Diagnostic Study on the Rights of Children

Study 1: Intercountry Adoption from Ethiopia

Human Rights Infrastructure Working Group

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1. Introduction

Adoption is rooted in Ethiopian cultural traditions. Adoption is a legal construct establishing parental relationship between a child and an adopter. The concept of adoption was incorporated in the Civil Code of 1960.[1] The Civil Code modified the traditional Ethiopian forms of adoptions, emphasising its advantage for the adopted child, but did not regulate intercountry adoption from Ethiopia. The Revised Family Code Proclamation No 213/2000 (Family Code) amended the relevant provisions of the Civil Code and incorporated provisions applicable to intercountry adoption.[2] The Revised Family Code (Amendment) Proclamation No 1070/2018 (Amendment Proclamation) repealed provisions of the Family Code applicable to intercountry adoption.[3]

This study examines Ethiopia's legislative and policy frameworks on children's rights with particular focus on the implications of the Amendment Proclamation and judicial practice of the Federal Supreme Court in light of international treaties on children: the Convention on the Rights of the Child (CRC),[4] the African Charter on the Rights and Welfare of the Child (ACRWC)[5] and the Hague Conference on Private International Law (Hague Convention)[6]. The study is presented in six sections including the present section. The next section provides a background for the remaining part by discussing the international context of intercountry adoption, including its development, trends and regulation. The third section discusses the legislative frameworks, including the Civil Code, the Family Code and the Amendment Proclamation. The fourth section deals with the practice of the Federal Supreme Court. The fifth section concludes the findings while the last recommends legislative interventions.

2. International Context of Inter-Country Adoption

2.1 Development and Trends

Adoption is a human phenomenon that has been existing since time immemorial. An example in Ethiopia is the *Guddifachaa* in the Oromo culture. Laws regulating adoption emerged in ancient times in different parts of the world. Modern adoption laws, which cut ties with a child's original family and completely integrate the child in the new family, emerged in the

[1] The Civil Code of the Empire of Ethiopia, Proclamation No 165/1960, adopted 5 May 1960, entered into force 11 September 1960 *Negarit Gazeta* Extraordinary Issue No 2, 1960
[2] Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 6th Year Extraordinary Issue No 1, 4 July 2000, chapter 10.
[3] Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 24th Year No 26, 14 February 2018.
[4] Adopted 20 November 1989, entry into force 2 September 1990, GA res 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989).
[5] Adopted 11 July 1990, entered into force 29 November 1999, CAB/LEG/24.9/49 (1990).
[6] Adopted 29 May 1993 by The Hague Conference on Private International Law, entry into force 1 May 1995.

United States and spread to the rest of the world.[7] For example, the State of Massachusetts in the United States had modern adoption law by 1851.[8] With the advantage of 'placing children with families and relieving the state of its burden of feeding and raising children that would otherwise be abandoned or orphaned', domestic adoption had been increasing in the United States until it reached the peak in 1970 and began to fall 'as contraception, abortion, infertility, and the tendency of single parents to keep their children have increased'.[9] The fall of domestic adoption in the United States is connected to the rise of intercountry adoption, which had the effect of substituting domestic adoption.[10]

Intercountry adoption 'emerged in the aftermath of the Second World War as a humanitarian response – in the first instance, largely by families in the United States – to war orphans in a number of European countries and Japan'.[11] The humanitarian motives of finding a family for children who lost their parents began to change in 1970s because of a more general desire in the industrialised countries 'simply to adopt children from abroad'.[12] That is, the humanitarian motive was replaced by the goal of 'meeting the needs of childless couples'.[13] The demand for adoptable children 'came from the more prosperous countries, initially the USA,' most attention going 'first to white children from less privileged countries at the time such as Germany, Greece and later Japan', and then turning attention to other continents because 'the supply of white inter-country children' started to dry up and prospective adopters 'began to compromise on issues concerning the degree of the child's pigmentation'.[14]

As the supply of children from the other continents dwindled, Africa became 'an attractive supplier of adoptees'.[15] Media coverage 'about actress Angelina Jolie's adoption of an Ethiopian child in 2005 and pop-singer Madonna's adoption from Malawi one year later have drawn attention to the possibility of adopting from Africa'.[16] The rise in the supply of children for

[7] Nigel Cantwell, *The Best Interests of the Child in Intercountry Adoption* (Innocenti Insight: UNICEF Office of Research 2014) 26.
[8] Alison Fleisher, 'The Decline of Domestic Adoption: Intercountry Adoption as a Response to Local Adoption Laws and Proposals to Foster Domestic Adoption' (2003) 13/1 *Southern California Review of Law and Women's Studies* 171-198, 174.
[9] Fleisher (n 8) 174.
[10] Fleisher (n 8) 173.
[11] Cantwell (n 7) 26.
[12] Cantwell (n 7) 28.
[13] John Triseliotis, 'Inter-country adoption: In whose best interest?' in Michael Humphrey & Heather Humphrey (eds), *Inter-country Adoption: Practical experiences* (Routledge 1993) 119.
[14] Triseliotis (n 13) 120.
[15] Elvira Carolin Loibl, *The Transnational Illegal Adoption Market: A Criminological Study of the German and Dutch Intercountry Adoption Systems* (Eleven International Publishing 2019) 37.
[16] Loibl (n 15) 37.

intercountry adoptions from Africa 'mostly consists of adoptions from Ethiopia,' which 'placed more than 30,000 children up for adoption' between 2003 and 2013.[17]

The global numbers of children moving for intercountry adoption 'had steadily increased to an estimated total worldwide of over 45,000 a year in 2004'.[18] From the peak in 2004, the total number of intercountry adoptions began falling despite increasing applications from prospective adopters in the receiving countries.[19] The fall can be attributed to a number of factors, including, but are not limited to, 'economic developments, doubts as to whether intercountry adoption was a proper child care measure, stronger reliance on domestic adoption, reports about illegal practices and concerns over adoptions by singles and same sex couples'.[20] Because of the economic development, for example, China improved child welfare system and interest in domestic adoption largely increased although China was one of the top child sending countries.[21]

