

***ST. MARY'S UNIVERCITY COLLEGE***

**FUCULTY OF LAW**

**THE LEGAL PROTECTION OF CHILDEREN AGINST  
SEXUAL ABUSES WITH SPECIFIC EMPHASIS TO THE  
CASES IN ARADA SUB CITY, ADDIS ABABA.**

**BY HANA AGIDEW AWANO**

**ADDIS ABABA, ETIOPIA**

**JULY, 2008**

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**BY HANA AGIDEW AWANO**

**ADVISOR: ATO TIUMELISSAN LEMMA**

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# Child Sexual Abuse

The legal protection of children against sexual abuse with specific emphasis to the cases in Arada sub city, Addis Ababa

**Hana Agidew Awano**  
**St. Mary's University College**  
**Department of law**  
**July, 2008**



***There is no universal definition of child sexual abuse. However, the major characteristic of any sexual abuse is the dominant position of an adult that allows him or her to force a child into sexual activity.***

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Hana Agidew

**TABLE OF ABRIVATION (ACROMYMS)**

**RFC---- RIVISED FAMILY LAW OF**

**ICCPR ----INTRNATINAL CONVENTION ON CIVIL AND POLTICAL  
RIGHT.**

**CRC ---- INTRNATINAL CONVENTION ONTHE RIGHT OF THE CHILD.**

**UDHR --- UNVERSL DECLARATION OF HUMAN RIGHT.**

**HIV/ AIDS – human Immune Deficiency syndrome /Acquired Immune  
Deficiency syndrome.**

**UN – UNITED NATIONS.**

**MOLSA--- MINSTER OF LABOUR AND SOCIAL AFFIRS.**



## INTRODUCTION

There is no universal definition of child sexual abuse. However, a major characteristic of any sexual abuse is the dominant position of an adult that allows him or her to force a child into sexual activity. Child sexual abuse may include touching a child's genitals, oral-genital contact, digital penetration, and vaginal and anal intercourse. Child sexual abuse is not solely restricted to physical contact; such abuse could include non contact abuse, such as exposure and child pornography. Abuse by peers also occurs.

Accurate statistics on the prevalence of child and adolescent sexual abuse are difficult to collect because of problems of underreporting and the lack of one definition of what constitutes such abuse. However, there is general agreement among mental health and child protection professionals that child sexual abuse is not uncommon and is a serious problem.

The impact of sexual abuse can range from no apparent effects to very severe ones. Typically, children who experience the most serious types of abuse—abuse involving family members and high degrees of physical force—exhibit behavior problems. However, children who are the victims of sexual abuse are also often exposed to a variety of difficult circumstances in their lives, including drug abuse. The sexual abuse and its aftermath may be only part of the child's negative experiences and subsequent behaviors. Therefore, correctly diagnosing abuse is often complex. Conclusive physical evidence of sexual abuse is relatively rare in suspected cases. For all of these reasons, when abuse is suspected, an appropriately trained health professional should be consulted. <sup>1</sup>



1. Statistical/prevalence of child sexual abuse ([http://www.darkness 2 light.org](http://www.darkness2light.org), [http://www.advocates to youth.org](http://www.advocates toyouth.org) (PAN Ddra's Box/ the secrecy of child sexual abuse./Nancy Fanlker, PHD

# CHAPTER ONE

## 1. DEFINITION OF CHILD SEXUAL ABUSE

In order to define child sexual abuse we must first find out the meaning of the words child and child sexual abuse.

**1.1 Child** –The research adopted the definition of a child used by the United Nations Convention on the Rights of the Child (1989) (UNCRC) was adopted unanimously without modifications by the general assembly of the UN on 20 nov,1989 .it entered in to force as international human rights law on 2 September 1990, after its ratification by the 20 required states which defines “A child as a person under 18 years of age unless the relevant national law specifies an earlier age of majority”

Today, 191 counties have ratified the convention including Ethiopia in 1992. 2

**1.2 Child sexual abuse** :- is an umbrella term describing criminal and civil offenses in which an adult engages in sexual activity with a minor or exploits a minor for the purpose of sexual gratification. This term includes **Sexual assault, Sexual molestation, and Sexual exploitation**

**1.2.1 Sexual assault** – a term defining offenses in which an adult touches a minor for the gratification; for example, rape Purpose of sexual.

**2.2 Sexual molestation** – a term defining offenses in which an adult engages in non-penetrative activity with a minor for the purpose of sexual gratification; .

**1.2.3 Sexual exploitation** – a term defining offenses in which an adult victimizes a minor for advancement, sexual gratification, or profit; for example, prostituting a child, and creating or trafficking in child pornography.

\* A person who has been convicted for one or more child sexual offenses is called **Child sexual offender** 3

2. Children’s right in Ethiopia; a situation analysis: save children march 2008, p-201

-convention on the rights of the childe .Art.1

3 .[http:// www.apd.org](http://www.apd.org) (American psychological association) ;

[Wikipelica-free enciclopedia/en.wikipeli.org/](http://Wikipelica-free enciclopedia/en.wikipeli.org/)

### **1.3. STATEMENT OF THE PROBLEM**

Sexual abuse and violence are serious problems that transcend racial, economic, social and regional lines. Violence is frequently directed toward females and youth, who lack the economic and social status to resist or avoid it. Adolescents and young women, in particular, may experience abuses in the form of domestic violence, rape and sexual assault, sexual exploitation, and/or female genital mutilation. Accurately estimating the prevalence of sexual abuse and violence in the developing world, like Ethiopia, is difficult due to the limited amount of research done on the subject and few adolescent health programs in sub-Saharan African address these critical issues.

