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LL.B. THESIS

THE TREATMENT OF JUVENILE DELIQUENTS  
IN ETHIOPIA: THE LAW AND PRACTICE

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## INTRODUCTION

This senior paper deals with the treatment of juvenile delinquents in Ethiopia: the law and practice .

In the first chapter of this study paper ,the writer has tried diligently to disclose the general concepts of juvenile delinquency ,its meanings and conditions for the formation of juvenile delinquents in general .

In the second chapter of this study paper ,the writer has tried to disclosed the relevant legal regimes governing juvenile delinquency both the international and domestic laws that have the great deal concerning the juvenile justice system.

The third chapter of this study paper deals with different governmental institution approaches towards the administration of juvenile justice system and finally conclusion and recommendation .

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# **CHAPTER ONE**

## **CONCEPTS AND CAUSES OF JUVENILE DELINQUENCY**

### **1.1 Definition of juvenile Delinquency.**

Juvenile delinquency has always remained a difficult concept to be defined for it represent different things to different people and different authorities and thus it is a different concept that there is a great deal of disagreement as to the point, what constitutes juvenile delinquency<sup>1</sup> to the police delinquents may be underage criminals, to the school authorities they may be truants, to some parents they may be those children ungovernable by other people, and to the store keepers delinquents are gangs loitering on the corner<sup>2</sup> some authorities defined delinquents as emotionally disturbed behavior: others understand delinquency as persistent anti-social act.

In a legal sense delinquent acts are defined as acts designated criminal in terms of the law committed by youths in between certain specified ages by the law.<sup>3</sup> In a strict legal sense for one to be considered legally delinquent the juvenile must have violated the law it is therefore, only up on the findings of the court that the juvenile has violated a certain law that he or she will be labeled delinquent.<sup>4</sup>

As we can understand from the above definition of Juvenile delinquency has been a treatable issue since long. This un consensus seems to emanate from the fact that some authorities widen the scope of juvenile delinquency to the extent of including those who are not actually anti-socially active, but, who look potentially dangerous to be delinquent. A significant number of criminologists and sociologists appreciate this wider scope of delinquency while many others construed delinquency narrowly so that only those who violated a certain criminal law that would crime had been committed by adult.

When we came back to the case of Ethiopia neither the substantive nor the procedural laws has expressly defined the term juvenile its principle of legality that a certain act or omission is criminal if and only if that act of commission or omission is made in Violating the provisions of Ethiopian criminal code of 2005. Accordingly, a child is a delinquent under our law should he or she violated a certain provisions of the penal code and is found so by the court.<sup>5</sup>

Juvenile delinquency is to means different things to different people. No single definition may suit all nations because the sociologists, psychologists and the lawyers define Juvenile delinquency in their own ways. It varies from nation to nation, for what is for bidden to do at one place, is allowed to do at another place.<sup>6</sup>

Juvenile delinquency is a blanket term that obscures rather than clarifies our understanding of human behavior. It describes a large variety of youths in trouble or on the verge of trouble. The delinquent may be anything from a normal mischievous youngster to a youth who is involved in a law violation by accident. or he may be a vicious isolative person who is a habitual offender and is a recipient of some gratification from his conduct. As a blanket term, delinquency is like the concept of illness. The same is true of delinquency. Like illness, delinquency describes many problems that develop from varied causes and require different kinds of treatment.<sup>7</sup> “Robin sons” define delinquency as any behavior which a given community at a given time considers in conflict with its best interest whether or not the offender has been brought to court.<sup>8</sup> That means that the definition of delinquency vary with the points of view of the people who feel challenged by it. Expressing his views on Juvenile delinquency “cloven” absorbed that the only possible definition of delinquency is one that relates to the behavior in question to some

set rules and observes that all children without exception, must in the course of development, have recourse to violent conduct.

Most children adopt themselves with varying degrees of difficulty to the rules observed by their elders. The child grows up with a distorted notion of what is right and wrong. The term has a very extensive meaning and includes rebellions and hostile behavior of the children and their attitude of indifference towards society. Certain other acts such as begging, smoking Cigarettes, dopes or drugs, lettering, absenting one self from home without permission, reaming truant from school, drinking, gambling , etc. Which adult persons too often commit are also included with in the meanings of the term juvenile delinquency.<sup>9</sup>

The more important one is the legal definition of the term juvenile delinquency. To adjudicate a child as a juvenile delinquent the court has to take the age of the child in to consideration and age is the material things while defining the term in the legal sense. In U.S.A the age which the term, Juvenile covers varies in different states, with the upper limit ranging from 16-21, with the majority of the stats considering individuals as juvenile if they are under 18 and over 6 years. Various children acts, in the states of India and the central children Act, 1960 for instance defines, a delinquent child as a child who has been found to have committed an offence<sup>10</sup> child under the act means a boy under 16 years of age and a girl under 18 years. Under the children. Acts in India separate Provisions have been laid down for neglected and uncontrollable children. They are dealt with by the Child welfare boards and not juvenile courts.

In U.S.A the extent of the juvenile delinquency has been condensed by the standard juvenile court act which includes in its provision corresponding to the usual delinquency definition only two items in addition to isolation of law or ordinance. These items are a child “who deserts his home or who is habitually disobedient” or is beyond



the control of his parent or other custodian, and who beings required by law to attend school, willfully violates rules there of or absent himself there from.<sup>11</sup> In England, in addition to the penal statue, the children's Department of local Authority, a police Constable or an officer of the national society for the prevention of cruelly to children must bring a child before a juvenile court if they have reasonable grounds for believing him to be in need of care, protection or control on any of the following grounds:

That the juvenile is not receiving such care, protection and guidance as a good parent may be reasonably expected to give and in addition (i) that he is falling into bad association is being exposed to moral danger, or (ii) that the lack of care, protection or guidance is likely to cause him unnecessary Suffering or seriously to affect his health or proper development (iii) that he has been the victim of a sexual offence or an offence involving bodily injury or lives in the same. House hold as a perpetrator of an offence of this kind against a juvenile.

