

**OROMIA JUSTICE SECTOR PROFESSIONALS TRAINING AND
LEGAL RESEARCH INSTITUTE**



Juvenile Justice System in Oromia Region

The Law and the Practice

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Abbreviations

- FDRE constitution- Constitution of Federal Democratic Republic of Ethiopia,proc.1/1995
- CPC of Ethiopia-Criminal Procedure code, Negarit Gazeta Extraordinary issue no.1 of 1995
- FDRE criminal code-FDRE criminal code,proc.414/1997
- ACRWC-African charter on the right & welfare of child(ACRWC)
- UDHR-Universal Declaration of Human Right
- UNCRC-United Nation Convention on the right of child(UNCRC)
- ICCPR-International convention on civil and political right(ICCPR)

Acknowledgement

My God, Jesus, you are not in need of thanks, but in bad need of man's boldness or faith to exploit the unlimitedly accumulated resources by your deed on the cross. You endowed every of your sons with a status not to beg but only to claim what they are in need of. I benefit from your generous love. Just thank you.

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CHAPTER ONE

PROPOSAL OF THE STUDY

1.1. Background of the Study

Subsequent to the formation of United Nation Organization there has been strong worldwide movement towards the issue of protection for human rights. Accordingly, different international human right instruments were created and ratified by states. Among others, universal declaration of human rights, international convention on civil and political rights, and international convention on economic, social and cultural rights are worth mentioning.

Interestingly, the action towards international human rights protection accords high priority to the issues of children. This fact is publicly hosted when the international community came up with Convention on rights of child already having the aforementioned strong international human rights instruments. Since 1989, the time when the convention has opened for ratification, all but two states of the world have joined it, a record that no other human rights treaties come close to matching¹.

The subject matter of the research to be conducted, the issues of juvenile delinquents, is not set sided, but properly administered by the aforementioned international human right instruments and the others. This special protection is not for a fact that these youth below 15 or 14 years old cannot know or appreciate right from wrong, but how can we hold juveniles accountable as adults in adult courts proceeding for not exercising a level of maturity that they are not physically, emotionally or intellectually expected to possess?² Thus, now there is a universal consensus that every court proceeding and judgment concerns juvenile offenders as well the

¹ Fric L Jensen & Jorgen Jepsen, *Juvenile law violators, human rights, and the development of new juvenile justice systems*, Hart Publishing, 2006, p.16

2. Michael A. Corriero, *Judging children as children: A proposal for A juvenile justice system*, Temple university press Philadelphia, 2006, p.4

manner of serving court judgment must be the one that advocates best interest of the child and with effect of rehabilitation.

Our country, Ethiopia has ratified all the aforementioned international human right instruments and other dealing with the issue of juvenile delinquent like African convention on right and welfare of child. As well, FDRE constitution and other domestic substantive and procedural legislations give special and informal attention for this class of people. However, as the contradiction between words and actions is a problem that runs throughout life, the deviation from laws in Oromia justice organs on the administration of justice for juvenile offenders is what going to be assessed in this research.

The study is divided in to four chapters. The first chapter is the proposal of the study. The second chapter will cover the legal definition and assessment of different international and domestic legislations on the subject matter. The third chapter maps out the administration of justice for juvenile delinquents in Oromia Justice Organs. The last chapter will be conclusion and recommendation.

1.2. Statement of the problem

Even though different international human right instruments ratified by Ethiopia and other domestic legislations come up with informal child-sensitive court proceeding and other special procedural and substantive protections for juvenile delinquents, there is no way to argue that the rights of these vulnerables have been protected as there are occasions when this class of people are mistreated both procedurally and substantively in Oromia regional justice system. Besides, institutional arrangements of the justice system of the region is seen when fail to promote the rights and protections granted to juvenile delinquents.

As well, as there is no any research so far conducted as to how much the rights and protections granted for juvenile delinquents are realized in the administration of Oromia regional justice system, it is found necessary to conduct this research. Hence, the research problem is what the administration of justice for juvenile delinquents looks like in Oromia Regional Government's justice system with special emphasis on the human rights instruments perspective.

1.3. Research Question

The study is going to answer the following basic questions.

1. Pending administration of justice, do juvenile delinquents in juvenile justice system of Oromia region are procedurally handled as per the separate procedural provisions under the Ethiopian criminal procedure code?
2. Do juvenile delinquents in juvenile justice system of Oromia region, once after being convicted, are subjected only to and as per the special part governing juvenile delinquents under FDRE criminal code?
3. Do the institutional arrangements in Oromia region's juvenile justice system promote the rights and protections granted for juvenile delinquents under domestic legislation and international human right instruments ratified by Ethiopia?

1.4. Objectives of the study

This work has its own general and specific objectives:

A) *General Objective*

Examining the existing practical and institutional problems in Oromia region's juvenile justice system towards realizing the protection accorded to juvenile delinquents both in domestic legislations and international human right instruments ratified by Ethiopia, and forwarding the possible solutions.

B) *Specific Objective*

1. Testing the compatibility of the practical activities in juvenile justice system of Oromia region with the map of procedural and substantive legislations and international legal instruments ratified by Ethiopia.
2. Assessing the realization of best interest of the child and rehabilitation effect of judicial judgment on juvenile delinquents.
3. Presenting any violation of rights inflicted up on juvenile delinquents fall under juvenile justice system of the region.
4. Suggesting possible solution for the problems discovered by the study going to be conducted.

1.5. Significances of the study

- The study can bring about the advancement of justice for juvenile delinquents in Oromia region by disclosing the failures there and recommending what need to be.
- The study will bring updated information to any interested organ about what actually running on in Oromia region concerning the subject matter of the study, and to take advancement measures accordingly.
- The study ultimately benefits juvenile delinquents come across justice system of Oromia region.

1.6. Beneficiary of the study

- The primary beneficiary of the study will be juvenile delinquents passing through Oromia justice system because the study enables them to exhaustively benefit from protections given for them in domestic legislations and international human right instruments ratified by Ethiopia.
- The second beneficiary will be justice organs in Oromia national regional state as the study is going to negotiate the actions of these organs with the words of the law.
- Oromia justice sectors professional training and research institute is the other main beneficiary of the study. As it stands for the advancement of justice system in the Oromia region in all aspects, the study will give a clue as to where immediate advancement is in need.
- Other government and non government organs having interest in the subject matter is to be beneficiary of the study. As well, Oromia regional state government will be the other beneficiary since it has the duty to ensure the existence of rule of law.

1.7. Scope Of the study

The study is limited only to criminally responsible juveniles. Means, those juvenile who attend 9 years age. It doesn't deal with sociological aspects of juvenile justice system, but only limited to the applicability of the laws once juvenile come in conflict with the criminal law. This includes only the activities from the very beginning of commencement of criminal proceeding up until the

serving of sentences in rehabilitation center. Once again, the study is to be conducted only at Oromia national regional state level.

1.8. Methodology of the study

The study employs different research methodologies such as collecting information via questioners, interviews and dead files assessment. . To this effect six zones and two prospective woredas under each zone were selected depending up on its representativeness, its geographical set up and under a presumption that these are areas from where a sufficient data can be found. On these zones and woredas; courts, prosecutor offices, police stations and juvenile delinquents are consulted. Accordingly, the following list is the selected zones and the perspective woredas of the region:

- I. Adama Special Zone: Adama Special Zone High Court-Adama
 - Adama Woreda and Adea Woreda
- II. Finfine Special Zone: Finfine Special Zone-Sebata
 - Sabata Woreda and Akaki Woreda
- III. West Arsi Zone: West Arsi High Court-Shashamane
 - Kofale Woreda and Shashamane Woreda
- IV. West Shoa Zone: West Shoa High Court-Ambo
 - Ambo Woreda and Toke kutaye Woreda.

The following table can further discuss the details:

Methods to be used	Area of assessment	No. of Judges	No. P/pro.	No. Police	Juvenile delinquents
1.Questionnaires	4 Zone 8 Woreda	3x4=12 3x8=24	3x4=12 3x8=24	3x4=12 3x8=24	
Total		36	36	36	
Data collected in percent		97.2	97.2	88.8	

2.Interview	4 zone				5x4=20
Total					20
Data collected in percent					90
3.File assessment	4 zone 8 woreda	2x4=8 2x8=16			
Total		24			
Data collected in percent		87.5			
4. Observation of court detention and correctional institutions, and federal rehabilitation. Center.	4 zone 8 woreda				
Observation conducted in per	100				
5.Data collection	supreme court				

Afgaaffii Daa'ima Mana sirreessaa jiraniif godhame

Aanaa/Zoonii.....

Maqaa mana sirreessaa.....

1.Eenyummaa daa'ima sanaa

Umurii

Saala

Bakka dhalootaa

Sadarkaa barnootaa

1. Gochaa ittiin adabamtee/shakkamte yakka nama adabsiisu ta'uusaa ni beektaayyuu?
2. Deebiin yoo eeyyen ta'e kana otuu beektuu maaf raawwatteree?
3. Yakkicha raawwachuu keetti gaabbiteertaa?
4. Yakkicha erga raawwattee eenyutu to'annaa jala si oolchee?
5. Qaamni to'annaa jala si oolchee maaliif to'annaa jala akka si oolchee sitti himeeraa?
6. Erga to'annaa jala oolteen booda yeroo amamii keessatti mana murtiitti dhiyaattee?
7. Erga to'anna jala oolteen otuu mana murtiitti hin dhiyaatin dura eessa turte? Qorannoon achitti sitti gaggeeffameeraa?
8. Rukuttaan, arrabson ynk reebichi sirratti raawwate jiraa?
9. Mana murtii haala kamiin ilaalte?
10. Abbaan seeraa haala kamiin sikeessumesse?
11. Oggaa mana murtiitti qoratamtuu maatiin kee ykn dhaabanni dhimma daa'immanii achitti argamaniiruu?
12. Abuukaattoon siif dhaabateeraa?
13. Hamma murtiin dhumaa keennamuutti erga qabamteen booda eessa turte?
14. Erga himatamteen booda murtiin adabbi hiidhaa narratti ni darba jettee yaaddee turee?
15. Adabbii sirratti murtaa'ee haala kamiin ilaalte?
16. Mana hidhaa keessatti namoota akkamii faana hidhantee?
17. Namoonni waliin jirtan dhiibbaan sirraan ga'aan jiraa?
18. Mana amala sirreessaa keessatti bakki ciisaa, nyaataa fi dhugaatiin, mana dhiqannaan, manni fincaanii, mana tajaajila fayyaa sii guutaniiruu?
19. Barumsa kee barataa jirtaa? Lakki yoo ta'ee maaliif? Ni feeta ture?
20. Haala kamiin yeroo kee dabarsaa jirtaa?
21. Fooyya'iinsa amalaa agarsiiseera jettee yaaddaa?
22. Waa'ee jireenya kee gar fuul duraa maal yaadda?

Bar Gaaffii abbootii seeraaf qophaa'e

Aanaa.....

Maqaa.....

**Milkaa'ina qonannoo kanaaf qabatamaan hojiirra waan jiru ykn hojjattan qofa bakka duwwaa ykn filannoo kennamee kessatti nuuf guutaa.*

1. Daa'ima shakkamee mana murtiitti dhiyaate qorannoon umurii gama ogeessa fayyattiin kenname yoo waggaa 8-10 ta'a jedhee kam fudhattu? A.8 B. 9 C. 10
2. Gaaffii Iffaan wal qabatee 14-16 yoo jedhee hoo? A. 14 B. 15 C. 16
3. Daa'imman yakka raawwachuun to'anna jala oolan gama poolisiitin otuu qorannaan homaatuu irratti hin godhamiin kallattiin gara mana murtii dhufuu? Eeyyee..... lakki.....
4. Ajjajni qorannoo umurii eenyuun raawwataa? A. M/murtii B.W/poolisii C. W/A/alangaa
5. Bu'aan qorannoo umurii yeroo hagamittin mana murtiif dhiyaata? A. Guyyaa 3 dura B.Guyyaa 3-7 C.torbaan 1 booda
6. Daa'imman to'annaa jala oolan yeroo hangamii keessatti gara mana murtii dhufu? A.hatattamaan B. Sa'aa 48 keessatti C. Guyyaa lama booda.
7. Yeroo dhadacha daa'ima yakka raawwachuun shakkamee gaggeessitan abbaan alangaa ni argamaa? Eeyyee..... Lakkii.....
8. Murtii dhumaa kennuun dura waa'ee amalaa fi sadarkaa bilchina daa'ima himatamee ragaa ogeessaa qindaa'e ni argattuu? A.eeyyee B. Lakkii
9. Ragoota gama abbaa alangaatiin barbaachisaniif eenyutu filannoo fi waamicha taassisa? A.A/alangaa B.Mana Murtii
10. Ragoota gama himatamaatiin barbaachisaniif eenyutu filannoo fi waamicha taassisa? A.Bakka bu'aa ykn abukaattoo himatamaa B.Mana Murtii
11. Ragoota gama himatamaatiin dhiyaataniif gaaffii jalqabaa eenyutu gaafata? A. Himatamaa ykn abukaattoo himatamaa B.M/murtii
12. Ragoota gama A/alangaatiin dhiyaataniif gaaffii jalqabaa eenyutu gaafata? A.A/alangaa b.mana murti
13. Qorannoo yakkaa daa'ima yakkaan shakkamee ilaalchisee gama poolisiitin rakkoon mul'atan jiruu? Yoo jiraate maal fa'i?

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14.Daa'imman yakka raawwachuun murtiin balleessummaa irratti darbe murtii adabbii hidhaan alaa ni kennituu? Yoo eeyyee jettan akkamitti raawwatamummaa isaa to'attuu? Yoo lakki jettan maaliif?.....

15.Dhaabanni amala sireessaa daa'imman yakka raawwatani(rehabilitation center) akka naannoo Oromiyaatti dhibuun isaa dantaa daa'immanii fi hojiirra oolmaa seeraa akkasumas itti gaafatamummaa keessan qixaan galmaan ga'uuf irratti dhiibbaa akkamii uumee?.....