***On October 11, 2006 the United Nations (UN) released the first UN Secretary-General's Study on Violence against Children, which addresses violence against children within the family, schools, places where children work, and communities. The report includes the following statistical data:***

- 150 million girls and 73 million boys under 18 experienced forced sexual intercourse or other forms of sexual violence during 2002.
- Worldwide, 40-47 percent of sexual assaults are committed against girls age 15 or younger.

- In a study in a South African hospital of children under age 15 in whom a diagnosis of child abuse was considered, 45 percent of the children reported having been the target of sexual abuse. Thirty-one percent reported being physically abused, and sexual abuse was suspected but not confirmed in another 14 percent of the children. A study in Uganda revealed that 49 percent of primary school girls say they had been forced to have sexual intercourse.

- Sexual exploitation of young people is frequently facilitated by their lack of economic power and job opportunities. In **Addis-Ababa, Ethiopia**, an estimated 30 percent (about 30,000) of prostitutes are women ranging from 12-26 years of age. The number of adolescent females engaged in informal prostitution may be far greater.

- Forced marriage of young girls to older males leaves girls with little or no economic or social power. In rural **Northern Ethiopia**, the mean age for first marriage is 13.5 years for girls and 19.5 years for boys. While the average age at marriage is rising, twelve of sixteen countries included in the Demographic Health Survey have an average age at first marriage of between 16 and 21.2

- The number of unreported cases of child sexual abuse is far greater than the available data, because children are afraid to tell anyone what has happened to them, and **the legal procedure for validating an episode is difficult**. When practitioners are called upon to provide investigative and evaluative procedures in child sexual abuse cases, they are often at a loss as to how to proceed. As there are no published formats, guidelines or techniques for conducting the best possible investigation into allegations of child sex abuse in our country, devising acceptable procedures for determining the validity of child sex abuse allegations has a great importance. This research is done to assess the techniques employed in our setup in providing a valid examination of a child alleging sexual abuse that will be defensible in a court of law. 4

4 . Statistical/prevalence of child sexual abuse (<http://www.darkness2light.org>,  
<http://www.advocates toyouth.org> (PAN Ddra's Box/ the secrecy of child sexual abuse./Nancy Fanlker, PHD

#### **1.4. OBJECTIVE OF THE RESEARCH**

The objective of this research is to assess the procedure of legally and practically solving the problems related to child sexual abuse.

In order to achieve this, attempt will be made to

- A. Examine the mechanisms of validating a case of child sexual abuse.
- B. Analyze the most common problems in investigative methods.
- C. Suggest approaches to the clinical and police investigation, prosecution and court adjudication of alleged child sexual abuse.

#### **1.5 SIGNIFICANCE OF THE RESAERCH**

Child sexual abuse has been recognized specifically as a type of child maltreatment in many countries criminal law including our country. Child sexual abuse is illegal in every part of the world but the application of the law & the process of validating a case of child sexual abuse are different in different countries. In our setup where most cases of sexual abuse are under reported because of unawareness of the basic rights of children & cultural values against reporting abuse makes it difficult to assess the problem accurately. The research will try to address basics questions:

- ❖ By figuring out components of case analysis in child sexual abuse
- ❖ By analyzing the commonest challenges in the process of investigating cases of sexual abuse
- ❖ By comparing our procedure with other country's

## **1.6. SCOPE OF THE RESEARCH**

The scope of the research focuses on child abuse limited to child sexual abuse particularly in connection with cases in Arada sub city ,of Addis Ababa starting form October 2004up to October 2005.

Institution, which made available files contain cases on child sexual abuse are the following.

- ❖ The Ethiopian women’s lawyer association.
- ❖ The Federal High court of Addis Ababa.
- ❖ The Minster of justice library.

## **1.7. LIMITATION OF THE REASEARCH**

There were great limitations in this research.

- Under the existing condition most cases on Child sexual abuse underreported.
  - The short time frame taken to revise cases affects the reliability of the conclusion.
  - The keeping of records and the quality of data reporting in the prosecution and judicial system is poor.
  - Medical testimonies are sometimes contradictory.
  - Many government employs are relevant to co-operate fully on research method.
  - The number of researches done in child sexual abuse in our country is limited .
- Due to this limitation sufficient numbers of reliable cases on child sexual abuse are not available.

## **1.8. METHOD OF THE RESEARCH**

This research designed to analyze the process of legal procedure in connection with cases in the criminal justice system with particular reference to the Arada sub city starting from reporting to police up to completion of court trail. It includes revision of relevant legal provisions analysis of the data collected.

# **HAPTER TWO**

## **2. INTERNATIONAL AND NATIONAL LAW ON CHILD RIGHTS AND SEXUAL ABUSE.**

There are various international and national laws & law conventions which are acceptable and signed by Ethiopia in this chapter we will try to see some of the provision of these conventions in relation to child rights and child sexual abuse.

### **2.1 INTERNATIONAL LAW**

The universal general assembly has adopted various binding documents aimed at ensuring promotion and protection of the rights of child.

The league of nation, the first major steps in the adoption of many conventions efforts to address the issue of promotion and protection of child rights by the international community later the United Nations has demonstrated the leading role .3

Particular care to the child has been stated in

- A. Declaration of the rights of the child
- B. International convention on economic, social and cultural rights
- C.