Several countries suspended intercountry adoption while others banned it altogether, decreasing the number of intercountry adoptions. Sending countries were not prepared for the increasing demand for children as they did not have adequate structures, procedures and laws in place; as a result, they responded by placing moratorium on intercountry adoption as early as 1990s.[22] Moratoria were also put in place for other reasons. Sending Countries may fear that malpractice in intercountry adoption elsewhere may result in similar malpractices in their own jurisdiction.[23] Sending countries may refuse to accept new applications from prospective adopters because of the backlog in dealing with pending applications for which they have few or no adoptable children.[24] Moratoria may also come from receiving countries where they believe that a country of origin lacks structures, procedures, and laws that safeguard the best interest of the child.[25] For example, the United States suspended adoption from Cambodia while Australia suspended adoption from Ethiopia.[26] Sending countries may suspend or ban intercountry adoption as a reaction to 'poorly controlled adoption practices, reflected in a series of scandals and increasing opposition from citizens'.[27]

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[17] Loibl (n 15) 37.
[18] Peter Selman, 'The rise and fall of intercountry adoption in the 21st century' (2009) 52/5 *International Social Work* 575–594, 575.
[19] Selman (n 18) 575.
[20] Loibl (n 15) 36.
[21] Selman (n 18) 590.
[22] Cantwell (n 7) 29.
[23] Cantwell (n 7) 39.
[24] Cantwell (n 7) 39.
[25] Cantwell (n 7) 39.
[26] Cantwell (n 7) 40.
[27] Selman (n 18) 590.

The intercountry adoption is at times 'portrayed as child trafficking or baby selling'.[28] This depiction might have emerged due to the perceived or actual malpractices occurred in some jurisdictions.[29] However, the prevalence of malpractices in certain countries does not eliminate the advantages intercountry adoption offers to certain category of children. As the UNICEF underlines, intercountry adoption pursued in conformity with relevant rules may be the best permanent solution for a child who cannot be cared for in a family setting in her or his country of origin.[30]

2.2 Regulation by International Law

Adoption raises issues of global concern, requiring regulation by international law. States and international organisations have been addressing the phenomenon of intercountry adoption. In the Resolution 41/85 of 3 December 1986, the UN General Assembly adopted a declaration, laying down standards to be applied in intercountry adoption.[31] Article 21 of the Declaration provides guidance to states as to when intercountry adoption becomes an option: 'If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.' It is clear from the Declaration that a child should be cared for in his or her country of origin. Three years later, the UN General Assembly adopted the Convention on the Rights of the Child (CRC), which guarantees children's rights and regulate adoption.[32] The Assembly of Heads of State and Government of the Organization of African Unity (now African Union or AU) followed the footstep of the UN General Assembly and adopted the African Charter on the Rights and Welfare of the Child (ACRWC).[33] In addition, the Hague Conference on Private International Law adopted Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention).[34] The following subsections briefly discusses these treaties.

[28] David M Smolin, 'The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals' (2005) 35/2 *Seton Hall Law Review* 403-493, 404.
[29] See Smolin (n 28) discussing intercountry adoption scandals in India.
[30] UNICEF, *Intercountry adoption* (New York, 26 June 2015), available at, https://www.unicef.org/media/intercountry-adoption (accessed 12 May 2020).
[31] UN General Assembly, *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, A/RES/41/85, available at: https://www.refworld.org/docid/5290a1cf4.html [accessed 7 May 2020].
[32] Adopted 20 November 1989, entry into force 2 September 1990, GA res 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989).
[33] Adopted 11 July 1990, entered into force 29 November 1999, CAB/LEG/24.9/49 (1990).
[34] Adopted 29 May 1993 by The Hague Conference on Private International Law, entry into force 1 May 1995.

2.2.1 The CRC and ACRWC

The CRC is one of the major UN human rights treaties guaranteeing rights of children. Except the United States, all members of the UN are party to the CRC, making it the most ratified human rights treaty in the world.[35] The Committee on the Rights of the Child (CRC Committee) monitors the implementation of the CRC. The CRC is supplemented by three additional protocols: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC);[36] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC),[37] and Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP-CRC-IC).[38] Ethiopia is party to the CRC and its two optional protocols: OP-CRC-AC and OP-CRC-SC.[39]

Compared to the CRC, the ACRWC has smaller geographical application and fewer numbers of state parties. Some members of the African Union that are party to the CRC are yet to become party to the ACRWC.[40] The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) monitors the implementation of the ACRWC. In terms of content, the ACRWC guarantees children's rights recognised in the CRC, but adds some elements specific to Africa, including the complete ban on child soldiers, the prohibition of child marriages, the protection of internally displaced children, and the obligation of states to prevent children from being used for begging.[41] Ethiopia is party to the ACRWC since 2002.[42]

The CRC and the ACRWC enshrine the principle of 'the best interest of the child'. Article 3 of the CRC states the principle: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies,

[35] The number of parties to the CRC are 196 by 10 May 2020, see https://indicators.ohchr.org/.
[36] Adopted 25 May 2000, entered into force 12 February 2002, General Assembly resolution A/RES/54/263; 2173 UNTS 222.
[37] Adopted 25 May 2000, entered into force 18 January 2002, General Assembly resolution A/RES/54/263; 2171 UNTS 227.
[38] Adopted 19 December 2011, entered into force 14 April 2014, General Assembly resolution A/RES/66/138; .
[39] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Ratification Proclamation No 825/2014, *Federal Negarit Gazette*, 20th Year No 19 (17 February 2014); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict Ratification Proclamation No 826/2014, *Federal Negarit Gazette*, 20th Year No 20 (17 February 2014).
[40] Democratic Republic of Congo, Morocco, Somalia, South Sudan and Tunisia, which are members of the African Union, are party to the CRC, but not ACRWC. See Status of ratification at https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf (accessed 10 May 2020).
[41] Frans Viljoen, *International human rights law in Africa* (OUP 2012) 392 -393.
[42] African Charter on the Rights and Welfare of the Child Ratification Proclamation No 283/2002, *Federal Negarit Gazette*, 8th Year No 31 (4 July 2002).

the best interests of the child shall be a primary consideration'. The use of the term 'a primary consideration' in the CRC suggests that 'the best interests of the child are a consideration of first importance among other considerations. They do not, however, have 'absolute priority' over other considerations.'[43] Article 4 of the ACRWC emphasises that the 'the best interest of the child is *the* primary consideration', giving more strength to the principle than the CRC does. That is, the best interest of the child has absolute priority under the ACRWC.