Narrower(because the concept is confined to the violation the ordinary penal law of the country), than the English or the American concept which is much wider in scope and includes a number of behaviors in addition to the violations of the penal statutes. The Indian position is inconsonance with the principle-Alum crime sine lese no Crime without law.

The largest definition is not free from criticism. The sociologists insist that the legal definitions are of no help in understanding the nature of juvenile delinquency and in knowing who are juvenile offenders, since the arrest and communication of a child may depend up on various fortuitous circumstances. They also maintain that legal definitions differ from place to place and time to time and hence are not suitable for scientific studies.

To conclude, it can be said that the term juvenile delinquency has not been defined anywhere elaborately and no definite meanings can be given to the term. Sociologists, psychologists and legalists (lawyers) have given their own meanings to juvenile delinquency. To avoid such controversies, it is better to arrive at an acceptable definition of juvenile delinquency. As indicated by the U.N. Congress on Prevention of Crime and the Treatment of Offenders held in London in 1960. It states "That the scope of the problem of juvenile delinquency should not be unnecessarily inflated. Without attempting to formulate a standard definition of what should be considered to be Juvenile delinquency. In each country, it recommends: (a) that the meaning of the term juvenile delinquency should be restricted as far as possible to violations of the criminal law, and (b) that even for protection, specific offences, which would penalize small irregularities or mal-adjusted behavior of minors, but for which adults would not be prosecuted, should not be created."<sup>12</sup>

## **1.2 Relevant age of delinquency**

The age of delinquency is one basic requirement for the accurate determination of the question, what amounts to be taken in order to determine delinquents: as to what proper proceedings should be followed. Generally, the system of juvenile justice has been established for juveniles based on the fact that juveniles are thought to be less responsible than adults for their behavior.<sup>13</sup> The age differentiation is based on a belief that adults are more matured and responsible than juveniles.<sup>14</sup>

Chronological age is universally used to distinguish between juvenile delinquency and adult criminality.<sup>15</sup> The chronological age of a child is a matter of enormous significance in criminal law that helps to determine, whether or not a child enters into a legal arena, the nature of the proceeding, the test that should be applied by the court concerned, the child's capacity to commit offences and the severity of the punishment to be inflicted upon the guilty child.<sup>16</sup>

Many Countries use chronological age to distinguish juvenile delinquents from adult criminals. No single age is taken as a standard of lower and upper age limit under which a child is presumed criminally irresponsible and above which he/she no more benefits from the protection given to the delinquent child.

The age limit for juvenility is not given. In fact there is no universally applied age limit for one's juvenile period: it all depends on the domestic laws of every nation. The lower age limit at which a child becomes fully 'Capable of Committing crime' and below which he is presumed "incapable of Committing crime" and the upper age limit that's the maximum age range up to which an offender may, because vary from one legal system to another. For example most Scandinavian countries, the lower age limit is 15 and the upper age limit is 18 and other European Countries have established the penal minimum age from 12 to 14 age range and the maximum age limit range is to be found in the 16 to 18 age range.<sup>17</sup> Similarly in the United States the lower age limit range is from 12 to 14, and the upper age limit is from 16 to 21.<sup>18</sup> In Ethiopia context the lower age limit is 9 and the upper is 15.<sup>19</sup>

When we see the Ethiopian legal system, the new criminal code of 2005/1997 stipulated different ages for no criminal intent respectively.<sup>20</sup> Accordingl, it classifies child offenders into there distinct categories, namely "infants" "young persons" and those considered as adults.

The first groups are called infants pursuant to articles 52 of the new criminal code of Ethiopia: Infants are children who have not reached the age of nine, They are not criminally responsible for their action and where an offence is committed by infants, appropriate measures may be taken by the family, school and guardian ship authority to ensure their proper up bringing.

The second groups, which are known as “young persons” are children between the age of 9 and 15 inclusive. This sets the age of delinquency to be between 9 and 15 years old. Despite the human right’s committee general comment and committee on the right of the child (CRC) concluding the observation that the upper limit be 18.<sup>21</sup> Therefore the Ethiopian criminal code effectively considers children between the ages of 15 to 18 years to bear the same criminal responsibility as adults, with the possibility of the application of lesser penalties than those applied to adults.<sup>22</sup>

### **1.3 Causes of juvenile delinquency.**

The cause of and conditions for juvenile crime are usually found at each level of the social structure, including society as a whole, social institutions, social groups, social organizations and interpersonal relations. Juveniles’ choice of delinquent careers and the consequent perpetuation of delinquency are fastened by a wide range of factors: the most important cause and condition for the formation of delinquents are described below.<sup>23</sup>

#### **Economic and Social Factors**

Juvenile delinquency is driven by the negative consequence of social and economic development, in particular economic crises, political instability and weakness of major institutions including the countries system of public education and the family socio-economic instability is often linked to persistent unemployment and low income among the young which have its contribution to increase their involvement in criminal activity. <sup>24</sup>

#### **Urbanization**

Geographical analysis suggests that countries with more urbanized population have higher registered crime rates than those with strong rural life-styles and communities.<sup>25</sup> Urban industrialized societies tend to formal, Legal and judicial measures. An impersonal approach that appears to be linked to higher crime rates .<sup>26</sup> Cultural and institutional differences

are such that responses to the same offence may vary widely from one country to another.

The ongoing process of urbanization in developing countries is contributing to juvenile involvement in criminal behavior. The basic features of the urban environment fasten the development of new forms of social behavior deriving mainly from the weakness of primary social relation and control.

