopters who are selected by the agency, the possibility of agency adoption seems to be ruled out in accordance with the RFC of Ethiopia. Article 192(1) of the RFC reveals that it is only orphanages, either governmental or private,, that may arrange adoption of a child

When we come to the consent of agency or orphan age, whose consent should be given to the adoption? Where the child to be adopted is in the orphan age. There is no clear provision in the Revised family Code of Ethiopia concerning the consent of orphan age. Article 192(1) simply says that the orphan age may give any child under their custody to adopters. But, it does not mean that the orphan age has got the capacity to enter in to adoption agreement on behalf of the orphaned child under its custody. Where as, article 190 of RFC asserts that the agreement of adoption may be made between the adopter and the guardian of the child. In this regard, the guardian may enter in to adoption agreement on behalf of the adopted child. Thus, the question is who can be considered as a guardian of the orphaned child? When the Orphanage may give a child under its custody to adopters. We can say that the Orphanage shall deemed to be the guardian of an orphaned child. There fore, I believe that the orphan age must give consent to the adoption and enter into adoption agreement on behalf of the orphaned child depending on the concept of article 190.

2.5 Procedures of Adoption

Adoption is a juridical act with serious legal consequences. It also creates judicial relation solely between the adopter and the adopted child. As it has been mentioned above, adoption has its own process which can not be violated by any means or any one in order to have a legal effect before a court of law. The agreement of adoption shall be of no effect unless it is approved by the court. In order to approve adoption, some procedures are required to form valid agreement of adoption. What are these procedures of adoption are discussed below.

2.5.1 Jurisdiction

The Federal court jurisdiction is determined under the proclamation no.25/1996 of Federal court. Article 14 of the proclamation asserts the power of the Federal First Instance court. It states that where the issue which can not be expressed in money and if such issue which can not be expressed in money and if such issue is civil matter, it shall be entertained under the jurisdiction of the Federal First Instance court.

Adoption, being agreement, creates judicial relation between the adopter and the adopted child. It shall be account as one of the civil matter issues which can not be expressed in money and present to the FFIC. Therefore, adoption shall be entertained under the jurisdiction of FFIC in accordance with the above proclamation.

2.5.2. Filing a Petition

The Revised Family Code of Ethiopia deals with the law of adoption that provides the presentation of adoption agreement petition. ⁴¹Under the RFC, there are two types of adoption agreement petition.

Firstly, the presenting adoption agreement petition may made between the adopter and the guardian of the adopted child. In such agreement of adoption, the contracting parties should fulfill the requirements of the law of adoption. It shall also be in writing and signed by all the parties bound by the agreement. Besides, the agreement of adoption shall be of no effect unless it is attested by two witnesses. The natural parents of the child or the representative of the intuition under whose custody the adopted child may made an agreement of adoption on behalf of the child while they will never claim again the adopted child, once the child was adopted. On the other hand, the adoptive parent will have custody of the child. They have duties and responsibilities to up bring the child in a safe family environment since they adopted the child. The adopted child has also a right to be cared, educated, maintained and deserves the same treatment the adoptive parent gives to his natural child. There fore, the presenting adoption agreement petition shall be of no effect where the obligations of the guardian of the child and the adopter can not be ascertained with sufficient precision. The court shall have regard to the interests of the adopted child and adoption procedures before making its decision.

Secondly, the agreement of adoption may be made depending on the information that should be provided by a competent authority before the court approves the adoption. Currently, the authority following the well being of children is the Ministry of Women Affairs. Such a kind of agreement of adoption petition may be presented to the court for approval. The adoptive parents or adopters must fulfill the information that is set out for adoption purpose before they enter into adoption agreement. There is also personal data information including full name, address, religion, marital status, № of children and if any occupation and also why they want to adopt a child that should be filled by adopters or adoptive parents. In the end, the adopter and the guardian of the child make an adoption agreement and present its petition to the court. The court shall also approve the presenting adoption agreement petition if it makes in accordance with such a type of adoption procedure.

Therefore, any adoption agreement shall be presented to the court based on the above two types of petition while the court may approve it.

2.5.3 Investigation

The RFC has clearly dealt with adoption that takes place in the best interest of the child and with respect for his/her fundamental right as recognized in international law. Ethiopia has ratified the United Nation Convention on the Right of the Child in 1989. The Ethiopian law of adoption has given for inter-country adoption regarding the international law. Under inter-country adoption, a foreign national may adopt an Ethiopian child according to article 193 of the RFC. In order to approve such kind of adoption agreement, the court shall take special care in investigating the availability of information which will enable it to know that the capability of the adopter to raise and take care of the adopted child as his own child or not.⁴² Besides, the Ministry of Women Affairs, should provide available information about the personal, social and economic position of the adopter and give its opinion that the adoption agreement is beneficial to the child, before the court approves the presenting adoption agreement petition. Moreover, the court shall, in approving adoption agreement, be guided by the principle of the best interest of the child which is the fundamental purpose of adoption. Therefore, any decision of the court should be based on the investigation revealing the suitability of the adopter in upbringing the adopted child before adoption shall be of effect.

2.5.4. Decision, Judgment or Order

In adoption, the last and most important one is the order and decision of the court. Before making its decision or order, the court should make serious and careful investigation into the presenting adoption agreement petition or documents.

The Civil code of Ethiopia procedure asserts the judgments and decrees of court in articles 180 up to 190. According to this code of procedure, courts shall make decision or judgment on issues that are specified for each respective court. When we see the practice of Ethiopian courts, they usually used the word judgment or decision and order interchangeably and the word “Beyen” is also used to address the same message of function.⁴³ Both these words are also applied in adoption proceedings.

The court has, unlike other agreements, been bestowed with wide discretionary power to interfere and dictate the contracting parties in the agreement of adoption. Although the adoption agreement fulfills the requirements or adoption procedures, it shall be of no effect unless the court shall approve it. Therefore, the decision or order of the court is the main procedure of adoption for the validity of adoption agreement.

Generally, the above procedures of adoption are the main requirement to achieve the fundamental purpose of adoption i.e. the best interest of the child, which shall be a guiding principle in any action concerning the child. The adoption agreement shall be of no effect where it is against the interest and welfare of the adopted child. Therefore, the court should, in pursuit of the welfare and best interest of the child, approve the presenting agreement of adoption based on the above procedures of adoption.

