

THE TREATMENT OF YOUNG OFFENDERS IN THE ETHIOPIAN LEGAL SYSTEM: LAW AND PRACTICE IN THE REGIONAL STATE OF TIGRAI

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INTRODUCTION

Juvenile offenders are categories of offenders requiring special protection and treatment. Because of their age they are vulnerable to abuse, neglect and exploitation, so they need to be protected against these threats.

Starting from the very early time, Juvenile delinquency is one of the most serious problems in Ethiopia. A number of Juvenile offenders are reported so many times in a very short time.

How to handle delinquency in older minors is a problem that requires careful attention. So far as the future of a country depends upon the children, more attention should be given on corrective and rehabilitative actions. This fact has been acknowledged in International, Regional and national legal instruments.

Ethiopia is now coming to the realization that giving careful attention to the treatment of young offenders is an important function so far as it helps to prevent juvenile delinquency. To effect this, Ethiopia adopts rules and principles concerning young offenders. Among other things, the FDRE constitution, the FDRE criminal code and the criminal procedure code of Ethiopia are the important ones.

The criminal code makes young persons responsible for their acts for the fact that a minor begins to understand the nature of his acts, to be able to form a decision and to keep to it. Because, during this period his intelligence and volition develop and become gradually closer to those of adults which it

brings difficult to divert their direction from a life of crime unless they treat appropriately at their earlier time.

The emphasis must be on rehabilitating or reforming the young from his bad behavior. That is why the pertinent legal provisions of the laws concerning young offenders are not those that apply to adult offenders. But to apply the special dispositive provisions of the law, the juvenile has first been convicted of his act.

This paper focuses on the assessment of treatment of young offenders in practice. It mainly deals with the comparative analysis of the law and practice in treating young offenders.

It is with the view to show the actual practice of treating young offenders in Ethiopia, in particular the Regional state of Tigray that this paper is prepared.

The structure or organization of this paper is as follows:

This paper involves three chapters. Chapter one deals with general back grounds. It involves the matters of criminal responsibility (i.e. partial responsibility and irresponsibility) and the identity and definitions of infancy, young and adult offenders. Further more, it deals with the matters of the need to give special protection, institutions of the special protection and guiding principles in which the institutions are to be followed.

Chapter two deals with the measures and penalties applied to young offenders. It mainly focuses on the legal principles applying to them.

You don't even seem to be aware of the existence of a state constitution!

III

Chapter three deals with the practice of treating young offenders. It mainly stresses on assessing the practice of the measures and penalties concerning young offenders.

Finally, a concluding remark and recommendations are made.

In conducting this research, both primary and secondary datas are employed. In obtaining primary data mechanisms like personal observations, interviews and distributing questionnaires are taken into account. Secondary datas, such as literature review are also well used for the effective completion of the study.

1. CHAPTER-ONE

GENERAL BACK GROUNDS AND HISTORICAL OVERVIEW

Over four thousand years ago, the code of Hammurabi contained references to run away children and youth who disowned their parents. Two thousand years ago, Roman civil law and canon (church) law made distinctions between juveniles and adults on the basis of the concept of *age of responsibility*. During the eleventh and twelfth centuries, distinctions were made in British common Law between youth and adults. For example, children under seven years of age were not subject to criminal sanctions because they were presumed to be incapable of forming criminal intent, or *mens/rea*; and children between the ages of seven and fourteen were exempted from criminal prosecution unless it could be demonstrated that they had formed criminal intent, could distinguish right from wrong, and could understand the consequences of their actions. These issues remain important in juvenile court proceedings today¹.

In the fifteenth century, chancery courts (under the direction of the king's chancellor) were created in England to grant relief and assistance to needy parties, including women and children who were left to fend for themselves as a result of the death of a husband or father, abandonment, or divorce. The king exercising the right of parent of the country, permitted these courts to act in the place of parent's to provide necessary services to such women and children.²

By the sixteenth century, British children could be separated from their pauper parents and apprenticed to others. This practice was based on

the assumption that the state has a primary interest in the welfare of children and a right to ensure such welfare.

At about the same time, attempts were being made in England to settle disputes involving juveniles confidentially and to segregate youths requiring confinement from adult offenders. The former practice was to help juveniles avoid public shame and stigmatization, the latter to avoid the harmful consequences of association with more hardened offenders.³

In the United States during the 1700^s, numerous juveniles were imprisoned, but few seemed to benefit from the experience. As a result, several institutions for juveniles were established in the early and mid 1800^s. These institutions were oriented toward education and treatment and away from punishment⁴.

Court decisions in the last half of the 19th c. were in conflict over the necessity of due process for juveniles, but by the time the first family court appeared in Chicago in 1899, "the delinquent child had ceased to be a criminal and had the status of a child in need of care, protection, and discipline directed toward rehabilitation."⁵

The period between 1899 and 1967 has been called the era of socialized juvenile justice. Emphasis on obtaining a complete picture of the delinquent to determine appropriate care, regardless of legal requirements, became paramount. Informality became the rule and was confirmed by the decision of the Supreme Court not to hear the Holmes case in 1955 on the basis that juvenile courts are not criminal courts and therefore that the

constitutional rights guaranteed to accused adults do not apply to juveniles (Holmes 1955).⁶

One of the major problems facing students of delinquency is that of arriving at a suitable definition. Without such a definition, measurement is impossible, and without accurate measurement, prevention and treatment are extremely difficult. Two different types of definitions of delinquency have emerged over the years: legal and behavioral. Strict legal definition holds that only these juveniles who have been officially labeled by the courts are delinquents. Such definitions are problematic, because according to self-report studies and victim survey research, the definitions do not include the vast majority of all juveniles who commit delinquent acts and therefore may lead us to seriously under estimate the number of delinquents. In addition, legal definition varies from state to state and time to time. Behavioral definitions hold that juveniles who have violated or attempted to violate statutes are delinquent whether or not they are apprehended; thus, the juvenile who engages in acts of vandalism is considered to be delinquent even though he or she has not been officially labeled by the court.⁷

In a very earlier times some states had been necessitated to form and adopt the juvenile court acts which they authorize the creation of juvenile courts with the legal authority to hear certain cases, including delinquency, dependency, neglect/ abuse, and other cases requiring authoritative intervention (example a minor in need of supervision). These acts establish both procedural Guidelines and substantive law relative to juveniles that are to be administered in the interests of juveniles and in the sprit of parental concern. A separate nomenclature has been developed for juvenile procedures to ensure that these goals are pursued.⁸

In addition to establishing these guidelines and a distinct language, juvenile court acts specify the age limits within which the juvenile court has jurisdiction and the nature of the acts over which the court has authority. For example *delinquent acts* are normally defined as acts designated criminal in terms of local, state or Federal law committed by youth under a certain age. Similarly, those considered *status offenders* are typically juveniles who commit acts that are offences only because of their age: running away from home, being “beyond the control” of parents, or being “incorrigible”.

Children are a group in society who need special protection and care, because due to their physical and mental immaturity they are exposed to abuse and exploitation. They are dependent upon the aid and assistance of adults for their physical, mental, moral and social development. In many countries, especially in under developed and developing countries, the conditions of children are critical.

All children are not as innocent as they used to appear to be. There are children whose conduct deviates from what is normal and who adapt criminal behavior due to various reasons. These children, even if they have committed criminal acts, should be protected during arrest, detention, conviction and imprisonment.⁹.