#### **2.1.2. CONVENTION ON THE RIGHTS OF THE CHILD /CRC/**

- More over art.34 and 35 require that signatories protect their nation's children from all forms of sexual exploitation and sexual abuse. This includes outlawing the coercion of a child to perform sexual activity the prostitution of children and exploitation of children in pornography performance and materials. Signatories also agree to prevent abduction, sale or trafficking of children for any purpose or in any form.
- Further more art.7/1 and 8/1 of this convention acknowledges that 'every child has certain basic rights, including the right to life, his or her own name, to acquire a nationality and to know and cared for by his parents.
- Art 1 of this convention obliges states to allow parents to exercise their parental responsibilities the convention also acknowledges that children the right to

express their opinion and to have those opinions heard and acted up on when appropriate to be protected from abuse or exploitation , to have their privacy protected and requires that their lives not be subjected to excessive interference and Art.5 Obliges that

Signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and ask that the child's view point be heard in such cases.

Art 16/1 of the convention asserts that no child shall be subjected to arbitrary or unlawful interference with his /her privacy, family, home or correspondence, or to unlawful attacks on his or her honor and reputation. The child has also the right to protection of law against such interference or attacks. (Art 16/2)

Art 16/1 of the convention asserts that no child shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. The child has also the right to protection of law against such interference or attacks. (Art 16/1&2)

According to Art.27/1 States parties recognize the right of the every child to the standard of living adequate for the child adequate for the child's physical, mental, spiritual, moral or special development. And the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's physical, mental, spiritual, moral or special development.

Art.39 of the convention concludes that some states parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of child victim of; any form of neglect exploitation, or abuse

The convention is child centric and deals with the child-specific needs and rights .it requires that states act in the best interests of the child.

One hundred forty nations are signatories to the United Nations Convention on the Rights of the Child. This international Convention is child centric and deals with the child-specific needs and rights .it requires that states act in the best interests of the child.

The approach of the convention is different from that of the common law found in many countries that had previously treated children and wives as possessions or chattels the ownership of which was often argued over in family dispute.

2.1.3 Additionally **in the convention on economic, social and cultural rights (ECSEER)** (in particular in Art. 10) the statutes and statutes and relevant in instrument of specialized agencies and international organization concerned with the welfare of children. And art.3 asserts that special measure of protection assistance should be taken on behalf of all children and young persons without any discrimination for reasons of percentage or other conditions.

#### **2.1.4. The universal declaration of human right (UDHR)**

Art.25/2 has proclaimed that childhood is entitled to special care and assistance, convinced that the family, as the fundamental group society and natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance, so that it can fully assume its responsibility within the community.

Art.22 of the convention asserts that every one, as a member of the society, has the right to social security and is entitled to realize through national effort and international co-operation and in accordance with the organization and resource of each state, of the economic, social and cultural rights, indispensable for free development of his personality.

The role of government executive organs in fighting child sexual exploitation must not only be limited by providing the necessary policy framework but should be also required an appropriate follow up.

The establishments of national inter – ministerial committee on CRC, the general arrangement of program and national plan of action of such committee is encouraging.

Moreover, the committee is responsible for the coordination and facilitation of intervention activities by other actors on issues related to child rights. 5



5. Government response MOLSA pp.35 may2005

## **2.2. ETIOPIAN LAW**

Ethiopia has introduced various policies and legislation on the right of children particularly on child sexual abuse this include THE FDRE CONSTITUTION OF 1995;THE CRIMINAL CODE OF 2004;AND THE NEWLY REVISED FAMILY LAW OF 2000.

### **2.2.1 THE FDRE CONSTITUTION OF 1995**

- In its 1995 constitution Ethiopia provides for a whole inventory of fundamental rights and freedoms.
- nearly one third of the constitution (31 articles ) is dedicated exclusively to human right
- The constitution appears to provide a broader coverage and recognition to the rights of children.
  - it provides for general policy guideline
  - "In art 36/1/d every child has the right not to be subject to exploitative practice.
  - Neither to be required to be nor permitted to perform work which may be hazardous or harmful to his or her education, health or well – being.
  - In art.36 /2 of this constitution declares that n all actions concerning children undertaken by public and privet welfare institution ; court of law ,administrative authorities or legislative bodies; the primarily consideration shall be the best interest of the child
  - Art 16 of the constitution asserts that every one has the right to protection against bodily harm.
  - Art 13/1 of the constitution also obliges for all legislative, executive and judicial organ of government to strictly respect enforce the provision of fundamental rights and freedoms in their day to day undertaking.
  - Other important point the constitution made all international agreement s ratified by Ethiopia are an integral part of the law of the land 6 which includes ICCPR,ICESCR,CRC,ACRWC.
  - The constitution made these documents as a term of reference in case of interpretation 7 and demonstrates striking similarly in the basic principles regarding protection and promotion of child rights with these international and regional documents.

71/2 Though some of these laws are not proclaimed in Negarit Gazeta, in the language of most Ethiopian lawyers can understand and get access and know the existence of such conventions since ignorance of law has no excuse.

6. Art 9/4

7- Art. 13/2

## **2.2.2 NEWLY REVISED FAMILY LAW OF 2000** **/RFC/**

The revised family code was proclaimed in July 2000 following amendment to the family law of Ethiopia ;which up until then was part of the civil code of Ethiopia of 1960.this code only applicable to federal cities of Addis Ababa and Dire Dawa.