2.6 Legal Effect of Adoption; General remark

Adoption order that shall be made only by a court under a statutory procedure has legal effect regarding exiting wishing the parental responsibility of the natural parent of a child and replacing them with a set of legal relation with the adoptive parents and the adopter’s family that are almost entirely equivalent to those that the child had with the natural parents.

There are two methods adoption into consideration the effect of adoption. These are complete adoption (adoption plena) and incomplete adoption (adoption minus plena).⁴⁴ Complete adoption severe all links between the adopted child and his natural parents. The adopted child loses his

right of inheritance and support from his natural parents and relatives under complete adoption. Where as, Incomplete adoption, it has been recognized under our law of adoption, does not totally extinguish the rights and obligations of the adopted child has towards his natural parents.

According to our law of adoption, the adopted child shall be considered to be the child of the adopter. The adopted child shall also be legally related to all members of the adopter's family.

⁴⁵As it has been mentioned, adoption, being an agreement, creates judicial relations between the adopter and the adopted child. In this regard, the agreement of adoption shall be of no effect unless it is approved by the court. It shall be entertained under the Federal First Instance Court (FFIC) in accordance with the Federal Court proc. № 25/1996. Under the jurisdiction of FFIC, since adoption is approved, the parties are bound from and after the act of adoption.

2.6.1 Effect of Adoption

Adoption transfers the natural parent's right of exclusive custody over the child to the adoptive parent since the date of adoption order. An adopted child is treated as if he were the legitimate child of the adoptive parents and not the child of any one other than the adopter but for certain purposes such as entitlement to citizenship, for the rules concerning prohibited degree of marriage and the law of descent.

In adoption order, the adopted child does not lose the advantages of the right of succession; of course, there are exceptional cases that affect the right of succession. In principle, the adoption order is irrevocable except when the child is adopted by a single person.

Such a person may enter into marriage contract. When the adopter is married, both spouses must give their consent to the adoption. And then, two spouses conjointly adopt the child. In this regard, the previous adoption order shall be revoked under operational law, besides the child shall deem to be the child of the married adopter. But, it does not mean that the revocation is not done regarding the protection of maltreated or morally abandoned children. As far as the RFC, adoption does not bound from the act of adoption order in some exceptional cases.

2.6.2 Effective Date of Adoption

As it has been mentioned, there are essential elements that required to form valid adoption agreement. The last and most important element is the order and decision of the court concerning adoption. The law has besides setting such requirements which are determinable by objectives assessment of evidence adduced to court, installed the subjective standard, as it is mentioned, the

best interest of the child. The court shall, in approving adoption, be make careful investigation of the documents of the adopter and be guided the principle of the best interest of the child.

The court shall approve the agreement of adoption where it fulfills all requirements of adoption. But, there is no clear provision that enshrined the effective date of adoption in the Revised family code. Where as, article 180 of the civil Code after a suit has been heard, the court shall pronounce judgment in public trial either on the day or after the date of judgment, and then adoption begins to have effect. Thus, the court shall be pronounce the effective date of adoption when it makes decision.

2.6.3 Revocation of Adoption

Adoption, being an agreement, creates judicial relations between the adopter and the adopted child. The agreement of adoption may made to promote the welfare and best interest of a child. Adoption creates artificial parent child relationship between he adopted child and the adopter. With this regard, the adoptive parent is duty bound to maintain the child and accord the same human treatment as if he were a natural parent. He has also a right to be cared, educated, maintained and deserves the same treatment the adoptive parent gives to his natural child. Adoption shall be of no effect unless it is approved by the court. The court may approve the agreement of adoption where the adopter is in a position to promote the welfare and best interest of a child. Whereas, adoption may be revoked by the judgment of the court where if fails to achieve its purpose.

However, the revocation of adoption can be pronounced only for serious reasons, principally the ingratitude of the adopted child. The total revocation of adoption may appear in certain cases to be too severe a measure. It is accordingly held that the adopter can be deprived of his paternal power. This is done by applying the law of adoption, regarding the protection of maltreated or morally abandoned child.

When we see our law of adoption, revocation of adoption is not possible under the Civil Code of Ethiopia. According to article 806 of the C.C, adoption is irrevocable even through after adoption the adoptive parent fails to discharge his responsibilities that may result from the adoption and raise and take care of the child. But, there is only one possibility to revoke adoption

in accordance with article 799 of C.C. It states that the conceived child mother's may revoke the adoption unilaterally before or within the three months following the birth of child.

Where as, the Revised Family Code of Ethiopia has given recognition to revocation of adoption. The court shall revoke the adoption in accordance with article 193/2 of RFC. Adoption may be revoked based upon the following reasons.

1. A conceived child may be adopted. Such a kind of adoption may be revoked unilaterally within six month following the birth of the child depending on the will of the mother.
2. The adopter, instead of looking the adopted child as his own child after the adoption, handles him as a slave or in condition resembling slavery, or makes him engaged in immoral acts for his gain or handles him in any other manner that is determine to the future of the child.

When the child is maltreated the child himself, authority empowered government organ to follow the well being of children, or any other concerning person may present petition to the court for revocation of adoption accordance with article 193(2) of the Revised Family Code of Ethiopia.

CHAPTER THREE

3. THE LAW AND THE PRACTICE: PROBLEMS PERTAINING TO VALIDITY REQUIREMENTS OF ADOPTION AGREEMENT

3.1 General Remark

Law deals with the system of rules and regulations that govern the social, economic and political relation of the society in a given state. It also expresses a combination of declarations, rules, orders, directives, norms etc. These are intended to govern the activities of the members of a society. Law is also designed and presented with due consideration to the basic facts of state and its people in terms of their social, economic and political conditions. In this regard, the fundamental objective of law is to maintain and direct the relationship of people. In addition to this, it is the main instrument to protect and defend the fundamental freedoms and constitutional rights of a given society. This objective of law can be achieved where the lawmaker makes law depending upon the situation of the society. The judiciary should also interpret and implement efficiently to achieve the objectives of laws.

In Ethiopia, the judicial authority is vested in courts. Under federal state jurisdiction, the federal first instance courts have power to investigate and make decision on the civil matter issues. Adoption is one of the issue that is presented to the Federal First Instance court.¹

Adoption should be made concerning the best interest of the child, since it shall be a guiding principle in any action regarding the child under various international and regional conventions.² As it is mentioned in chapter two, there are different elements and procedure of adoption in order to keep the interest of the child. In relation to this, the Federal First Instances Courts have the power to investigate the agreement of adoption and responsibilities of adopter.³ In order to approve the agreement, the court shall make sure that whether the adoption is important for the child or not. It is also required to take special care in investigating the available information to know the condition of the adopter child.⁴ Above all, the RFC of Ethiopia is the main law to federal first Instance courts to approve the agreement of adoption. Therefore, the formation of adoption is associated with the best interest of the child and this shall be made in line with provisions of Revised Family Code of Ethiopia.