### **Family**

The home is the cradle of human personality. Every person from the moment of birth is deeply influenced by the people around him, from a warm, loving, stable family, the child learns that people are friendly worth knowing, and can be depend up on. When a family is cold, despairing, rejecting, or neglectful, the child learns distrust, hostility or down right hatred of people.<sup>27</sup> That is to say whatever is learned in family has a strong influence in the mind of the child and the juvenile interprets the human relationship accordingly. The broken home has serious impact in the mind of the juvenile on the emotional and socio-economic relationship. The alcoholic or drug addicted father, or immoral mother facilitate the propensities of juvenile delinquency. Divorced family also has tremendous influence in the mind of the juvenile for delinquency.

### **Poverty**

Poverty is one of the reasons for the causation of crime and delinquency. Their direct relationship has been since long it seems the poverty operates as a cause of crime through its social accompaniments. These accompaniments are (I) segregation in slum areas where people are isolated from anti-delinquency patterns and are compelled in to association with criminal behavior patterns(II) Law social status, with little or no stakes (III) inadequate housing condition and poor health (IV). Childs premature withdrawal from school with compulsion to take-up unrewarding, unskilled, street-trade occupations, and (V). Worry anxiety and insecurity and sense of inadequacy and insignificance in parents,

which deprives children of their love and affection 20.<sup>28</sup> In other words there is a strong relationship between poverty and delinquency.

### **Early Physical maturity and violence blended Cinema, TV.**

The embodied feelings about criminals through media are vital reasons for juveniles learn and imitate such characters of the story. The delinquent propensity from sediment in the sub-conscious mind and ebbs up and put in to circumstances and environment.

Coming back to the case of Ethiopia Widespread poverty, rapid urbanization, drought and famine, armed conflict destabilization of family life etc. are cause and condition for the formation of delinquents in Ethiopia and also they left millions of children without proper care and protection.

The problem of juvenile of juvenile delinquency is a problem of urban areas, few researches conducted on the problem in Ethiopia revealed that almost 70% of them are migrants from rural areas where various social amenities are lacking .<sup>29</sup> Some children also reflected that improper handlings of parents as well as maltreatment by parent were the major pushing factors to leave their place of origin; therefore urbanization will be the cause delinquency besides there are so many causes for the formation of delinquency like family disruption, family poverty, and high dropout rate children from school and lack of other opportunity for gainful employment or training. And also the proliferation of drug and abusive substances and the expansion of small bars and illegal video houses in major cities, particularly in school surroundings are major pushing factors for children in Ethiopia to involve in anti-social delinquency.

#### **1.4 Juvenile justice (children's Justice)**

Children's justice, (or juvenile justice as it is often called the two phrases will be called or used interchangeably through this study paper.

Every day thousands of children around the world get caught up in adult formula Justice Systems. Children are arrested and detained by police, tried by magistrate, and sent to institutions, including prisons under systems of Justice which in many cases are set up for adults. Although there are explicit international guidelines on the proper administration of juvenile justice ,and on community –based conflict resolution and rehabilitation of child offenders, children's rights and special needs are being ignored. These children are alleged to have come in to conflict with the law of the land: how ever no allowances are made for the fact that it is often the law that is in conflict with their survival behavior and the reality of their lives.<sup>30</sup>

Large numbers of children in conflict with the law are socio economic victims, denied their rights to education, health, shelter, family care, and protection. Many of them have had little or no access to education: many are working children. Some children have left their homes and taken to the streets to escape from violence and abuse at the hands of their families. Some are forced to make a living on the streets, in order to survive. Others have been abandoned by their families and left to tend for themselves and sometimes for younger siblings. These children who are abandoned and destitute, are also at high risk of sexual exploitation , trafficking and becoming involved in substances abuse and the drug trade through peer influence or the influence of adult criminals.

For children in conflict with the law, the process of arrest trial and custody destroy their childhood as a result of being denied their right to, for example family life, education, care protection and play many of them have little chance of rehabilitation and reintegration into society: discrimination against children. Have been in conflict with the law, together with deprivation and poverty; limit their opportunities for developing into active and contributing adult citizens.

Juvenile or children's justice is not only the treatment of children in conflict with the law but also about the root causes of offending behavior and measures to prevent such behavior. Different studies on the field of children's justice show two major points that is prevention and protection.<sup>31</sup>

This work aims to ensure that children do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system. The causes of children offending are wide ranging and complex, and include poverty, broken homes, lack of education and employment opportunities, peer pressure and lack of parental guidance these cause need to be tackled with a range of social and economic interventions, including programmes for education, poverty reduction, skills development, parent counseling and job creation.

At the same time, measures are needed to protect children who are already in conflict with the law, in order to deter them from reoffending and to promote their rehabilitation and smooth their reintegration back into society. Programs and projects that focus on protection generally include one or more of the following features:-

- Advocating for law reform, to ensure that national legislation conforms with international standards and guidelines on juvenile justice



- Training, education and awareness programs on juvenile justice issue for key members of government, criminal justice agendas and civil society.
- Diversion project that aim to keep children away from the formal criminal justice system by resolving conflicts with in the criminal justice system in order to ensure proper treatment, protection and preparation for reintegration back to society.<sup>32</sup>

### **1.5 Juvenile Courts.**

The world book of encyclopedia. Defines Juvenile Courts were the results of a change in attitude towards the child offenders during the late 1800's. According to those new attitudes the Juvenile Courts were to be places to help, not to punish (or reattribute) children, why because children were not supposed to experience the harsh atmosphere and treatment often found in adult courts. Instead, trained social workers were to give the judge information on the child's back ground, and the judge would freely discuss problems with the child mainly in a private hearing.