The RFC promulgated that minor is a person of either sex who has not attained the full age of eighteen years 8

This code also purports to give “priority to the well - being, up bringing and protection of children in accordance with the constitution and international instrument which Ethiopia has ratified 9

The code has incorporated the principle of the best interest of the child as per art 3/1 of UNCRC art.36 of FDRE constitution .and it presume that the minor is incapable of doing a broad range of legally binding acts and places the care and protection the minor in such circumstance under the care and protection of specified organs .the code also lays down rules of procedure for the removal of such organs where said organ fails to discharge their function to the determinate of the child. 10

8 - Art 215 RFC

9 – Preamble

10 - Art 245 -249 RFC

### **2.2.3 THE CRIMINAL CODE OF FDRE OF 2004**

Features that distinguish the criminal code of 2004 from the penal code of 1957 are that;

- 1/ it criminalizes some acts which were not offences in the previous code
- 2/ it specifies crimes in a much greater detail than the former code;
- 3/ it increases the minimum and maximum penalties of already existing offences so as the punishment fits the seriousness of the crime.

\*\* Most of the provisions promulgated in this law in relation to sexual abuse against child are mentioned below.

According to Art.620/2/a of the new criminal code the rape of a girl between the ages of thirteen to eighteen is punishable with rigorous imprisonment from five years to twenty years; where as the punishment for rape of a girl below the age of fifteen years was punishable from one year to fifteen years rigorous imprisonment on the base of Art.589/2/a of the former code. It can be easily understood that the minimum and maximum penalties for rape are increased under the revised criminal law.

Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment. (Art.620/3)

Where the rape is related to illegal restraint or abduction of the victim, or where communicable disease has been transmitted to her, the relevant provisions of this code shall apply concurrently. (Art.620/4)

There were no similar sub articles in the 1957 penal code.

Not only the physical person but the juridical person is also punishable for the sexual outrages and immoral acts (Art.632, 638 and 645)

\*\* This section does not include the assessment of homosexual act on children

- Art 626/1 criminalizes performing sexual intercourse with a minor who is between thirteen to eighteen years and impose rigorous imprisonment from 3 years up to 15 years
- According to 626/2 rigorous imprisonment not exceeding 7 years is imposed on women who cause a male minor between the ages of 13-18 years to perform sexual intercourse with her.
- Rigorous imprisonment not exceeding 5 years is also played down for performing an act corresponding to the sexual act or any other indecent act up on minor of opposite sex who is between the age of 13-18 years .(Art.626/3)
- The code aggravates the penalties if the victim is the pupil, apprentice, domestic servant or ward of the criminal, or a child entrusted to his custody or care, or any other way directly dependent up on or subordinate to him.(Art.626/4)
- Art 627/1 criminalizes for performing sexual intercourse with the minor of opposite sex who is under the age of 13 years and imposes rigorous imprisonment from 13 up to 25 years.
- A women who cause a male minor under the age of thirteen years to perform sexual inter course with her is punishable rigorous imprisonment not exceeding ten years. .(Art.627/2)
- - Rigorous imprisonment not exceeding 10 years is imposed on a criminal who performs an act corresponding to the sexual act or any other indecent act up on a minor, of opposite sex who is under age of 13 years, induce him to perform such an act, or deliberately perform such an act in his presence. .(Art.627/3)

where the victim is pupil, apprentice, domestic servant or ward of the criminal ,or a child entrusted to his custody or care ,or any other way directly dependent up on or subordinate to him,

A/ in respect of the crime prescribed in sub art (1) above the punishment shall be more server on such a person than when it is committed to other person;

- B/ in respect of the crime prescribed in sub art (2) above the punishment shall be rigorous imprisonment from three years to fifteen years. .(Art.627/4)
- Where the sexual outrage has caused grave bodily or mentally injury to or death of the victim, the punishment shall be rigorous imprisonment for life. .(Art.627/5)

For an instance the provision of Art.632 read as follows where an official or employee of a judicial person or any other person commits on of the crimes in the provision of

Article 626-628and 631 on a minor living in than institution established for the purpose of up bringing, educating training or in any other way taking care of children, and were the operation or administration of such juridical person has created a favorable condition for the commission of such crime, or where the crime is committed because the juridical person has not provided sufficient safeguard ,the juridical person shall be punishable in accordance with Article 90 of this code according to the kind and gravity of each crime .

Another form in which child sexual abuse can take place is in connection with abduction and early marriage.

Greater attention has been given to child abduction in the revised code Art.590 has been drafted so as to contain four Articles, while Art.560 of the 1957 penal code has only two sub Articles, more over where the abduction of a child is perpetrated for the purpose of debauchery or prostitution, the punishment is rigorous imprisonment from ten years up to twenty five years (Art.590/1/a and590/2/e)

In this case the minimum and maximum penalties are much higher than those prescribed under Art.561/1(a) and **561/1 (a)**

In the case of an early marriage, it is clearly provided for under Art.648 of the criminal code of 2004, that such an act is punishable with rigorous imprisonment not exceeding Three years ,where the age of the victim is thirteen years or above ;not exceeding seven years; where the age of the victim is below thirteen years.

There was no such provision in the former code, which penalized early marriage to such a great extent.