3.2 Practical Problems of Adoption in Federal First Instance Courts: case analyses

In this section, efforts are made to discuss some practical problems of adoption in the Federal First Instance court, Lideta civil case bench depending on the purpose of adoption, adoption requirements based on the Revised Family Code of Ethiopia, effects of adoption on the rights of inheritance as well as problems on nationality of the adopter and revocation of adoption. In what follows, analyses of some selected cases will be presented so as to unveil the practical problems pertaining to adoption.

3.2.1 Case number 58250⁵

Consent of parents is one of the requirements of valid adoption. Depending on this, Ato Teklhab Bhiresillase (here in after” the adopted child father”) made an agreement of adoption with Ato Melkamu Hagos (here in after” the adopter”) on behalf of Kidus (here in after “the adopted child”). The adopter made an agreement of adoption with the adopted child’s father based on Article 803(1) of the Civil Code of Ethiopia.

Article 803(1) of the C.C states that adoption agreement shall not be made without the consent of both natural mother and father of the child to the adoption where they are alive and known. Of course, this article has similar concept with article 191(1) the RFC of Ethiopian, But the RFC of Ethiopia asserts additional requirements and procedures for adoption agreement including age, status, blood-relatives, nationality and physical capacity.⁶ Recently, the agreement of adoption procedures includes consent of the guardian of the child; where the child is ten and above years old, he/she may give his/her consent to the adoption in the court.⁷ Also the agreement should be reinforced by the current operational law i.e. Revised Family Law. Above all, the agreement of the adoption shall not be legitimate, unless it is approved by the court having jurisdiction. Although there are some problems in the adoption agreement referred in the case between the adopter and the adopted child’s father who gave his consent to the adoption, it presented to the Federal First Instance court, Lideta civil case bench to make to make the agreement legitimate. The court also approved the above agreement of adoption as the problems it replete with stand. There are some reservations in making decisions by the court based upon the following grounds:

Firstly, as it has been mentioned in chapter two, there are requirements and procedure of adoption to make and approve adoption agreement under the Revised Family Code of Ethiopia. These should be respected and protected by the court before approving the agreement. In the absence of fulfilling the requirements of adoption and lack of investigation the best interest of the child is violated, since it is a guiding principle to approve adoption agreement.⁸

Adoption requirements and procedures are means of safeguard of the adopted child rights including best interest of the child. When we see the decision of court on the case⁹ adoption agreements fulfilled only one requirement of adoption i.e. the consent of natural parents of adopted child, but the remaining requirement are not mentioned in the agreement of adoption. In addition to this, the court violates one of the main procedures of adoption that is investigation, which is critical instrument to identify whether the adoption agreement fulfills, or not the basic requirements of adoption. Lack of investigation enables the agreement of adoption to violate the best interest of the child and the adopted child lose his/her benefits that he/she will get from adoption. In such case the court shall remedy any deficiency in the agreement of adoption or it shall be revoked until the agreement will be provided with fulfilling the requirements of adoption where as it violated the basic principle of adoption i.e. the best interest of the child. Surprisingly, the FFIC, Lideta civil case bench approved the above adoption agreement as it was.

Has the court the power to approve such agreement of adoption? No it has no power to approve the above adoption agreement, it is because any adoption agreement shall be deemed to complete where it is presented depending upon the adoption procedures of the RFC of Ethiopia.

Secondly, lack of investigation related with physical capacity of the adopter is the other deficiency in decision making of the court. Physical capacity is the main procedure of adoption to protect the interest of the child.¹⁰ As it is indicated in the above case,¹¹ we do not have any information regarding personal, economical and social condition of the adopter either in the agreement of adoption or in decision making of the court. But physical capacity of the adopter is considered as importance for the well being of the adopted child.

As it is mentioned in chapter two, the state shall have responsibility to take all appropriate legislative and administrative measure to protect the child from all forms of violence including physical and psychological violence.¹² This concept is important in order to criticize the above

adoption agreement because we don't know the adopter's personality and health status, for example, he may be drug abuser or he may have mental problem. So, the court must respect the law of the state to protect the child from all forms of violence and defend the best interest of the child. The physical capacity of the adopter is also considered in approving adoption. According to Article 194 (3) RFC, the court shall take into consideration the capability of the adopter to raise and take care of the adopted child before approving the agreement. In other words, the court decision should be based on the findings that reveal the capability of the adopter in upbringing the adopted child. When the adopter has no capacity to maintain the best interest of the child, the adoption agreement shall not be approved.

Thus, the physical capacity or capability of the adopter in the above agreement it should be known but we don't have any information because there was no investigation of the court. The adopted child may be exposed to sexual abuse, mal-treatment, physical and psychological violence due to lack of investigation on the physical capacity of the adopter. I firmly oppose the above agreement of adoption legitimized under the FFIC, Lideta civil case bench because there is lack of investigation regarding the physical capacity of the adopter and the basic principle of adoption (i.e. the best interest of the child) is violated. It asserts that lack of investigation of the physical capacity of the adopter may create an opportunity to violate the right of the child. Why does the FFIC Lideta civil case bench approve the agreement of adoption¹³ in the absence of making further investigation? We can't find persuasive answer for this question. I shall account the perspective court why it failed to investigate the physical capacity of the adopter before making its decision. When the presenting adoption agreement fails to provide appropriate information on the of personal, economic and social conditions of the adopter, the court has the power to revoke such kind of adoption¹⁴ under Article 14 of proc. No 25/ 1996. But the court didn't do accordingly in the case of the above agreement.

Thirdly, the above agreement¹⁵ held the already repealed provisions of Civil Code while the court approved it. The two parties made an agreement of adoption based on the repealed Article 803(1) of the C.C. The Civil Code Articles from 550 up to 825 were no more operative. The expiry law automatically terminates any legal transaction making the repealed the source of authority. However, the rights or obligation may continue notwithstanding the expiry law if their nature determines. In other words, once the law is terminated, it may not apply again to

regulate issue appertaining to it. With this regard, the above agreement of adoption should be improved in accordance with the current applicable law.