The international community has urged governments to adopt legislation which recognizes the need for special legal protection of children. Thus, the rights of children are legally protected at the international, regional and national level. Among which the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of juvenile justice are international instruments. On the other hand, the African

Charter on the Rights and Welfare of the Child is a regional instrument. The same is article 36 of the FDRE constitution for national instruments.¹⁰

A young person who is accused of crime should be entitled to the protections of the constitution. The constitution itself provides the rule that no one shall be denied the equal protection of the laws. But in addition to this, for purposes of the special protection and treatment of young offenders, Ethiopia adopts different provisions in its laws. There are criminal code articles applicable only to juvenile offenders and also there are provisions only applicable to young offenders in the criminal procedure code.

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1.1. Criminal Responsibility and Irresponsibility

The problem of criminal responsibility is among the most controversial issues in criminal law. Because there have been and still are disputes as to who is a responsible person. For a very long period of time, philosophers, lawyers and physicians have endeavoured to circumscribe the notion of responsibility, which involves a variety of extralegal elements, but with so little success that the lawyers for their part sound themselves in a complete dead-lock. There existed a profound difference of opinions between the spiritualists, who thought in terms of free will and moral responsibility and the positivists, who thought in terms of determinism through factors such as heredity, education, geographical conditions, and the like.¹¹

Although it was subsequently agreed to leave philosophical concepts out of the discussion, it soon appeared that the notion in issue, even though analyzed in a purely concrete or practical perspective, could not be reduced to an entirely complete and satisfactory definition. It was found impossible to lay down the criteria of responsibility and the more that could be done was to list certain signs or symptoms which, if present in a person, should prohibit his being regarded as responsible for his acts.¹²

The verdict to be pronounced and the punishment to be imposed on the social deviant, commonly designated as the criminal, to a great extent depend on his responsibility; i.e. whether or not he has the mental capacity to appreciate the possible consequences of his action.¹³

The criminal code provides that an offender is presumed to be responsible so long as he does not show any of the signs of partial or total

irresponsibility enumerated by law, and only on offender who does not show any of these signs is fully liable to punishment.¹⁴

1.1.1. Absolute Responsibility or Irresponsibility

Responsibility is the state of being answerable for an obligation, and includes judgment, skill, ability and capacity. It is the obligation to answer for an act done and to repair or other wise make restitution for any injury it may have caused.¹⁵

Absolute responsibility refers to a complete or perfect responsibility or accountability for the act he or she commits or refrain from doing an act which is obliged to do so by law. A person is absolutely responsible for being he is capable of understanding the nature of his acts, the consequences to be caused as of his acts or of controlling him self.¹⁶

Incase of absolute responsibility, a person who commits a criminal act can by no means relieve him self from his liability.

By absolute irresponsibility it is to mean that a person incurs no liability for his acts. An irresponsible offender, therefore, is a person who commits an offence when he is in such a physical or mental condition that he is totally deprived of his mental faculties.¹⁷

It is not at random that a person is taken as responsible or irresponsible for his criminal acts. Rather, there are factors that used in determining whether a person is responsible or irresponsible under the criminal law.

There are three principal methods of defining criminal irresponsibility. The biological method, the psychological method and the combination of both methods (i.e. bio psychological method).¹⁸

The biological method consists in specifying a member of physical or mental disabilities or defects deemed to render the person concerned irresponsible. Where as the psychological method consists in prescribing that a person incurs no liability, who, at the time of the offence, was incapable of understanding the nature of his acts or of controlling him self. The third one is bio psychological method, according to which a person is regarded as irresponsible if, at the time of the offence he was deprived of his mental faculties in consequence of certain biological defects.¹⁹

Considering all the above facts, one may understand an irresponsible offender as a person commits an offence when he is in such a physical or mental condition (biological cause) that he is totally deprived of his mental faculties (psychological effect). Not only must these two requirements be present together, but they must be linked by a causal relation.

Factors which bring biological causes of irresponsibility include; the age of the offender, illness, an abnormal delay in the offenders development, and the deep alteration or deterioration of the offender's faculties.²⁰

In our case, it is no importance whether these biological causes are of a temporary or permanent nature, but they must be present. It is not simply that one is relived automatically from liability to punishment, only for the mere fact that these biological causes are existed. Rather, he is so relieved, only when the said causes had psychological consequences at the time of

commission of the act, in that they prevented him from understanding the nature or consequences of his act or from behaving according to such understanding. In this case two psychological consequences may follow. The intelligence and volition of the person concerned may be affected.²¹

Because he suffers from a certain disease, the offender is deprived of that minimum of intelligence which should be present in a responsible person so as to enable him to know what he is doing. Similarly, because he suffers from a certain disease, the offender is deprived of that minimum of power of will which should be present in a responsible person so as to enable him to make a reasonable decision or to act in accordance there with. This is so when the offender is incapable either of making any decision at all or refraining from acting as he does, even though he knows that he does some thing wrong.²²

One should know that the requirement of the simultaneous or collective occurrence of the abolishment of intelligence and volition is not necessary. That is, it is not requirement that his intelligence and volition should have been existed. A person is irresponsible when he was totally deprived of either faculty, and that this deprivation existed at the time of commission of the act.²³

Finally, criminal irresponsibility has its own effects. Normally, the legal effects of criminal irresponsibility are of two kinds. Firstly, irresponsibility incurs no liability since, "the offender who is responsible for his acts is alone liable to punishment."²⁴ Secondly, since an irresponsible may be in need of medical care or be menace for others, the court is compelled to order appropriate treatment; when ever these orders are found

necessary for the treatment of the offender or the protection of the public, or both.²⁵

1.1.2. Partial Responsibility or Irresponsibility

Partial responsibility is some times named as diminished responsibility, limited responsibility, partial insanity, or semi-responsibility. Different jurisdictions use either of these names in describing the matter.²⁶

Diminished capacity is an impaired mental condition-short of insanity that is caused by intoxication, trauma, or diseases necessary to be held responsible for a crime. In some jurisdictions, a defendant's diminished capacity can be used to determine the degree of the offence or the severity of the punishment. Here, when we say capacity, it is the mental ability to understand the nature and effects of one's acts.²⁷

The 1957 penal code of Ethiopia used the name 'limited responsibility' instead of partial responsibility in which the criminal code is used. But, still it has no matter to use it interchangeably.

A person who is not totally deprived of either his intelligence or volition is capable of acting in a guilty manner; yet, the fact that he is not completely irresponsible does not imply that he is completely responsible. There is an intermediary stage between insanity and sanity, where an offender's faculties are affected to such an extent that, although he is certainly able to understand what he does and to act accordingly, it is equally certain that his intelligence and will power is not that of a normal person and that his degree of guilt is consequently lesser than that of such a person.²⁸

Partial responsible person is neither fully responsible nor irresponsible for his acts, rather he is responsible; but his responsibility and the consequences of his guilt will be reduced.

Similar to the case of absolute irresponsibility, partial responsibility is required that the offender should have been at the time of the offence in a biologically abnormal condition and affecting his mental faculties.²⁹

Limited responsibility brought about by biological causes such as, the derangement of mind or an abnormal or deficient condition or any other similar biological cause and when these factors makes the person partially incapable of understanding the nature or consequences there of or regulating his conduct according to such understanding.³⁰

Partial responsible offenders are persons who are partially deprived of their understanding or volition. In our case, when a question arises as to the offender's mental stability and it is established that his mental development is not that of an ordinary man, what should matter is whether or not this abnormal condition had the effect that he was totally deprived of his faculties at the time of commission of the act. Then, if he is found not fully deprived of his mental faculties but partially deprived, he will be subjected to partial responsibility and is treated by the applicable provisions.³¹

There are two legal effects of partial responsibility, like that of irresponsibility. First, he is responsible, but to a reduced punishment, because he is not fully responsible. Second, since persons who are not fully responsible for their acts may, like irresponsible persons, be in need of

medical treatment or threaten public safety, the court must, when ever the necessity is present, make an order under article 121 - 131 of the criminal code.³²

One should have been known that by criminal responsibility it does not mean that every one is subject to penalties or any other measures for the mere fact that he commits an act which is prohibited by law.