16.Bulchiinsa haqa daa'imman yakka raawwatani ilaalchisee hanqin jiran maal fa'ii jettanii yaaddu?.....

17.Gama qorannaa umurii daa'ima yakka raawwachuun shakkamaniitiin rakkooleen mul'atan jiruu? Yoo jiraatan maal faa'ii?

Bar-gaaffii Qorataa Poolisiitiif/Abbaa Alangaaf Qophaa'e

Aanaa/zoonii.....

Itti gaafatamummaa.....

Maqaa.....

*Milkaa'ina qorannoo taassifamuuf seerra barraa'ee jiruuf otuu hin dhiphatiin wanta hojii irra qabatamaan jiru/raawwatan qofa bakka duwwaa kennameetti nuuf guutaa.

1.Daa'ima yakka raawwachuun shakkaamee gara keessan dhufe haala kamiin keessummeessitu?.....
.....
.....
.....
.....

2.Daa'ima yakka raawwachuun shakkame hanga mana murtiitti dhiyeessitaniitti eessa tursiiftu? Rakkoon gama kanaan isin quunnamu jiraa? Yoo jiraate maal fa'i?.....
.....
.....
.....
.....

3.Daa'ima yakka raawwachuun shakkamee gara keessan dhufe umurii isaa/ishee ilaalchisee ragaa eessaa argattu? Umurii jedhame irratti shakki yoo qabaattan ta'e haala kamiin qulqulleeffattu? Gama kanaan rakkoon isin mudatu maal fa'a?.....
.....
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.....
4.Qorannoo umurii gama waajjira fayyaatiin akka godhamu ajaja ni kennituu ? gama kanaan rakkoon isin mudatu jiraa? yoo jiraate maal fa'i?.....
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5.Daa'ima yakka cimaa raawwachuun shakkamee himatamee ykn to'annaa jala oole qorannoo fi ragaan yeroo gabaabaa keessatti yoo argamuu/raawwachuu baatee daa'ima sana eessa tursiiftu? Gama kanaan rakkinni isin mudatu jiraa?yoo jiraate maal fa'a?

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6.Bakki turtii Daa'ima yakka raawwachuun shakkamee to'annaa jala oole addatti aanaa ykn zoonii keessanitti argamaa? Yoo hin jiru ta'e dhibusaarraan kan ka'e rakkoon isin mudatu jiraa? Yoo jiraate maal fa'a?.....
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7.Bulchiinsa haqaa daa'imman yakka raawwachuun shakkamanii himataman ykn to'annaa jala oolan ilaalchisee rakkoo jira jettan nuuf ibsaa?

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CHAPTER TWO

JUVENILE JUSTICE SYSTEM

INTRODUCTION

A motto for a better tomorrow is not only for something with economic nature, but also for human rights aspect. That is why human rights nature and coverage increase in scope and variety from day to days. The jurisprudence juvenile justice system is also the result of this fact.

There is different degree of condemnation and blame by society against criminals based on their mental, moral and physical maturity. On top of this, there is uncontested legal jurisprudence that argues for the determination of a minimum age under which no one is able to be criminally liable. Likewise, there is also international consensus to afford special legal protection and treatment to those people attends the minimum age of criminal liability but still in range of adulthood. Ethiopia also shares the idea of minimum age criminal liability, and this theme of a special protection and treatment to juvenile delinquents. Consequently, in addition to setting separate substantive and procedural provisions governing juvenile delinquents in its domestic legislation, Ethiopia has ratified different continental and international conventions concerning juvenile justice system.

Thus, the subject matter of this chapter revolves around legal definition, historical development of juvenile justice system, and devotes to discuss the rights and protections given for such class of people both under domestic legislations and international conventions ratified by Ethiopia.

2.1 Legal Definition and Terminology

There is no a single and internationally accepted definition and terminology for the class of people in the age of youth and come in conflict with law. The reason behind could be from the fact that the definition and terminology accorded to this class of people is from different point of view. Though there is no single and internationally accepted definition, the ordinary dictionary definition for the word juvenile is a person who has not reached the age at which one should be treated as an adult by the criminal justice system.³ Juvenile delinquent is also defined as a minor guilty of criminal behavior, which is usually punished by special laws not pertaining to adult.⁴

There are no international hard laws, treaties that carry obligation for countries ratify or acceding to it, which define juvenile delinquents. International hard laws such as international convention on civil and political rights (here after termed as ICCPR), United Nation Convention on the

³ Bryon A.Ganer(editor),Black's Law Dictionary,7th ed.,west publishing co.,1999,p.871

⁴ Id.

rights of child (here after termed as CRC), and the African charter on the rights and welfare of child (here after termed as ACRWC) prefer to exhaust the rights and protection accorded to this class of people than defining it.

Even though it is a soft law or with non binding effect, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), however, describes who and what about of juvenile delinquents. Accordingly, a juvenile is a child or young person who under the respective legal systems, may be dealt with for an offence in a manner which is different from adult⁵, and a juvenile delinquent is a child or young person who is alleged to have committed or who has been found to have committed an offence⁶.

In Ethiopian legal frame work, even though there is no a direct legal definition accorded to a phrase ‘juvenile delinquents’, there is a sort of inference as to what about of such persons. From the provisions: art.52-56 & art.157-176 of FDRE criminal code it is possible to deduct that juvenile delinquents are those youth range from 9 to 17 years old and who committed any behavior that is punishable under criminal code.

As to the terminological variety, the terminology employed to express such persons differ from state to state and from legislation to legislation. The most common terminologies are: juvenile delinquent, innocent offender, young offender, juvenile in conflict with law and juvenile offender. These varieties in terminology may be rooted in different stand and perception hold up by different country’s legal and sociological scholars, writers and experts. The surprising thing is that different legislations of a single country use different terminology to describe such class of people. Ethiopia is the one among those who are suffering from such confusion. The terminologies employed to describe such class of people in FDRE Constitution, FDRE Criminal code and Ethiopian Criminal Procedure codes are: juvenile offender, juvenile delinquent and young offender respectively. It is so insignificant to the study at hand to deal with terminological problem that the issue is not discussed.

2.2 Historical Development of Juvenile Justice System

The legal history of juvenile justice system began at the turn of the last century with the establishment of Chicago’s juvenile court in 1899, USA⁷. Back to the early European settlers in America, Puritans for example, believed that children as young as seven years old understood the difference between right and wrong, and could thus punished severely for ‘crimes’ as minor as disrespect for their parents, and many children were put into the same prisons as adult⁸. Two decade later after the establishment of Chicago’s juvenile court in 1899, however, most states and countries in North America, in Europe and all over the world had separate jurisdictions and

⁵ Rule 2.2(a), UN Standard Minimum Rules for Administration of Juvenile Justice, Resolution 40/83, 29 Nov., 1985

⁶ Id. rule. 2.2(c)

⁷ Michael Tonry & Anthony N. Doob, Youth crime and youth justice: Comparative and Cross-National Perspectives, Vol.3, Chicago press, 2004, P.544

⁸ Kevin Hile, Trial of Juveniles as Adults, CHELSEA publ., 2002, p.11

laws for children who committed an offence⁹. These new separate system of justice for children and youth were based on the legal doctrine of *parens patriae*¹⁰. That mean the state is the ultimate guardian of children¹¹. Two kinds of justifications were advanced.

*The first is children and adolescents were viewed as less able to understand the wrongfulness of their act, which reduced their guilt. As a consequence, they deserved or reduced punishment. The second, offending by children and adolescents was seen as an indication of adverse socialization, which could be corrected. Children and adolescents were seen as more malleable by treatment or reeducation and this opportunity should be taken*¹².

Among the measures for advancing justice for juvenile in African countries, Nelson Mandela as he made his first address to parliament as the newly elected president of South Africa in 1994, he promised that *'the basic principle from which we will proceed from now on ward is that we must rescue the children of the nation and ensure that the system of criminal justice must be the very last resort in the case of juvenile delinquents'*¹³. The South African, the child justice bill of 2002 is the result of such a promise for advancement.

As to Ethiopia, the 1957 penal code is a pioneer codified legal instrument in stipulating the start of the age of criminal responsibility at 9 years. Children between 9-15 years are considered as minors while children between 15-18 years are punished as adult although there are provisions for taking measures of mitigation. Among the measures and penalties included in the code ,art 172 of the penal code provided corporal punishment of up to 12 strokes to be administered on the former class of people on the condition that only if the young offender is in good health. As far as procedural protection is concerned, the 1961 Ethiopian criminal procedure code has come up with a separate part dealing with juvenile delinquents.

The UN committee on CRC, in its concluding observations, recommended to the government of Ethiopia the implementation of a comprehensive juvenile justice reform in line with international legal standards and articles 37, 39 and 40 of CRC¹⁴. In an attempt to harmonize the penal code with the provisions in the CRC, the code was revised¹⁵. Though this recommendation by CRC is one thing, the introduction of FDRE constitution in the country's legal system is the prominent reason for the incorporation of internationally accepted rights and protections for juvenile justice in the revised criminal code. The message in preamble of the code also justifies the same facts.

⁹ Supra note 7.

¹⁰ Supra note 1, p.2

¹¹ Id.

¹² Supra note 7, p 545

¹³ Supra note 1, p 65

¹⁴ <http://www.ecaf. Savethechildren.se/documents/...pdf>

¹⁵ Id.

There is now sufficient consensus among states that reformation and rehabilitation, not punishment should be the objective of juvenile justice¹⁶.

2.3 LEGAL INSTRUMENTS ON JUVENILE JUSTICE

2.3.1 International Human Right Instruments

International human right law is composed of an elaborate body of universal and regional treaties, non binding declarations, resolutions, rules and guidelines¹⁷. These instruments are designed to govern civil, political, economic, social and cultural aspects of people in the world at the minimum uniform level. As well, since these rights are universal by nature they need protection throughout world.

As part of society, the international community does not set aside the issue of juvenile justice. Rather, international human right instruments accord high priority to the issues of juvenile justice¹⁸. This measure clearly demonstrates the ability and commitment of the actual generation to think across generation.

Among international human right instruments, binding or non binding, dealing with juvenile justice system the following are worth mentioning.

- The United Nations Convention on the rights of the child.
- The International Convention on the Civil and Political Rights.
- The African charter on the right and welfare of children
- The United Nations standard Minimum rules for the Administration of Juvenile Justice 1985 (The Beijing rules).
- The United Nations Guide lines for the Prevention of Juvenile Delinquency 1990 (the Riyadh Guidelines)
- The United Nations rules for the protection of Juveniles Deprived of their Liberty 1990 (Havana Rules),
- The United Nations Standard Minimum Rules for Alternative Penal Measure 1990 (the Tokyo Rules).

The latter four instruments have no binding effects to the member states of UN because they are a mere rules and guide lines. However, the former three instruments are with binding effect to those countries that ratified. Ethiopia has already ratified these three international human right instruments at different time.

¹⁶ JAISHREE JAISWAL, Human Rights of Accused And Juvenile Delinquent/in conflict with law, Kalpaz pub., 2005, p.194

¹⁷ Jane Pickford, Youth Justice: Theory & Practice, canvedish publishing, 2000, p.100

¹⁸ Supra note 16.

Having considered the significance of the discussion, it will be limited only on the first three conventions with more attention on CRC, and high light the others with intention to avoid unnecessary redundancy.

2.3.1.1 UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD

The convention on the right of child is the centerpiece of an international movement that is aimed at promoting the human dignity of all children and adolescent's¹⁹. The CRC has been for more popular with governments than other UN treaties²⁰. It has achieved near universal ratification having been signed by 191 states,²¹ USA and Somalia the two hold out.

One of the great strengths of CRC is that it is holistic²². Holistic usually means that the civil and political rights are not to be given priority over economic, social and cultural rights: all rights are said to be interdependent²³.

For the study at hand, the discussion is held only on the provisions of the convention that directly and specifically deals with juvenile justice. That is the procedural and substantive treatment accorded to juvenile delinquents under the convention. And for a better clarity and attractiveness, the presentation will not be about to discuss the provisions but to discuss the substance under different provisions.

i. Age of Criminal Responsibility

There is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to juveniles²⁴. The Convention simply enjoins states parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law²⁵. The Beijing Rules, which is designed to elaborate the convention, adds to this principle that the beginning of that age shall not be at too low age level bearing in mind the facts of emotional, mental and intellectual maturity²⁶. This at least provides some guidance as to the grounds for deciding the age: the finding of medical and psycho-social rather than tradition or public demand²⁷.

¹⁹ Supra note 1, p 15

²⁰ Id. P.16

²¹ Supra note 17, p.102

²² Supra note 1, p 26

²³ Id.

²⁴ <http://www.unicef-inc.org/publication/pdf>.

²⁵ Art. 40/3/a/, Convention on the rights of Child.

²⁶ Supra note 5, rule 4.1

²⁷ Supra note 24

Different countries set their age of criminal responsibility at different age. For example countries like Ethiopia, Italy, Portugal and Denmark set age of criminal responsibility at 9, 14, 16, and 15 respectively. The Ethiopia's age of criminal responsibility is too low compare to others.

ii. Care for the best interest of the child

Art. 3(1) of the convention stipulates that:

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

The wording of "...shall be the primary consideration" indicates that the best interest of the child will not always be single, overriding factor to be considered but there may be competing or conflicting human rights interests, for example between individual children, between different groups of children and between children and adults²⁸. The child's interests, however, must be the subject of active consideration²⁹.

According to the principle of best interest of the child, judge must sentence based not solely on the seriousness of the penal infraction, but also based on the relevant psycho-social and family conditions³⁰. Mean, the understanding level, the environment around like peer pressure and social movement, and family back ground both in literacy and economy. In the adult court, the level of youth's maturity is relevant primarily in determining the nature of the sanction instead of as a defense to prosecution³¹. Once culpability of a youth has been established, however, a judge should have the authority to craft a sanction that conforms to the offender's level of maturity and that enhances such a youth's potential to make a positive contribution to society³².