Currently, any adoption agreement is made according to the provision of the RFC. So the courts are expected to make sure the presenting agreement is made in accordance with the RFC before making decision. However, the FFIC, Lideta civil case bench approved the above agreement as it was. This action is unacceptable under any legal circumstances and it creates a legal gap in the agreement of adoption.

3.1.2 Civil case 62123¹⁶

The agreement of adoption made between W/ro Mulatua Getanehe (here after the adopter) and W/ro Yemeserach Demise (here after' mother of the adopted child') on September, 2005. In such agreement, the adopter adopted Hermela Assefa (here after the adopted child) from her mother W/ro Yemeserach Demise. This agreement presented to the Federal Firs Instance court, Lideta civil case bench for approval. The court made resolution in such agreement of adoption under file number 62123 on February 2006. However, there are law deficiencies in both the adoption agreement and making decision of the court.

3.1.2.1 Omission of Consent as a Necessary Requirement

As it is mentioned, the consent of natural parents (i.e. both the father and mother) of the child is essential to conclude the agreement of adoption.¹⁷ It is also one of the main requirement or elements of adoption under the currently operational law i.e. Revised Family Code of Ethiopian.

When the natural father and mother of the child are alive or known, they must give their consent to the adoption.¹⁸ According to the above agreement of adoption between w/ro Mulatua Getaneh and W/ro Yemeserach Demese of the adopted child, mother we cannot see the consent of the natural father of the adopted child. The writer couldn't get clear information whether he is died or absent during the agreement. Besides, I found two contrary ideas about the natural father of adopted child in the -adoption agreement.¹⁹

On the one hand, when the agreement of adoption made between the above two parties on September 22, 2005, the adopted child mother stated that she doesn't know the exact address of

the natural father of the adopted child. On the other hand, in the court she said that the natural father of the adopted child is died in May 2005. In this case, the deceased had died before she made an adoption agreement with the adopter. Why she didn't include necessary the information about the death of the adopted child's father when she made an agreement? Why she used contradictory statement? Did she make this mistake knowingly or unknowingly? We do not have any information. When the two contradictory statements occur in one adoption agreement, the court should remedy any deficiency before dashing to approve. In relation to this the FFIC, Lideta civil case bench can use different legal techniques in order to know about the natural father of adopted child. One of these techniques is that the court may order the adopted child mother to present the legal statement that assure about Hermela's father. Whether he is dead or absent.

The Civil Code Article 154 (1) asserts the declaration of absence. It states, "When a person has disappeared and has given no news of him self for two years, any interested party may apply to the court to declare his absence." This enables the court to solve the above two contradictory statements. The court can order W/ro Yemeserach Demise to provide available information about the deceased father depending upon the above article. In addition, the court shall declare the absence of natural father of the adopted child before making its decision in accordance with article 157(1) of C.C. But the court failed to declare the absence while it approved the adoption agreement in the absence of persuasive evidence about the father of the adopted child.

There is no law that confers the court the mighty to/agreements approve including adoption, when it has two contradictory statements. With this regard, how could the court reach a decision to approve the above agreement of adoption? Did the court believe that whether the presence or absence of the adopted child father is not necessary to approve the adoption agreement? When the adopted mother gave her consent to the adoption, she made mistake (i.e. the two contradictory statements about the adopted child father) simply she thought it makes adoption so easy, but this quashed the right of the adopted father to give his consent if he was available. Consequently adoption shall be no effect unless the courts make sure of his death or absence.

According to article 697 C.C, the FFIC, Lideta civil case bench has the right to revoke the adoption agreement on the ground of mistake that was made by W/ro Yemeserach Demise.

Article 697 states “party who invokes his mistake shall establish that he wouldn’t have entered in to the contract, had he known the truth”

In addition, when the court realize that the adoption agreement holds two contradictory statements that violate the requirement of adoption it may disapprove it in accordance with its power vested in article 194 of the RFC.

Therefore, the court should revoke the above agreement of adoption until the two contradictory statements regarding the status (where about) of the father of adopted child will be solved.

3.1.2.2 Physical Capacity of the Adopter as a Necessary Requirement

Under file no 62123 of the agreement of adoption, I have seen another deficiency that is related with physical capacity of the adopter.

As it is mentioned in chapter two, physical capacity of the adopter is considered to be of paramount importance for creation of adoption under article 194(3) the Revised Family code of Ethiopian. In other words, any decision concerned with adoption should be based on the findings revealing the sustainability of the adopter in upbringing the child. Is this element of adoption is respected and protected in the present adoption agreement? No, it is because the only point that is mentioned in the agreement is the will of the adopter. When she (the adopted child mother) made an agreement with the adopter in the written form, the adopter stated that she is capable to raise and take care of the adopted child as her own natural born child. Did the court believe the adopter word instead of making investigation? In my opinion, the court believed her word and accordingly made decision. I don’t agree with the court decision because investigation is the main instrument of the court to make sure the capability of adopter. Capability of the adopter should be determined in light of the mental, physical and financial condition of the adopter. Physical capacity of the adopter is the main element to keep the best interest of the child. In addition, adoption confers on the adopter parental rights and responsibilities when the adopter is capable to perform all acts of civil life. And also adoption agreement is the general rule of contracts concerned with that applicability of capacity. In this regard, the court may revoked the agreement of adoption, when the agreement doesn’t fulfill article 194(3) RFC. But in the above case, the court in approving agreement of adoption violates the article. Therefore, the court is required to take special care in investigating the availability of information which will enable to

know the capability of adopter in handling the adopted child as his/her won child before making decision

3.1.2.3. Repeal law as a basis of decision

Under the file no 62123, there is a legal gap with respect to the approved of during the court approved the presented agreement. In this agreement, we can observe the application of two laws i.e. the Civil Code and the RFC at a time. The agreement of adoption that was made to adopt Hermela Assefa based on Article 796 and 797 of the C.C and RFC Article 180, 184, and 185. As it is mentioned in the first case, the RFC Articles 319/1/B asserts the termination of some provisions including the above two provisions of civil code. It indicates that once the law is terminated, it may not apply again under any circumstances. Since those articles of civil code were terminated, any adoption agreement shall be made in accordance with the current operational law of adoption the RFC of Ethiopia. When there are two contradictory laws (the expiry and applicable law) in the agreement of adoption, the court may not approve it. In other words, the agreement of adoption is against the law of state, the respective court may disapprove it in accordance with its power vested in article 194 RFC.