The principle of the best interest of the child requires that all actions, including inter-country adoption, should be undertaken only if they are in the best interest of the child. In particular, Article 21 of the CRC and Article 24 of the ACRWC require states that recognise the system of adoption to 'ensure that the best interests of the child shall be the paramount consideration'. It is interesting to note that states do not have the obligation to recognise or permit the system of adoption under both treaties. The CRC and ACRWC give states the discretion to recognise the system of adoption, but if the states do recognise the system of adoption, they have the obligation to comply with the principle of the best interest of the child.

States that recognise the system of adoption have additional obligation under the CRC and the ACRWC. First, they must establish competent authorities that authorise adoptions.[44] The responsibility of the competent authorities is to determine whether the adoption is permissible or not based on reliable information about the child to be adopted. That is, the adoption of children is a matter of public concern that cannot be left to decisions of individuals alone. States must put in place laws and procedures, which guide the competent authorities in authorising the adoption.[45] The competent authorities should ascertain that concerned persons, including biological parents, relatives or guardians of children to be adopted, should give their informed consent to adoption after they receive proper counselling.[46]

Second, states have the obligation to recognise the subsidiary nature of intercountry adoption. The ACRWC underlines that adoption is a measure of last resort.[47] That is, states should provide alternative care to a child deprived of her or his family environment within their territory. They turn to inter-country adoption as an option 'if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.'[48]

[43] Michael Freeman, 'Article 3: The Best Interests of the Child', in André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde (Eds) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 2007) 61.
[44] CRC, Art 21(a); ACRWC, Art 24(a).
[45] CRC, Art 21(a); ACRWC, Art 24(a).
[46] CRC, Art 21(a); ACRWC, Art 24(a).
[47] ACRWC, Art 24(b).
[48] CRC, Art 21(b); ACRWC, Art 24(b).

The ACRWC provides for additional requirement, limiting intercountry adoption to states parties to the CRC or the ACRWC and to those states adhering to these treaties.

Third, states have the obligation to ensure that a child affected by intercountry adoption 'enjoys safeguards and standards equivalent to those existing in the case of national adoption.'[49] States can put in place similar laws and procedures for both domestic and intercountry adoption to ensure that children enjoy the equivalent 'safeguards and standards'. For example, states may 'establish a machinery to monitor the well-being of the adopted child'.[50] In intercountry adoption, however, it is not easy for the countries of origin to ensure 'equivalent safeguards and standards' concerning post adoption matters because they have no control over the situations in the receiving countries.

Fourth, states have the obligation to ensure that intercountry adoption does not result in improper financial gains for those involved in it.[51] The CRC and the ACRWC prohibit sale of children in the name of adoption. If 'a child is transferred by any person or group of persons to another for remuneration or any other consideration' it constitutes sale of a child.[52] The ACRWC imposes additional obligations on states as it requires them to ensure that intercountry adoption does not result in trafficking of children.[53]

Finally, states of the obligation to promote the objective the CRC and the ACRWC in relation to adoption by concluding bilateral and multilateral treaties, which ensure that 'the placement of the child in another country is carried out by competent authorities or organs'. In other words, the states' obligation is not limited to establishing competent authorities to authorise adoption, but they have undertaken the obligation to promote the establishment of competent authorities in other countries. An example of a multilateral treaty that promotes the purpose of the CRC and the ACRWC is the Hague Convention. The CRC Committee usually recommends that states ratify this convention. In its 2015 Concluding Observations on Reports submitted by Ethiopia, for example, the CRC Committee recommended the ratification of the Hague Convention.[54] The following subsection discusses the Hague Convention in brief.

[49] CRC, Art 21(c); ACRWC, Art 24(c).
[50] ACRWC, Art 24(f).
[51] CRC, Art 21(d); ACRWC, Art 24(d).
[52] OP-CRC-SC, Art 2(a).
[53] ACRWC, Art 24(d).
[54] Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, CRC/C/ETH/CO/4-5 (10 July 2015) Para 52(f).

2.2.2 The Hague Convention

The Hague Convention was adopted in 1993 after the adoption of the CRC and the ACRWC. It defines state obligations relating to intercountry adoption with greater details than the CRC and the ACRWC do. In defining specific state obligations, the Hague Convention takes into account principles recognised in international instruments, particularly the CRC.[55] A total of 102 states are parties to the Hague Convention, indicating that it has fewer parties than the CRC has. Unlike the CRC and the ACRWC, the Hague Convention does not have a committee that monitors its implementation.

The Hague Convention confirms the principle of the best interest of the child recognised in the CRC and the ACRWC. Article 1 of the Hague Convention stipulates that one of its objectives is 'to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights'. In addition, it aims at preventing 'the abduction, the sale of, or traffic in children' by establishing a system of cooperation among states.[56] It also aims at securing the recognition of adoptions among state parties. [57]

The Hague Convention contains specific requirements applicable to intercountry adoptions. It lays down requirements to be met by the child to be adopted, her or his birth parents or guardians, and prospective adoptive parents. Article 4 requires competent authorities of states to give due consideration to 'the possibilities for placement of the child within the State of origin' before considering the option of intercountry adoption.[58] The authorities of state parties should ascertain that intercountry adoption is in the best interest of the child,[59] and ensure that the child, her or his parents or guardians and prospective adoptive parents obtain necessary counselling services before the adoption and give their informed consent.[60] Moreover, the Hague Convention lays down procedures to be followed in intercountry adoption.