So, for the attainment of the objective of the convention the principle of best interest of the child shall not be ignored even slightly.

iii. Establishment of separate criminal substantive and procedural laws.

Art. 40 (3) of the convention clearly puts that:

State parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed that penal law.

This provision of the convention requires state parties to come up with legislations that specifically deal with juvenile delinquents. These legislations need to be substantive and

²⁸ <http://www.kinderrechte.gov.at/home/upload/crc...pdf>

²⁹ Id.

³⁰ Supra note 1,p.101

³¹ Supra note 2,p.45

³² Id

procedural laws. These legislations can be laid down in special chapters of general criminal and procedural law, or be brought together in a separate act or law on juvenile justice³³.

The main thing is that the content of these substantive and procedure laws of the state parties need to have at least equal power with the provisions in the convention to realize justice for juvenile. In case where the domestic law of the state party is more conducive toward realizing justice for juvenile the convention under its art. 41 suggest the application of national law than the convention. However, in other occasion the convention requires state parties to be bound by the provisions of the convention.

iv. **Establishment of a separate authorities and institutions**

Under art 40(3) of the convention requires state parties to establish authorities and institutions specifically applicable to children alleges as, accused of, or recognized as having infringed the penal law. Additionally, art.3 (3) of the convention requires that standards be established by ‘competent bodies’ for all institutions, services and facilities for juveniles and that the state ensures that the standards are complied with. Though convention is clear as to the need of establishment of institution and authorities specifically dealing with juvenile justice, it not clear as to what these institutions and authorities are. Once juveniles become in conflict with the law they pass through different arrangement of authorities and institutions. The primary components of the juvenile justice system include the police, juvenile court, and juvenile corrections³⁴. These components are referred as three C of Juvenile justice: Cops, Courts and Corrections. In addition to the three Cs, there are allied organizations and agencies- departments of social service and youth counseling centers³⁵. In other word “three Cs” seems juvenile friendly detention room, Juvenile friendly court room, and juvenile rehabilitation center, not prison.

These primary components of juvenile justice system play different role for the attainment of best interest of the child and due process of law. The questions as to what are services, facilities and standards these institutions required to ensure are going to be addressed in the following manner.

a. **Juvenile police and Detention Room**

The police are the most visible symbol of the juvenile justice system and are on the “front lines” in identifying, controlling and processing juvenile delinquents³⁶. Law enforcement officers often view policing juveniles as a no-win situation³⁷. These juvenile officers often receive special training in child development, adolescent psychology, sociology, and counseling, in order to

³³ <http://www2.ohchr.org/english/bodies/crc/docs/...pdf>

³⁴ Donald J. Shoemaker & Timothy W. Wolfe, *Juvenile Justice: Contemporary World Issues*, ABC-CLIO inc., 2005, p.44

³⁵ Id.

³⁶ Jack E. Bynum & William E Thompson, *Juvenile Delinquency: A Sociological Approach*, Pearson publ., 2007, p. 375.

³⁷ Id.

better equip them to handle the unique problems associated with policing juveniles³⁸. The detention for juvenile suspected of committing crime need to be separate from adult, and it shall be the one whose structural manner and facility is in compliance with the essence best interest of the child and reformation.

b. Juvenile court

Historically, the juvenile court system was premised on two fundamental beliefs about young people who violated the law³⁹. One was so that young people were both cognitively and morally underdeveloped so that they should not be considered fully responsible for their offences. The other was that young offenders were particularly malleable and therefore susceptible to moral and social rehabilitation. Thus, in juvenile court system:

The goals were to investigate, diagnose and prescribe treatment, not to adjudicate guilt or fix blame. The individual's background was more important than the facts of a given incident; specific conduct relevant more as a symptomatic of a need for the court to bring it's helping powers to bear than as prerequisite to exercise of jurisdiction. Lawyers were unnecessary adversary tactics were out of place, for the mutual aim of all was not to contest or object but to determine the treatment plan best for the child⁴⁰.

There is no strict procedural formality. The participants are judge, juvenile, parent/guardian, legal counsel and other professionals that can contribute in reshaping the juvenile in to responsible citizen. Therefore, hearing in juvenile court focused less on whether the juvenile had violated the law on the occasion in question and more on the social and moral condition of the offender and how best to reform his or her deviant behavior⁴¹.

c. Juvenile Rehabilitation or correction center

Implementing juvenile justice treatment, by definition, requires adoption of a rehabilitative approach. That is, a basic premise of treatment is that offenders can change and redirect their behavior toward non criminal and productive ends⁴². Thus juvenile correction or rehabilitation center must be the one that alarm up reformation and social reintegration of juvenile delinquents. And it has to deliver health care, education, recreation service and other clean and safety facilities.

All persons having contact with juvenile in the institution need to receive special training in child development, adolescent psychology, sociology and counseling in order to properly secure the objective of the institution.

³⁸ Id. P.376

³⁹ <http://www.Princotcn.Edu/futureofchildren/publications/...pdf>

⁴⁰ Supra note 36, p.376

⁴¹ Supra note 39.

⁴² Robert D. Hogo, etal, Treating the Juvenile Offender, Guilford publ.,2005, p.112

v. Promotion of Non-judicial measure: Diversion

Two kinds of interventions can be used by the state authorities for dealing with children alleged of, or recognized as having infringed the penal law. These are: measure without resorting to judicial proceeding, and measure in the content of judicial proceeding⁴³.

Art 40 (3) (b) of the convention come up with a statement saying whenever appropriate and describe, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. More than this the convention needs a custodial measure to be used only as a last resort and for the shortest appropriate period of time. This shows as the convention gives recognition to community based correction program, which is a diversion program.

Diversion programs focus on the removal of youth from formal judicial intervention⁴⁴. In other words, their aim is to handle delinquent and at risk youngsters in community based settings, away from the attention of the courts and institutions⁴⁵. As to the objectives and theoretical foundation of diversion:

Diversion program are based on the concept of labeling. Labeling theory argue that when people, either juveniles or adults, are arrested and sent through the formal system of justice, they are likely to become worse in terms of their attitudes and behaviors. This theory assumes that juveniles will start to become what they are labeled and will act the way they are treated. According to labeling theory, as juveniles are processed further into the juvenile justice system, they began to receive additional labels that may be hard to shed once they are released from the system. Diverting offenders from courts and institutions therefore should result in less stigma and improved behavior⁴⁶.

This is the best approach towards juvenile justice system. It has far reaching advantage of building a secured society.

2.3.1.2 INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS

The convention does not have an independent provision that govern juvenile justice system in large. However, there are a number of distributed provisions that specifically deal with juvenile delinquents. Besides, the convention is endowed with provisions that govern human right aspect of accused in judicial proceeding up until the final disposition of the case, and the possible protection even during serving of sentences. All these provisions are paramount important in absence of which justice cannot be established in juvenile cases.

Among the provisions specifically deal with juvenile justice the following worth mentioning.

⁴³ <http://www2.ohchr.org/english/bodies/crc/docs/...pdf>

⁴⁴ Supra note 34,p.33

⁴⁵ Id.p.34

⁴⁶ Id.

I. Separate and speedy Adjudication.

Art. 10(2)(b) of the convention says that accused juvenile persons shall be separated from adults and brought as speedy as possible for adjudication.

This provision requires the adjudication of juvenile not to be together with adults, and to be as speedy as possible. Accordingly, the length and the rate of adjournment in juvenile case need to be too short and low. The convention rules the trial of accused to be without undue delay which may justify delay due to work load in court and police investigation. The trial of juvenile cases, however, needs to be below the limit of 'undue delay'. Mean, at most measures need to be taken to speed up juvenile at all steps.

II. Promotion of Juvenile rehabilitation

Art. 14(4) stipulate that in the case of juvenile persons, the procedure shall take into account of their age and the desirability of promoting their rehabilitation.

This provision requires each part of criminal proceeding to take into account the age and desirability of promoting juvenile's rehabilitation. Here, the topic of the proceeding needs not to be the offence and punishment, but the offender and rehabilitation. This reduces the adversarial nature of the court and raises the commitment of the court to reshape the juvenile delinquent into productive citizen.

III. Abolishment of death penalties

As by the convention, sentence of death shall not be imposed for crimes committed by persons below eighteen years age⁴⁷. This rule is non derogable as by art. 4 of the same convention.

2.3.1.3 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF CHILD

The charter comes up with an independent provision that specifically discuss about administration of juvenile justice. Like the preceding international legal instruments the charter provides special treatment with effect of the juvenile's reformation, re-integration into his or her family and social rehabilitation under its art. 17(1) and (3). To avoid unnecessary redundancy the discussion is not going to address each and every treatment addressed under the charter. However, it is only with special treatments that are not clearly drawn in the previous legal instrument.

I. Prohibition of the press and the public from trial

The charter under its art.17 (2)(d) makes the trial room of juvenile case closed from press and the public. This is in line with the stand of the charter that makes the essential aim of trial and

⁴⁷ Art. 6, International Convention on Civil and Political Rights

treatment to be with the end of re-integration in to family and society. This reduces the coming societal stigma against the juvenile.

II. Separate place of detention and imprisonment

The charter under its art. 2 require state parties to ensure that children are separated from adults both in their place of detention and imprisonment. This provision enables juvenile delinquents not to have contact with adult delinquents during their stay under justice system.

Besides, the right to special treatment in a manner consistent with the child's sense of dignity, right to get legal and other appropriate assistance in the preparation and presentation of defense, abolishment of death penalty, as speedy as possible adjudication, are among those specifically granted to juvenile delinquent under art.17 of the charter.

Further, the charter clearly stipulates that in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary -consideration⁴⁸.

2.3.2 Domestic Legal Instruments

2.3.2.1 The FDRE Constitution

The FDRE constitution come up with different rights that accorded to every person once falls in conflict with law. Such rights are extended from the very time the suspect is arrested to a time the criminal is serving his sentence. These rights are exhausted under chapter three of the constitution, and every person regardless of age and sex is to be benefited. More than this, the constitution under its art.13 (2) stipulates:

The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the universal Declaration of Human Rights. International Covenants on Human Rights and international instruments adopted by Ethiopia.

This provision enables every person of the country to gather benefits that are provided under international human right instruments ratified by Ethiopia. As constituents of juvenile justice system such as diversion programs and special institutions are not sufficiently addressed in domestic legislations, juvenile delinquents in the country are more beneficiary from this provision than other class of people. More specifically, the constitution under its art.36 comes up with special protections that are accorded to juvenile delinquents. These protections are:

⁴⁸ Art.4, African Charter on Rights and Welfare of Child

1. *Care for the best interest of the child*

This is clearly put in the constitution in such manner:

In all actions concerning children undertaken by public and private welfare institutions, Court of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child⁴⁹.

This provision needs the best interest of the child to be the driving engine of the proceeding.

2. *The right to be admitted to corrective or rehabilitative institution.*

This art 36(3) of the constitution prohibits juvenile delinquents to serve their judgment in the ordinary prison, rather in the corrective or rehabilitative institution composed of different facilities. While conditions of detention for sentenced juveniles are likely to be better than for pre-trial detainees-including special facilities, trained staff, a program of educational and recreational activities⁵⁰.

3. *The right to be kept separately from adults*

This basic and long-standing principle has two purposes: to protect children from exploitation, abuse and negative influenced by adults, and to ensure that the detention of children is affected in facilities that cater to their special needs⁵¹. The principle tends to be respected more or violated less-for children and young people serving a custodial sentence than for those on pre-trial remand⁵². As mentioned before this principle included under different continental and International human rights instrument like ACRWC, CRC and ICCPR.

2.3.2.2 The FDRE Criminal Code

2.3.2.2.1 Juvenile Delinquents under FDRE Criminal Code

From part of FDRE criminal code (here after termed as criminal code) dealing with a topic ‘infants and juvenile delinquents’, juvenile delinquents refers to class of people who fall in range between nine and eighteen years old. As far as the extreme either demarcation is concerned it seems that while 18 years is excluded 9 age is included. These class of people still categorized into two groups based on their age to benefit different kind of treatments exhausted in the criminal code. For a better clarity and understanding let see each in the following manner.

⁴⁹ Art. 36, FDRE constitution

⁵⁰ Supra note 17.

⁵¹ Id.

⁵² Id.

A. The first class of juvenile Delinquents

These classes of juvenile delinquents are those who are expressed under art.53 of the criminal code in such manner:

When a crime is committed by young persons between the ages

Of nine and fifteen years the penalties and measures to be

Imposed by the courts shall be only those provided in

Art.157-168 of this code.

It is a principle without exceptional reservations that other than those provisions exhausted under art.157-168 of the code the other provisions of the code are not applicable on this first class of juvenile delinquents.

A further more privilege, this class of juvenile delinquents in regard to whom curative, educational or corrective measures has been ordered shall not be regarded as having been sentenced under criminal law⁵³. Mean, this people remain beneficiary of such status if and only if they are convicted and subjected to curative, educational or corrective measures, not penalties. If they are subjected to penalties, not measures they become devoid of this immunity and shall be regarded as having been sentenced under criminal law. In other words, the order of measures against juvenile delinquents by court have no the effect of recidivism. And whatever the order of the court against such peoples, they shall never be kept in custody with adult criminals. Such custody includes detention room and corrective institution. Besides, before passing penalties and measures the court may make an order that the young criminals be kept under observation in medical or educational centre, a home or any other suitable institution⁵⁴. In whole, it seems that for such class of juvenile delinquents judge is the guardian.

B. The second class of Juvenile Delinquents.

This class of juveniles refers to those who are belonging to the intermediary age group extending from the end of criminal minority (15 years) to legal majority(18 years) as by art.176 of criminal code. And they are termed as:

If at the time of the commission of the crime the criminal was over fifteen but fewer than eighteen years of age, he shall be tried under the ordinary provisions of this code⁵⁵.