A criminal offence is not punishable unless the accused is found guilty. To impose penalties or measures over a person, he should have been found guilty for his acts, and should be responsible for his acts. Both requirements are essential and they must be present together, for no person may be convicted of an offence unless, at the time of commission, he was responsible for his acts and he acts either intentionally or negligently. Thus, the fulfillment of the requirement as to responsibility is a condition precedent to the fulfillment of the requirements as to guilt; before a court can decide whether the accused acted intentionally or negligently, it must satisfy it self that he was not incapable of so acting, that is his state of mind at the time of the offence was not such as to prevent him from understanding what he was doing or from for seeing the consequences of his acts.³³

In other words, the question whether the accused is guilty arises only when there is no doubt that the accused is not irresponsible, for he may not be found guilty but insane.

The rules which permit deciding whether the accused committed an offence when he was capable of understanding the nature of his acts and of regulating his behavior according to such understanding will be found in

articles 48-56 of the criminal code. However, these rules are not uniform for there are between adult and young offenders considerable mental differences which the code takes into consideration.³⁴

1.2. Infancy

Before we see what infancy is, let's define what minority is.

Minority is the state of a person who is under the age of legal majority; at common law 21, years; now generally 18 years. According to the sense in which this term is used, it may denote the condition of the person merely with reference to his years, or the contractual disabilities which non-age entails, or his status with regard to other powers of relations.³⁵

At common law, children under the age of 7 are conclusively presumed to be without criminal responsibility or capacity, those who have reached the age of 14 are treated as fully responsible, while as to those between the ages of 7 and 14 there is a rebuttable presumption of criminal incapacity. Many countries have made some change by statute in the age of criminal responsibility for minors. In addition, all jurisdictions have adopted juvenile court conduct by those persons under a certain age (usually eighteen) must or may be adjudicated in the juvenile court rather than in a criminal prosecution. This is all about the common law legal system, in particular the U.S. legal system commentary.³⁶

For purposes of criminal law, infant in Ethiopia is a person between the ages of 0 and 9, or from the time of birth to 9 years.³⁷

What we can understand here is, it is by no means easy to decide when human beings should become subject to criminal law, and the age limit which marks the end of infancy actually varies from place to place (six years in Switzerland, eight years in England, thirteen years in France, etc.). Although, it is always somewhat arbitrary to fix any limits at all, the choice

Categorical / conceptual confusion! 14

The concept minority has no place in criminal law. It pertains only to civil law and is guaranteed by the constitution of this country. 24/14? Where is the exercise of civil rights?

should not be made at random; rather the following may be taken into consideration. The conditions, if any, which influence a child's biological or physical maturity, like the factors of the standard of living of the country concerned, the average degree of education, etc, which bear upon the minds of infants as much as purely personal circumstances (individual intelligence, family surroundings, etc.).³⁸

Bearing these considerations in mind, it is taken that nine years would be adequate as the age limit of infancy in Ethiopia.

Infants are completely exonerated from criminal provisions. Legally speaking, infancy is the period extending from birth to what might be called the beginning of ~~criminal minority~~, i.e., the age from which a child becomes a "young offender" within the meaning of the law. Therefore, what ever offence may be committed by a child who ~~is~~ ^{has} not yet attained the age of ten years, he is not criminally liable and may not be subjected to a penalty under the law. This exemption is justified not so much by reason of lack of intelligence or by lack of will power. Further more, punishment, which in any event might do more harm than good owing to its psychological consequences, is not a proper objective for one who deals with infants. The main task is to investigate why the infant did wrong and to bring about a change in the circumstances which led him to commit the offence.³⁹

This is not to say however, that children may do as they please, but merely that they are not the concern of the criminal law. They are under the exclusive jurisdiction of their parents or persons who are in exercising of the duties of parents. If they do wrong corrective steps may be ordered at home or at school, but not in court.



When an infant commits an act which is wrong, this wrong should be remedied as quickly as possible. But, so long as he or she is an infant, the remedy must be administered principally by his parents, which are by persons who may be primarily responsible for the wrong or by others who have taking the status of the responsibility.⁴⁰

pointless

1.3. Young offenders

Before we define who young offenders are, it is better to see who a child is. The practical definition of a child differs from community to community. One can say that a child is a human being below the age of 18 unless under the law applicable to the child, majority is attained earlier. Similarly, the rights of the child in the Administration of Justice provide that, a child is any person below the age of 18. There are also other international legislations that strengthen the above fact.⁴¹

At common law, a child is a person who has not reached the age of 14, though, the age now varies from jurisdiction to jurisdiction. (Authenticity?)

In the U.S. constitution, juvenile is defined as a young person who has not yet attained the age at which he or she should be treated as an adult for purposes of criminal law. In some states (i.e. the U.S.) this age is seventeen. Under the Federal Juvenile Delinquency Act, a 'Juvenile' is a person who has not reached his or her legal majority for purposes of contracting, marriage, etc. In law, the term "Juvenile" and minor are usually used in different contexts, the former used when referring to young criminal offenders, the latter to legal capacity or majority.⁴²

A young offender is a person who has not yet attained the age of which he or she should be treated as an adult for purposes of criminal law. He is the one either violated criminal laws or engaged in disobedient or indecent conduct, and is in need of treatment, rehabilitation or supervision.⁴³

→ If so, why are you alluding to the terms "minor" and "minority" in your attempt to define the terms "infancy" and "young offenders"?

What we can understand here above is that, different scholars use "juvenile offender," instead of saying 'young offender'. Therefore, we can use them interchangeably and they would have the same effect.

Ethiopian laws also mention the case of young offenders in different provisions. The FDRE constitution under article 36(3) and art. 53 of the criminal code are among the important provisions dealt with young offenders.

The constitution simply says young persons who are in commission of criminal acts; and it does not say any thing as to age limitation. But we can infer that, since Ethiopia adopted the rule that the fundamental rights and freedoms specified in the FDRE constitution are to be interpreted in a manner conforming to the principles of the UDHR, international covenants on Human rights and international instruments,⁴⁴ it is clear that the age limitation for children is 18 years for the constitutional purpose. But for purposes of the criminal law, the criminal code provides the age limitation of young offenders to be between the ages of 9 and 15. According to the FDRE criminal code, young offenders are defined as persons between the ages of 9 and 15 who have found to be committed an act which is prohibited by law.

Young persons between the ages of 9 and 15 are responsible for their acts but they are not subject to the same penalties and measures applicable to adults. Nor are they expected to be kept in custody in prisons with adult offenders.⁴⁵

A minor, even though he may be more intelligent than an adult, is nevertheless not a matured man; because, his appreciation of the world is not

→ confusion!

Can u afford to dispense with the exact content of the constitution?