Unfortunately, Ethiopia is not a party to the Hague Convention. The ACERWC examined Ethiopia's combined initial, first, second and third periodic report on the implementation the ACRWC during its first Extraordinary Section held from 7 to 11 October 2014.[61] Ethiopia's Delegation led by the then Minister of Women, Children and Youth Affairs (Zenabu Tadesse) presented the report and explained that Ethiopia was in the process of ratifying the Hague Convention.[62] Commending the initiative, the ACERWC encouraged Ethiopia to accelerate the

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[55] Hague Convention, preamble.
[56] Hague Convention, Art 1(b).
[57] Hague Convention, Art 1(c).
[58] Hague Convention, Art 4(b).
[59] Hague Convention, Art 4(b).
[60] Hague Convention, Arts 4 & 5.
[61] ACERWC, Draft Report, ACERWC/ RPT(EXI) (2014).
[62] ACERWC, Draft Report (2014) para 10.

ratification process.[63] However, Ethiopia has not yet become party to the Hague Convention in May 2020.[64]

3. Intercountry Adoption from Ethiopia: Legislative Framework

The concept of adoption has existed in Ethiopia since time immemorial as a form by which ‘children born outside a family unit are taken into the family’.[65] Adoption entails ‘complete assimilation of the outsider as if he had been born within the family’.[66] The advent of modern state laws in the country codified the concept. Adoption was codified in the state laws in 1960 and has been regulated since then by federal and state laws. This section focuses on the federal laws.

3.1 Codification of Adoption: The 1960 Civil Code

The concept of adoption was incorporated in the Civil Code, which was adopted in 1960.[67] The Civil Code lays down rules applicable to the processes and effects of adoption. Adoption establishes artificial filiation, the relationship of a child to a parent, through a contract concluded between the adopter and the adopted child.[68] In the conclusion of the contract, the child is represented by his guardian unless his/her age is 15 years and above, where the child him/herself can conclude the contract.[69] The contract of adoption is not unless the parents of the adopted child give their consent.[70] A child is eligible for adoption from the date of conception until to the age of majority (18 years) as far as the adoption offers advantages for the child.[71] This requirement implies that the adopter must be capable of bringing up the adopted child. In addition, the adopter needs to fulfil the requirement of age, which is 18 years and above.[72] The adoption must be approved by a court, which must hear the adopted child

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[63] ACERWC, Concluding Observations on Ethiopia, para 25.
[64] See Hague Convention status of ratification table, available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=69 (accessed 12 May 2020).
[65] John H Beckstrom, ‘Adoption in Ethiopia Ten Years after the Civil Code’ (1972) 16/2 *Journal of African Law* 145-168, 145; Hiwot Ashenafi, ‘Exploring the Practice of Domestic Adoption: the Case of Selected Organizations in Addis Ababa, Ethiopia’ (MA Thesis, Addis Ababa University 2017) 12.
[66] Beckstrom (n 65) 145.
[67] Proclamation No 165/1960, adopted 5 May 1960, entered into force 11 September 1960 *Negarit Gazeta* Extraordinary Issue No 2, 1960.
[68] Civil Code, Art 796.
[69] Civil Code, Art 802.
[70] Civil Code, Art 803.
[71] Civil Code, Arts 799 & 805.
[72] Civil Code, Art 797. The Amharic version requires that one of the married couples must be 40 years and above to adopt a child.

when she/he is 10 years old or above and ascertain that the contract of adoption offers advantages for the child.[73]

The provisions of the Civil Code do not bear out that the institution of adoption has the purpose of providing home for orphans or vulnerable children. This may be attributed to the customary practices prevailing before the 1960 when the Civil Code was adopted. As Beckstrom recounts, the customary forms of Ethiopian adoption did not have the primary purpose of providing homes for orphans because of the situation in the country until the end of the 20th century:

> [H]omeless children without known family ties seldom existed in the rural, village environment that constituted all of Ethiopia until the turn of the century. If a child found himself without a mother or father due to death or desertion, there was probably virtually always a relative, however remote, who would provide the child with a home.[74]

Rather, the customary forms of Ethiopian adoption served the interest of adopters. As in other African countries, children are considered assets in Ethiopia: 'They help on farms and look after cattle. When parents get older, it is the responsibility of the children to take care of them.'[75] The adopter would get 'an heir and someone to provide comfort and care in old age'.[76] Therefore, Article 805 of the Civil Code, which renders the contract of adoption invalid unless it offers advantages for the adopted child, is a clear departure for the customary forms of Ethiopian adoption.[77] Another problem with the customary forms of Ethiopian adoption was the failure to address the plight of increasing number of orphans, particularly in the cities. Children were abandoned because of the stigma attached to children born outside the institution of marriage and to their mothers.[78] Moreover, Ethiopians were reluctant to adopt a foundling due to the prevailing traditions, including the tendency of marrying another spouse in cases of infertility.[79] In these difficult situations, the adoption of Ethiopian Children by non-nationals was one alternative.

The Civil Code does not make any distinction between nationalities of adopters. In the absence of specific provisions applicable to non-Ethiopian nationals, the same provisions of the Civil Code apply to adopters who are nationals of other states. Indeed, after entry into force, the Civil Code has been applicable to non-nationals who adopted children from Ethiopia. For

[73] Civil Code, Arts 804 & 805.
[74] Beckstrom (n 65) 145.
[75] Solomon Addis Getahun, 'A History of Ethiopia's Newest Immigrants to the United States: Orphans' (2011) 81/2 *Journal des africanistes* 187-202.
[76] Beckstrom (n 65) 145.
[77] Beckstrom (n 65) 152-153.
[78] Beckstrom (n 65) 160.
[79] Beckstrom (n 65) 160.

example, 40 Ethiopian children were adopted by non-Ethiopian nationals from 1963 to 1970.[80] As the Civil Code dictates, adoption is valid only when approved by a court.[81] When non-Ethiopian nationals submitted adoption applications for approval, some lower courts rejected the applications on the ground that non-Ethiopian nationals were not eligible to adopt Ethiopian children; however, the appellate courts approved the adoption applications, on those instances of rejection by lower courts, on the ground that the Civil Code does not make distinction between national and non-national adopters.[82]

The Civil Code had been applicable during the *Derg* regime (the military junta that ruled Ethiopia from 1974 to 1991), but 'child adoption from Ethiopia was unthinkable due to cultural and ideological reasons'.[83] This did not prevent the taking of Ethiopian children particularly orphans from Ethiopia. As humanitarian response, diplomats and other foreigners informally took orphans, who lost their parents due to war, famine, and HIV/AIDS pandemic.[84] Adoption from Ethiopia resumed after the fall of the *Derg* regime,[85] implying that the provisions of the Civil Code begun to apply again until those provisions were replaced by the Revised Family Code in 2000.