In principle, unlike the former class of juveniles, these are tried under the ordinary provisions of the code. This group and the first, what they share in common in Ethiopian legal context is that

⁵³ Art. 165, Criminal Code of FDRE, proc. No. 414/2004.

⁵⁴ Id. Art. 54/2/

⁵⁵ Id. Art.56/1/

both shall not be subjected to death penalty or to life term imprisonment without the possibility of release⁵⁶.

In all other conditions it falls under the discretion of the court to extend special treatment accorded to the first class of juvenile under art.157-168 of the code to second class. Still what must not be subjected to confusion is that it is only up to the discretion of the court to extend the penalties under art.166-168 to the second class of juvenile delinquents on the condition that 'taking into accounts the circumstances the case in particular the age of the criminal, his incorrigible or dangerous disposition and likelihood of his reform. As far as the extension of measures for the first class of juvenile to the second class is concerned, it lies not only on discretion of court, but also 'compulsory', expert opinion, condition that where a young criminal's physical or mental development is considered to be that of a young person below the age of fifteen or did not commit a serious crime and according to expert opinion, still seems amenable to curative, educational or corrective measures⁵⁷.

2.3.2.2.2. Judicial Measures and Penalties

The principal objective of policy in adjudication and sentencing minor is to avoid damaging the young person's development into adulthood of full potential and free choice⁵⁸. Thus, the level for this type of policy is room to reform⁵⁹. Being a mediator of best interest of child and best interest of society, FDRE criminal code come up with different measures and penalties accorded to juvenile offenders based on age, mental status and health, need for care and protection, and level of exposition to external problem like addiction to drink or drug on one side and social security and stability on the other hand. These penalties and measures are with custodial and non custodial nature. Custodial measures are enforced by limiting the juvenile delinquent to a certain institution while non custodial institutions are enforced without limiting the liberty of the juvenile to a certain institution. All these measures are going to be elaborated and discussed in the following manner.

2.3.2.2.2.1 Custodial Measures and Penalties

These custodial measures and penalties are with different degree of restricting liberty and different legal effect.

⁵⁶ Supra note 25, art.37/a/

⁵⁷ Supra note 53, art. 177

⁵⁸ Supra note 2. p.66

⁵⁹ Id.

I. Admission to a curative institution

In principle this kind of measure is extended only to the first class of juvenile delinquents, and exceptionally to the second class based on the condition under art. 177 of the code. The code puts down the conditions when such order is appropriated in such manner:

If the condition of the young criminal requires treatment and where he is feeble minded, abnormally arrested in his development, suffering from a mental disease, epileptic or addicted to drink, abuse of narcotic and psychotropic substances or other implants with similar effect the court shall order his admission to a suitable institution where he shall receive the medical care required by his condition. His treatment shall where possible include education and instruction⁶⁰.

II. School or Home Arrest

This is a measure not penalty, extended only to the first class of juvenile delinquents. The second class of delinquents is not legitimate for such measure even exceptionally and in presence of mitigation conditions. Because such measure is not included under art.177 which open the room for the applicability of other measures to second class of juvenile delinquents.

Such measure is given by the court based on the condition termed as:

In cases of small gravity or when the young criminal seems likely to reform, the court may order that he be kept at school or in his home during his free hours or holidays and perform a specific task adapted to his age and his circumstance⁶¹.

III. Admission to a special Corrective and rehabilitation Institutions

It can be ordered as a measure or penalties based on the seriousness of the crime and the criminal. It can be ordered as penalty when the first class of juvenile delinquents has committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more or with death⁶² and where special measure for safety, segregation or discipline can be applied to him in the general interest⁶³.

On the other hand, it can be ordered as measure on the first class of juvenile delinquent taking into account the bad character, antecedents or disposition of the young criminal as well as gravity

⁶⁰ Supra note 53, art.158

⁶¹ Id. Art.161

⁶² Id. Art.168 /1/

⁶³ Id. Art.168/1/ A

of the crime and the circumstances under which it was committed. It can also be extended to the second class of juvenile as per the conditions under art.177 (2) of the criminal code.

IV. Penitentiary Detention Institution

From the words of the law, and its dictionary meaning penitentiary detention institution is different from the regular detention institution. It seems to be designed for more serious and unusual criminals. Accordingly, as by art.168/1/b of the code such order is given to the first class of juvenile delinquent as a penalty when a young criminal has committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more and if he is incorrigible and is likely to be a cause of trouble, insecurity or corruption to others.

As far as the second class of juvenile delinquents are concerned, it is a principle for them unless benefits from exceptional conditions under art.177.

2.3.2.2.1 Non custodial Measures and penalties

These kinds of measures and penalties are appreciable under the jurisprudence of juvenile justice system. The followings are those exhausted under the criminal code.

I. Supervised Education

It is a measure extended only to the first class of juvenile delinquent in principle. But, exceptionally the second class of juvenile delinquent becomes the subject of this measure up on the fulfillment of conditions under art.177

For the effectiveness of such measure the involvement of parents or guardian or protector organization for the education and protection of children and local supervisory authorities is indispensable. The duty of supervision is also undertaken in writing before the court by the supervisors mentioned to see good behavior of the young criminal entrusted to them⁶⁴. Juvenile delinquents subjected to this measure:

If the young criminal is morally abandoned or is in need of

care and protection or is exposed to the danger of corruption or is corrupted, measures for his education under supervision shall be ordered. He shall be entrusted either to relatives or if he has no relatives or if they have proved to be incapable of ensuring his education, to a person (guardian or protector), a reliable person, or organization for the education and protection of children⁶⁵.

⁶⁴ Id.art. 159/1/

⁶⁵ Id.

II. Reprimand: Censure

It is a measure extended only to the first class of juvenile delinquents. Here, no need of institutional and personal involvement of any body for implementation and effectiveness of the measure except the court and the juvenile concerned. As by art. 160/2/ of criminal code, if expedient, it may be coupled with any other penalty or measure.

III. Fine

It is not a measure, but a penalty. This penalty is extended to the first class of juvenile offender. Fine cannot be imposed based on art.179 of the code to these classes of people. The second class of juvenile delinquent becomes the subject of such penalty not under the exceptions and conditions laid down in art.177 of the code. But it is when the ordinary provisions order for such penalty, and the other occasion is when art. 179 come into picture. This penalty is undertaken by court in cases where young criminal is capable of paying a fine and of realizing the reason for its imposition, the court may sentence him to fine which shall be proportionate to his means and gravity of the crime.

Like in the case of reprimand, fine can be imposed in addition to any other penalty. The difference is that while measures and penalty go with reprimand, it is only penalty that goes with fine.

2.3.2.2.3 Suspension of penalty and period of probation

Suspension of penalty encompasses two kinds of privilege: suspension of pronouncement of the penalty and suspension of enforcement of the penalty. Suspension of pronouncement of the penalty comes into picture just after the suspected is convicted, and it is a condition under which a criminal is not subjected to a penalty while suspension of enforcement of penalty is a condition under which a criminal is convicted and a penalty is passed against him but relieved from serving the penalty passed against him up on the satisfaction of court.

As far as such privileges are concerned the criminal code comes up with a separate part that governs every criminal. Such an order implies an appeal to the cooperation of the criminal for his own reform and may at any time be revoked if circumstances show that it is not justified.

The condition for suspending pronouncement of judgment suspended is that when the criminal has no previous conviction and does not appear dangerous and when his crime is punishable with fine (art.90), compulsory labour (art.103 and art.104) or simple imprisonment for not more than three years (art.106)⁶⁶.

⁶⁶Id.art. 191

Suspension of enforcement of the penalty is granted when the court considers that the criminal, whether previously sentenced or not (194), shall receive a warning it shall enter a conviction and pass sentence but suspended for a specified period of probation⁶⁷.

As by art.197 of the criminal code, conditional suspension shall follow up on the criminal entering into a formal undertaking to be of good conduct, to accept the requirements laid down, as well as to repair, to the fullest extent possible the damage caused by the crime or to pay the indemnity to the injured person (art.101) as well as to pay the judicial costs with the time therefore.

More than this, the court shall specify the rules of conduct, protection and supervision, which appear to it to be necessary⁶⁸. As by art.171 of the code for the first class of juvenile delinquents the duration of the period shall be fixed between one and three years.

2.3.3 CRIMINAL PROCEDURE CODE

2.3.3.1 Setting justice in motion

The criminal proceeding in cases concerning juvenile delinquent has a bold difference with the regular adult procedure. The difference is exhausted in the 1961 Ethiopian criminal procedure code (hereafter termed as procedure code).

The criminal procedure code under its art. 172/1/ come up with provisions saying that in any cases where a young person is involved in crime, he shall be taken immediately before the nearest woreda court by police, the public prosecutor, the parent or guardian or the complaint. From this provision we can draw out the following facts.

- The question for local jurisdiction is of no matter, and what matter is only the distance of the court. In other word, it is the nearest woreda court that at least in principle has the first jurisdiction on juvenile suspected of committing crime.
- The gap with in which an arrested juvenile is brought before the court is too narrow than the rule of within 48 hours.
- The criminal proceeding criteria of ‘up on complaint’ is with no value. Because, all those persons aforementioned in the provision are equally legitimate to bring before court the juvenile who is seen involved in any crime. So the roles of police and public prosecutor in setting justice in motion during the regular adult procedure are shared among persons exhausted in the fore mentioned provision.

⁶⁷ Id. Art.192

⁶⁸ Id. Art.198

2.3.3.2 Police Investigation and Charging

In normal course of things, police investigation is to be conducted in a manner prescribed by art.22 and succeeding provisions of the procedure code. However the investigation of offences committed by juvenile delinquent shall be carried out in accordance with instructions given by the court under art.172 (2).

The court may give the police instructions as to the manner in which investigation should be made⁶⁹. Where the young person is brought before the court and his parent, guardian or other person in loco parentis is not present, the court shall immediately inquire whether such person exists and shall summon such person to appear without delay⁷⁰.

Investigation by police is not a usual rule but exceptional and it is only up on recommendation of the court. Such a recommendation is not as to an order only for investigation, but also includes the manner of investigation. The law does not clearly puts down the conditions under which investigation is to be ordered that it is up on the satisfaction of the court. In addition, as per art.173 of the procedure code, the presence of parent, guardian or other person in loco parentis of a juvenile delinquent during investigation is compulsory.

While the manner of charging in regular court proceeding is governed by art.180 et.seq of procedure code, art.108 (3) of the code come up with a stand that prohibit the application of these provisions unless an order to the contrary be made under art.172.In the case of accusation relates to an offence punishable with rigorous imprisonment exceeding ten years or with death the court shall direct the public prosecutor to frame a charge⁷¹. From this provision it is not a usual to frame a charge in cases concerning juvenile delinquent, but exception. The public prosecutor frame a charge only up on recommendation by court.

As to the jurisdiction of the court it does not seem logical to conclude that it is the nearest Woreda court that entertains every criminal case concerning juvenile delinquents. The spirit of the law under art. 172(1) seems that it the court that needs to master each and every criminal proceeding concerning juvenile delinquents excluding the independent decision of police or public prosecutor. Every questions of jurisdiction, especially in the case investigation or framing of charge is ordered, seems to be managed formally but only after the juvenile is delivered to the nearest woreda court.

⁶⁹ Art. 172 /2/,Criminal procedure code of Ethiopia, Negarit Gazeta, Extra ordinary issue no.1 of 1961

⁷⁰ Id. Art.174

⁷¹ Id. Art.172/3/

2.3.3.3 TRIAL

From the word and the spirit of criminal code, criminal procedure code and international conventions ratified by Ethiopia, trial of cases concerning juvenile delinquents is to be in manner that takes into account psychology make up and best interest of the juvenile. Accordingly, the trial is different from that of regular adult trial procedure. The point of variation is:

i. Right to legal representation

Art. 20/5/ of FDRE constitution stipulates that accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense. Here for the entitlement to legal counsel at state expense, economic indigent is one criterion. The special part of criminal procedure, however, does not employ the test of poorness to be represented by legal counsel at state expense. Juvenile are entitled to a court appointed legal counsel if no parent, guardian or other person in *loco parentis* appears to represent the young person, and even if parent, guardian or other person appear, juveniles are entitled to a court appointed legal counsel where the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death. In the juvenile court proceeding, the law comes up with a stand that there is not room for juvenile to go through the proceeding without representation. Accordingly, art.174 stipulates that the court shall appoint an advocate to assist the juvenile where

- a. -no parent, guardian or other person in *loco parentis* appears to represent the young person, or
- b.-the young person is charged either an offence punishable with rigorous imprisonment exceeding ten years or with death.

ii. Condition and participants of trial room

Art. 176 of the provision of procedure code says

Where the young person is brought before court all the proceeding shall

be held in chambers. Nobody shall be present at any hearing except witnesses experts, the parent or guardian or representatives of welfare organizations.

The public prosecutor shall be present at any hearing in the high court.

From this provision, the proceeding is not to be held in regular court room but in chambers which is more responsive to psychological makeup of juvenile. More than this art.176 (2)

stipulates for all proceeding to be in informal manner. Though this provision seems short and brief, still it is unclear as to the composition and the extent of informal proceeding.

In 1909 the judge Julian Mack, one of the first judges to preside over the nation's first juvenile court in Cook country Illinois, described how the procedure in juvenile court need to be in the following manner:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trapping of the court room are out of place in such hearings. The judge on a bench, looking down up on the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge while losing none of his judicial dignity, will gain immensely in the effectiveness of his work⁷²..