As regards the emergence and evolution of Juvenile courts Massachusetts became the first to provide separate court sessions for children in 1872, Colorado and Illinois had authorized separate courts for children in 1899.<sup>33</sup>

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## CHAPTER TWO

### THE LEGAL REGIME GOVERNING JUVENILE DELINQUENCY

#### 2.1 International Instruments:-

In addition to the United Nations convention on the rights of the Child (UNCRC) and supplementing and elaborating on the Provisions of its Article 40, there are a number of international rules and of its Article 40, there are a number of international rules and guide lines (which are recommendatory and non-binding) which, are taken together, constitute a comprehensive frame work for the care protection and treatment of Children coming in to conflict with the law or at risk of coming in to conflict with the law.<sup>1</sup>

#### 2.11 United Nations Convention on the Rights of the Child (UNCRC)

This Convention was adopted in 1989m, the (UNCRC) Provides a wider-ranging frame work for the protection of children's rights and, more importantly Constitutes a Comprehensive listing of the legality binding obligations towards children that countries are required to implement.

United Nations convention on the rights of the child (UNCRC) under Article 40 more specifically covers the rights of all children alleged as, accused of, or recognized as having in fringed the penal law. Thus it Covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. Article 40 (UNCRC) requires states parties to promote a distinctive system of juvenile justice with specific positive rather than punitive aims. Article 40 details a list of minimum guarantees for the child and it requires states parties to set a minimum age of criminal responsibility to provide measures for dealing with children (juvenile) who may have in fringed the penal law with out resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional Care.<sup>2</sup>

The (UNCRC) convention under article 40 contained briefly detailed rules for handling of Children who are in Conflict with the law sub Art(1) of Art 40 of this very provision establishes the principle that the treatment of such children should be in a manner consistent with the promotion of the children's respect for human rights and fundamental freedoms of others. Article 40(2) of this provision also guarantees for every child's alleged as or accused of having infringes the criminal law, the right to presumption of innocence

until proved guilty, the right to be promptly and directly informed of the charges against him or her, the right to consul or other appropriate assistance in the preparation and presentation of his/her defense, the right to be promptly and directly informed of the charges against him or her, the right to counsel or other appropriate assistance in the preparation and presentation of his /her defensemen the right to speedy trial. The right against self incrimination and compulsion to this effect.

Also Article 40(3) of the (UNCRC) convention binds states parties to seek and prompt the establishment of law, procedures authorities and institution specifically applicable to children who are in conflict with the law.

### **2.1.2 U.N Standard minimum rules for the administration of juvenile (The Beijing rules -1985/**

The Beijing rules, adapted by the United Nations in 1985, Provide guidance to states for the protection of children's rights and respect for their needs in the development of separate and specialized system of juvenile justice. Limited previsions concerning juvenile justice may be located in regional human rights treaties and in the international covenant on civil and political rights 1966. Similarly the United Nations standard minimum rules for the treatment of prisoners adopted in 1955, Set out certain basic requirements for all prisoners but do not address specific issues in relation to yours offenders.

The Beijing Rules were the first international legal instruments to comprehensively detail norms for the administration of juvenile justice with a child rights and redevelopment oriented approach. These rules were a direct response to a call made by the sixth United Nations congress on the prevention of crime and the treatment of offenders which convened in 1985.

The rules operate within the frame work of two other sets of rules governing juvenile justice, both adopted in 1990, The UN Guideline for the prevention of Juvenile delinquency (The Riyadh Guidelines) and the UN Rules for the protection of Juveniles Deprived of their liberty (The JDL Rules).

These three sets of rules can be seen as guidance for a three stage process:-

Firstly, Social Policies to be applied to prevent and protect young people from offending i.e. (The Riyadh Guidelines):

Scandinavia establishing a progressive justice system for young persons in conflict with the law i.e.(The Beijing rules) finally, safeguarding fundamental rights and establishing measures for social re-integration of young person once deprived of their Liberty, whether in prison or other institutions i.e. the (JDL Rules).

Status of the Beijing rules in the International law are recommendatory and non-binding: Certain of the Principles enunciated within the rules, however, have been encompassed in provisions of the convention on the rights of the child, a global treaty which is binding on all states parties. The Beijing rules do not prevent the application of the United Nations standard minimum Rules for the treatment of Prisoners adopted in 1955. Those rules should be extended to juveniles in detention pending adjudication and in institutions and applied in such a way as to meet the particular needs of Juveniles.<sup>3</sup>

### **2.1.3 U.N Rules for the protection of Juveniles Deprived of their Liberty (1990)**

The United Nations rules for the Protection of Juvenile Deprived of their liberty are known as (JDLS). Which set out standards applicable when a juvenile or (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether at the definition be on the grounds of conviction of , or suspicion of,, having committed an offence, or simply because the juvenile is deemed at risk) by order of any judicial, administrative or other public authority. In addition, these rules include principles that universally define the specific circumstances under which children (young offenders) can be deprived of their liberty, emphasizing that deprivation of liberty must be a means of last resort, for the shortest possible period of time, and limited to exceptional cases. The U.N rules for the protection of juveniles deprived of their liberty serves as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of juveniles and ensuring the dignity and welfare of the children is upheld while in custody.<sup>4</sup>

### **2.1.4 The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)**

This guideline was adopted and proclaimed by the General Assembly resolution 45/112 of 14 December 1990. The guideline represents a comprehensive and proactive approach to prevention and social reintegration. Prevention is seen as not a matter of tackling negative situations, but rather a means of promoting welfare and wellbeing more

particularly, counties are recommended to develop community based interventions and programs, to assist in the Prevention of children coming into conflict with the law and to recognize that depriving children of their liberty should be utilized only as a means of last resort.

The Riyadh Guidelines recommended that prevention programmers should give priority to children who are at a risk of being abandoned neglected, exploited, and abused. This Guideline advocates a multidisciplinary and inter sect oral approach to the prevention of children coming into conflict with the law land recognizes children to be full participants in the society.