In sum, adoption is rooted in Ethiopian culture that usually favoured the interests of the adopter rather than that of the adopted child. The focus shifted to the adopted child when the concept was incorporated in the Civil Code, which expressly provides that adoption is invalid unless it offers advantages to the adopted child. The provisions of the Civil Code applied to all adoptions; it applied to domestic and inter-country adoptions alike.

3.2 Adoption of Orphans: The 1995 Constitution

Children's rights were not clearly guaranteed in the past Ethiopian Constitutions, although the Country had written constitutions and other documents of constitutional nature since 1931. The 1995 Constitution of Federal Democratic Republic of Ethiopia (Constitution) contains a chapter on fundamental rights and freedoms which are applicable to adults and children alike.[86] It also contains a provision specifically applicable to children, guaranteeing children's rights to life, name, nationality, know their parents, be cared for by their parents/guardians, be

[80] Beckstrom (n 65) 161.
[81] Civil Code, Art 804(1).
[82] Beckstrom (n 65) 161.
[83] Getahun (n 75) 194.
[84] Melat Assefa, 'The Ban on Intercountry Adoption in Ethiopia: Implications on the Right to Alternative Care' (MA Thesis, Addis Ababa University 2018) 36.
[85] Peter Selman, 'The rise and fall of intercountry adoption in the 21st century' (2009) 52/5 International Social Work 575–594, 587.
[86] Proclamation No. 1/1995, *Federal Negarit Gazeta*, Year 1, No. 1, 21 August 1995.

protected from exploitation, and be free from corporal punishment.[87] It enshrines the principle of the best interest of the child: 'In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child'.[88]

Adoption is clearly stipulated in the Constitution as a part of children's rights under Article 36(5): 'The State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education'. The Constitution refers to adoption in relation to one category of children, orphans. Orphans are obviously persons younger than 18 years as they are a category of children, but what distinguishes them from other children is their loss of parental care. Thus, an orphan is 'a child who has been deprived of parental care.'[89] The term includes children whose parents are dead or unknown or who are permanently abandoned. Loss of parental care may also result from judicial decisions, particularly when the parents neglect their children or abuse them in any other way. This usually follows conviction and sentence for the crime of child neglect because the failure to bring up a child is a crime for a parent or other person exercising the authority of guardian or tutor.[90]

The fact that the Constitution refers to adoption only in relation to orphans raises this issue: can other children (ie, those who are not orphans) be adopted? Article 36(5) of the Constitution is not framed in a language that establishes a dichotomy of children: orphans and others. Rather, it specifies orphans for additional treatment because of their additional vulnerability. Whether a child is adopted or not, the guiding principle is the best interest of the child. Therefore, any child can be adopted as far as the adoption is to the best interest of the child.

Even for orphans, Article 35(5) of the Constitution does not guarantee adoption as a right in the way it guarantees other rights of the child. The Constitution does not guarantee that 'every orphan has the right to be adopted'. It rather emphasises the obligation of the state, which should provide orphans special protection. The state may carry out this obligation by taking different steps, including legislative and institutional measures. It may promulgate laws punishing mistreatment of orphans and other vulnerable children. The state may establish institutions that are responsible for the care of orphans, including the provision of clothing, food, shelter, education and health care.

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[87] Constitution, Art 36(1).
[88] Constitution, Art 36(2).
[89] Bryan A Garner (ed), *Black's Law Dictionary* (9th ed, West 2009) 1211.
[90] The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 (9 May 2005) Art 659.

Article 36(5) of the Constitution establishes indirect obligation, requiring the state to encourage the establishment of institutions that ensure and promote the adoption of orphans. It is clear from Article 36(5) that the Constitution envisages the establishment of institutions, but it does not require the state to establish those institutions. The obligation of the state is limited to encouraging the establishment of institutions, for example, by providing an environment conducive to the creation and operation of non-governmental organisations (NGOs) and faith-based institutions that ensure and promote the adoption of orphans.

Apparent from the text of Article 36(5) is the intention to provide orphans a family environment suitable for their physical, psychological, intellectual, and emotional development. Adoption creates such a family environment by bonding orphans to adoptive parents, who can be found in Ethiopia or come from other parts of the world. When the adoption is in the best interest of the child, both in-country and inter-country adoption from Ethiopia serve the intended purpose of the Constitution. Promulgated after the adoption of the Constitution, the 2000 Revised Family Code regulates both in-country and inter-country adoption as discussed in the next section.

3.3 Regulation of Intercountry Adoption: The 2000 Family Code

The Revised Family Code Proclamation No 213/2000 (Family Code)[91] brings a major change to the regulation of adoption in Ethiopia by amending the provisions of the Civil Code. As noted above, the Civil Code did not regulate intercountry adoption. The Civil Code was drafted by an international expert in 1950s when intercountry adoption was not international issues. As a result, the Civil Code did not distinguish intercountry adoption from domestic adoption, meaning the same provisions of the Civil Code were applicable to both domestic and intercountry adoption. On the other hand, the Family Code was drafted in 1990s when intercountry adoption, including adoption from Ethiopia, was common. Thus, what is new in the Family Code is the regulation of intercountry adoption.

The Family Code contains common provisions that apply to domestic and intercountry adoptions. It includes additional criteria specific to an Ethiopian child adopted by a foreigner (non-Ethiopian national). In line with the requirements of the CRC and the ACRWC, the Family Code stipulates that adoption should be in the best interest of the child and that an adoption agreement is invalid unless approved by a court of law.[92] Unlike the Civil Code, the Family Code gives courts additional responsibilities if the adopter is a non-Ethiopian national as provided under Article 193(1) of the Family Code:

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[91] *Federal Negarit Gazetta of the Federal Democratic Republic of Ethiopia*, Extra Ordinary Issue No 1/2000 (4 July 2000).
[92] Family Code, Arts 194(1) & 194(2).

> Where the adopter is a foreigner, the court may not approve the adoption unless an authority empowered to follow the wellbeing of children, after collecting and analyzing relevant information about the personal, social and economic position of the adopter, gives its opinion that the agreement is beneficial to the child.