What do u mean?

that of a grown-up person. In this case, a court dealing with a young person should not concern it self so much with what he deserves or with what he needs, and that it should consider the offence merely as an indication that he requires medical treatment, education or correction.⁴⁶

1.4. Adult Offenders

An adult is a person who has attained the legal age of majority; generally 18 years.⁴⁷

In the Ethiopian legal system, an adult is a person who has attained the age of 18 for the general constitutional purpose. We can infer this fact from articles 13(2) and 38(1) (b) of the FDRE constitution. Because, article 13(2) clarify the interpretation of Ethiopian laws concerning the fundamental rights and freedoms specified in the constitution, in a manner conforming to the principles of the UDHR, International covenants on Human Rights and international instruments adopted by Ethiopia. Similarly, article 38(1)(b) of the FDRE constitution provide the rule that an Ethiopian citizen has the right to vote in accordance with the law on the attainment of 18 years of age.

For the purpose of criminal law, the Ethiopian criminal code provides another age limit which is different from the above age limit (i.e. 18 years old). An Ethiopian who has attained the age of 16 is subjected to the criminal law and as a principle; he is treated under the ordinary penalties and measures which are applicable to adult offenders.⁴⁸

In case of adult persons, the offender who is responsible for his acts is alone liable to punishment under the provisions of criminal law. But, a person to be subjected to the punishment of the criminal law, he should have to be found responsible. Because, a person is not responsible for his acts under the law when, owing to age, illness, abnormal delay in his development or deterioration of his mental faculties, he was incapable at the time of his act, of understanding the nature or consequences of his act, or of regulating his conduct according to such understanding.⁴⁹

Why infer when you can cite a provision to the same effect from the Civil Code?

Why don't you cite the pertinent provision under the Civil Code of Ethiopia?

and?

Irrelevant

and?

The Civil Code fixes

the age of majority

at 18

but that's

only for

the case of

civil

rights!

In case of adult offenders, there is no confusion as to their liability for their criminal acts and are subjected to the ordinary criminal law provisions unless they are found irresponsible. In this case, since an irresponsible person may be in need of medical care or be a menace for others, the court is compelled to make the order provided in articles 129-132 of the criminal code.⁵⁰

1.5. The Need to Give Special Protection or Treatment to Young Offenders

Here, by special protection, it is to mean that, the question is not to punish a juvenile “according to the degree of individual guilt, but to ensure the best possible treatment”. For this reason, the court may not be impose penalties unless they will better than measures in serving the objectives which the law aims at accomplishing.⁵¹

Young offenders are responsible for their criminal acts but they are not subjected to the same penalties and measures applicable to adults. Nor are they expected to be kept in custody or in prisons with adult offenders.

How to handle delinquency and antisocial behavior particularly in older minors is a problem that requires careful attention, so that one is forced to rely on corrective and rehabilitative measures.

The other important point of consideration when dealing with juvenile delinquency is the creation of specialized Juvenile courts or similar institutions exclusively charged with the tasks of adjudicating young offenders, as opposed to the trial of children in ordinary criminal courts. Equally important are the special procedures for conducting the trial and the setting up of institutions responsible for the care and correction of delinquent children.

1.5.1. The Need for the Special Protection

There are international conventions and legislations deal with the need and purpose of the special treatment of young offenders. Among these include; The Convention on the Rights of the Child, The United Nations

Standard of Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), The United Nations Guidelines for the prevention of juvenile Delinquency (Riyadh Guidelines) and The African charter on Human and Peoples Rights.

The above are some of the international instruments, which have rules regarding the rights of Juvenile offenders upon arrest, detention and conviction, and measures that should be used in preventing juvenile delinquency.

The Convention on the Rights of the Child, which has a binding effect on states, is central to the administration of Juvenile justice. It offers a wide range of measures aimed at protecting the interests of the child. Article 40(4) of the same convention provide that a variety of dispositions, such as care, guidance and supervision orders; counseling; probation, foster care, education and vocational Training programs and other alternatives to institutional care shall be available to ensure that children are deal with a manner appropriate to their well being and proportionate both to their circumstances and the offence. In addition sub-article 2(b) of the same convention provide that "Every child alleged as or accused of having infringed the penal law has guarantees like to have his or her privacy fully respected at all stages of the proceedings, states 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 the penal law."

The United Nations Standard of Minimum Rules, under rules 2.3 and 5 clearly provide the aims and necessities of implementing special protection

(Authority) Date of ratification or accession? whether Ethiopia is also a party/signatory or acceded to it?

(Not linked up with Authority)

and guidelines for juvenile offenders. The same is the United Nations Guidelines for the prevention of Juvenile delinquency (Riyadh Guidelines) under part. I refers to the purpose and objective of the prevention of juvenile delinquency. That is its focus is educating young persons from their early child hood to make them a good future of the country by applying special provisions as to the measures and penalties. And this is by understanding the fact youthful behavior or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adult hood. (Authority ?)

The African Charter on the Rights and Welfare of the Child also enlighten some important principles relating to the rights of young offenders. Among other things, article 17(1) of the same charter provide that every child accused or found guilty of having infringed the penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others. Article 17(3) of the same charter also provide the fact that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.⁵² Similarly, article 14(4) of the ICCPR also stipulates the course of conduct that must be followed in such proceedings. That is, criminal trials of young offenders must be conducted taking in to account their age and the desirability of promoting their rehabilitation.⁵³

Ethiopia, being a member of the UN also adopts important principles concerning the special protection and treatment of young offenders. At the

Is this an inference
enough

national level, the CRC has been adopted and ratified by the government of Ethiopia. A part from article 36(3) of the FDRE constitution, which makes this treaty an integral part of the law of the land, the constitution also, has a specific provision under the same article for the protection of the rights of juveniles.

when? how?

(Authority / Speculation?)

Most of the additional protections available for young offenders as mentioned in the above international conventions and legislations are also incorporated in the criminal and criminal procedure codes of Ethiopia.

1.5.2. The Institutions of Protection

The creation of specialized courts or other similar institutions exclusively charged with the tasks of adjudicating young offenders is an important point of consideration when dealing with Juvenile delinquency. Equally important are the special procedures for conducting the trial and the setting up of institutions responsible for the care and correction of delinquent children.

In many countries there has developed, over the past fifty to seventy five years, an institution known as "Juvenile court." Although, local variations are numerous, basically, the juvenile court can be described as a special court designed to apply the criminal code's or a special modification of the criminal law, to children and young persons. The Juvenile court grew up as a reaction against a former practice of dealing with Juveniles in the same courts, under the same procedural and substantive law, as adults charged with crime⁵⁴

Believing that the problem of juvenile delinquents is a matter which needs careful attention, the General Assembly of the United Nations adopted the Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as "The Beijing Rules," on November 29, 1985." This convention provide among other things; the form of institutional ⁵⁵ and non-institutional ⁵⁶ treatment.

Under article 26 of the same convention, it clearly provide that the objective of training and treatment of Juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society. Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical that they may require because of their age, sex, and personality and in the interest of their whole some development. Further more, juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. This is all about the stand of some of the international conventions and legislations regarding the treatment of young offenders. And of course, these are general provisions. (Authority)

Coming to the history of Ethiopia, before 1961 G.C, young offenders were taken before ordinary adult courts where the offence committed was of considerably more importance than the welfare of the child. In 1961, a special tribunal of three High court judges was constituted to hear juvenile cases under the criminal procedure code; this court functioned until December 1962, when a special juvenile court was established by order of his imperial majesty to sit twice a week in Addis Ababa. The director of

social defense in the Ministry of National Community development by that time, has been appointed a woreda court judge for purposes of hearing cases in the juvenile court.⁵⁷

There are different types of institutions which are to be dealt with treating young offenders, in which among them include medical institutions, Educational institutions, correctional institutions, etc. Each institution has its own purpose and is served to accomplish it. As to the institutions concerned with the rehabilitation of young offenders, it is the Training school and Remand Home established in 1942 in Addis Ababa, for the first time in the history of Ethiopia.⁵⁸

This is all about to mention little as to the history of Ethiopia, particularly in the earlier regimes.