The conclusion of marriage even with adult women does not preclude the abductor from being punished (Art.587/3 of the 2004 criminal law)but this fact did not entail the criminalization of abduction when marriage took place after the abduction(Art.558 of the former code)

As stated above a criminal code of Ethiopia 2004 provides for various legal provisions in which sex criminals are punished severely and the victims are taken care of by different institutions.

The code has preventive role in addressing social problems by giving due notice of punishable behavior as understood within that legal system and deterring members of the society from committing another crime and make them a lesson to others or providing for their reform and measures to prevent the commission of further crime.<sup>11</sup>

Special safety measure aimed at criminal process that involves children as victims of a crime.

One of the driving reasons behind the promulgation of regional law and ratification of international agreements in relation to child rights is because

- Children are often victims of physical, mental, and sexual abuse and prostitution seriously damages their emotional and social development
- AIDS also is a contributing factor to their problem they suffer from serious psychological disorders including self-degradation & hopelessness and guilty & hatred towards men and the society at large and also to protect them from emotional neglect such as deprivation of family, love, affection loneliness.
- Sexual abuse, particularly sexual exploitation of girls by adults, raping, prostitution, early and unwanted pregnancies, abortion, STD and HIV/AIDS, drug and alcoholism<sup>12</sup>
- And from physical abuses that involve corporal punishment, emotional maltreatment such as blaming, belittling, verbal attacking, rejecting, humiliating and bad remarks.

Due to the commission of child sexual abuse in the country;

- Never attains the required socio-economic sustainable development.
- Face to high child death rate, low life expectancy and intolerable poverty.
- Deprive from developing higher skill and technological capabilities that are required for economic development or transformation to attain higher income and better standard of living and
- Destroy its sovereignty and future because no sovereignty without strong development and capable generation to keep up the political, social, economic and other functions of the country.<sup>13</sup>

<sup>11</sup>-Art.1 of the new criminal code of Ethiopia 2004

<sup>12</sup>. Hope enterprise /1997 / child prostitution, the crises unto death, best interest of the Ethiopian child vol. 1 no.2

<sup>13</sup>. The legal protection of children against child labor in Ethiopia law and policy

## HAPTER THREE

### 3. LEGAL PROCEDURS

The legal procedure for a case of child sexual abuse in the criminal justice system composed of serious of events extending from accusation to trial.

- A. Reporting Child Sexual Abuse
- B. Medical Examinations
- C. Interviews
- D. Assembling evidence
- E. The trial

A child sexual abuse investigation requires coordination of several professionals and their various duties. When a child sexual abuse allegation is reported, the child will come in contact with, law enforcement detectives, medical examiners, victim advocates, district attorneys, and judges. Not only is there a need for coordination of services, but there clearly is a need for standardized approaches to the investigative procedures used by this type of professionals.<sup>14</sup>

#### **3.1. The problems on reporting child sexual abuse**

There are many problems in connection with reporting to the police about child sexual abuse and gathering evidences on these crimes

- a. The first problem is that members of the family of sexually abused child are not quick to report to the police as in other ordinary crimes.

Many Ethiopians are reluctant to report such outrages because it is considered shameful for the victim and her family, the attitude is now changing and people are learning to report.

- b. Another problem in reporting is because of lack of information many families do not sue the rapist for his criminal act ,many are ignorant and do not know where to go when their child has become victim of rape or abduction .
- c. Members of the victims also fail to report because they are not aware that the psychological trauma can never be wiped out from the unconscious mind of the victim. <sup>15</sup>

14. <http://www.stop.org> it now childsexual abuse

15. w/ro original wolde giorgis (EWLA),PROTECT CHILDREN FROM ABUSE AND NEGLECT .CYAO&the etiopian corporation Dec.2-4.1996

- d.** There is a serious problem in the assembling of evidences .in the first place it is very difficult to obtain eye witnesses of reliable testimony since rape or child sexual abuse is committed in secret .in the second place there are instances where the police are not ready to receive accusation and gather evidence.

The survey of children prostitution in Addis Ababa stress that police man did not take action when the victims reported that they were raped. The attitude of the police man and other about the rape victim is that “she asked for it “<sup>16</sup>

- There is a tendency by the police and prosecutor not to take the case of rape seriously when the victim was not virgin and the justice system is almost universally biased against victims who are not virgin.
- In addition to this corporative evidence should be looked for by way of eye witnesses or other but that may be itself be difficult as the act of rape is committed in privet away from anybodies eye’s shot.
- The police should be given special training to handle sexual abuse cases, the victim may be intimidated to speak or discuss their cases with police man especially after being maltreated by a man.
- One problem with reporting is that most investigator police officers are male, girls have having been abused by men, we would finding it hard to tell about it to investigators of same sex, the number of female investigating police officers is small.

16. a report on a national work shop on the problem of rape and abduction organized by A-BU-GI-DA 14&15 May 1996)



### 3.2. The problems with prosecution as regard child sexual abuse.

As soon as the prosecutor receives police files he /she will decide whether he/she should

A/ prosecute the accused on charge drawn up by him under art.109-122; or

B/ order that a preliminary inquiry be held under art.80-93;or

C/ order further investigation; or

D/ refuse to institute proceedings under art.42

The prosecutor should inform the parents and the investigative unit members of her/his decision regarding criminal charges prior to any public disclosure.

When a criminal charge has been drawn against an accused person, the prosecutor will

- confer with the parents of the child victims prior to trial to explain court procedures and discuss possible court outcomes and court dates
- - adequately prepare witness to be fully aware regarding court process and consider the special needs of victim to appear as witness.
- Assure that victims and their families are provided support services throughout the process; including arrangement
- Follow-up investigative assessment prior to trial confers with all medical personnel and any other expert witness in the case.