The participants during hearing in woreda court are no body except witness, expert, the parent or guardian or representative of welfare organization.

iii. ***Calling, examination and status of witnesses.***

As by art.172(4) of procedure code, pending the trial if it is clear to the court from what the accused says that he fully understands and does not admit the accusation or charge, the court shall inquire as to what witnesses should be called to support such accusation or charge. All witnesses shall be examined by the court and may there up on be cross examined by the defense. Unlike the regular procedure, witnesses are not witnesses of parties but of court and the judge is active participant of examination. Mean, the role of judge is more than that expressed under art.136 (4) in a way that the court may at any time put to a witness any questions which appear necessary for the just judgment of the case. Answer for the question that who and what type of witnesses shall be called for the determination of the truth is left for the court. Pursuant to art.172(4) of the same code, those who come before court with accused at the very time of institution of proceeding and the court picks them as witnesses shall be bound over to appear at trial. Besides, art.176 (5) contemplates that the young person, his representative or advocate may cause any witnesses to be summoned.

⁷² [Hhttp://www.americanbar.org/content/dam....pdf](http://www.americanbar.org/content/dam....pdf)

iv. The Right not to be tried together with adult

Art. 5 of the procedure code stipulated young person not to be tried with the adult. As long as the procedural rules and substantive criminal law applicable up on juvenile delinquent is different from the regular adult procedure. Consequently, to try these classes of people with adult can defeat not only the objective of law but also the justice.

v. Expert Evidence and Enquiry

Reliable and valid assessments are critical for effective decision making at all level of the juvenile justice system⁷³. Many assessments conducted in juvenile justice systems are clinical in nature that is they rely on the more or less inform collection of from interview and file reviews, and the integration of that information through an informal judgmental process⁷⁴. Accordingly, art. 54 of the criminal code says that for the purpose of assessing sentence the court may require information about the conduct, education, position and circumstances of the young criminal. It may examine his parents as well as the representatives of the school, guardianship authorities and the institutions concerned. The court may require from the above-mentioned persons and institutions the production of files, particulars, medical and social reports in their possession concerning the young person and his family.

vi. Variation of Order

From the words of the procedure code it is only measure, not penalty that can be varied. It is better treatment accorded to juvenile delinquents. Any court which has sentenced a young person to a measure may at any time of its own motion or the application of the young person, his legal representative or the person or institution to which he has entrusted vary or modify such order of the interest of the young person so requires⁷⁵. Any kind of juvenile delinquent is to benefit from such privilege based up on the satisfaction of the court.

⁷³ Supra note 42, p.54

⁷⁴ Id.56

⁷⁵ Supra note 69, art.180

CHAPTER THREE

ADMINISTRATION OF JUSTICE FOR JUVENILE DELINQUENTS IN OROMIA REGION

Introduction

Oromia region is the leading region both in geographic coverage and population number among the nine regions stipulated under FDRE constitution. This region encompasses about 19 zonal and more than 300 woreda administrative units.

The courts in Oromia region are organized as Supreme Court, high court and district court⁷⁶. They are labeled at Woreda, zone, and regional level respectively.

The subject matter of this chapter is going to be assessing the overall practical juvenile justice system in the region against different domestic legislations and international human right instruments ratified by Ethiopia.

This chapter is composed of different parts. The first and the second part revolve around testing the compatibility of the practical procedural and substantive activities running in justice organs with domestic legislations and international legal instruments ratified by Ethiopia, respectively.

The third part of the chapter is devoted in assessing the availability and accessibility of juvenile justice institutions, organizations and personnel as well as the actual programs and activities running in the juvenile justice system of the region.

3.1. Conformity with Procedural laws

3.1.1. Commencement of proceeding

Commencement of criminal proceeding is supplemented by different procedural guarantees. Most of these guarantees are constitutional rights and some are procedural rights, and they become more sensitive in the case of juvenile delinquents. Here the discussion is going to be around procedural matter of juvenile justice during the very commencement of proceeding by exposing the compatibility of practical activities in the region with the map of laws.

⁷⁶ Art. 4,A proclamation for the re establishment of Oromia courts no.141/2008

In the adult case, the criminal proceeding is commenced when any accusation or complaint is made to the police or the public prosecutor. Even, in the case where an accusation or complaint is made to a person or authority other than the police or public prosecutor or to a police authority or a prosecutor having no jurisdiction, such person, authority or prosecutor shall without delay forward the accusation or complaint to the police authority or public prosecutor⁷⁷. In flagrant cases also the procedure code under its art. 21 stipulate that the case of offences as defined in art. 19 and 20, proceeding may be instituted without an accusation or complaint being lodged, unless the offence cannot be prosecuted except up on a formal complaint.

In case of juvenile delinquents, however, the procedure code stipulates that an accusation or complaint regarding a young person shall be made in accordance with art. 172⁷⁸. In other words, in principle the section of the code that governs accusation or complaint against adult criminals does not apply in the case of juvenile delinquents. Accordingly, art.172 (1) of the code equally empowers police, public prosecutor, parent/ guardian/ and victims to bring before justice organs the juvenile involved in criminal acts. Here, unlike in the adult case, there is no need for a precondition of an accusation or complaint to be made to police or public prosecutor. Rather, even parent or guardian and the complainant are empowered by the law to bring juvenile delinquent before court without passing through the procedure of accusation or complaint to police or public prosecutor.

This stand of the code clearly distributes the responsibility about juvenile delinquents not only to law enforcement agency, but also to family of juvenile, and the society in general. This is in line with the jurisprudence of juvenile justice which says the state is the ultimate guardian of delinquents, and delinquents are the responsibility of every one. As well, this is with a potential to increase the commitment of society towards producing a responsible generation, and softens the attitude of society towards juvenile delinquents.

The participation of different bodies in bringing juvenile delinquents before organs of justice in the site covered by assessment is simply demonstrated in the following charter based on the interview conducted with 18 juvenile delinquents ranging from 9 to 15 years old.

⁷⁷ Supra note 69, art.17

⁷⁸ Id. Art.16(1)

Addressed group	No. juvenile apprehended by Police/militia		No. juvenile apprehended by victim/complainant		No. juvenile apprehended by parent/guardian		No. juvenile apprehended by any other citizen	
	In No	In %	In No	In %	In No.	In %	In No.	In %
J/delinquent(18)	15	83.2	3	16.6	0		0	

Here, persons participated in bringing juvenile delinquents before justice organs are predominantly law enforcing organ of government: police in urban and semi-urban area, and militia in rural area. While the involvement of parents or guardians and any other responsible citizen is zero, the victim/ complainant also prefer to go through an accusation or complaint made to police or public prosecutor. Thus, the slowness of societies' commitment towards bringing any juvenile involved in criminal acts can potentially make the juveniles come in conflict with the law to pass through the adversarial nature of the regular adult criminal procedures during the very beginning of commencement of proceeding.

As to the right to speed trial, internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible⁷⁹. The longer this period the more likely it is that the response loses its desired positive pedagogical impact, and the more the child will be stigmatized⁸⁰.

In line with this international consensus the criminal procedure code under art. 172 (1) require once the juvenile delinquent is apprehended to be brought immediately before the nearest court. Interestingly, the common pillars of the right to speedy trial i.e., the regular time limit of 'within 48 hours' under FDRE constitution and the principle of 'without unreasonable delay' under different international human right instruments, are not admissible in juvenile justice system. Having considered the sensitiveness of juvenile justice, these two pillars of the right to speedy trial are replaced by another more strict time indicators: *immediately, and as speedy as possible*. In Ethiopian legal framework, the time indicator '*immediately*' is stipulated under art.172 of criminal procedure code while the term *as speedy as possible* is recognized under CRC and ICCPR. Thus, in juvenile cases the law need the enforcement of the right to speedy trial to be in a way that it is immediately and as speedy as possible.

⁷⁹ Supra note 33.

⁸⁰ Id.

The same provision of the code mentioned above need the direct appearance of the apprehended juvenile delinquent to be directly brought before court without resorting to police station or any other place. This can potentially hinder the possible violations of rights up on juvenile delinquents, and also upgrade the possibility for the attainment of best interest of the same, which is stipulated both in domestic legislations and international human right instruments ratified by Ethiopia. Thus, direct appearance before court is not only a single procedural matter, but it can also determine the protection of other rights and the realization of the measure or penalty going to be given by the court. If juvenile is not directly taken to court and frustrated in police station or any other detention place the basic principle of best interest of the child can be defeated initially.

The following charter shows the rate of time within which juvenile delinquents are brought before court for the first time once they are apprehended in Oromia regional justice system.

Duration of time taken.	Within 48 hours	3-5 days	7-10 days	15-18 days
No. of juvenile (out of 18)	2	7	4	5
In percent t(%)	11.1%	38.8%	22.2%	27.7%

The data is collected via interview with juveniles in four Zonal corrective institutions. These juveniles are made to spend all this unlawful detention time with in police station. This clearly shows as juvenile delinquents are not able even to benefit from the common pillars of the right to speedy trial. Out of 18 juvenile delinquents none of them are directly brought to court without resorting to police station. In other words, the level of violation of such protection is about 100% in Oromia region.

3.1.2. Investigation and Preparation of charge

The criminal procedure code contemplates that investigation of offences committed by young person shall be carried out in accordance with instructions given by the court under art.172 (2).⁸¹ This arrangement is clearly distinct and different from the case of the investigation of crimes allegedly committed by adult. In the latter case, a basic premise of the code is that investigation

⁸¹ Supra note 69, art.22(2)

of crime commences when the agency entrusted by law to investigate crimes i.e., the police and public prosecutor is formally informed of the commission of a particular crime. In the case of juveniles, however, investigation may only be conducted only after the juvenile delinquent is presented to court. The court may, when presented with a juvenile delinquent, dispose the case or investigate it informally and immediately. Though there is no a clear indication as to when police investigation is to be ordered, police investigation is ordered by the court presumably in exceptional cases. Thus, the court in juvenile cases is not merely an adjudication body, but serves as a mechanism for diverting the child from time taking and adversarial investigation procedure and trial. Apparently, the code assumes that judges and courts will be in a better position to appreciate the problems and different situation of juvenile delinquents.

The assessment conducted via interview with 18 juvenile delinquents shows that none of these juveniles are saved from investigation by police and/or public prosecutor before being brought to court. This procedural violation brings about the following inconformity with the words and the spirit of the laws.

1. Investigation without authorization goes to about 100%.
2. Domination of police investigation while it needs to be exceptional.

As to preparation of charge, the code stipulates that the public prosecutor shall not institute proceedings against a juvenile delinquent unless instructed to do so by the court under art.172⁸². Additionally, the chapter of the code that govern the manner of charging come up with a stand that provisions of this chapter shall not apply in cases concerning juvenile delinquent unless an order to the contrary be made under art.172⁸³.

However, the study conducted via assessment of dead files has shown the following deviation from the law at Woreda and Zonal High Court.

Level of court	Authorized charges		Unauthorized charges	
	In No.	In %	In No.	In %
At W/ Court(out of 12 files)	0	0	12	100
At High Court(out of 6 files)	2	33.3	4	66.4

⁸² Id. Art.40(2)

⁸³ Id. Art.108(3)

The total rate of unauthorized charging in the area fall under the assessment is about 85.7%. This deviation certifies the other inconsistency with laws developed in this area i.e., domination of charging in criminal proceeding of juvenile delinquents while it ought to be an exceptional unless the offence is a very serious one that carries a penalty of no less than 10 years imprisonment or death.

3.1.3. Examination and determination of age of the suspected juvenile

As registration of birth is not developed in the country when need arise for the determination of age of a person it is a medical examination that is going to be conducted. Such examination is conducted in two ways⁸⁴. One is through DNA technology with a potential to determine exactly. This is so expensive that it is inaccessible even in developed country. The other is estimation by medical board based on the combination of radiological test up on bones and physical observation by medical experts. This is common in our country while the former one is actually inaccessible.

The research conducted via different methodologies describes draw backs and inconsistencies related to examination of age of juvenile delinquents in juvenile justice system of the areas fall under the scope of assessment in the following manner.

The age of juvenile delinquent subjected to medical examination is not determined accurately. Rather, it is expressed in terms of interval like 11-13 or 9-10. Consequently, the possible legal inferences drawn when the determination of age is made in term of interval can be: immunity from criminal liability, application of special measures and penalties, reduction of penalties, and application of the ordinary provision of the code. The choice made by judges in such occasion is different from judges to judges, and this problem is more elaborated in the following manner via the questioners filled by 35 judges:

Range of age of juvenile	No. of Judge choose the first age		No. of judge choose the average		No. of judge choose the end	
	In No.	In (%)	In No.	In (%)	In No.	In (%)
8-10	18	51.4%	17	48.5	-	0
14-16	16	45.7	18	51.4	1	2.8

⁸⁴ Interview with Dr.(not willing to express his name),Adama Hospital,19/05/05, @,5:00-5:14

According to this charter, if the age of the juvenile is determined by medical board as of 8-9 years old, 51.4% of judges contacted via questioner will release the juvenile from criminal liability while the remaining 48.5% treat the juvenile under special provisions governing juvenile delinquents. As well, if the age of the juvenile is determined as of 14-16 years old, 97.1% of judges addressed via questioner will treat the juvenile under special provisions governing juvenile delinquents while the remaining 2.8% will treat the juvenile under ordinary provisions of the code. This shows the non uniformity of judgments in juvenile justice system of the region.

Besides, as the age of client is determined by appreciation of facts, some judges, police investigators and public prosecutors addressed via questioner complain as the professionals engaged in examination of age are sometimes influenced by the different factors like the gravity of crime committed by juvenile, the response of the society towards the crime committed, the expert's relationship with the suspect or the victim or their respective family. Consequently, sometimes when the estimation given by medical institution under the order of police or public prosecutor is contested by party at the trial and the court order the same institution for examination of age the latter result of examination becomes different from the first one. Besides, result of examination of age of the same juvenile delinquent given by different medical institutions is also different from one another.

Compulsory admission of age is the other problem related with determination of age of juvenile delinquents. This is created when a juvenile is forced to admit his age above the truth one. The effect of such violation makes the juvenile to be subjected to the ordinary provisions of criminal code. The following saying certifies this fact:

While the truth is only 15 years, I was accused as I have been 16 years old without any other further examination. Though I try to oppose no one listen to me⁸⁵.