Courts have the obligation to ascertain that adoption is in the best interest of the child based on the assessment of personal, social and economic position of the adopter. Courts receive information about the position of the adopter from the authority empowered to follow up the wellbeing of children, the Ministry of Women, Children and Youth Affairs at the federal level along with the corresponding bureaus in states. The Family Code gives courts a broad power, including the power to reject adoption agreement despite the advice provided by the Ministry and the power to order the latter to provide additional report about the adopter. It is important to note that the Family Code focuses on the nationality of the adopter than on the removal of the child from Ethiopia. In other words, it does not distinguish cases where the adopted child leaves Ethiopia to live with her (his) adopter in another country from cases where the adopted child lives with a non-Ethiopian adopter in Ethiopia. In both cases, the same provisions apply if the adopter is non-Ethiopian.

The subsidiarity of intercountry adoption, which is provided in the CRC, the ACRWC and the Hague Convention, is expressly incorporated in the Family Code. Adoption courts have the obligation to consider the 'absence of access to raise the child in Ethiopia' before approving intercountry adoption from Ethiopia.[93] The Family Code requires courts to reject the application for the approval of intercountry adoption if there are possibilities of raising the child in Ethiopia. This implies that courts should examine the availability of a range of options, including domestic adoption, foster care and other alternatives. Therefore, the Family Code makes intercountry adoption a measure of last resort in line with the international obligation undertaken by Ethiopia. Whether this happens in practice or not is, of course, another question.

The strict compliance with the subsidiarity of intercountry adoption would have required a slight textual reformulation of Article 194(3) of the Family Code. This provision of the Family Code required courts to consider the possibilities of raising the child in Ethiopia but did not obligate them to determine whether such possibilities exists or not, giving them the discretion to approve the intercountry adoption even when there is a possibility to raise the child in Ethiopia. It would have been better if Article 194(3) had required that the absence of access to raise the child in Ethiopia were a condition precedent for the approval of intercountry adoption.

[93] Family Code, Arts 194(3) (d).

In sum, the Family Code regulated intercountry adoption from Ethiopia in line with the international obligation of Ethiopia. In particular, the Family Code responded to the legal developments in intercountry adoption that took place since the adoption of the Civil Code in 1960. It recognises the principle of the best interest of the child in domestic and intercountry adoptions. It underlined the subsidiarity of intercountry adoption, but this provisions and others relating to adoption by a foreigner was repealed in 2018 as discussed below.

3.4 Deregulation of Intercountry Adoption: The 2018 Family Code Amendment

The Revised Family Code (Amendment) Proclamation No 1070/2018 (Amendment Proclamation) repealed the intercountry adoption provisions of the Family Code. The Amendment Proclamation was preceded by a couple of developments in 2017. The Office of the Prime Minister suspended intercountry adoption from Ethiopia.[94] It appears that the suspension was the result of another development, the adoption of National Children's Policy.[95] The policy document summarises the problem and makes a recommendation:

> Inter-country adoption was one alternative childcare option, though in addition to not fully compensating for the love and care the children have missed in their natural homes, there is a downside of children experiencing identity crisis and other problems that will affect them psychologically and socially. It is advisable to support orphan and vulnerable children only through domestic alternative care options instead of pursuing the option of intercountry adoption.[96]

The policy document outlines the problems with intercountry adoption. The main problem is the identity crisis experienced by the adopted children who also face psychological and social problems. The policy document states that the love and care of adoptive family does not compensate for the love and care they missed in the natural home. It is intuitively clear that any alternative care option, whether domestic adoption or foster care, cannot compensate for the love and care adopted children missed in the natural home.

The policy document recommends support for orphans and vulnerable children 'only through domestic alternative care options instead of pursuing the option of intercountry adoption'. This statement does not provide a clear direction because states should not pursue intercountry adoption as an option for supporting orphans and vulnerable children in the first place. As provided in the ACRWC, intercountry adoption is a measure of last resort, not a form of support

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[94] Suspension of Adoptions from Ethiopia (2 May 2017), available at https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/ethiopia-adoption-notice-2may2017.html (accessed 13 May 2020).

[95] Federal Democratic Republic of Ethiopia, National Children's Policy (2017).

[96] National Children's Policy (2017) 6.

provided by states. The policy does not expressly ban intercountry adoption from Ethiopia. Yet, the preamble to the Amendment Proclamation states that its aim at harmonising the Family Code with the National Children's Policy.

The Amendment Proclamation is very short, containing one substantive provision, Article 2:

> 1/ Article 193 of the Proclamation is repealed; 2/ Paragraph (d) of sub-article (3) of Article 194 of the Proclamation is deleted and the existing paragraph (e) is rearranged as paragraph (d); 3/Sub-article (4) of Article 194 of the Proclamation is deleted.

Article 2 of the Amendment Proclamation repeals Articles 193, 194(3)(d) and 194(4) of the Family Code. The result of repealing these provisions eliminates the major changes made to the Ethiopian adoption law in the 2000 Family Code. There is no provision in the Amendment Proclamation that bans intercountry adoption from Ethiopia. It does not even address a simple technical problem of renumbering the remaining provisions of the Family Code. It just takes out Article 193 of the Family Code.

4. Inter-Country Adoption from Ethiopia: Judicial Practice

4.1 Practice the Federal Supreme Court in General

The Federal Supreme Court consistently applies the principle of the best interest of the child in cases involving children, even when the consequence of applying the principle disregards express provisions of the law. An example is its judgment in *Tsedale Demissie v Kifle Demissie*.[97] The Supreme Court examined a case concerning custody of a child who had been taken care of by the applicant (Tsedale Demissie) for 12 years. After the death of the child's mother, the father (Kifle Demissie) sought and obtained custody of the child against the objection by the applicant that the child's father had never cared about the child and his interest in the custody was only to obtain access to the property inherit by the child. The decision of the trial court which was confirmed by the appellate courts was based on article 235(1) of the Family Code of the Southern Nations, Nationalities and Peoples' State, which provides that a surviving parent remains a guardian and tutor of a child when one of his or her parent dies. The law is very clear except that its application would not be in the interest of the child.