But it is mostly difficult to have a sexual offender convicted in cases of child sexual evidence on such case on the basis of the studied cases it has been inferred that though Ethiopia does not have a codified law of evidence in order to secure a conviction on a charge of rape the prosecutor has to satisfy 3 elements . These are,

- ❖ there was sexual intercourse ,
- ❖ The accused has actually committed the alleged crime ;and
- ❖ There was no consent.

Where these elements are not proved by the public prosecutor, the accused is set free. In addition to oral witnesses the prosecutor must adduce medical evidence to show that sexual intercourse took place.

But the medical evidence can only serve to show whether there was a fresh defloration or not. Thus, it is only as good as criminal evidence, where the victim was a virgin prior to the act. That is, where the victim was not a virgin, the medical evidence will only indicate that the defloration was an old one and nothing else. In this instance, the medical evidence may not be adduced by the prosecution as it does not prove that sexual intercourse has taken place.

A problem in the prosecution is that there is no clear cut standard of sufficient evidence deemed to be sufficient in one particular case is insufficient in another.

As it happened in one case, where the prosecutor decided not to press charge on the ground of insufficient evidence (Art.42/1/a of the criminal procedure code), even though the victim has brought a medical evidence providing fresh defloration and 2 witnesses testifying that the accused had

told them that he has had sexual intercourse with the victim, though, the element of consent is not proved, the prosecutor should rather have requested for further investigation that to be so eager to withdraw from pressing charge.

Even where the prosecutor fails to prove any of the elements of the pending charge against the accused, the prosecutor should rather consider, if it is possible to convict the accused of lesser charge, on the evidence already found. He may, for instance, be charged for the attempt of the greater offence (Art.115 of the criminal procedure code), or where the element of consent can not be proved and the victim is an alternative possibility of conviction should be strived for, where the essential elements of the offence are failed to be proven, before the accused is set free.<sup>17</sup>

17- Violence against women and the role of the law enforcing institutions by Rakeb Messele sep.1997 pp-20.

## 3.2.1. Child Medical Evaluation (CME)

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- All children who are who are alleged to be physically or mentally abused should have medical or psychological examination.

***PREQUISTIES for Child Medical Evaluation that parents and guardian of children sexually abused should give their consent.***

The physicians performing the medical evaluations have to carry out medical examination, give medical certificates and to appear in court, and to give testimony if necessary.

\* The medical certificates should contain the following information:-

- A. The presence of sexual abuse.
  - B. The existence of Trauma or bleeding in the genital or rectal area.
  - C. The presence sexually transmitted diseases.
  - D. The existence Foreign objects in the vagina, urethra, or rectal cavity.
  - E. The existence of Pregnancy.
  - F. Ejaculation. (Evidence of ejaculation is present only if the child is examined soon after the alleged incident.)
- A determination as to whether any condition or injuries that may be present are the result of abuse and/or neglect.
  - A determination as to whether the conditions or injuries that is present could have resulted from the causes alleged by the parents or caretakers.<sup>18</sup>.

### **The objectives of medical evaluations include:**

- 1.) Enabling the courts to obtain an assessment of medical evidence of abuse and neglect;
- 2.) Assisting the courts in determining the most appropriate case decision; and
- 3.) Providing guidelines that help in determining appropriate services for the child or children.

18. <http://www.aacap.org> (American academy of child and adolescent psychiatry)

### **3.2.2. MEDICAL EXAMINATION CHECKLIST**

This checklist serves as a guideline for the physician.  
All of the procedures marked with an "X" must be conducted at the initial medical examination.

Child Interview	X			
Past Medical History				
Medication History				
Hospitalization History				
Allergies				
Medical Problems	X	X		
Physical Examination of the Child			X	X
Laboratory Tests:				
Gonorrhea culture				
Throat				
Rectal				
Vagina and/or Urethra		X	X	
Pregnancy Test		X	X	
HIV testing (must be repeated after 03 month)	X			X

### **3.3. Interview Technique of A children by physician**

- 1) The physician must carefully examine his or her own emotions and possible biases regarding child sex abuse before undertaking to interview children who are alleged to have undergone of sex abuse.
- 2) The interview of well-trained and experienced physician will yield more informative and accurate accounts by children.
- 3) The greatest accuracy is obtained by eliciting a free narrative from the child in response to open-ended questions. Inaccuracies increase with the level of suggestiveness and coerciveness of the interview techniques used.
- 5) The interview and child's behavioral responses should be recorded, preferably by videotape, but at least by audiotape with detailed notes.
- 6) Preschool age children are prone to suggestiveness and fantasy/reality confusion, and thus require special skills by the interviewer.
- 7) Some measure of a child's ability to distinguish between truth and falsehood must be taken and all such measures are not equal. For example, asking a child to "tell the truth" about the color of your sweater and the child says 'red' and the sweater is red, does not mean that the child can reliably distinguish between truth and falsehood in all applications.

8) Some children's statements will be false and must be distinguished from true statements by the application of a structured technique.

9) Behaviors that mimic sexual activity are seen more frequently in abused children than in non-abused children.

11) Tools such as anatomically detailed dolls, puppets, or human figure drawings may be useful when interviewing children under age 5 or older children who are uncommunicative.