As to power and responsibility to order and manage examination of age, the criminal procedure code is not clear and specific as to who is authorized to order examination of age of juveniles. However, this does not mean the code is totally silent or of no provision to govern such issue.

⁸⁵ Interview with Gamachu Nuguse, East Shoa rehabilitation center (Adama),29/12/04,@10:10-10:27

Art 172(2) and 22(2) of the code clearly puts that the investigation is to be conducted in accordance with court instruction. This provision exclusively empower the court to instruct from the very beginning each and every legal engagement up on a juvenile delinquents. Thus, as age examination is part of investigation it needs to be ordered and managed by the respective court. Pending the study, about 35 judges are addressed via questioner, and their respective answer for the question that ‘who is empowered to order and manage examination of age?’ is elaborated in the following table.

Unit	Bodies that presented as choices for the above question.		
	Court	p/prosecutor	Inv. police
In No.	20	13	2
In (%)	57.1	37.1	5.7

About 42.8% of judges are pro stand that court is not with the responsibility to order and manage examination of age of juvenile delinquent. The effect of such confusion up on the power and responsibility to order and manage examination of age a juvenile delinquent is seen when bring another problems in juvenile justice system of the region.

One of such problems can simply be observed in a juvenile case of Alamayo Dabale Vs P/prosecutor⁸⁶. This case is discontinued by the order of the court before being entertained due to a mere reason that the public prosecutor failed to appear before court with the result of examination of age on the adjournment. This order of the court is has no ground of law as it has been after all the responsibility and power of the court to manage every incident related with examination of age to the extent that arresting the one who fail to perform the order of the court.

The statics in the charter clearly shows the fact that it is tolerable to the extent of 42.8% when juvenile delinquents are subjected to examination of age before being brought to court or without authorization of court in Oromia juvenile justice system.

The other problem is delay of time during examination of age. As mentioned in the preceding sub-topics, the international legal instruments ratified by Ethiopia and domestic legislation require the adjudication of juvenile cases to as speedy as possible. Among part of adjudication,

⁸⁶ Alamayo Dabale Vs P/prosecutor, Ada’a Woreda court, file no.29705

the time taken during age examination is the one that bring delay of justice as by the output of data collected via questioner filled by 35 judges. The minimum time taken for the result of examination to reported to the court I different area fall under the scope of assessment is described in the following manner.

Time Table	No. of judges gives the respective answer.	
	In No.	In (%)
Less than 3 days	5	16.1
Within 3-7 days	14	45.1
More than a weak	12	38.7

One of the reasons for such delay of time is the problem related with budget for examination of age of juvenile delinquents. Pending the study 30 investigating police officers have been contacted, and 22 or 73.3% of them complain the problem of budget for examination of age of juvenile delinquents. As medical institutions like hospital that can conduct examination of age is not available at every woreda town, it is not easily to accomplish order of examination of age. There is transportation and other cost to be incurred while neither of justice office, court nor police office has an independent budget for such cost. As by these police investigators addressed via questioner, there is a time when they are forced to request a support from other institutions work on children. Sometimes it is the victim of criminal act by the juvenile delinquents or the police himself as a last resort under the pain of his/her duty that covers the costs. The effect of this unsettled issue is that it brings grave delay of justice..

3.1.4 Trial

As stipulated by the international legal instrument ratified by Ethiopia and the domestic legislations, the trial in juvenile cases is different from the regular adult trial proceeding. The trial in juvenile cases needs to be the one that advocate justice and best interest of the juvenile. The jurisprudence and the word of the laws on one hand, and the practical assessment conducted in the Oromia region on the other hand, are drawn in the following manner.

I. Informality of Court Proceeding

Art 176 (2) of criminal procedure stipulates that all proceeding shall be conducted in an informal manner. Accordingly the informality of proceeding and the set up of the chamber is needed to be in juvenile-friendly manner. Such informality may be reflected through the structural set up of the bench, clothing of the judge, prosecutor (if he is there), the tone and manner of speaking, the smoothness of the questioned forwarded.

Pending the study the structural set up of the bench of 12 courts have been observed, and except that belongs to Adama Special High Court and Shashamane Woreda Court the others are with a potential to make the trial to be a confrontation while it needs to be in juvenile friendly manner and the one that can promote intimacy among attendants of trial such as judges, juvenile delinquents, social workers, parents of juvenile, advocates of juvenile and any other interested party.

The narration of trial with in 18 dead file assessed pending the study certify as there is no a spirit of exchange of ideas but adjudication. The flow of examination of juvenile delinquents, examination of witnesses and the role of judge and public prosecutor in the trial is exactly the same as the formal adult trial. Via interview some juveniles also mention as judges and public prosecutors attend the bench with a formal legal dressing.

Consequently, this adversarial set up of the bench and the environment during trial made these 17 juvenile delinquents addressed via interview to complain uniformly that they had been too afraid of the environment of trial and set up of bench to the extent that they were unable to express their idea to the court.

Besides, some express what they confronted with in the following manner.

In court room I was so afraid that I remained only crying than expressing my idea⁸⁷.

The judges are in the same mode that they reflect in regular criminal proceeding. The following event certifies this fact.

When arrived at the gate of court room I become afraid of , and I resort to sit. But the judge on the bench warms me not to sit down⁸⁸.

⁸⁷ Interview with Alamu Ragasa, East shoa zone prison(Adama),30/12/04, @4:02-4:15

The worst is that even in places where there is juvenile friendly bench like at Adama Special Zone High Court the case of juvenile delinquents is not being entertained there⁸⁹. The case of juvenile delinquents is simply being entertained within a closed regular bench while juvenile bench is being utilized only when juvenile appear before court being a victim of criminal act and witness at the same time or being a witness. This is unusual ignorance to juvenile justice system.

II. Participants of Juvenile Bench

Advocates, legal professionals and researchers tend to agree that parental involvement in the juvenile justice process is the goal that should be promoted⁹⁰. In dealing with youth delinquency cases the juvenile justice system has the unique challenge of balancing the interest of the child with the autonomy of the family and the goal of public safety⁹¹. All three entities (the child, the family and the state) have a legal interest in how the process unfolds. As in other areas the law assumes that parents and children share the same goals or interests and therefore conceptualized the role of the parent as guardian and advocate⁹².

The procedure code also stipulates that where the young person is brought before court and his parent, guardian or other person in loco parentis is not present; the court shall immediately inquire whether such person exists and shall summon such person to appear without delay⁹³.

The assessment conducted via interview with 17 juvenile delinquents and 18 dead files study to measure parental participation in the trial of juvenile delinquents' cases within the area fall under the scope of the study is drawn in the following manner.

Methodology employed	The addressed group	Parental participation during trial		Non participation of parent	
		In No.	In (%)	In No.	In (%)
Interview	17 J/delinquents	0	0	17	100
Dead file study	18 dead files	0	0	18	100

⁸⁸ Interview with Qalab Dawit, East Shoa zone prison(Adama), 30/12/04, @4:17-4:403

⁸⁹ Interview with Tasfaye Gabre, a judge at Adama Special High Court(Adama),27/06/05,@10:54-11:11

⁹⁰ <http://www.oklaos.state.ok.us/moja/...pdf>

⁹¹ Id.

⁹² Id.

⁹³ Supra note 69,art.173

Besides, the study conducted discloses that even when there is presence of parent there is no participation on trial.

My family came after me from the very beginning of the commencement of proceeding up until the day of judgment. But they have been out side of the court room during trial⁹⁴.

In the absence of parents' participation the possibility for the attainment of best interest of juvenile is too far.

Besides, the law prohibits the presence of prosecutor at any hearing in woreda court. This is designed to avoid adversarial nature of the court which may defeat due process of law. However, the real activities under the area covered by the assessment shows:

Methodology employed	Addressed group	Pro participation of p/prosecutor		Pro non participation Of p/prosecutor	
		In No.	In (%)	In No.	In (%)
Questioner	23- Woreda court jugdes	14	60.8	9	39.1
Dead file study	12- entertained at Woreda courts	12	100	0	0

The participation of public prosecutor in these 12 dead files entertained at woreda court was exactly like adult criminal proceeding in each and every part of proceeding.

In perhaps no other courtroom in the criminal terms is so many interested parties: family members, alternative to incarceration program counselors, social workers, psychologists, teachers, and lawyers assembled at times on a single case⁹⁵. These all are to contribute for maximum achievements of best interest of the child.

As well, art 177(2) of criminal procedure empowers the court to call before it any person or representative of any institution with a view to obtaining information concerning the character and antecedents of the juvenile. Art 54 of criminal code also contemplates that for the purpose of assessing sentence the court may require information about the conduct, education, position and

⁹⁴ Interview with Mangistu Bayena, Juvenile rehabilitation center at Adama, 29/12/04, 8:40-9:00

⁹⁵ Supra note 2, p.161

circumstances of young criminal. It may examine his parents as well as the representatives of the school, guardian ship authorities and the institutions concerned.

The assessment conducted via dead file study shows the level of the participations of different organs in the juvenile cases entertained in areas belongs to the scope the research in the following manner.

No. Dead files assessed	Participants in each files					
	Expert participation		Welfare organization		Any social files	
	In No.	In (%)	In No.	In (%)	In No.	In (%)
Among 12- W/Court files	0	0	0	0	0	0
Among 6- High Court files	0	0	0	0	0	0

III. Calling & examination of witnesses

The status and examination of witness in the juvenile court proceeding is different from that of adult court proceeding. The reason for such difference may be rooted in the juvenile justice jurisprudence that promotes the state as the ultimate guardian of the juveniles in conflict with law.

In the juvenile delinquents case the criminal procedure code under its art 176(5) puts that if it is clear from what the accused says that he fully understands and does not admit the accusation or charge, the court shall inquire as to what witnesses should be called to support such accusation or charge. This provision clearly devoid public prosecutor the right even to cause to be summoned any witnesses that support the accusation in the charge.

The assessment conducted via dead file study and questioner filled by judges shows that:

- i. 18 dead files with their respective charges have been observed pending the assessment and 100% of the charges are with lists of witnesses of prosecution. This is of a clear deviation from the words of the law developed in the Oromia juvenile justice system.
- ii. Among 35 judges addressed via questioner 26 of them are with a stand that the calling and selection of witnesses that can support the accusation is to be made by the public

prosecutor. In other words, about 74.2% of judges in the area fall under the scope of research clearly stand in opposite to the words of law.

Besides, the law says that in juvenile cases all witnesses shall be examined by the court and may there up on be cross-examined by the defense⁹⁶. Neither party to allegation is able to chief examines nor re examines witness of their side. The right to cross examine is given only to the juvenile or his/her representative or his/her advocate. This right is not given to public prosecutor even when he is present at high court.

The assessment conducted via questioner filled by 35 judges and 18 dead file assessment shows how the examination of witnesses is running in area covered by assessment in the following manner.

- i. 35 judges are addressed via questioner and 77.5% of them with a stand that examination, and re- examination of witnesses is distributed among parties to allegation like in the case of adult criminal procedure.
- ii. 18 charges addressed via dead files study and 100% them show that the right to cross examine is given to public prosecutor.

This clearly proves as the calling and examination of witnesses in the juvenile criminal system of Oromia Region is not running in line with the law and jurisprudence of juvenile justice system.

3.2. Conformity with Substantive Laws

3.2.1. Judicial approach towards juvenile delinquents

Once the juvenile delinquents come in contact with justice organs the two possible judicial judgments are either custodial or non custodial disposition. Custodial judgments totally limit the liberty of juvenile delinquent while non custodial judgments are implemented without or with a little limitation of the liberty of juvenile delinquent.

As by the output of the assessment conducted via dead files study, the deviations occurred in judicial judgments concerning juvenile delinquents ranging from 9-15 years old (hereafter termed as the first class of juvenile delinquents) are narrated in the following manner.

Art 168 of the criminal code stipulates the possibility of imprisonment penalty is up on the satisfaction of the court when juvenile delinquent has committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more or with death.

⁹⁶ Supra note 69, art.176(6).

Juvenile delinquents that haven't committed such a kind of crime need to be subjected to other kinds of measures or penalties, not imprisonment.

The study conducted via assessment of dead files shows the lawfulness of the penalty of imprisonment imposed up on the first class of juvenile delinquents in the area covered under the scope of the study in the following manner:

Article under w/c the juvenile is convicted	No. of juvenile convicted.	Penalty	Lawfulness of judgment
540	1	Imprisonment	Unlawful
556(1)	1	Imprisonment	Unlawful
558	1	Imprisonment	Unlawful
665(1)	4	Imprisonment	Unlawful

This charter certifies that penalty of imprisonment imposed up on the first class juvenile delinquents is 100% unlawful.

On the other hand, art.53 (1) of the criminal code stipulates that where a crime by young persons between the ages of nine and fifteen years, the penalties and measures to be imposed by the courts shall be only those provided in articles 157-168 of the code.

Regarding the applicability of these special provisions the study conducted via assessment of dead files, among 15 files the penalties and measures imposed up on 8 of them are those provided in 157-168 of criminal code while the remaining 7 files are subjected to the penalty prescribed under the special part of the code. This means about 46.6% of juvenile delinquents are subjected to unlawful penalty.

As to the age interval of the first class of juvenile the law (cumulative readings of art. 53 & 56 of criminal code) has a clear standing that 15 years age person shall fail under the scope of the first class of juvenile delinquent. However, the following dead files collected pending the study shows that there is a time when courts presume such edge of years in otherwise way.

In the case of *Robera Yonas Vs Public prosecutor*, the delinquent is only 15 years old, and convicted under art. 540 of criminal code. The penalty imposed by the court after conviction is deducted from the possible penalty described under art. 540 based on the federal courts sentencing guideline no. 1/2002 .However, it is mitigated as per art. 56(2) of the criminal code and only three year imprisonment is imposed up on the delinquent⁹⁷. Here, as per the words of the law art. 56 must have not been expressed because the juvenile is only 15 while the provision expressed governs only those juvenile above fifteen but below eighteen.