This guidelines Is concerned about the prevention of juvenile delinquency most of its provisions are devoted to the principles, strategies and policy of prevention especially part VI of this guidelines under the title” Legislation and Juveniles Justice administration” requires that states parties to enact and enforce specific laws and procedures which are relevant to juvenile justice administration.<sup>5</sup>

## **2.2 Domestic laws Concerning Juvenile Justice System**

Ethiopian laws have no separate criminal code or proclamation that governs the treatment and protection of Children (Juveniles) who have come in conflict with the law. Even though there is no law Even though there is no separate domestic law with regard to juvenile offenders. The Ethiopian law provides special Provision Concerning Juvenile offenders in the general laws. The relevant laws which embodied the relevant Provision regarding juvenile offenders are discussed here in under.

### **2.2.1 The F.D.R.E Constitution of (1995)**

The F.D.R.E Constitution is the Supreme law of the land this constitution has incorporated a provision Concerning juvenile offenders in the country. The FDRE construction in harmony with the modern trend in the development of Children’s right devoted an article that deals with the rights of Children “Which is an incorporation of widely accepted values of internationally behavior with respect to children <sup>6</sup>.

The F D R E Constitution Article 36 Sub Art (2) provides the underling principle in the undertaking of all actions concerning children that means the “best interest of the child”

principle. According to this constitutional provision the best interest of the child must be given primary consideration in all action concerning children under taken by whether public and private welfare institutions, courts of law, administrative authorities or legislative bodies. Therefore the administration of Juvenile justice as it involves a set of actions concerning children. The principle of the best interest of the child must be the primary consideration throughout the process of administration of justice. In other words all the concerned bodies engaged in the administration of juvenile justice such as the police courts of law, corrective institutions etc must make this principle their major guideline in their actions in relation to concerning juveniles.

The F.D.R.E Constitution specific provision, Concerning juvenile offender's Is Article 36 Sub Article (3) which reads as follows.

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

The whole idea of this provision is separation of institutionalized juveniles from adults. The fact that Article 36 of the constitution specifically deals with confider's rights doesn't mean that it is the sole constitutional provision for children right and that other fundamental rights and freedoms guaranteed for all citizens do not extend to them. Sub Article 2 and 3 of Article 36 of the constitution being's specifically relevant to children who come in contact with the criminal justice system doesn't deprive them of the protections accorded (given) by the Constitution to adults Juvenile offenders hence, enjoy the rights given to persons accused, arrested, Kept in custody and convicted.

In general juveniles. As any other citizen, shall a not be deprived of their liberty except in accordance with the procedures established by law and enjoy the protection and treatment from arbitrary arrest and definition as guaranteed to them under Article 17 Sub Art(2) of the constitution. In time of arrest, they have the right to be promptly informed to the charges against them and the reasons for arrest, and also they have the right to remain silent, the right to access to court of law, the right to be free from compulsion to make any statement, the right to petition for a writ of habeas corpus, the right to bail are all equally enjoyable by juveniles.<sup>7</sup> as accused person, Juveniles also have the right to be presumed innocent until proved quality. The right against self-incrimination, the right to counsel. The

right to appeal and the right to confrontation .<sup>8</sup> If juveniles are held in custody or imprisoned they are entitled to treatment respecting their human dignity including the right to communicate with and to be visited by those persons important to them.<sup>9</sup>In addition, Juveniles through out the whole process of criminal justice, enjoy the right to privacy and the right to protection against cruel, inhuman or degrading treatment or punishment.

### **2.2.2 The 2005 Criminal Code of Ethiopia**

The Criminal code of Ethiopia (2005) is the other domestic law which has a great relevance to the administration of juvenile justice. Most importantly this code sets the age limit for criminal responsibility which is important point to start with the juvenile justice administration. The criminal code provides the basic principles of Criminal law for the handling of juvenile offenders and it introduce a variety of special treatment measures and penalties applicable to juveniles found involving themselves in certain Criminal conduct.

Under the Criminal law of Ethiopia, Children who belong from 9 up to 15 years of age are not immune from criminal liabilities However; they would never be treated in the same manner as adults who are criminally liable are treated. Article 53 of the Criminal Code Clearly States That” Young persons shall not be subject to the ordinary Penalties applicable to adults nor shall they be kept in custody with adult offenders.

Apart from The special treatment measures and penalties applicable to adults nor shall they be kept in custody with adult offenders.

Apart from the special treatment measures and penalties applicable to Juvenile offenders, the code introduces a special method of assessment of sentences in case of conviction of these persons by directing the courts to take into account the age, character, degree of mental and moral development of the Juveniles as well as the educational values of the measures to be applied <sup>10</sup>. A gremmie in order to be sentenced to any of the special provisions he or she must firstly be convicted <sup>11</sup>.

The special mechanisms applicable to juvenile offenders are provide in the Criminal code these are measures and penalties.

- I. The Special measures applicable to Juvenile offenders are solely designed to result of such person without recharge to any element of punishment Measures are not meant to serve the purpose of punishment. The special treatment measures aimed at



II. rehabilitation juvenile offenders can be classified in to two those are institutional measures and non-institutional measures.

The institutional measures designed for those juvenile offenders who are in need of institutional care and rehabilitation program. Whew as the non institutional measure is designed to rehabilitate for juvenile offenders without institutionalizing, the specific measures included under each category are discussed below.

**a) Non-Institutional measures are reprimand and supervised education**

Is one of the intuitional measures applicable with out the institutionalization of the Juvenile offender and consists of the Juveniles attention to the consequences of his act and appeal to this sense of duty and determination to be of good conduct in the future. The codes provisions don not go to detail but practically it may include advice, strict warning, order to offer the victim an apology etc. Reprimand must be restored when it is appropriate and likely to produce good result.

School or home detention: involves keeping the Juvenile at home or School during his free house even on holidays with in such time he/she is made to carry out a specific task proport6ional to his/her age and the circumstances. Thus in practical terms this measures involves temporary deprivation of liberty and engagement in some specific activities with the absent of other interactions with in specified time but with out institutionalization the juvenile.