There is only one criminal code in Ethiopia in which courts used or applied in deciding criminal cases. That is all the Regional states of Ethiopia used the same criminal code.

The Regional state of Tigray, being ~~it is~~ one of the regional states of Ethiopia apply the same criminal code; which is named at the present time as “The Criminal code of the Federal Democratic Republic of Ethiopia.”

In the area under consideration there is no juvenile court system prepared to see and determine juvenile cases. It is only the ordinary courts which see and determine adult cases that also see the cases of juveniles. There are also, no special institutions concerned with the rehabilitation of juvenile offenders specifically. Rather, what courts follow in practice is, though the institution is the same, young offenders have kept in a separate

room from those of adult offenders. And of course, not only separate sections of an institution are availed for those young persons, but also there is the action of separating from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence.⁵⁹

1.5.3. Guiding Principles to be followed by the Institutions

Different international conventions and legislations provide guidelines in which law enforcing officials are to be followed in treating young persons (i.e. young offenders). Example; the UN Guidelines for the prevention of Juvenile Delinquency. This convention provides important principles regarding the special treatment of young persons. Among other things, part-I, article 4(c) of the same convention provide that official intervention to be pursued primarily in the over all interest of the young person and guided by *fairness* and equity. The Guidelines to be more protective; the convention under its part-II, article-7, provide the need of the Guidelines to be interpreted and implemented within the broad frame work of the Universal Declaration of Human Rights, the International covenant on Economic, Social and Cultural Rights, the International covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the Rights, interests and well-being of all children and young persons.⁶⁰

But here one should know that it may be difficult for one member state to follow strictly the above mentioned scope of the guidelines. Because,

there may be a real difference in Economic, Political, social and cultural development between states of the world. It is considering this fact that article-8 of the same convention (that is the UN Guidelines for the prevention of Juvenile Delinquency) provide “The guidelines should also be implemented in the context of the Economic, Social and Cultural conditions prevailing in each member state.” What is important here is, juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical that they may require be cause of their age, sex , and personality and in the interests of their whole some development. Therefore, a state can enact its own rules and procedures regarding the treatment of young offenders. But of course, it should not abuse the above mentioned necessities.

Article 52 of the UN Guidelines For the prevention of Juvenile Delinquency provides that “Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons”.

Ethiopia, being a member of the UN and other conventions enacted under the UN, it adopted laws regarding the special treatment of young offenders. Articles 53-56 and 158-168 of the criminal code, articles 171-180 of the criminal procedure code and article 36(3) of the FDRE constitution are among the important provisions regarding the special treatment of young offenders.

So far as the long-term goal is to turn juveniles in to useful citizens, the primary aims of any action taken with respect to young persons are and must be education and correction. In performing their functions; courts

should apply the special provisions while treating young offenders. Thus, they should not subject juveniles to the ordinary provisions of the criminal law. Because, these ordinary penalties are not as well suited to the requirements of a young person as those special measures and punishments.⁶¹

Since education and correction are the purposes of the law, the court is not obliged to pass rigid decisions regarding young offenders. Flexibility is justified and is necessary having regard to the purposes of the order to be made. Therefore, it should guide the court in deciding how this maladjustment can best be remedied, in the same manner as a physician diagnoses a disease and prescribes the treatment accordingly.⁶²

In ordering the measures, it is not simply that the court decides the order as it wishes rather the court needs an expert evidence and enquiry with a view to elucidating the factors which led the minor to commit an offence and how they can be eliminated. This is because; the court will not have a true picture of the case unless it understands why the minor has done wrong. Therefore, what this fact shows is, the cooperation of judges, physicians and psychiatrists is more necessary.⁶³

Thus, taking in mind all the above facts, we can say that the guiding principle of treating young offenders in the Ethiopian legal system is rehabilitative. Or we can conclude that the theory or the guiding principle is rehabilitative or educational theory.

END NOTES FOR CHAPTER ONE

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2. CHAPTER-TWO

MEASURES AND PENALTIES APPLIED TO YOUNG OFFENDERS

Juvenile offenders are categories of offenders requiring special protection and treatment. Because of their age they are vulnerable to abuse, neglect and exploitation and need to be protect against these threats. This fact has been acknowledged in international, regional and national legal instruments.¹

The rights of juveniles in the administration of justice are the same as for adults but in addition there are several rights to which juveniles are entitled. Measures and penalties which are some what different from those measures and penalties applied to adult offenders should apply to young offenders; for the reason that to treat young offenders appropriately so that to correct and construct them.²

The special measures and penalties applied to young offenders will be discussed separately here under.

2.1. Measures Applied to young offenders

Let us resume our discussion of the criminal code's special provisions for young person who have been convicted of a criminal offence. i.e, to apply the measures for a young offender, he should have been found guilty for his acts. In such a case, we have said, the ordinary penalties and measures prescribed by the criminal law for the punishment and correction of adult offenders are not available to the sentencing judge; in their place, the judge may choose from a number of special measures designed to rehabilitate the youth. There are also special penalties applicable to young persons, but these penalties may only be ordered "where measures have been applied and have failed."³

There are so many types of measures applied for young offenders. One measure is different from the other measures and is ordered so as to accomplish its specific purpose. The measures include medical treatment, supervised education, oral reprimand, school or home arrest, and commitment to a "corrective institution" defined as a "special institution for the correction and rehabilitation of young offenders," where the juvenile will receive education "under appropriate discipline."⁴

Orders for medical treatment and supervised education expire when the young offender becomes eighteen or, before then if, in the sole judgment of the administrative authority concerned, the measure has achieved its purpose. The duration of school or home arrest is fixed in advance by the sentencing judge. So, too, is the length of commitment to a corrective institution, which may be within the limits of one to five years, but not

longer than the offender's eighteenth birth day. Conditional release with probation is available after one year's detention under the usual conditions⁵

It will be appreciated that some of these measures might be viewed by the juvenile and/ or his parents as punitive, in as much as they result in a forced deprivation of personal liberty. But it is clear that the codes guiding philosophy here is rehabilitative not punitive. The court is directed when assessing the sentence, to take into account the "age, character, degree of mental and moral development of the young offender, as well as the educational value of the measures to be applied"⁶ To facilitate such individualization, it is encouraged to order an expert inquiry into the life and personality of the offender, there by to decide what treatment and measures of an educational, corrective or protective kind would be most suitable.⁷ Presumably, the term "protective" here refers to protection of the juvenile from a harmful environment so as to help the rehabilitation process.