⁹⁷ *Robera Yonas Vs P/Prosecutor*, west shoa High court, file no.46548

The following order by the court against the respective accused juveniles of 15 and 14 years age also certify this clear deviation from the words of law.

Let the first suspected be released up on a bail of 500 (five hundreds birr).As far as the second accused is concerned as he is below 15 years let he be handed over to his father, Lema Hirpho, up on a signature entered to bring him on the next adjournment⁹⁸.

As to the right to benefit from doubt, it is the jurisprudence of criminal law that the accused shall be convicted only in the condition of beyond reasonable doubt. This jurisprudential stand enables the accused to benefit from each and every doubt that can potentially determine the conviction or the penalty going to be imposed. Accordingly, in juvenile cases, the CRC committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she have the right to the rule of the benefit of the doubt⁹⁹.

However, the case entertained at East Shoa high court disclaims such protection. The case is between Misganu Alamayo Vs P/prosecutor¹⁰⁰. The age of the delinquent convicted under art. 627(1) and (5) and subjected to 11 years rigorous imprisonment is estimated within interval of 15-16 years by Adama Hospital. From the estimation of the age it can be simply deduced that the juvenile is surely 15 but not 16. In other word, it is certain that the juvenile is 15 while it is doubtful that the juvenile is about 16. As these two extreme figures have different penal effect the court should have stared at a criminal jurisprudence that enables the accused to benefit from the doubt; beyond a reasonable doubt. However, in this case the court chooses 16 years and inconsistency with this jurisprudence the juvenile is subjected to 11 years rigorous imprisonment.

In the juvenile case of Xilaye Balacha of age 8-10 Vs public prosecutor, the juvenile is convicted under art.627(1) of the criminal code, which may make him to be subjected to corrective institution or penitentiary detention as by art.168 of the same code. However, the court spelled out that;

.....we decided the juvenile to be punished by 8 years simple imprisonment. However, as the misconduct of the delinquent shows the failure of responsibility of his family, we reprimand both the juvenile and his family, and release the family as per art.160 of the criminal code¹⁰¹.

Here the judgment is two kinds: 8 years simple imprisonment, and measure of reprimand against the juvenile and his family and, release the delinquent. It is not clear to implement. This shows the confusion created among the judges in juvenile cases.

⁹⁸ Case Gamachu Lema & Dasu Lama Vs P/prosecutor, Adama Woreda Court, file no.01482

⁹⁹ Supra note 33

¹⁰⁰ Case Misganu Alamayo Vs P/prosecutor, East Shoa High court, file no. 26847

¹⁰¹ Xilaye Balacho Vs P/prosecutor, West shoa High court, fie no.46684

The part of the criminal code that govern the measures and penalty to be imposed against the first class of juvenile delinquents empower the court to impose a penalty of imprisonment either to corrective institution or a penitentiary institution when the juvenile committed crime punishable by rigorous imprisonment of 10 years or more or by death.

Under the case entertained at West Arsi High Court the juvenile delinquent (ranging from 13-15 years old as by estimation given by medical board) is convicted under art.627(1) of criminal code. This kind of crime might bring the juvenile to a penalty of imprisonment. The reasoning of the court under penalty version was coined in the following manner:

*.....the accused is belongs to only 13-15 years old. This makes him not to be subjected to penalty of imprisonment.*¹⁰²

The other fact disclosed through an assessment conducted via the study of dead files is the ratio of different kinds of measures or penalty up on juvenile delinquents ranging from 9-15 years old. Art.37 (b) of CRC contemplates that arrest, detention, or imprisonment of a child become inconformity with the law shall be used only as a measure of last resort and for the shortest appropriate period of time. The ratio of different measures and penalties imposed up on juvenile delinquents in 15 files is described in the following manner.

Units	Kinds of penalty or measures					
	Supervised education	School or home arrest	Admission to rehabilitation center	Reprimand	Fine	Imprisonment
In No.	2	1	2	3	1	6
In (%)	13.3	6.6	13.3	20	6.6	40

This charter show the domination of imprisonment penalty compared to other penalties and measures. This does not go in line with the intention of the laws and the jurisprudence of juvenile justice system.

In juvenile delinquent case the criminal code under art. 171 stipulate that the period of probation shall be fixed between one and three years. However, this rule is seen when defeated in the following cases:

*.....we passed a penalty of three months simple imprisonment against the accused. As he is a student, however, we suspend the penalty as per art. 191 of the criminal code for a probation period of 6 months...*¹⁰³

¹⁰² Abuna Kore Vs P/prosecutor, West Arsi High court, file no.16348

The period of probation granted under this judgment up on juvenile delinquent is only 6 months. This is a clear inconsistency with the provision of the code that set the minimum period of probation granted to a juvenile delinquent to 1 year.

Probation is appreciable both under domestic legislations and the international human right instruments ratified by Ethiopia like CRC, and it is a means to supervise the future character of the juvenile delinquent under the order of the court. From the jurisprudence of juvenile justice system, and words of the law, it is probation under supervision that is more effective than sending a juvenile to prison.

As by the assessment conducted via dead files study, among 7 juvenile delinquents subjected to imprisonment penalty by judgments courts only 1 penalty is suspended. In other words, about 85.7% of juveniles are sent to prison while only 14.2% benefited from suspension of sentences up on probation. This shows as probation is ignored in Oromia juvenile justice system.

3.2.2. Non Judicial Approach toward Juvenile Delinquents

Art. 40(3)(b) CRC clearly stipulates that whenever appropriate and desirable, measures for dealing with juvenile delinquents without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

A characteristic feature of the legal processing of juvenile is the recognized flexibility in the programs focus on the removal of youth from formal judicial intervention¹⁰⁴. In the other word, their aim is to handle delinquent and at risk youngsters in the community based setting away from the attention of the courts and institution.

To appreciate the importance of community based corrective programs for juvenile justice system in particular and for the country in general, let bring into picture what now running in Addis Ababa city at each kebele level. The following part is wholly taken from Case study: Diversion of Children in Conflict with law in community based program center, Ethiopia.

There is Child protection unit (CPU) in each police station, and when children are brought to the CPU, the police officer in charge of the CPU then contact the parent and guardian of the children, investigate the crime and compile a report to be assessed by community workers of the CP to take one the following measures:

- Release the child under the responsibility of parents/guardians
- Refer the child to the Community based correction program(CBCP)
- Present the child to a juvenile court

¹⁰³ Tafesa karorsa Vs P/prosecutor, Toke kutaye woreda Court, file no.07713

¹⁰⁴ Supra note 1,p.102

The criteria for enrolling children in the program are:

- The child being a first time offender and having committed a petty offence
- The age of the child being in the range of 9 and 15 years.

The working methods used in the program are the following:

- **Child assessment:** Once a decision is taken to send a child to the center, a treatment plan is drawn. The treatment plan is a written agreement signed by the child, the parent/guardian and the community worker stating the duties and responsibilities of the child, the parent/guardian and the type of activities that the child has to attend during his/her time in Community Based Corrective Program, here after termed as CBCP. The length of time that the child spends in the CBCP is determined by the community worker on a case by case basis. However, the upbringing of the child, factors that pushed the child to commit offences and readiness of the child for diversion are considered as general indicators in determining the length of time that the child is supposed to spend in the CBCP.
- **Engagement in organized daily schedule:** On average, children are enrolled in the program for three hours per day on weekdays. The duration of stay in the CBCP varies between one to two and half years. A typical day in the center is organized and led by film, and play indoor games of own choice. Children who are required to get counseling also are provided the services.
- **Behavior modification:** the children in the center are closely followed up by volunteers, who have daily contacts with the children and are the main agents in the follow up of children. There are also periodic follow ups by counselors. Team leaders, community workers, police officers and school teachers. All these people focus on discussing with the children about causal factors for committing the offence, expectation of families and communities from children, etc. These discussions are also opportunities for the children to have good models.
- **Periodic assessment:** periodic assessments are conducted on the situation of the children by collecting information from parents, teachers and volunteers. Once the initial enrolment term is over, the volunteer, team leader social worker, and police jointly decide to discharge the child from the program or extend the time. The attainment of correction is determined by assessing the child's school attendance, educational performance, personal hygiene, relationship with persons in the child's immediate environment, and the child's attendance and participation in the center.
- **Rewarding good behavior and innovative actions:** those who show good behavior and regular attendance in the center are rewarded in different ways such as going to theatres, foot ball games, or music festivals. Children in the center take different initiatives, as shown in the following example: a fourteen year old boy who is enrolled in the community based program in one of sub-cities in Addis Ababa compiles a daily

international and local sports report. He compiles the report from the media and reads the news every morning to his peers at the center. The children at the center, being great fans of foot ball, look forward to this event.

- Prevention of children: some street gangs use young children to distract adults while they carry out criminal activities or to signal the arrival of police. In return the young children get small material rewards and/or protection from the older children. When the young children are caught and enrolled in the CBCP, the older children stop their connection with the young children for fear that young children are recognized and followed by the police. Once children are enrolled in the CBCP, they are not likely to be victims of retaliatory measures by the victim of their offence, as it is considered that the matter is now in the hands of the law.
- Linkage with other NGOs: in some cases, the center works in coordination with child welfare NGOs that operate in the community, for example, in providing credit service to parents of Children in conflict with law, link up discharges, however, is not formalized in the program and are dependent on the initiative of the volunteers and other program staff.
- Discharge and follow up: the process of discharge takes place in a formal setup where parents, community representatives, a simple discharge form is filled, with the purpose of handing over the care of children to the parents. A significant gap in the program is the absence of a systematic method of follow up to find out how the children that are discharged from the diversion program have fared and design ways of supporting the children.

While there are many towns in Oromia region, none of them has program of diversion¹⁰⁵. No part of government has conducted discussion with the community of any town in the region for the establishment of diversion program¹⁰⁶. This clearly shows how much juvenile justice system of the region is ignored.

3.3. Institutional Facilities and Personnel in Juvenile Justice system of Oromia Region

3.3.1. Institutional Facilities

I. Juvenile court or Juvenile bench

A major reason why juvenile courts were established was to insure that young people, given the special circumstance of their age, would be treated fairly and humanely¹⁰⁷. When a minor is taken to a juvenile court, the atmosphere is much less adversarial than in criminal court¹⁰⁸. In juvenile courts, young people are often able to talk a special worker or counselor who can help

¹⁰⁵ Interview with Tesfa wakuma, social Worker of juvenile court at Oromia Supreme court, 25/06/05, @ 6:00-6:10

¹⁰⁶ Id.

¹⁰⁷ Supra note 8,p.70

¹⁰⁸ Id. P.71

them with their problem and instead of being tried before a judge sitting on the bench, the young offender is typically taken into a room with a table around which every one discusses the issue in an informal setting¹⁰⁹. In criminal courts, however, juveniles face a much more confrontational setting, in which they are at a distinct disadvantage¹¹⁰.

Juveniles often do not have the capacity to fully appreciate their situation in what can be a complex process and some psychologists have felt that this may prevent them from defending themselves effectively in criminal court¹¹¹.

In Oromia region there are only about 7 juvenile courts¹¹² while there are about more 300 district and 19 high courts which can entertain juvenile delinquents case in the first jurisdiction. The worst is that even where there is a juvenile bench the bench is utilized only during juveniles come before court as witnesses for a crime committed upon them or on a third party. The activity in Adama special zone is drawn as follows:

This juvenile bench is utilized when a juvenile appears before court as a witness for a crime committed upon them or on a third party. When juveniles suspected of committing a crime are brought to court we simply entertain the case in a closed regular bench¹¹³.

Trying juveniles in adult court would violate due process of law. This is elaborated in the following manner by the US Supreme Court that entertained a juvenile case in appellate capacity.

The 1960 US Supreme Court case of *Dusky Vs US* established a test to determine whether trying a juvenile in adult court would violate due process¹¹⁴. In *Dusky* the court concluded that in order for there to be a fair trial the defendant must understand the legal process, be able to appreciate their circumstances and the charge against them, and be able to assist in their defense¹¹⁵. If however, juveniles do not possess the same mental abilities as adults, their ability to assist in their own defense would be compromised¹¹⁶.

Thus, juvenile delinquents in the juvenile justice system are likely subjected to violation of due process of laws. Accordingly, among 17 juvenile delinquents addressed via interview 100% of them blame the adversarial nature of the court to the extent that they could not express their ideas to the court.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² supra note 105

¹¹³ Interview with Tasfaye Gabre, A judge at high court of Adama special zone (criminal bench), 27/06/05, @ 10:50-11:10

¹¹⁴ Supra note 8, p.71

¹¹⁵ Id.

¹¹⁶ Id. P.72

II. Juvenile Rehabilitation Center

Prison is what Erving Goffman refers to as a total institution, a place of residence and work where a large number of like situated individuals cut off from the wider society for an appreciable period of time together lead an enclosed, formally administered round of life. As such, the institutions have a tendency to mold persons into complaint and often shapeless forms to maintain discipline and a sound working order or less utilitarian reason¹¹⁷.

Juvenile facilities on the other hand, were specifically designed to handle the special needs of minor offenders¹¹⁸. They offer a more supportive atmosphere, where juveniles can receive counseling and continue their education, doing so among their peers¹¹⁹. The emphasis is on rehabilitation instead of punishment, which some feel makes it less likely that they are released back into society¹²⁰.

In Oromia region juvenile justice system, there is only one Juvenile rehabilitation center situated in Adama town¹²¹. Even this rehabilitation center is with different limitations like access to school and recreational facility.

This problem of availability of juvenile rehabilitation center brings the following failures in the juvenile justice system of the region.

As by art. 36(3) of FDRE constitution juvenile delinquents subjected to custodial penalty need to be detained separately from adult criminals. Additionally, Art.53 (1) of the criminal code also stipulates the same protections.

The assessment conducted via interview with detained juvenile delinquents shows that except those detained in Adama juvenile rehabilitation center all the remaining juveniles are kept in custody together with adult criminals.