**Supervised Education:** is the other non-institutional measure applicable to juvenile offenders. If the young offender is normally abandoned or is in need of care and protection or is exposed to the danger corruption or is corrupted, the court shall order a measure for his/her education and protection under the supervision of physical or legal persons. In the legal terms the Juvenile will be handed over to relatives or reliable family or home or an organization that can be responsible for the education and protection of the child. The local supervisory authorities shall be responsible for the control to measure.<sup>12</sup>The person entrusted for the implementation of the measure, they may be recalled or formally admonished or even be withdrawn if they can not discharge the trust in a proper manner<sup>13</sup>

**b) Institutional measures are**

admission to a curative institution: where According to Article 158 of the criminal Code, admission to a Curative institution is very necessary when the condition of the juvenile requires treatment and where he is feeble minded abnormal in his development, suffering from a mental disease, blind, deaf, and dump epileptic or adapted to drink. In such a case the pu&rpose or aim of institutionalizing the juvenile is to provide the necessary medical care and treatment required by his condition.

Admonishing to a Corrective institution: a corrective institution is a place where the juvenile receives” under appropriate discipline the general moral and vocational .educational needed to adapt him to social life and the exercise of an honest as activity <sup>14</sup>. Acer during to this article a juvenile is to be admitted to corrective institution when his character, antecedent or disposition is band and the purpose of institutionalization is aimed at the correction and rehabilitation of the juvenile.

III. The types of special penalties provided by the criminal code are fined and imprisonment note that any of the penalties can not be restored without measures being restored and failed to fulfill the purpose of rehabilitation of the juvenile.

Fine: as a penalty for juvenile conducts is available for the sentencing court only in exceptional circumstances when the young offender is capable of playing and realizing the reasons for its imposition.<sup>15</sup> The same provision requires that the fine to be imposed must be proportionate to the means of the convict and the gravity of the offence.

**Imprisonment** is also a penalty that that can be ordered against young offenders. Which is provided under Article 168 of the Criminal code note here imprisonment can be sentenced when only such young offenders has committed a serious offences which is normally punishable with rigorous imprisonment of 10 years or capital punishment. Concerning Juvenile in such a case the criminal code provides two types of imprisonment the fist is imprisonment in corrective institutions and the other is imprisonment in definition institutions.

### **2.23 The Criminal Procedure Code of 1961**

The Criminal procedure of Ethiopia regulates the word-Process of criminal justice. Which Starts from the earlier stages provide a comprehensive rule of procedure especially applicable to young offenders.

Article 171 of the Criminal procedure code provides that all criminal cases, concerning young persons (juveniles) shall be tried in accordance with the special procedure. The code introduces a special manner of institution of proceedings in juvenile cases when a juvenile is involved criminal cases, such person shall be taken immediately to the nearest woreda court <sup>16</sup> now a days the (federal fist instant court juvenile benches.) Such a requirement of urgency is presumably to avoid the Custody of the Juvenile from the hands of the or other persons.

The other very important in juvenile case is that the3 court is the one that gives the police institution regarding the manner according to which investigation should be made on framing of charge is necessary. And also where the acuration relates to an offence punishable with rigorous imprisonment exceeding 10 years or with death penalty in such cases also the public prosecutor must be instructed by the court to frame a charge <sup>17</sup>.

In case where the case require adjournment or transfer to superior court for trial, the juvenile must not be handed to the police <sup>18</sup>. The rule is that he/she shall be handed over to the care of his/her parents either to guardian or relative or in their default to a reliable person who is going to be responsible for ensuring the presence of the Juvenile at the time of trial. Juveniles have also the right to counsel as any other citizen. If they want to be represented by a counsel. However If they can not or their families can not afford for a counsel the court has the duty to appoint an advocate to assist on their cases as per article 174 of the criminal procedure code, However this could take place only in two circumstances i.e. where no parent is or guardian or other person in loco parent appears to represent the juvenile or where the juvenile is charged with an offence Punishable with rigorous imprisonment exceeding ten years or with capital punishment <sup>19</sup>.

When we came to the trial stage juveniles are entitled to the hearings which is provided under Article 176 of the Criminal procedure code. That all the proceedings shall be held in chambers and the persons who are allowed to attend the proceeding are limited to witness, experts, parents, guardian or representatives of welfare organization. The same provision prohibits the public prosecutor to be present in the juvenile hearing except at hearings in the high court. All the juveniles Criminal Proceedings must be conducted in an informal manner. <sup>20</sup>

## **End notes chapter two**

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2. Ibid
3. Ibid
4. bids
5. Ibid
6. the F.D.R.E constitution of 1995 Negarit gazeta art 36
7. the F.D.R.E constitution of 1995 negarit gazeta art 19
8. Ibid art 20
9. Ibid art 21
10. the 2005 criminal code of Ethiopia art 55
11. Ibid art 54
12. the 2005 criminal code of Ethiopia 208
13. Ibid art 159 (3)
14. Ibid art 162
15. Ibid art 167
16. Ibid art 172
17. The criminal procedure code of Ethiopia 1961 arty 172(2)
18. Ibid art 172(4)
19. Ibid art 174(1)
20. Ibid art 176(2)

## **CHAPTER THREE**

### **INSTITUTIONAL APPROACHES OF JUVENILE DELIQUENTS**

#### **3.3 Institutions**

There are many institutions, which work, or should work hand in hand for the effective Implementation of the legal provision concerning Juvenile offenders. Such institutions include the police and office of the public prosecutor, the courts and Juvenile delinquents Rehabilitation Center. Each of these institutions has Specific responsibilities in the Administration of Juvenile Justice System in Ethiopia.