Under the file ²⁰ the Federal First Instance Court Lideta civil case Bench has power under the proc. No 25/1996 to approve the presenting agreement, despite the fact that it held two contradictory laws. Courts are legal institutions charged with interpreting laws. But the FFIC Lideta civil case bench failed to interpret the Ethiopian law of adoption in approving the adoption agreement. Hence, the decision of the court is not fair based on the following grounds.

The FFIC, Lideta civil case bench decision concerning the above presenting adoption agreement shall be no effect in accordance with the RFC. Under the principle of the expiry law, it automatically terminates a legal transaction. However, the rights of obligation may continue notwithstanding the expiry law, if their nature determines. With this regard, the expiry law has never been applied in any civil issue matters for example; adoption is one of those civil issues that may not be made based on expiry law. Therefore, adoption and the agreement of adoption under the file no 62123 must be improved according to the RFC before it present to the court. Likewise, the court shall disapprove any agreement of adoption, if it mentions the expiry law. On the other hand, it can approve the agreement, if it make in accordance with the RFC including

the requirements of adoption. But the question is how did the court approve the case²¹ adoption agreement? Had the court right to apply the expiry law? I believe that the court has responsibility to obey and respect the law of state. It does not have legal round and right to apply the expiry law in any civil matter issues including adoption. In addition, the main responsibility of the judiciary (court) is protecting the law of state from any form or attempt of violation. The parties under the agreement²² may violate the law of the state because the provisions of civil code are terminated and the adoption agreement is made including terminated provisions based on an agreement either knowingly or unknowingly. Surprisingly, the law protector i.e. the court approved the above agreement as it was. The practice of the court creates confusions whether the mentioned provisions of civil code are terminated or not. The FFIC, Lideta civil case bench may not avoid the confusions for the reason that it approved the presenting adoption agreement.

Therefore, the court is expected to make sure that an adoption shall be made according to the RFC before approving the agreement. And also the court shall revoke the adoption agreement when it holds both the expiry law and the RFC or it is made based on expiry law.

3.1.2.4. Revocation: a means to maintain Best Interest of the Child

The other question arises over the decision of the FFIC, Lideta civil case bench is related with the fundamental purpose of adoption under the RFC and regional and international conventions. Adoption shall be of no effect when it is against the best interest of the child. These enable us to think and look about the revocation of adoption. With this regard, any action concerning children, undertaken by the court shall primarily consider the best interest of the child.

The question is however, how the court could protect the best interest of the child in approving the above agreement of adoption in which case there evolved the expiry law of the civil code and the currently operational RFC. The working principle in adoption proceeding is the best interest of the child that lies at the foundation of the institution of adoption.

The repealed Article 806 of the C.C stated, “Adoption may not be revoked for any reason” The word “any reason” includes one of the fundamental purpose of adoption i.e. the best interest of the child. Where as, the RFC has clearly dealt with the issue of revocation of adoption and states under article 193(2) that adoption may be revoked depending upon exceptional cases. One of these cases is that when adoption fails to achieve its purpose i.e. the best interest of child, the

adoption is required to be terminated and revoked. That is why the above provisions, like other provision, of the civil code are terminated and the adoption is to be made in accordance with the RFC.

Under the RFC,²³ revocation of adoption is the main means of instrument to protect the best interest of the child in adoption proceedings. Depending on this principle, how can the FFIC, Lideta civil case bench protect the best interest of the child, if it approved the above agreement of adoption, which held the expiry laws? How can it fill the legal gap regarding the best interest of the child that is the right of the child under the Federal Democratic, Republic of Ethiopia constitution? The expiry law of the C.C or the RFC will be applied when the adopter fail to live up to the minimum standards expected to raise a child or neglected her/his parental duties. In such cases, the only possibility is the court should revoke the agreement of adoption. Here there is a question, the court accepted the expiry provisions²⁴ and approved the agreement of adoption. If the court acknowledged and accredited the presenting agreement, the parties who entered in to the above agreement may defend the question of revocation of adoption while the best interest of the child is violated. If the court may approve the agreement of adoption that is made only in accordance with the RFC, revocation of adoption will prevail. However, the court failed to protect the interest of the child in while approving the above agreement under the file no 62123 as it was.

Therefore, the court should approve any adoption agreement based on the RFC to avoid a legal gap regarding the best interest of the child and revocation of adoption.

3.2 The Effect of Adoption on the Right of Inheritance

Adoption where by the parents of the child and the adopter agree to create artificial parent child relationship between the adopted child and the adopter.²⁵ And also, adoption being agreement creates judicial relation solely between the adopter and the adopted child in which the child shall be considered to be the natural child of the adopter. The conception of a legitimate child after adoption on the legitimating of a natural child born before the adoption in no sense adversely affects the rights of the adopted child. With this regard, the adopted child can compete in the succession with legitimate children born before or after adoption.

Similarly, the law of adoption in Ethiopia is currently working in accordance with the RFC and adoption does not make the child leave its natural parent. Besides, the spouse and descendants of the adopted child shall be related to the natural family of the adoptee. But, if there is alternative between the adoptive parents and the natural parents, choice is primarily given to adoptive parent.²⁶The adopted child has two parents, adoptive father, mother in one hand and natural father, and mother on the other hand. At the same time, he/ she have the right of inheritance from both natural parents and adoptive parents.

When we see the right of inheritance, there is no doubt about the child right of inheritance from both parents but the question arise in particular, regarding who inherit the deceased child if he/she die with or without leaving descendants? In order to answer the question, there is no clear provision in the Revised Family Code of Ethiopia.

The first question arises over who succeed the adopted child if he/she dies without leaving descendants but leaving his natural parents and adoptive parents. In both laws, the Civil Code and RFC, the deceased's father and mother shall be called to his succession. As it has been mentioned in the above, although the child is adopted, he/she has two parents i.e. the adoptive and natural parent. Who comes first to succeed the deceased? With this regard, when both adoptive and natural parents compete there is no controversy i.e. the law grants primarily for adoptive parents. According to article 183(3) of the RFC, when alternatives are to be made made between the family of origin and the family of adoption in terms of inheritance from the deceased child, the primary choice has to be given to the family of adoption. It is clear the natural parents shall not have the right to claim the right of inheritance from the deceased child, where the adoptive parents are alive.