Both the domestic laws and international instrument ratified by Ethiopia make rehabilitation and reformation the one and the only objectives of judgment against juvenile delinquent. Juvenile who have been in adult prisons are more likely to break the law again¹²². Rehabilitation in juvenile facilities and harsh punishment in adult facilities encourage antisocial behavior¹²³. Thus, the objective of punishment is not being achieved in juvenile justice system.

Art. 168 of criminal code stipulates that when a young criminal has committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more or with

¹¹⁷ Howard Abandinsky, *probation and Parole*, 7th ed., Upper Saddle River, 2000, p.196

¹¹⁸ *Supra* note 8, p.64

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *supra* note 105

¹²² *Supra* note 8

¹²³ *Id.* p.65

death the court may order him to be sent either to a corrective institution or penitentiary detention institution based on the gravity and nature of the crime and criminal. Though there is such kind of juveniles, these institutions are not available. And this brings like the following complain by presiding judges:

...even if the crime is punishable by imprisonment as there is no rehabilitation center for juvenile delinquents we decided to release the convicted juvenile up on reprimand as per art.160 of criminal code¹²⁴.

Such perception of judges can bring different effects. Among these effects, non uniformity of judgments can be reflected due to the different response by the judges against absence of accessible juvenile rehabilitation center in the region. While some choose to send the convicted juvenile to prison, the others release up on reprimand the juvenile convicted of the same crime. Consequently, juveniles with the same criminal status are to be treated differently

The investigating polices addressed via questioner indicated that there is a time when they are ordered by court to hand over the juvenile released up on reprimand, and his/her family escape away from them objecting the immediate judgment due to a potential fear that juvenile could be subjected to a revenge action.

III. Curative Institution

Art. 158 of the criminal code assists that if the condition of the young criminal requires treatment and where he is feeble minded, abnormally arrested in his development, suffering from mental disease, epileptic or addicted to drink, abuse of narcotic and psychotropic substances or other plants with similar effect the court shall order his admission to a suitable institution where he shall receive the medical care required by his condition. His treatment shall where possible include education and instruction.

This provision of law is in line with the thought that the state is the most guardians of children, and it is a commitment towards leaving no body on the road to be irresponsible citizen. In the context of Oromia region, there is no curative institution in the region¹²⁵. This shows the absence of any guarantee for such class of juvenile delinquents in juvenile justice system of Oromia region. Judges addressed via questioner also raised this problem and suggest that they simply release free when they confront with such kind of juvenile delinquents.

¹²⁴ Supra note 11

¹²⁵ supra note 105

IV. Rehabilitation Detention Room

It is interesting to note that Ethiopian law does not as a rule authorize the pre trial detention of children in conflict with the law. On the contrary, the law emphatically states that such a child should stay within a family environment pending the final disposition of the case. Thus, the procedure code reads:

Where the case requires to be adjourned or to be transferred to a superior court for trial, the young person shall be handed over to the care of his parents, guardian or relative and in default of any such person to a reliable person who shall be responsible for ensuring his attendance at the trial¹²⁶.

However, there is a time when a need for juvenile detention room rise. These are:

a. *Due to unlawful acts* : As discussed before among 18 juvenile interviewed none of them come to prison without spending two or more days in detention room with adult suspected. Some of this violation is created due to unlawful acts by law enforcement agency.

b. *By lawful order of the court*: This may be done when the best interest of the juvenile need as it is given a primary consideration by the constitution. For instance, if there a potential danger up on juvenile by the victim of crime committed, the court may order detention.

c. *When the family object to take back the juvenile*: The study conducted shows that when the court order the juvenile to be handed over to the care of his family as per art. 172(4) of procedure code, there is a time when the families of the juvenile object this order of the court and the police is forced to detain the juvenile at least until the condition of the crime calm down. Such thing is occurred in the case of Abuna kore Vs P/prosecutor mentioned above.

d. *Absence of family or any person to take back the juvenile*: There is a time when the parent, guardian or relative cannot be easily gained. This forced the juvenile to stay under detention at least until the family comes there.

In Oromia region there is no juvenile detention room¹²⁷. This brought about violation of constitutional rights of juveniles, the right to be detained separately from adult offenders, and this is with a potential to make the juveniles to develop unnecessary antisocial behavior during detention period.

¹²⁶ Supra note 69, art. 172(4)

¹²⁷ supra note 105

3.3.2. Personnel in the juvenile justice system

A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders other representatives who provide legal or other appropriate assistance to the child¹²⁸. In addition, specialized services such as probation, counseling or supervision should be established together with specialized facilities¹²⁹.

The administration of juvenile for juvenile delinquent in the region is lack of all these specialized units within the judiciary organs, the court system, the prosecutor's office and defenders¹³⁰, which is against the words and spirit of laws. In police unit, there is personnel to deal with children, but such polices operates mostly only when children come as a victim of criminal act. In the cases of juvenile delinquent there is no this much commitment and it is every ordinary police investigator that deal with juvenile delinquent without a category of specialization in profession.

Besides, there is no a data system in the region that specifically deal with such class of people to look over the number of juvenile delinquents, the rate of delinquency, the types of crime committed by such juveniles, and the judgments given by the courts up on such juveniles¹³¹.

3.4. Protection for Basic constitutional rights of juvenile Delinquent

FDRE constitution and international legal instrument ratified by Ethiopia come up with different human rights accorded to a person once he/she is lawfully apprehended/curtailed. The discussion is not to assess all these rights because most of them are already discussed directly or indirectly in preceding topics, but only some of them based up on the interaction they have with others rights.

I. Presumption of Innocence

The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law¹³². The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudicing the outcome of the trial¹³³. This rule/ principle is prescribed under art 20(3) of FDRE constitution, art. 14(2)(b)(i) of CRC, art. 17(2)(c)(i) of ACRWC, and 14(2) of ICCPR. The trespass of this right brings about the violation of all other fundamental rights of juvenile. Once the right to

¹²⁸ Supra note 33.

¹²⁹ Id.

¹³⁰ supra note 105

¹³¹ Id.

¹³² Id.

¹³³ Id.

presumption of innocence is violated, protection for the right of dignity, right to be heard, guarantees for a fair trial, freedom from compulsory self- incrimination and others is too low.

Though the words of the law that describe the rule of presumption of innocent until proven guilty is interesting, the study conducted via interview with juvenile delinquents shows among 18 juveniles 12 or 66.6% of them are subjected to unlawful action by police or the victim of the criminal act committed. This violation committed against the juvenile has a far reaching consequence of shaking the base of best interest of the child. Compulsory self incrimination is the other output of violation of presumption of innocence in the area assessment is conducted.

*I haven't committed any crime. I am here only for the only reason the accuser is in hostility with my brother. He apprehended and handed over me to Police. The accuser treated me harshly, and the police also forced me to admit the accusation*¹³⁴

II. The right to legal representation.

Art. 20(5) of FDRE constitution entitles every accused to the right to be represented by legal counsel of their choice, and if they do not have sufficient means to pay for it and miscarriage of justice would result to be provided with legal representative at state expense. The separate part of criminal procedure law governing the case of juvenile ban out the test of economic indigence and make the court to appoint legal representative for the juvenile on the condition that no parent, guardian or other person in loco parentis appears to represent the juvenile or the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death.

Besides, Art. 40(2) (b)(iii) of CRC, and art. 17(2)(b)(ii) of ACWRC also require state parties to ensure that every child infringing the penal law shall be afforded legal and other appropriate assistance in the preparation and presentation of his/her defense. These entire legal instruments need the intervention of legal representation or assistance at the very beginning of the proceeding of juvenile delinquent without any further criteria.

However, the assessment conducted shows the following inconsistency:

A. Presentation without representation:

The assessment conducted via dead file study shows that juvenile delinquents sued at high are given the chance to benefit from the constitutional right to legal representation at state expense. The complaint here is with the manner and duration of relation or discussion that had been

¹³⁴ Amanuel Abera, Oromia special zone of Finfine prison(Burayu),23/01/05, @ 3:06-3:25

between the juvenile and the legal representative. Such complaint can be more elaborated by the following saying of one of juvenile interviewed in prison.

*Legal representative has been assigned for me at state expense. had there been a good discussion with my representative I would have been released freely.*¹³⁵

There is also no culture of discussion between the juvenile and his/her family on one hand, and the advocate on the other.

B. Denial of the right to legal representative

Juvenile who are not represented by counsel are unlikely to exercise their other procedural rights effectively¹³⁶. They are severely hampered in their ability to contest the charges against them, to challenge their detention, and to propose alternatives to the dispositions advocated by the prosecution¹³⁷. The US supreme court has noted ‘the right to representation by counsel is not a formality; it is of the essence of justice¹³⁸. Even when juveniles do have lawyers to represent them, the quality of the advocacy they receive is too often deplorable¹³⁹.

Accordingly, art.174 of the procedure code come up with a situation in which a juvenile come in conflict with the law cannot be left without a representative any cases. Thus, an occasion in which juvenile delinquent is left without a representation cannot be reasoned out otherwise than it is a violation of right.

In other hand, the assessment conducted via dead files study has shown that among 6 juvenile delinquents case entertained at high court all are granted a legal representative at state expense while among 12 juvenile delinquents cases entertained at woreda court all are denied such a right.

The effect of such denial can be simply manifested in the following chart prepared based on a data collected.

¹³⁵ Alamitu Wararka,Shashamanne,01/05/05@ 8:13-8:29

¹³⁶ Supra note 39.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

Name of court	Parties to all accusation	Right to legal representative	Crime committed	Judgment of the court
Shashamane woreda court	Ismael Mustafa Vs P/prosecutor	Denied	665(1)	7 months simple imprisonment
Sabata Awas woreda court	Amanuel Abera Vs P/prosecutor	Denied	665(1)	4 months simple imprisonment
High court of West Arsi zone	Abuna Kore Vs P/prosecutor	Respected	627(1)	Reprimand
High court of West Arsi zone	Amana Shubisa Vs P/prosecutor	Respected	627(1)	Reprimand

All the above juveniles belong to almost within the same age interval. The first two juveniles are 15 years without age examination while the latter two are 13-15 after age examination. The idea of the public prosecutor on penalty to be given by the court in the first two cases was that 'let a penalty which is educative for other with similar status be given on the criminal', while the idea of legal representative on penalty in the third cases was that 'as the criminal is juvenile let he be handed over to his family'. Thus, this shows the effect of the denial of the right to legal representative at state expense in the region on the penalty given after conviction.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

CONCLUSION

Juvenile justice system is a legal innovation that sufficiently determines the essence of justice and the responsibility of the human being to think across generations. Like others this legal system is composed of different procedural and substantive laws. For that end, the international community comes up with variable human right instruments that can potentially advance such part of justice internationally.

As a part of international communities, in addition to ratifying different international human right instruments Ethiopia has promulgated a separate procedural and substantive legislation that directly dealing with juvenile justice system. This shows, in principle, none lateness of the country at least in the theory of juvenile justice system.

In Oromia regional state though the domestic legislations and international human rights instrument dealing with juvenile justice system ratified by Ethiopia remain applicable, the research conducted has revealed the prevalence of procedural, substantive, and institutional inconformity with the laws and the jurisprudence of juvenile justice in the region.

As far as the procedural activities developed in the justice organs of the region is concerned, from the very beginning of commencement of criminal proceeding go through investigation and trial up until the final disposition and enforcement of judgments, juvenile delinquents are seen when they are treated as per the regular adult procedure.

Likewise, the substantive legislations governing juvenile justice system are suffering from violation, and ignorance to the basic principle of a protection for the best interest of the juvenile in the custodial and non custodial judgments given by the courts in the disposition of the case is common. The domination of custodial measures and the absence of diversion programs in any place of the region certify beyond a reasonable doubt the poorness of the juvenile justice system in Oromia region.

The inaccessibility of juvenile justice institutions such as juvenile court, juvenile rehabilitation center and juvenile detention room that potentially advocate and complement the words of the legislations and juvenile justice jurisprudence in the region does not only show the poorness of the system in this largest region of the country but also the fatal negligence by the government towards such department of justice.

Conclusively, the juvenile justice system of Oromia region is characterized by a fatal inconsistency of the practices with the words and spirit of laws.

Recommendation

I present my recommendation, for the juvenile justice system of Oromia region within the frame work of procedural and substantive domestic legislations and international human right instruments ratified by Ethiopia, one that recognize the nature of juveniles and the opportunity of their reformation on one hand, and the security of the actual community without compromise with essence of justice for juvenile on the other hand.

- To tackle Procedural and substantive inconformity with legislations which is common from the very beginning of commencement criminal proceeding go through trial up until disposition of the case and enforcement of judgments, training on juvenile justice system that encompasses legal, psychological and sociological approach shall given to judges, public prosecutors and police officers of the region.
- To reduce the prevalence of custodial measures in the juvenile justice system of the region, and to manage the potential delinquency character of juveniles an alternative non judicial community Based Corrective Program, i.e. diversion, program shall be established in the towns of the region based on delinquency rate running there.
- To ban out the phase out of the rehabilitative objective of custodial judgments of the courts in Oromia region, to maintain a relative uniformity of judicial judgments and to deliver equal opportunity for all juvenile delinquents of the region, juvenile rehabilitation center shall be established at each zonal level.
- To realize the best interest of juvenile, and to maintain due process of law, which is being defeated due to the adversarial nature of regular criminal bench, juvenile bench shall be established at each woreda and high courts level.
- As there is a condition in which juvenile delinquents need to be detained, to realize the constitutional rights of juveniles: right to be detained separately and protection for best interest of the juvenile, juvenile detention room must be established at each worada of the region.
- The Oromia Police commission shall allocate an independent budget that can cover every cost of examination when a need arise for examination of age juvenile delinquents.
- To understand the system, scope, types and reasons for delinquency in the Region, and accordingly to capture the attention of the concerned or interested body and to take an advancement measures concerning juvenile justice system of the region a uniform channel of data collection managed by Oromia Supreme Court shall be disseminated within the whole courts of the region.

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