##### **3.3.1 Police and office of the public Prosecutor**

The police and the office of the public prospector are law enforcement institutions, which are organized for discharging of governmental duty of serving peace and safety of the society by prevention, detection and investigation of Crime. Juveniles, as member of the society need to be protected and corrected in cases where they violate laws of the society. In such cases, according to article 172 of the criminal procedure code, the police must take the juvenile suspect immediately before the nearest wereda court since investigation of juvenile cases starts at the court rather than the police Station. The police start investigation after it has received the proper reauthorization from the judge. In the past years, there has been inconsistency in doing so, which has raised the need to establish a special unit to ensure the safety of juvenile suspects and the application of such provisions effectively.<sup>1</sup>

According to the Addis Ababa Police Commission Crime Prevention and investigation Main Division, it has observed this need of special care for juveniles. To this end, it has organized a unit, first in five woreda police stations in 1997. In the years following, this number has increased to include the ten sub-cities. Some other towns of the country have also followed suit.

These Units have three major Cardinal Objects as their guide online in order to enhance the protection, treatment and prevention of juveniles in the event of criminal act; these are:-

Ensuring the protection of Children from different abuses.  
Improving the treatment of children by the police and,  
Involving the police in alternative treatment of young offenders in place of custodial treatment.<sup>2</sup>

One of the major tasks of these units is to raise the awareness of police officers regarding the rights of juvenile offenders and the kind of protection that must be given in cases of arrest. Since the Juvenile suspects are arrested first by the police, the unit also has the obligation to ensure that no investigation is made on the Juvenile suspect before a judge order the proper investigation that has to be conducted.<sup>3</sup>

Once the police arrest a young offender He/She must be taken o the nearest court as soon as possible. Therefore juveniles are to be brought in the morning to the police station & will be brought to court in the afternoon as the courts adjudicate juvenile cases only during the afternoons, though this might not always be the case. In exceptional cases where the benches are not in session, for instance, if the juvenile is arrested on friday afternoon, weekends or holidays, the police will take his/her statement before taking him/her to special custodial, where their parents will visit them.

In Ethiopia as most of the juveniles do not have birth certificate, the police must treat equally all these who say they are juveniles. So if an accused aged 16 says he is only 14, the police treat him in the same manner as juvenile offenders till it is proven other wise by medical evidence However, the police are not effectively practicing this, therefore, the decision should not have to base on the youth's physical appearance, and where there is a

doubt as to the age of the offenders the judge has to order the age ascertainment attainment tests. The age ascertainment test is presently conducted by the Tikur Anbesa Hospital only. This has created Work load on the Hospital , and it has a negative implication on the provision of speedy trial to the young offenders(juveniles) This in turn may lead to a situation where offenders who have attain the age of majority continue to stay in the rehabilitation center during such time or be released on bail.<sup>4</sup>

According to the criminal procedure code the police, the public prosecutor, the parents or guardians or complaints could institute offences by immediately taking the juvenile to the nearest woereda court.<sup>5</sup> However, in practice, the police institute almost all cases. The police, as the initiator of the case, may be allowed to conduct investigation on the juveniles. However the police officer does not interrogate the suspect in such a manner that will intimidate or frighten him/her. Further more the juvenile is given a chance to confirm before the judge takes his/her statement and that it was given freely and willfully.<sup>6</sup>

### **3.3.2. Courts**

The judiciary is another institution involved in the administration of juvenile justice. In 1963 a separate juvenile court, or bench with an honorary judge, was set up, by order of the emperor, to handle juvenile cases.<sup>7</sup> unfortunately, the juvenile court served only delinquent cases in Addis Ababa. In other parts of the Country, the ordinary Courts handled the cases of juveniles. Up to now there is no separate juvenile act. Juvenile offences have been dealt with, on the basis of the provisions of the criminal code and the criminal procedure code that have special section for handling cases of juveniles. According to the various international instruments and local laws special court procedures are provided for young offenders by taking into consideration their mental development.

The juvenile court is “a court of law or institution of justice that is vested with the distinct function of considering and deciding cases referred to it by the law enforcement agencies of the government.”

Usually the police whenever legally defined rules of conduct are violated by minors below a certain specified age limit.<sup>8</sup> Hence, if the offender is young, the objective of the court is not to discover whether he has committed a specific offence but to determine if he is in such a condition that he has lost or never known the fundamental rights of childhood to parental shelter and guidance and control. Consequently the court can be considered to play a guardianship role by inquiring into the cause which made him/her tread down the path of criminality, and to seek the means that can best facilitate he/her rehabilitation in society. The basic function of these courts are the establishment and supervision of centers for the rehabilitation of minors found “guilty” of such conduct. Equally, it is to handle in similar manner non-criminal cases involving juveniles who require protection and care because their parents or guardians are unwilling or unable to take proper care for them.<sup>9</sup>

In Ethiopia there is no legally institutionalized juvenile court but from federal court amendment proclamation, it can be inferred that Federal and regional First Instance Courts are given jurisdiction over cases of young offenders though it may sometimes be transferred to high courts depending on the gravity of the offence.<sup>10</sup> Currently only four benches, among the 24 Federal first instance Court divisions, are dealing with juvenile cases in Addis Ababa with no particularly trained judge assigned to this area.

The judges in these specific benches adjudicate juvenile cases only in the afternoon while they see cases of adult offenders during the morning time. This kind of working program has two negative impacts on the administration of juvenile justice first, a young offender who has been arrested in the morning has to stay in the custody of the police for at least



half a day. Sometimes the juvenile may stay in the hands of the police for longer than half a day since the courts, which tries the case, may not be in the nearest location secondly, on the side of the judge looking the cases of adult offenders in the morning and juvenile cases in the afternoon creates work load and hampers him/her from giving due attention to and other basic things of the young offender (juvenile).