12) Although medical exams commonly do not show evidence of sexual abuse, they should be performed and documented in every case as soon as possible after the allegation, by a highly trained specialist using multiple techniques and sophisticated equipment.<sup>19</sup>

### **3.4. The following are basic principles of legal procedure in investigating a case of child sexual abuse.**

- To provide case management approach which focuses first, on the child victim's needs, second, public, on the activities of law enforcement bodies
- to reduce an absolute minimum number of interviews to which a sexually abused child is subjected;
- to provide extensive initial case screening, assessment and validation procedures in order to proceed with appropriate civil and/or criminal actions;
- to develop, achieve and professional cooperation in case management and handling of child sexual abuse cases;
- To obtain and preserve evidence useful for court trial.
- to seek changes in the law which are necessary to protect children

Law and policy enforcement agencies including the their organs of government, particularly legal practitioners (police, public prosecutors and courts) are given the primary tasks of enforcing laws of the country including those relating to the protection of children from sexual exploitation .

They have to follow the implementation of ratified international laws and proclamations.

The first problem experienced by these institutions is in relation to law enforcement and lack of capacity to provide protection of children.

Niter the legal system nor the on going judicial reform program in the federal and regional justice organs addressees the problem sufficiently .the problem worsening due to lack of coordination between and among these judicial organs. 20

19. American medical associations Dxa. mx. Guideline, <http://www.aaets.org/Article> 50 htm)  
20- Government response MOLSA sep.1997 pp.27

### **3.5. CASE ANALYSIS**

The research is done with especial emphasis to child sexual abuse cases in Arada sub city Addis Ababa. The cases analyzed dated back to 1998 E.C up to the completion of the court trial.

The total amount of cases of child sexual abuse presented to 8 different court in Addis Ababa were 1138 starting from October 2004-october2005			
Sentence on cases	Percentage of the ages of the victims	The age of the criminal offender by Percentage.	The extent of the penalty.
144 sexual offender were punished	3% below 5 years	50 % 20-30 years	82 offenders were punished with rigorous imprisonment from 1-5 years
66 sexual offenders were set free from charges.	15 % 6-10 years	30 % 15-20 years	45 offenders were punished with rigorous imprisonment from 6-10 years.
62 cases were closed because of marriage	50 % 11-15 years	15 % 30-50 years	9 offenders were punished with rigorous imprisonment from 11-15 years
72 cases were closed because of the absence of the witnesses	17 % 16-18 years	5 % above 50 years.	2 offenders were punished with rigorous imprisonment 18 years
118 cases were closed because of the absence of the victim.	15 % above 18 years.		7 offenders were punished with simple imprisonment from 3-6 month.
36 cases were not decided up on and on adjournment was made for these cases			1 offender was punished with fine of 500 Birr.and 3 offenders were punished with rigorous1 year imprisonment

21-Minster of justice report October 2005

### **3.6 CONCLUSION AND RECOMENDATION.**

#### **Obligations of the police**

- Most investigators are males; it is better if female a large number of female police are trained and participate in the investigation of crimes against child sexual abuse. the task of police is not only to discover the commission of the crimes ,apprehends the criminals, investigate cases and send police files to prosecutors and judges ,they have also a major duty in presenting the commission of crimes against child sexual abuse but most of the sexual abuse cases are done out of sight to find supportive evidences needs specialized methods, resource and technical staff, due to the shortage of all these things the system in data collection and investigative method are poor .
- Child sexual abuse including rape is getting worse and worse, the number of these crimes increasing from year to year but the investigation usually focus on the act of rape not on the effects, the criminal code such as criminalizes and punishes the spreading of transmissible diseases including HIV AIDS.

#### **Obligation of the prosecutors;-**

- Where the public prosecutor receive police files; they should examine whether or not sufficient evidence has been assembled to have the sexual criminal convicted .If the evidence presented by the police is incomplete they should give detailed directive or order to the police to make in depth investigation rather than closing the files. Further more since there is poor follow up mechanism ,they have to insure that their directive are carried out and give guidance to the police ,especially for cases that are referred back for further investigation .
- After presenting the cases to the court ,public prosecutor should ask to the court to give priority to child sexual abuse cases so that judicial decision should be given in a short period of time and they should cite articles which prescribe serve punishment ,if the child victim is physically injured and when any other aggravating circumstance is present . Public prosecutors should follow up that medical certificates have been obtained showing the extent of the physically and psychologically injured undergone by the victims, and as well as the transmission of communicable disease due to child sexual abuse.
- The number of public prosecutors is few when compared with high number of cases, they are expected to handle 100 cases in month individually in addition they will be involved in 27 first instance court,12high courts and 1 supreme court so that only60-70 % of cases are completed annually the rest will be adjourned for the next year . The judicial system should change this situation by increasing the number of prosecutors. 22

22-Minster of justice report October 2005.

## Obligation of the courts,

- There are no separate courts; if possible separate court should be set up to try and adjudicate child sexual abuse cases.
- Not all judges are well experienced in handling sexual abuse cases; it is better to appoint well experienced judges who can interpret and implement existing laws effectively and to give special attention to child sexual abuse cases and without granting or long adjournment.
- Courts should do their atmosphere to urge the police and prosecutors to produce the best available evidences on child sexual abuses cases. When offenders are left unpunished because of inadequate evidence or absence of witness, this will encourage further crime by the offender in such cases the community would lose confidence in the judiciary and other law enforcement bodies.
- When necessary; changes should be made in the criminal procedure code in order to create closer co-operation among the police, prosecutors and judges in the immediate and effective adjudication of child sexual abuse cases.