The court shall be flexible in deciding orders of treatment concerning young offenders till the purpose needed will be accomplished or succeed. This flexibility is necessary and justified having regard to the purposes of the order to be made. Since education and correction must come first, the law can not bind the court to make specific orders in specific cases lest these purposes might not be achieved. This explains, for instance, why the court is not obliged to order a penalty if, although the minor is not a first offender, it considers that the infliction of a penalty would ruin the last chance to correct him. What the court must order, there fore, is the measure or penalty which will best serve the said purposes, taking into account the offender's age, character and mental and moral development. Thus, if a young person appears to have been the victim of his family circumstances and to be easily

amenable to reformation in changed circumstances, the court may what ever the seriousness of the offence committed, confine itself to ordering that he should be separated from his family and entrusted to the care of reliable persons, if he has acted out of light mindedness but he is old enough to understand the meaning and implications of an admonishment, the court may reprimand him; if he appears to be in need of supervision because he spends his leisure time in the company of friends who have a bad influence on him, the court may order school or home arrest; in other cases, it may deem it more appropriate to send him to a corrective institution. This is to say that the minor's needs, as disclosed by the inquiry are of greater importance than the nature or gravity of his act.⁸

As we said in our previous discussion, incase of deciding measure for juvenile offenders, the court may substitute a new measure for the measure originally ordered. And of course, this is an exception to the generally admitted procedural principle that a final judgment may not be revised in the course of its enforcement.

In this case we can compare and relate the duties of courts' regarding disposition of juvenile offenders and the doctor's duties to his patients. Therefore, the courts' duties don not end after it has given judgment, as a doctor's duties do not end after he has prescribed a drug. In both cases, he who has ordered the treatment should ensure that it had its desired effects. As a physician does not blindly continue the treatment originally prescribed but often tries a new drug in the course there of when he sees that the patient's condition does not improve as expected, so the court may order a new measure if it appears that the one which is being enforced does not serve the purpose for which it was ordered.⁹

Since measures are imposed with a view to educating and correcting young persons, they may be varied as soon as it is shown to the court, either by the management of the institution to which a minor has been entrusted or by the minor him self or his legal representative, that the measure originally ordered is inappropriate as regards its duration or its nature. For instance, when a court has ordered supervised education and it is apparent that no supervision at all is exercised over the young person, the court may either entrust him to a person or institution other than the one designated in the original order, or order school or home arrest, or decide that he must be sent to a corrective institution. Similarly, if it appears that a minor does not benefit from his stay in a corrective institution and that supervised education would be better suited to his requirements, the court may alter its judgment accordingly. These variations may be ordered for so long as measures are legally enforceable; but, although the law makes no specific provision to this effect, it seems that they should not be ordered except after the court has again ascertained the minor's needs as it did before making the order the revision of which is sought¹⁰

As we have said earlier the court is not at random that order the measures. Rather, it needs care in obtaining the real conditions that brings about the young to commit the crime, so that appropriate measures will be ordered so as to rehabilitate the offender effectively. For this to make, the court shall gather necessary evidences from different personalities, such as the offender's parents or other persons in control of him, teachers, social workers, and the like, and require the production of any written information regarding him. Expert findings such as medical examination and others have also an important role in helping courts to know the problems that

necessitate the young person to commit the crime and to give appropriate order which is suitable to reform or rehabilitate him.¹¹

But the realization of all the objectives of the special treatment of young offenders depends on a great extent on the availability of the institutional frame work for their implementation. For a population which is believed to have a fifty million mark, there is only one juvenile court with very limited man power and financial resources just as we have discussed earlier. Though, this is a very earlier history, there is also some what similar problem at the present time.¹²

In the region under consideration, there are no juvenile court systems and special institutions. This lack of appropriate juvenile court system and the non availability of special institutions prepared for the correction and education brings about a weak practice of treating young offenders.¹³

The absence of these institutions with appropriate facilities for the special protection of Juveniles is a main problem or a drawback to the fulfillment of the objective of the law in rehabilitating youngsters from their antisocial behavior. The same is true as to the absence of juvenile court system, though neither the criminal code nor the criminal procedure code provide as to the application of the juvenile court system. Because, actually courts are forced to entertain Juvenile cases and adult cases together. And this exactly has an influence on the manner of giving special attention in treating young offenders. Therefore, the presence of Juvenile court system like the system in U.S.A. and other countries has an important contribution in effecting the special treatment.¹⁴

In addition to the special measures discussed above there are also special penalties applicable to young persons, but these penalties may only be ordered where measures have been applied and failed.¹⁵ That is when the appropriate measures have been applied and have turned out to be unsuccessful, the court may sentence the delinquent for instance, to a fine which shall be proportionate to his means.

2.2. Penalties Applied to young offenders

As we have said previously, young persons between the ages of nine and fifteen are responsible for their criminal acts but they are not subject to the same penalties and measures applicable to adults.

The penalties which may be ordered in respect of young persons are vastly more lenient than those which an adult convicted of crime would ordinarily face. And, like the measures discussed above, they are not, as a rule tied to specific offences according to gravity. A young person who, following an initial conviction or convictions, has undergone one of the prescribed measures, may upon a new conviction for any criminal offence be sentenced to any of the special penalties provided, if in the opinion of the court the prior measure had failed.¹⁶

The special penalties are fine and imprisonment. Fines are designed for exceptional cases where the young offender is capable of paying a fine and of realizing the reason for its imposition. Most of the time fine is the only penalty which may be ordered for young persons, except in one circumstance that is where the youth has committed a serious offence which is normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment. Conviction of such a serious offence renders him liable to be sentenced to imprisonment in one of two classes of institutions: in a "corrective institution," which is the same place to which convicted young persons may be committed as a measure under article 162 of the criminal code, There, special measures for safety, segregation or discipline can be applied to him. Or, if the court finds that the youth is incorrigible and is likely to be a cause of trouble, insecurity or corruption to

others, he may be sentenced instead to a “penitentiary detention institution by which is meant, presumably, an ordinary prison. However, in such place he must not be in contact with adult prisoners.”¹⁷

A youth sent under the criminal code, to a corrective institution may subsequently be transferred to a penitentiary detention institution in two cases: where his conduct warrants it, and where he reaches the age of eighteen and his sentence was for a term extending beyond his majority. In the latter case of course, the principle of segregation from adult prisoners will not apply.¹⁸

It is important to note two facts about the penalty of imprisonment. In the first place, just like the other penalties for young offenders, it may not be ordered following a first offence, even if the first offence was homicide. No penalty may ever be ordered unless one of the special measures has been tried and has failed. In other words, the serious offence must be the subject of at least a second conviction. Secondly, the penalty of imprisonment is not mandatory on the court; even where the new conviction is for an offence defined as “serious,” the law still permits the court to impose merely a measure, or one of the lesser penalties.¹⁹

To summarize our discussion on penalties one should know that penalties should be imposed as a last resort when the measures applied have failed to rehabilitate and reform the young offender from his bad conduct. The practice is also some what similar to the above principle and purpose of penalty. It is in very rare circumstances that young offenders are ordered to be imprisoned. Most of the time, when a young offender is found to be committed repeatedly and if he became a danger to the society, the court

passes an order of imprisonment.²⁰ But in practice, it is very small number of juvenile offenders that allowed to enter into prison.

2.3. Measures Versus penalties

In discussing the effect of a juvenile conviction and sentence we must distinguish to some extent between those young offenders sentenced to one of the above mentioned penalties, and those with respect to whom only measures have been imposed.