The Federal Supreme Court invalidates private juridical acts which are not in the best interest of the child. In *Etsegenet Eshetu v Selamawit Nigussie*, the Court examined the effect of a will that

[97] *Mrs Tsedale Demissie v Mr Kifle Demissie*, Cassation File No. 23632 (Judgment of 6 November 2007), Judgments of the Federal Supreme Court Cassation Division (April 2009) vol. 5, p.188.

is not in the best interest of a child.[98] The concerned child was born to the applicant in a marriage which was dissolved by divorce after which common property was partitioned and the child's father retained the custody of the child. The father made a will, appointing the respondent, who is his sister and the child's aunt, an heir of his estate, and a guardian and tutor of the child. After his death, the respondent applied for a certificate of heir which she obtained from the Addis Ababa Appellate City Court Cassation Division. Upon the application of the applicant (child's mother), the Federal Supreme Court invalidated the will; appointed her the guardian and tutor of the child; and determined that the child was the only heir of the diseased.

The Federal Supreme Court overturned state courts' decisions on the ground of a violation of the rights of the child guaranteed under Article 36(2) of the Constitution and Article 3(1) of the CRC.[99] The Court reasoned that parents are given custody only when it is in the best interest of the child. Therefore, the Court upheld the principle of the best interest of the child disregarding the express provision of the law, Article 235(1) of the Family Code of the Southern Nations, Nationalities and Peoples' State.

The Federal Supreme Court adopted similar views in adoption cases. In *Franswis Poster v Dukeman Veno and another*, the Federal Supreme Court examined an application for the revocation intercountry adoption.[100] The case involves a child in an orphanage administered by the applicant. While processing the approval of the adoption, the adopters wrote to the orphanage that they had changed their mind and that they would not take the child for adoption. The letter did not reach the Court, which approved the adoption agreement. The applicant petitioned the First Instance Court to revoke the adoption as it would be detrimental to the interest of the child. The Court rejected the petition as there was no ground of revocation. The First Instance Court's decision, which was confirmed by the Federal High Court, was based on article 195 of the Family Code, which prohibits in principle the revocation of adoption, but unless the adopter handles the child 'as a slave, or in conditions resembling slavery, or makes him engage in immoral acts for his gain, or handles him in any other manner

[98] Mrs *Etsegenet Eshetu v Mrs Selamawit Nigussie,* Cassation File No. 35710 (Judgment of 25 December 2008), Judgments of the Federal Supreme Court Cassation Division (November 2010) vol. 8, p.243.
[99] Interestingly, the Court invoked a provision of an International Treaty that has not been published in the Federal Negarit Gazeta despite arguments by the academician that courts take judicial notice of laws published in the official law gazette. See Ibrahim Idris 'The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution' (2000) 20 *Journal of Ethiopian Law* 113, at p. 125. Ibrahim concludes that ratified human rights convention 'becomes internally applicable, provided it is internalized or transformed into the Ethiopian legal order through a proclamation to be published in the Federal Negarit Gazeta. Indeed, it is the act of publication that brings any ratified international convention into effect within Ethiopia.'
[100] *Mrs Franswis Poster v Mr Duckman Veno & Ms Barbot Letitiya,* Cassation File No. 44101(Judgment of 3 March 2010), Judgments of the Federal Supreme Court Cassation Division (November 2010) vol. 10, p.41.

that is detrimental to his future.'[101] It is clear from the case that if the adoption was not revoked, it would not be possible for the orphanage to find a permanent solution for the care of the child by looking for another adopter.

Despite Article 195(1) of the Family Code, which prohibits the revocation of adoption except on limited grounds, the Federal Supreme Court revoked the adoption on a ground not stated in Article 195(1). The Court held that revocation is in the best interest of the child provided under article 36 of the Constitution. Confirming its earlier judgments in *Tsedale Demissie v Kifle Demissie* and *Etsegenet Eshetu v Selamawit Nigussie,* the Court emphasised the best interest of the child as one of the basic principles enshrined in the CRC and the ACRWC which are part of the Ethiopian law according to Article 9(4) of the Constitution. To enforce children's rights guaranteed under the Constitution and international human rights treaties to which Ethiopia is a party, the Court disregarded Article 195 of the Family Code. In this regard, the Court read a new ground of revoking an adoption into article 195(2). The Court held that an adoption can be revoked when it causes possible disadvantages to the future of a child or when it is detrimental to his future.

In *re Betezata Children's Home Association and others*, the Federal Supreme Court considered an application for revocation of intercountry adoption from Ethiopia.[102] The ground of revocation was that the adopters would not have concluded the adoption agreement, if they had known that the child was suffering from mental underdevelopment since they had no means to provide for the treatment of the child. Confirming its judgment in *Franswis Poster v Dukeman Veno and another,* Court held that the adoption should be revoked when it is ascertained that the adoption would endanger the welfare of the child. Hence, it is not in the best interest of the Child.

In sum, the practice of the Federal Supreme Court shows that the Court consistently applies the principle of the best interest of the child recognised in the Constitution and in international human rights treaties ratified by Ethiopia. What is more, the Court's application of the principle overrides express provision of the law.

4.2 The 2020 Judgment of the Federal Supreme Court

The application of the Amendment Proclamation was tested in the case concerning intercountry adoption of an Ethiopian child (Efrata Wondwossen) by a US national of Ethiopian

[101] The Revised Family Code Proclamation No. 213/2000, Federal Negarit Gazeta, 6th Year Extraordinary Issue No. 1, 4 July 2000.
[102] Re *Betezata Children's Home Association and others,* Cassation File No. 52691 (Judgment of 30 April 2010), Judgments of the Federal Supreme Court Cassation Division (November 2010) vol. 10, p.72.

origin (Tirunesh Bekele Seyoum).[103] The adoption was concluded between relatives: birth mother (Woinshet Tadesse Aterew) and father (Wondwossen Tadesse Yisma) agreed with an adoptive parent of foreign national (Tirunesh, who was Woinshet's sister) on the adoption of their child (Efrata). The adopter had supported and regarded the adopted child as her own child even before the conclusion of the adoption agreement because relatives help each other as per Ethiopian cultural traditions.

The adoption agreement was submitted to the Federal First Instance Court for approval, but the Court rejected to approve the agreement on the ground that the Amendment Proclamation banned intercountry adoption from Ethiopia. The Federal High Court confirmed the judgment on appeal. The Cassation Bench of the Federal Supreme Court reversed the judgments of the lower courts, emphasising that the Amendment Proclamation does not prohibit adoption by foreign nationals of Ethiopian origin.