However, we cannot make sure that the family of origin is immediate successor of the deceased child where the adoptive parents are dead. Because, the word "family of adoption" is ambiguous. We do not understand the word "family adoption" from the article whether it means only the adoptive father, mother and their child or it includes the adoptive parents, their descendants, ascendants and other distant relatives. In this regard, the natural parents may not claim the right of inheritance from the deceased child unless the word "family of adoption" is clearly defined by the law. Therefore, the question over the natural parent's right of inheritance from the deceased is not answered under the RFC of Ethiopia.

As it mentioned above, under incomplete adoption, the adopted child has two parents i.e. natural parents, adoptive parents, and the right of inheritance from both parents.

In addition, the descendants and spouse of the adopted child will be related to natural family of the adoptee. Depending on this relationship, the adopted child has equal right of inheritance from adoptive parents with legitimate children born before or after adoption. How can this right of the adopted child be protected? Where he dies leaving descendants, do the descendants have the right to represent the deceased child to inherit from the estate of the adoptive parents? In other words, the deceased shall be represented by his descendants for protection of his right of inheritance from the adoptive parents depending on the concept of incomplete adoption. The RFC does not provide persuasive answer for this right of inheritance. Therefore, the Ethiopian law of adoption, particularly the currently operational law of adoption, does not protect the descendants of the adopted child's right of inheritance. When question on the right of inheritance arise by descendants of the deceased adopted child, how could the Ethiopian law of adoption solve it? In general, the Ethiopian law of adoption does not provide tangible answer for the above two questions. The writer has seen the above two problems regarding the right of inheritance where the adopted child dies with or without descendants in the RFC of Ethiopia.

3.3 Legal gap under Article 193 of the Revised Family Code

There are local adoption and inter country adoption (associated with nationality). Ethiopian law of adoption permits both ways of adoption.²⁷ Article 193 of the RFC asserts nationality of the adopter. The Article also states that a foreigner may adopt an Ethiopian child by fulfilling the basic requirements in the UN convention on the rights of child.

Currently, the authority following the well being of children is given to MOWA and it provides basic requirements for foreign adopter (see appendix). Besides, it gives its view that the agreement of adoption is beneficial to the child.

The court may approve the adoption for foreign adopter depending on the RFC provision and available information that is provided by MOWA. The court mainly emphasize in three requirements including the other valid information providing by MOWA, before approving adoption. These are:

1. The foreign adopter shall provide valid information that describes his/ her personal, economical and social position from the competent authorities of his country. The personal, economic and social position of the adopter is essential for the well-being of the adopter.
2. The foreign adopter should present clear information in which the child will be authorized and permitted to enter and reside permanently in the principal residence of adopter.
3. Adoption creates artificial parent-child relationship between adoptive family and the adopted child. In order to legalize this relationship, the foreigner should provide recognition evidence whether the adoption is approved by Ethiopia court from the competent authority of the adopter country.²⁸ Then, the country makes sure and approve that our court shall be effect or shall be no effect.

When the court believe that the presenting adoption agreement is valid based on the providing information from MOWA and fulfills the above basic requirements, it may be approved the adoption. The RFC article 193 and ACRWC,²⁹ that is similar concept with the article discuss about foreign adopter, they emphasize mainly on the nationality of adopter. Where as, they don't mention the domicile and residence of adopter associated with acquiring nationality.

The processes of acquiring nationality vary in different countries depending upon the specific laws of each country and it also determines the domicile or residence of the adopter. When we see our constitution article 6(1) affirms that any person born in and out side Ethiopia from either Ethiopian man or women is regarded as an Ethiopian citizen. Accordingly, to be an Ethiopian citizen, it is sufficient for a child to be born to one of Ethiopian parents irrespective of the birthplace. On the other hand many Ethiopian live out side Ethiopia through acquiring nationality from the given state where they live. As an Ethiopian citizen they exercise certain rights and privilege despite the fact they have two nationalities and reside permanently out side Ethiopia. In this regard the question arise, can they adopt their blood- relatives in terms of adoption? Can they take the adopted child where they live permanently? What kind of law do they use to enter in adoption agreement? Article 193 discusses mainly regarding to foreign adopter. According to our constitution, they are Ethiopian while their principal resides /domicile/ is out side Ethiopia.

In addition, marriage is another effect on nationality of the adopter. For example, adoption agreement may not be made in case the adopter is married unless the two spouses jointly give their consent to adopt the child. The question arise over, when a foreigner engage in to marriage contract with an Ethiopian. The principal residence of the two spouses is here in Ethiopia-How can they adopt an Ethiopian child? What would the court do? How can they make adoption agreement based on the pertinent law? How does the law understand residence and domicile and its impact on adoption? These questions are not answered in any provision of the RFC. Therefore, the writer has felt the defect of article 193 RFC concerning domicile/residence.

3.4 The legal gap between the Revised Family Cod and the practice of adoption regarding Tutor and Guardian of a minor

The Federal Democratic Republic of Ethiopia Constitution and International and Regional conventions elaborate on the rights of child .Children have human right which are emanating from the nature of humanity. These rights of children will prevail when both the father and the mother of the child, including tutor or guardian of the minor, discharge their duty efficiently. When both the father and the mother of the child are not in a position to exercise such functions as a result of death, unworthiness, and soon, the tutor or the guardian of the child shall be appointed to exercise such functions.

In other word, a minor who has not attained the full age of eighteen years in incapable of exercising the function of his father and mother .In this regard, a minor shall be placed under the protection of the guardian or of the tutor, whom he shall obey. The proper care of the person of the minor and administration of the property of the minor functions vested to the guardian and the tutor respectively .The function and basic feature of guardian and tutor had mentioned under chapter two.³⁰

Now when we come to our point, there is a legal gap between the currently operational law of adoption (i.e. RFC) and the practice of adoption under the Federal First Instance Court (FFIC) related with tutor and guardian of the child .The function of tutor and guardian is clearly expressed .³¹

Those article is that both tutor and guardian may not made any agreement including adoption agreement on behalf of the child /minor .As it mentioned in chapter two , although the tutor and guardian of the child have different functions , they may not enter into a compromise agreement concerning the interest of the minor according to revised family code .However, when we see the particle of adoption under the FFIC, both the guardian and tutor may give their consent to the adoption on behalf of the child .Similarly, where the tutor and guardian give their consent to the adoption and made an agreement of adoption on behalf of the adopted child, the court may receive and approve such agreement involution of the law of the state .Therefore, when we see the practice of adoption in the FFIC, we can observe that there is a legal gap between the RFC and the practice of adoption in the FFIC regarding guardian and tutor of the child .