Even as regards the former category (i.e. penalties), whose cases are the more serious ones, the code drafter attempted to ameliorate the ordinary effects of criminal conviction in order to ease the young person's eventual rehabilitation. This was done by three devices: restrictions on publicity given to the proceedings, restrictions on public access to the offender's criminal record, and easier reinstatement conditions²¹

Confidentiality of the court proceedings in juvenile cases is the apparent intent of the law's requirement that such proceedings be held in private. This requirement would be discussed below, but it is appropriate here to question whether the law can achieve its aim by this means. In the first place, there is apparently no legal prohibition upon publicity in newspapers, etc, of the proceedings, nor any law forbidding the police, the injured party or the witnesses from freely communicating to outside parties what has occurred in the court proceedings, unless in the particular case the court should make a special order declaring the matters 'secret' and forbidding their divulgence and publication. It is evidently no standard practice at the present time for the court to do this. In the second place, public knowledge of the proceedings and sentence is likely to be widespread, particularly in small communities and where the court imposes measures or penalties which involve restrictions upon the young offender's liberty.²²

Article 174 of the criminal code attempts to restrict public access to the young offender's criminal record by providing that in juvenile cases the court may never be effected the measure of publication of the judgment under articles 155, criminal code. It also provides that the police record of the sentence imposed on the juvenile shall be made merely for the information of the official administrative or judicial authorities concerned, and that in no case shall excerpts from their record be communicated to third parties. This provision, some what more protective than the rule governing adult cases, is meant to ensure that no unnecessary publicity is given to the juvenile's conviction.

Lastly, the convicted juvenile offender enjoys the right to apply for formal reinstatement, that is "on the application of the young criminal or of those having authority over him the competent authority may order the cancellation of an entry in his personal judgment register of measures or penalties applied to him, except imprisonment, within two years from their enforcement if the normal conditions for reinstatement are fulfilled."²³ It is only incases where he was sentenced to the penalty of imprisonment must be apparently wait longer.

The effect of reinstatement is to "cancel" the sentence which was undergone, and consequently to restore any civil rights which may have been suspended, to delete the entry in his police record, hence forward to be "presumed... non existent."²⁴

Thus far we have been discussing the criminal codes attempt to ameliorate the effects of conviction and sentence upon a juvenile offender

sentenced to a penalty. In the case where only a measure has been imposed, the code goes even further. Article 165 of the criminal code declares that the young person shall not be regarded as having been sentenced under criminal law. By this, the apparent intent of the provision is to prevent any stigma of criminality from attaching to the young person, in order to foster his rehabilitation.²⁵

However, it is clear that the criminal code article 165 cannot be applied literally in all circumstances or instances. If the young offender sentenced only to a measure should again be convicted in juvenile proceedings, his earlier brush with the law may affect his fate. For example, a penalty could then be imposed on the ground that the earlier measure had failed, and such failure could be taken as some evidence that the severe penalty of imprisonment was justified because he was incorrigible.²⁶

We thus see that for some purposes article 165 does not obliterate the effects of juvenile convictions which result only in the imposition of measures: record of the sentence must be kept in a place and form accessible to the courts, at least until the offender has reached the age of eighteen. Thus, even reading criminal code article 165 as broadly as possible, i.e, as having the effect of automatic and immediate reinstatement of the juvenile, we see that it does not completely “de-criminalize” him in the eyes of the law.²⁷

The arrest, detention or imprisonment of a child shall be in conformity with the law, and shall be used only as a measure of last resort and for the shortest appropriate period of time. Treatment can only be ordered after the young person has been convicted of a crime, and it may consist of penalties

in addition to or alongside of curative and protective measures, if measures alone have been tried and failed. Further, the use of imprisonment for recidivists in serious cases for pre-determined periods, possibly extending into majority shows at best an incomplete commitment to the goal of rehabilitation. It might even be said, in such cases, that goal has been effectively abandoned.²⁸

As we have said earlier, since the purpose of measures is to educate and correct the juvenile offender, courts should be flexible in deciding the order of treatment until the needed purpose will be fulfilled. That is, in case of measures applied to young offenders; once a judgment is decided, the court may then substitute a new measure for the measure originally ordered. But this flexibility or variability of judgment seems difficult to apply in case of penalty judgments.

But the practice does not seem to satisfy the demands of the law. Because, there are no available institutions for the special treatment of young offenders, it is difficult for the court to vary its decision at different times.²⁹ Since, there are no special corrective and protective institutions for young offenders, and the court is forced to make an order of entering into the ordinary institutions, but of course, a separate room. In this case, while the young offender is in the ordinary institution, he is allowed to get a medical, educational and other service that helps him to rehabilitate his behaviour.³⁰

On the other hand, so far there is shortage of class rooms in the ordinary institution; there is a difficulty to allow each young offender to enter into a separate room. For this reason, what the courts made is to return juveniles to their family immediately upon giving important advices that

may help the offenders rehabilitation. But of course, still there is a way or situation that the offenders (i.e. young offenders) are allowed to enter and get protection or treatment if it is found necessary, but is for a short period of time.³¹

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21.አንድ-ኛ ኮይል: በማረሚያ ቤቶች አስተዳደር የሰብዓዊ መብት አጠባበቅ የማረሚያ ቤት ሠራተኞች መመርያ መጽሐፍ የማረሚያ ቤቶች ጥናት ዓለም አቀፍ ማዕከል (Translated by the ICRC), ገፅ: 183

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23.Supra note at 6, Art.175

24.Supra note at 3, P. 125

25.Id

26.Id

27.Id

28.Stanley Z.Fisher, criminal procedure for Juvenile offenders in Ethiopia (1994) P. 393

29.Supra note at 14

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3. CHAPTER THREE

PRACTICE OF THE MEASURES AND PENALTIES

There are important international legislations that provide the standard minimum rules concerning the treatment of young offenders, just as we have said in our earlier discussions. Mainly, these legislations provide important guidelines and principles on how to treat prisoners under sentence and those of institutions in which measures are undertaken. These guiding principles are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore, the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.¹

The purpose and justification of a sentence of imprisonment or a similar measure derivative of liberty is ultimately to protect society against crime. This one can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self supporting life. To this end the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners. Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a

graduate return to life in society. This aim may be achieved depending on the case, by release on trial under some kind of supervision.² And, the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it.

The treatment shall be such as will encourage the prisoner's self respect and develop their sense of responsibility. To these ends all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.³

One should also know that to effect the purposes of the law regarding the treatment, the law enforcement officials shall have responsibility with regard to performing their profession. It is for this reason that the UNGA necessitate to enact the legislation known as "UN code of conduct For Law Enforcement Officials."

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when ever the best of their capability, prevent and rigorously oppose any violations of the law.⁴

Finally, classification and individualization are important functions of treatment. In this case, the purpose of classification shall be to separate from others those prisoners, who, by reason of their criminal records or bad

characters, are likely to exercise a bad influence, and to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation. Thus, so far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.⁵ In doing this a program of treatment shall be prepared for the prisoner in light of the knowledge obtained about his individual needs, his capacities and dispositions.

Careful attention should be given to young offender just as we have discussed in chapter-1 and 2 of this paper.