The text of the Amendment Proclamation does not prohibit intercountry adoption from Ethiopia, as noted above. The Federal First Instance Court and the Federal High Court understood that the Amendment Proclamation absolutely bans intercountry adoption, whether the adopter is a foreign national of Ethiopian origin or not. The issue of distinguishing foreigners of Ethiopian national from other foreigners was raised and discussed during the public consultation organised on the Amendment Proclamation but, in the end, no distinction was made between them because such distinction may result in discrimination contrary to the CRC and affect Ethiopia's diplomatic relations with other countries.[104]

The Cassation Bench of the Federal Supreme Court also understood the Amendment Proclamation as a ban on intercountry adoption, but not an absolute ban. Citing its judgment in *Tsedale Demissie v Kifle Demissie* and *Etsegenet Eshetu v Selamawit Nigussie,* the Court confirmed the priority of the principle of the best interest of the child over other considerations.

5. Conclusions

The Family Code incorporates fundamental principles applicable to intercountry adoption recognised in the CRC, the ACRWC, and the Hague Convention: it underlines the subsidiary nature of intercountry adoption; and it requires courts to apply the principle of the best interest of the child before approving domestic and intercountry adoptions. There is always a room for improvement. It is necessary to incorporate new developments and address loopholes

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[103] Re *Wondwossen Tadesse Yisma, Woinshet Tadesse Aterew & Tirunesh Bekele Siyoum*, Federal Cassation File No 189201 (Federal Supreme Court judgment of 11 March 2020).
[104] Melat (n 84) 45.

uncovered by the practice. Thus, one would reasonably expect the 2018 Amendment Proclamation to address gaps in the Family Code and incorporate new developments.

The Amendment Proclamation, however, does not bring any improvement. It simply repeals provisions of the Family Code applicable to intercountry adoption. Given the fact that the 2018 Amendment Proclamation repeals Articles 193 and 194 (3) (d) and (4) of the Family Code, which contain rules that provide an additional protective regime that apply only to intercountry adoptions, one could argue that the 2018 Amendment makes intercountry adoptions easier rather than banning them. The result is deregulation, taking the country back to the legal regime existing before the year 2000 when the Family Code was promulgated. Therefore, the legislative development relating to intercountry adoption in Ethiopia is regressive, bringing more confusions than it does bring clarity.

The text of the Amendment Proclamation does not contain any provision banning intercountry adoption from Ethiopia. It makes no reference to a word implying intercountry adoption or adoption by a foreigner, confusing courts as to its effect. As the judgment of the Cassation Bench of the Federal Supreme Court in *re Wondwossen Tadesse Yisma and others* indicates, the lower courts took the Amendment Proclamation to mean an absolute ban on intercountry adoption while the Federal Supreme Court found an exception to it, confirming the application of the best interest of the child.

Whereas this diagnostic study focuses on intercountry adoption, it is apt to mention that the way the courts have assumed that the Amendment Proclamation prohibits intercountry adoptions, even though it clearly does not, raises serious questions about the role courts will play in strengthening the rule of law in Ethiopia. The courts did not conclude that the Amendment Proclamation prohibits intercountry adoptions based on some interpretative feat (for example based on a legislative intent or non-absurd purposive construction etc.). The judiciary simply ignored the law and assumed that a certain activity is prohibited. A judiciary that is expected to be the guardian of the rule of law ought to have adhered to the principle of legality in these cases.

6. Recommendations

Theoretically, one could see how one of the solutions to the conundrum created by the bad drafting behind the Amendment Proclamation is to pass a law that accomplishes what the former intended. This course of action is, however, not recommended because the envisaged prohibition go against the principle of the best interest of the child contained in international treaties Ethiopia is a party to and the positive laws of Ethiopia including the Constitution. Passing a law that actively prohibits international adoptions, even when it is unequivocally clear that there are no better alternatives and such adoption is best for the protection of the rights

and interests of children, is not only unconscionable but can also violate Article 36 of the Constitution. This diagnostic study does not delve into this possibility in much detail because, in the absence of a prohibitive law to discuss, that would require the Working Group to delve into an abstract discussion of what the law could be and how that may or may not violate the Constitution or the precept of the best interest of the child. We therefore turn to possible solutions based on Ethiopian law as it stands.

A simple solution is to repeal and the Amendment Proclamation, replacing it with a new proclamation that revives Articles 193, 194(3)(d) and 194(4) of the Family Code. This solution is simple because it involves changes to a short proclamation consisting of three substantive provisions. The new proclamation will also be short, even shorter than the Amendment Proclamation, stating the revival of the repealed provisions. This simple solution would eliminate at least the regressive legislative deployment brought by the Amendment Proclamation and result in minimum regulation of intercountry adoption From Ethiopia.

Repealing the Amendment Proclamation, albeit simple and easy, is not an ideal solution. A better alternative is drafting detailed provisions applicable to intercountry adoption from Ethiopia. The new provisions preferably include detailed procedures that rivals the provisions of the Hague Convention. In particular, the new provisions include the requirement that intercountry adoption is permitted only if there is no possibility of bringing up a child in Ethiopia with the exception that such a rule does not apply to intercountry adoption by relatives. This legislative option has at least two advantages. First, it gives adequate guidance to courts and other stakeholders on the course of their actions. Second, it pre-empts the need to make changes if Ethiopia ratifies the Hague Convention.

The revision of the law applicable intercountry adoption should ideally be complemented by the ratification of the Hague Convention. By the ratification, Ethiopia will complete the process already started and implement the recommendations of the CRC Committee and ACERWC. The ratification will bring additional benefits to the protection of the rights of the child affected by intercountry adoption, enabling the Ministry of Women, Children and Youth Affairs to cooperate with similar authorities in states that are already parties to the Hague Convention. This improves the post adoption follow-up by the Ministry, which in the past relied on adoption agencies in Ethiopia.

The legislative interventions alone, it must be noted, cannot be a panacea for the malaise plaguing intercountry adoption from Ethiopia because it is not a legal problem in the first place. The malpractices and illegal adoptions reported in Ethiopia did not occur because of the gaps in the law, rather due to other factors such as corruption, the society's perception and value about a child and poverty. Without addressing these causes, the revision of laws and ratification of international treaties by themselves will not produce the desired goal.