The guardian and tutor shall be appointed by the court to replace the function of the mother and the father of the child. Why the laws suspend the tutor and guardian consent to the adoption? Adoption is an agreement between the adopter and the guardian of the child.³²In adoption agreement , the father and the mother of the child must give in their consent to the adoption and enter to the adoption agreement .As it mentioned above, where the father and the mother of the child may fail to perform their function , tutor and guardian shall be replaced to exercise such function .Such functions of tutor and guardian of minor are compulsory for the person who is vested with them .If the tutor and guardian may receive compulsory function ,they shall give their consent to the adoption and enter into adoption agreement on behalf of the child .However, the RFC transfer the whole function except consent to the adoption and make an adoption agreement on behalf of the child to the tutor and guardian .I believe that the law should give the right of consent tutor and guardian on behalf of the child to the adoption like other function. Where as depending on the concept of compulsory function tutor and guardian the FFIC may accept the consent of tutor and guardian to the adoption and approve the agreement of adoption in which the tutor and guardian made agreement on be half of the child .In general still now, there is a legal gap between the RFC and the practice of adoption under the FFIC regarding tutor and guardian of the child. I believe that the law should give the right of consent for tutor and guardian on behalf of the child to the adoption like other functions.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

There were traditional concept and practice of adoption in the history of human societies. Some of the events that contributed for the development of modern concept of adoption belong to recent historical development such as wars, pandemic diseases particularly HIV/AIDS .In Ethiopia, there were traditional adoption practices particularly in amhara and Oromo societies. Adoption become a judicial act with a serious legal consequences since the civil code of Ethiopia has introduced in 1960 to address civil matter issues .According to the civil code of Ethiopia, adoption is a contract of two particle but not agreement .

In 1995, Ethiopia experienced a constitution that is based upon human rights and democratic principles .The federal government of Ethiopia has demonstrated its commitment towards child right and positive growth of a child by endorsing and ratifying the Convention on the Rights of the Child. In addition, the government accepted to implement declarations and conventions of the African Union stated in its Charter on the Rights and Welfare of the Child. Like wise, the 2000 Revised Family Code of Ethiopia states that the well-being of children shall be given priority in order to protect the rights of the child. With regards to the rights of the child, parent or others who are responsible are required to up-bring the child in a safe family environment which fosters the social and spiritual development of the child. Adoption is expected to be observed in the laws and international and regional conventions for the prevalence of the rights of the child. The main purpose of adoption is to promote the welfare and the best interest of the child. Adoptions where by the parents of the child and the adopter agree to create artificial parent child relationship between the adopter and the adopted child. It should be made concerning the best interest of the child, since it shall be a guiding principle in

any action concerning the child under various international and regional conventions and the Ethiopia law of adoption.

The revised family code of Ethiopia deals with the two types of adoption. These are private adoption and institutional adoption. Private adoption means that the agreement of adoption shall be made between the adopter and the guardian of the adopted child. Whereas, in agency or institutional adoption every negotiation or arrangement including placement and choice of the adopter is carried out by the institution licensed by appropriate government authority. There are common essential elements which the adopter and the adoptee must satisfy to form a valid adoption agreement. These adoption elements or requirements are necessarily to promote the welfare and best interest of the child and to know that the adopter will handle the adopted child as his own child and will not abuse him.

The court shall also take into consideration those elements or requirements of adoption before approving the agreement of adoption. Moreover, consent of the person involved in the adoption agreement is essential for the formation of adoption. Whose consent is required in adoption agreement depends upon the type of adoption. Perhaps, the court may, in pursuit of the principle of the best interest of the child, dispense the consent of the guardian of the child including the natural parent and approve the adoption. Adoption is a judicial act. It is a general principle that a minor who has not attained the full age of eighteen years may not perform judicial acts. In this regard, a minor shall be placed under the authority of guardian or tutor.

Adoption is one of the civil matter issues that are vested to the courts. The proclamation No. 25/1996 of the Federal Court Article 14 asserts the power of Federal First Instance Court. It states that the civil matter issue shall be entertained under the jurisdiction of the Federal First Instance Court. The adoption agreement petition shall be presented to the court for approval. The court shall not approve the adoption agreement unless it is beneficial to the

child. In addition, the Revised Family Code of Ethiopia deals with the nationality of the adopter .Article 193 say that a foreigner may adopt an Ethiopian child. The article requires that sufficient information should be provided by an authority empowered to follow the well being of children, it is Ministry of Women Affairs, before the court approves the adoption .Above all, the court shall, in approving adoption, be guided by the principle of the best interest of the child which lies at the foundation of institution of adoption.

Adoption, being an agreement, creates judicial relations between the adopter and the adopted child. Adoption transfers the natural parents rights of exclusive custody over the child to the adoptive parent. It does not make the child leave its natural family. The adopted child shall be considered to be the child of the adopter .Any decision concerning adoption should be based on the findings revealing the suitability of the adopter in up bring the adopted child. The Revised Family Code, influenced by various international and regional conventions, has permitted the revocation of adoption. Adoption may be revoked regarding the protection of maltreated or morally a abandoned children or when adoption fails to achieve its purpose.

The agreement of adoption shall be made in accordance with out law of adoption. The court shall make further investigation whether the adoption agreement fulfills or not basis requirements of adoption in order to keep the interest of the child before making its decision. But, there are problems including consent of parents, capacity of adopter, best interest of the child in adoption agreement that was presented to the Federal First Instance Court, Lideta Civil Case bench. When the court believes that the presenting agreement of adoption violates the law of the state and does not fulfill the requirement of adoption, it may refuse to approve it. In addition, where the court having regard to the circumstances of the case thinks that the adoption is against the interest and welfare of the child it may disapprove it anaccordance with its power vested in article 194 of the Revised Family Code.

According to the Revised Family Code, the adopted child is the child of both the adoptive and natural parents, and hence, he/she is not deprived of its right of inheritance from its natural parents in addition to its right of inheritance from the adoptive parents .But since adoption in our law of does not totally sever the natural relationship of the adopted child and the family of origin, issues revolving around the inheritance will inevitably arise. There have been some confusions regarding to the domicile or residence associated with nationality of the adopter the confusion resulted from the absence of clear provision of the Revised Family Code concerning the domicile or residence in addition to nationality of the adopter.