As regards the age of young offenders the judges are faced with problem of ascertaining the exact age of the young offender in due time since that may take more than three months.<sup>11</sup> This hinders the judges from finalizing the juvenile cases immediately. On top of this, the judges themselves lack consistency in the application of the maximum age limit, whether this upper limit (up to 15) ends up on the celebration of the 15<sup>th</sup> or 16<sup>th</sup> birthday.<sup>12</sup>

The other problems during the trial are time taken to ascertain their age, absent of witnesses in adequacy of attention given by the police and public prosecutor. The court is informal as it is held in the office of the judge rather than the ordinary court room. Only the police, the parents or guardians and some times representatives of welfare organizations are allowed to be present. This is to serve the best interest of the child since the society can not call him/her an offender and the young offenders themselves will not feel condemned by society.<sup>13</sup>

### **3.3.3. Juvenile Delinquents Rehabilitation Center**

The juvenile corrective institution was first established in 1961, A special Department of juvenile correcting institution within the prisons Administration was put under the new department and was renamed as the training center and Remand Home. The center accommodated both committed delinquents and those awaiting Court decisions.<sup>14</sup>

Though this is not an ideal arrangement it was better than keeping the youth in police detention centers (jails).

The only institution found in Addis Ababa that gives such Services is the Addis Ababa Rehabilitation Centre for juvenile Delinquents run by the City Administration. Upon the arrival to this institution, the young offenders are given individual Counseling and orientation about the institution so that they could understand the inappropriateness of their previous behavior and prepare themselves to become good citizens.<sup>15</sup>

At Present the writer has been told by one of the institution's worker that institution shelters 80 inmates those who are convicted and 20 and more these who are on remand waiting court decisions. It must be noted that the U.N rule requires the placement of juveniles taking into full account of their special requirement according to their age, personality, sex and type of offence to ensure their protection from harmful influence and risk situations. However, disregarding the UN rule for the Protection of Juveniles deprived of their liberty, the institution puts the inmates separately only on the basis of their sex alone. This is due to in adequacy of rooms that institution lacks.<sup>16</sup>

The Addis Ababa Rehabilitation Centre for juvenile Delinquents provides different kind of treatments for inmates, such as food and clothing, education, counseling and recreation.

**Education:-** The elementary school which is found in the institution gives education to both inmates and other students from out side of the institution up to 8<sup>th</sup> grade. This is done, )making the inmates learn with students coming from the neighboring kebeles (community) to make those juveniles feel that they are not out costs from the society and so that they could learn some good manners from the other students.

Presently, the institution does not provide vocational training to inmates Despite its great importance to avoid idleness of the inmates during the afternoon and providing them with invaluable skills that will help them to

lead their lives when they leave the institution, it has been discontinued due to some security reasons such as escaping of inmates. Equally, in the facility, the admission of unconvicted juveniles to the institution has also resulted in wastage of resources as they will be discharged, leaving the years education unfinished.<sup>18</sup>

**Counseling Services:** A juvenile placed in such detention facilities need help to her/his problems and adjustment to the facility. The counseling program which is provided by the institution aims at on two points First counseling services given to the inmates is based on the offences that the inmates are found guilty Second counseling services based on the General social affairs that the inmates have to be aware or know. However the writer has been informed that counseling services in the institution is a problem because the institution does not have enough counselors that are working in the institutions attending the inmates. The institution get assistance/aids from different non-governmental organizations on the services of counseling.<sup>19</sup>

Apart from the inadequate counseling the institution also uses corporal punishment as a means of correction when ever a juvenile misbehaves. The punishment includes whipping and crawling on heir knees on rocky roads. Such corporal punishment contravenes with Article 36 of the constitution of Federal Democratic Republic of Ethiopia, which provides that children should be free from any kind of corporal punishment and provides for more protection to those in such institutions.<sup>20</sup>

**Recreation:-** Recreational activities are beloved to be helpful in improving creativity and in reduction of time spent in non-Productive things. That is why different kinds of recreational materials and physical activities are very important to the Well-being and health of young offenders. How ever the juvenile delinquents who are in the institution do not have adequate facilities. The only recreational facilities that are found in the institutions as the writer has been told are foot balls table tennis music and drama mini clubs which established by the inmates. So there is still a need to make some improvement in the institution to enhance the change in behavior of juvenile delinquents.<sup>21</sup>

## **CONCLUSION AND RECOMMENDATIONS**

### **CONCLUSION**

The concept of juvenile justice is relatively a modern one, it has undergone through several stages of development through the world and in Ethiopia too, with this the juvenile justice administration also undergone through ups and downs in its history of development.

Under the Ethiopian law juvenile offences are governed by the ordinary criminal law for the purpose of determines criminal liability. However, special mechanisms are provided both in the substantive and procedural laws for juvenile offenders which are applicable to them throughout the whole process of criminal liability. Those mechanisms which are provided by the substantive and procedural laws mainly focuses on the proper care, protection and treatment of juvenile offenders.

### **Recommendations**

The study recommends a number of specific interventions measures for the treatment of juvenile offenders in Ethiopian laws. This requires the:

Amendment of the procedural laws that lacks provisions dealing with arrest how to be applied especially when it comes to juvenile offenders.

Amendment of procedural laws that lacks detail provisions of care and treatment of juvenile of fenders during investigation.

Amendment of the roll of the public prosecutor during the proceedings of juvenile cases.

Awareness of the police force dealing wit juvenile suspects in the process of investigation and detention.

Co-ordination work between the concerned institutions involved in the administration of juvenile justice.

Establishment of other juvenile rehabilitation centers in different locations.

Creation of an effective system of birth registration so that the ages of children can quickly and easily be as curtained.

Providing psycho therapy treatment for those children in the rehabilitation center.

Supervision work for those who work in the rehabilitation center as a remand officer.

As a long term solution, there is a need for policy and legal reform. The existing policy and legal from work has gaps in the protection and treatment of the rights of children in conflict with the criminal justice system.

## Chapter Three End Notes

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## **Statement of Declaration**

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name        MOTTI TESFAYE

Signed      \_\_\_\_\_