## Obligation of the general public.

At last but not least, it should be well noted that the problem of sexual exploitation can not be solved by the government and NGO's,

Nether by the judiciary nor by the police and prosecutors alone .the greater responsibility rests on the shoulder of the general public.

Since the sexual offenders and the abused children are members of the general public, no child sexual abuse can escape notice if the public is well educated about the harmfulness of such crime and is ready to bringing up, protects and teach its children properly and expose the criminals to judicial authorities immediately.

- **Encourage family relation** for many people say rapist came from broken families and in turn brake others ,other say every girl or women is a potential victim and every man or boy is a potential rapist
  - **Teaches everyone** :- To bring about attitudinal change s so that our children could never rape.
  - **Create opportunities**; - so that parents would never ask “what does my daughter do if she is not married early and settled “? Or sentence small girls who are not only ready for marriage but do not even know what sexual intercourse is all about and say the man is poking me with the hard object.



- **Sensitization of target groups.**

Women associations like EWLA, social workers, nursing association should take lead in sensitizing the public and also target groups on human rights, gender role and perspectives.

Target groups can be community and religious leaders, policy makers, judges, lawyer policemen etc...

- **Sensitize the public:** - by all means including the use of religious, civil education and human rights in the curriculum.
- **Give Counseling service;** - medical help and financial support and temporary support should be available for those victims who need them
- Children are victims yet it is the victims who are ostracized, shamed even by parents and other and made to bear the burden alone so much so that most are afraid to speak out about the crimes committed against them , victims should be healed and supported.
- **Let us give hope to children** so that they never have to say like a girl child enticed to prostitution in the name of employment as maid “ we are like a birds in a cage, we can not fly away.
- **Let us all be shocked and angry enough;** - to act collectively and fight the scourge that is endangering children.
- **Popularize the problem** and the law discourage factors such as male supremacy and loose moral values which contribute to the aggravation of the problem .23
- Undertaken in - depth studies on the case of the problem
- Attempt to eliminate the cause of the problem such as poverty, migration, etc.
- Strengthen the law or improve the law especially. in countries where the laws are weak and ,
- Establish organizations that stand for the protection of the rights of child victims. 24

- 23-w/ro original wolde giorgis (EWLA),PROTECT CHILDREN FROM ABUSE AND NEGLECT .CYAO &the Ethiopian corporation Dec.2-4.1996

24- Proceeding on the work shop on child sexual exploitation in Ethiopia law and practice

- The national steering committee against sexual exploitation of children and the Ethiopian women's lawyers association.

## Bibliography

1. Proceeding on the work shop on child sexual exploitation in Ethiopia law and practice
2. The national steering committee against sexual exploitation of children and the Ethiopian women's lawyers association
3. Hope enterprise /1997 / child prostitution, the crises unto death, best interest of the Ethiopian child vol. 1no.2
4. Violence against women and the role of the law enforcing institutions by Rakeb Messele sep.1997 p-20
5. **Children' right in Ethiopia; A situation analysis: save children March 2008, p-201**
6. w/ro original wolde giorgis (EWLA), PROTECT CHILDREN FROM ABUSE AND NEGLECT .CYAO &the Ethiopian corporation Dec.2-4.1996
7. MOLSA.(2005)Ethiopia's national plan of action for children ;(2003-2010)
8. Minster of justice report, October 2005

### Web sites

1. <http://www.childwelfare.org>
2. <http://www.aacap.org>
3. <http://www.apd.org>
4. <http://www.stopit/>
5. [http://www.darknese /](http://www.darknese/)
6. <http://www.advocates toyouth.org>
7. [en.wikipil.org/](http://en.wikipil.org/)

### Legal documents

1. Convention on the rights of the child, 1989. (CRC)
2. The universal declaration of human right (UDHR)
3. The convention on economic, social and cultural rights (ECSER)
4. THE federal democratic republic of Ethiopia constitution of 1995.
5. Newly revised family law of *Ethiopia 2000 /RFC/*
6. The criminal code of *Ethiopia 2004*.
7. St. Mary's university college (2003), criminal procedure module.

**Work plan (time schedule) of the study**

	Tasks	<b>Months (2008/2009)</b>						
		Dec	Jan	Feb	March	April	May	June
1	Selection of title	*						
2	Preparation of research proposal.	*	*					
3	Review of related literature		*	*				
4	Collection and organization data			*	*			
5	Writing the analysis and discussion of the first draft				*			
6	Preparation of the first draft				*			
7	Submission of the first draft				*	*		
8	Preparation of the final paper					*	*	*
9	Submission of the final paper							*

## **Cost of the study**

Item	Units of measurement	quantity	Unit price
Stationery			
1.1 paper		2	32
1.2 pen		5	1
2.1materials			
2.2 diskettes		1	5
2.3 assets		1	5
3. Personal cost			
3.1 Internet-service to down load information from web sight	days	5 hours	35 cent/minutes
4. Computer service, photocopy and binding.			
4.1.For the first draft		40-50 (page)	
4.2.For the final draft		40-50( page)	
4.3. Photo copy		80-100(page)	15 cent/page
4.4. Binding		3	5
Total			409

## Statement of declaration

I hereby declare that the paper is my original work, and I will take full responsibility for any failure to observe the conventional rules of citation.

Name -----

Signature -----