Moreover, there is a legal gap between the Revised Family Code and the practice of adoption regarding the guardian or tutor of minor. Although the functions of guardian or tutor of the minor are compulsory for the person who is vested with them, neither guardian nor tutor may enter into a compromise agreement including adoption agreement concerning the interests of the minor of the child .Where as, tutor or guardian of the child may give his consent to the adoption and enter into adoption agreement on behalf of the child in adoption practice under the Federal First Instance Courts. Generally, adoption shall be of effect when the courts approve the agreement of adoption concerning the welfare and best interest of the child.

RECOMMENDATION

As I aimed to find out problems associated with adoption and to forward possible recommendation, I forward the following

1. In order to protect the interest and Welfare of the Child, the court should make sure that whether the adoption agreement fulfills or not the basic elements (requirement) of adoption before making its decision.
2. The agreement of adoption should be made in accordance with the revised family code of Ethiopia.
3. The law of adoption should provide the maximum age of the adopter as it is concerned the minimum age limit of the adopter.
4. Where the child to be adopted is in the orphanage, whose consent should be given is not clear in our law of adoption .The orphanage should be considered as the guardian of an orphan or the child and enters , on be half the child, into the agreement of adoption with the adopter .
5. Any decision concerning should be based on the findings revealing the suitability of the adopter in upbringing the adopted child.
6. The Ministry of Women Affairs should gather and provide relevant information about the personal, social and economic position of foreign adopter to protect the rights of the child and given its opinion that the agreement of adoption is beneficial to the child.
7. The law makers must understand and work to put laws that address the legal gap regarding the right of inheritance of the deceased child and the consent of guardian or tutor of the child.
8. The law should take into consideration the domicile and residence of the adopter associated with nationality.

9. Our Law of adoption should provide clearly the natural parents right to request adoption revocation due to change of physical or financial condition since the adoption or lack of free and full consent to the adoption.

Finally it is my hope that the findings of the research and the recommendations provided here within may through light and holds knowledge for those who want to know more about the subject area of the research and for those who want to conduct further research.

Chapter two End notes

1. Krause, Harry D. 3rd ed ,1995, p,7
2. Convention on the Right of the Child, 1989, art, 31 and African Charter on the Right, and Welfare of the Child, 1990 art 4.
3. Tilahun Teshome, the child and the law in Ethiopian, JEL ,v 18 p.43
4. FDRE, Proc, No 1, 1995, year 1st No 1, Art 914 cumulatively 13/2.
5. CRC ,Art 2,3,6,and 12
6. ACRWC, art ,4/1
7. Revised Family Code, Proc .No 213/2000
8. Ibid ,Art 180
9. Ibid ,Art 194
10. Oliphant, Family Law, examples and explanation. 2004, p, 298-300.
11. Encyclopedia of Encarta ,Microsoft ® Encarta, ® 2006,
12. Supera note, 1,p,243
13. Supera note, 1,p,298
14. Supera note 1,p.243
15. Abebe Mulatu, Compiled material on inter- state conflict of law's in family case is Ethiopia,2007,p.5-6
16. Civil Code of Ethiopia ,1960 year 19 No .2 Proc .No 165, Art 798(1)
17. Ibid, Art 805
18. Supra note 10,p,299
19. supra note 11

20. Supra note 1, p.249
21. FDRE, Art 914
22. RFC,Art 914/3
23. Ibid ,Art 192-194
24. C.C Art 1678/9
25. Ibid ,Art 1,
26. Ibid ,Art 2 and 834
27. Supra note 10,p.304
28. RFC, Art 187
29. C.C, Art 198
30. Ibid Art 329-330
31. RFC, Art 191/3
32. Ibid ,Art 219
33. Ibid, Art 186
34. Elias ,N.Stebek, law of persons : teaching material oct ,2007.
35. RFC,184
36. Ibid 231
37. Ibid 233
38. Ibid 216
39. Ibid 216/269.
40. Supra note 11

41. RFC, Art 196

42. Ibid Art 1931,194

43. Filipol Aynalem, Judgment writing and decision making (hand out), oct, 2007,p.

44. Supra note 15, p

45. Rfc, Art ,183

Chapter one

1. Ababe Mulatu, compiled materials on inter-state conflict of law's in family case in Ethiopia .p-2-3

2. Encyclopedia Britannica, knowledge in depth,15th ed, p-97.

3. Oliplan, family law, examples end explanation 2004, p,296.

4. Berihune Teweldebrhan, the legal protection of children against child labors in Ethiopia 2007..21

5.Brayn A, black law dictionary ,8th ed. 1999, p.52

6.World book, Encyclopedia, Vol.1 2001 ,p.66

7.Huald, Leo Albert, the law of adoption ,U.G 1956, p.143.

8.Supera note, 3,0,296.

9.Planiol,M,treatises on civil law v.a 1959,p,827.

10.Ibid

11.Revised family law, pro.No 213/2000.Art.180

12. Ibid Art,181

13.Holly Bible,Exodous,CH,2:5-8

14.Supra note 6,p, 66

15, Supra not 7, p,743

16.Ibid

17.Supra note 3,p, 296.

18. Ê/ jðK? %4u?}cw lÓ 1990 ñ.u. Ñî 241-242

Chapter three

1. Federal Court proc. No 25/1996, 2nd year No 13,

2. ACRCA, Art 31 and CRC Art.4

3. Revised family code, prc No 2/3/2000,Art 194.

4.Ibid

5. Ato Tekleab Bhiresillase us,At Melkamu Hagose

6.See, chapter two, sub-section 2.3.5

7.RFC,art 191

8.RFC art 194-195 ,crc 21 and acrc 41.

9. Supra note 5

10. Supra note 6

11.Supra note 5

12.FDRE, ACRCA, CRC

13.Supra note,5

14.Supra note, 1

15.Supra note ,5

16.W/ro Mulatu Gethahu V/S

17. RFC, Art 191.

18.Ibid

19.Supra note, 16

20.Ibid

21.Ibid

22.Ibid

23.RFC,Art 193.

24.C.C art 550 +0 852

25. RFC.

Acronyms

ACRWC = African charter on the rights and welfare of the child,

C.C = Civil code

CRC = Convention on the right of the child.

FDRE =Federal Democratic republic of Ethiopia

FFIC = Federal first instance court.

HIV/AIDS =Human immune deficiency syndrome .

MOLA =Ministry of women's affairs

Pro No Proclamation number .

RFC = Revised family code

UN = united nations

WWL. First world war.