Every child accused or found guilty of having infringed penal law have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.⁶ This special treatment helps to prevent further commission of criminal acts by young persons. That is its focus is educating young persons from their early childhood to make them a good future of the country by applying special provisions as to the measures and penalties. This is by understanding the fact that youthful behavior or conduct that does not conform to over all social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.⁷

In many countries there has been developed the juvenile court system, in which it can be described as a special court designed to apply the criminal code, or a special modification of the criminal law, to children and young persons. The juvenile court grew up as a reaction against the former practice

of dealing with juveniles in the same courts, under the same procedural and substantive law, as adults charged with crime.⁸

Some of the innovations claimed for juvenile courts have been: specialization of judges, informality of the court room and of other aspects of the proceedings, rigid segregation of juveniles from adult subjects of the criminal process at all pre-trial and post trial stages, protection of juvenile offenders from publicity, emphasis on discovering the cause of anti-social behavior in the juvenile and on rehabilitating him through affecting his environment rather than on fixing his blame and punishment.⁹

In Ethiopia, too, the machinery of criminal justice embodies many of these principles. The criminal procedure code prescribes the special procedures by which trial of juvenile delinquents is to be conducted, and the criminal code provides the special disposition measures to be applied.¹⁰

The practice in Ethiopia is different from those of countries having juvenile court system. There are no special juvenile courts in Ethiopia which exclusively dealt with deciding young offenders cases; and of course, there is no legal provision neither in the criminal code nor the criminal procedure code which mention the need and application of juvenile court system.¹¹

In the particular area of this study it is the same courts (i.e. the ordinary court) that see and determine both juvenile and adult cases. But, though the same court entertain both cases there is special attention for juveniles so as to rehabilitate or correct form their anti-social behavior because, the country is expected from them future potential of human resource. In deciding juvenile cases, the court takes in to account all

conditions surrounding him that necessitate him to commit the crime. In addition, although the same substantive law applies to both adults and juveniles, the manner of committal for trial is different, proceedings are to be conducted in an informal manner and the juvenile may also be removed from the court chambers where it is deemed undesirable that he should hear certain evidence or comments.¹²

3.1. Practice of the Measures

As we have discussed earlier, for the purpose of rehabilitating or correcting young offenders the laws provide the purpose of special protection and treatment. Thus, the judge may choose from a number of special measures designed to rehabilitate the youth. This is all about the purpose of the law.

In practice, to the extent possible courts follow and apply the rules of the special provisions in deciding juvenile cases with the objective of rehabilitating a young person from his bad behavior and to become a sociable person. Thus, more or less there is no confusion as to the application of the special provisions. But what is the problem is, those organs who have the responsibility of performing the courts order some times fail to enforce and perform the order effectively. As a result the needed purpose and objective of the law or the court may not be effected. For instance, there is an occurrence of a situation that although the court order a decision to get entered the child to an institution which has educational, medical and other recreational services, the institution fail to avail all these services may it be as of a weak human power or less financial support. Therefore, we cannot say that all the orders of courts or the purposes and objectives of the law are performed effectively as they needed.¹³

If the juvenile is found guilty, the disposition measures provided for by the criminal code may be considered by the court. These may depending on the circumstances, be orders for admission to a curative institution,

supervised education, reprimand, school or home arrest, or orders for admission to a corrective institution.

In practice, the court ordered from the above mentioned, a measure which is most suitable, appropriate and proportionate for the reformation and rehabilitation of a young offender without any restriction, if it believe that it is necessary. But the question is as to the institutions concerned with keeping up of juveniles who are found convicted for their acts.¹⁴

The realization of these objectives depends to a great extent on the availability of the institutional frame work for their implementation. Thus, so far as the present institutions (i.e. actually they are ordinary prisons) found in the area under consideration are with very limited human power and financial support it is difficult to think all the orders of the court will be effected practically. And of course, it is expected that it is a practical problem of the whole country. Because, there are no as such available and appropriate institutions almost in all regional states of Ethiopia.

These special provisions of the law demonstrate the general tendency to differentiate the status of the delinquent from the adult criminal and to define his position interms of the scope and purposes of the special measures to be applied to him, rather than in terms of law or social norms he is found to have violated. But, this to be effective, there shall be available and appropriate institutions and other organs for their implementation.¹⁶

In practice, the ordinary prisons are used as institutions for the special protection and treatment. i.e., if a juvenile is found to be convicted for his acts and if the court has passed an order of institutional treatment, he is taken

to the ordinary prisons in which adult offenders are also found or are allowed to be treated. But, still considerations should be taken with the view to rehabilitate the young offender. First, he is entered to a separate room from that of adult offenders' room(s). And also, they are entitled to different privileges than that of adults such as the right to see their family and to discuss with them, to leisure time etc.¹⁷ This situation of treating young persons can not satisfy, even the UN standard Minimum Rules for the Administration of Juvenile Justice. Because, in addition to the non-availability and non-existence of special institutions even the actual prisons are without appropriate facilities in which one prisoner is expected to get at a minimum requirements of the international standards and of course the national scope and purposes of the special treatment.

This problem is not limited to the region under consideration rather it is a problem in most or all of the regional states of Ethiopia.

There is no institution which is prepared for the exclusive protection or treatment of young offenders in Jimma zone (i.e. under oromia regional state). What courts made in practice is, if a young is found guilty of the offence he accused, he had made to entered to corrective institution, which actually are ordinary institutions in which adults are also made to be entered to correct.¹⁸

If we see the 1940^s history of Ethiopia regarding the special institutions concerned with the rehabilitation of Juvenile offenders, it was only the training school and Remand Home established in 1942 in Addis Ababa. It was considering this fact that one writer said "the curative and corrective institutions envisaged by the criminal code have never been heard

of except the Remand Home in Addis Ababa which can accommodate only a few inmates.”¹⁹

The other important function of the law regarding young offenders is as to the professional duties of law enforcement officials; example the policemen, judges, public prosecutors etc. For the effective treatment of young offenders, it is important to give special trainings to the law enforcement officials. These trainings enable the official to have full competence of rehabilitating or correcting the offenders from its antisocial or bad behavior. That is to say, those officials supervising or controlling the day to day situations and activities of the young offender in an institution shall be those that have better performance and special skill to correct the juvenile offenders.

In England for instance, numerous attempts have been and are being made to ensure better qualified juvenile personnel. A number of states now require specialized training and specific designation for juvenile police officers. Prosecutors and juvenile court judges have their own associations, complete with national and regional meetings that address key issues confronting the juvenile justice system. In addition specialized training programs and seminars for both judges and prosecutors are available and are frequently well attained.²⁰

But if we see the practice in Ethiopia with regard to the function of training and specializing personnel is not as such satisfactory. There are no special trainings given frequently and timely for instance, to the policemen that enable them to exercise their profession fully and appropriately. There are occasional trainings on the general human rights. But these conditional

and general trainings on human rights are not enough to perform the duty of the special protection and treatment of young offenders. This is because; treating young offenders needs special skill and great care. Thus, appropriate trainings should be given exclusively to those officials dealt in supervising, controlling and educating young persons who are convicted of crime(s).²¹

Much is expected from the society, particularly parents, in making youngsters to grow with best conduct and character so that to be law respective citizens of the country. For instance, if parents teach their children the love of their parents, society and their country, and if supervises well, it will have great contribution in the prevention or reduction of juvenile delinquency.²²

If we see in U.S.A., attempts to divert youth from the juvenile justice network have also been popular in recent years. Diversion programs are of two basic types: those that attempt to divert youth from initial involvement in delinquency and those that attempt to divert youth who have already been involved. What we can understand from this is, so far as the purpose of the law in treating young offenders specially from adults or to give them special care is to make youths a good and law respective citizens of the future, preventive measures shall also be conducted.²³ Because, the prevention of juvenile delinquency is an essential part of crime prevention in society. Be engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and out look on life, young persons can develop non-criminogenic attitudes. To effect the successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early child hood.²⁴

In actual reality, there is no as such effective practice of juvenile delinquency prevention mechanisms in this area of study. The law enforcing officials what they do is to advise the young about the un necessity and consequences of crimes after he has accused. Had there been appropriate preventive mechanism it might be helped in solving or reducing courts burden of work and, indirectly it contributes for the quality of system of protecting young offenders through appropriate measures of treatment. And, the less number of juvenile offenders the more quality of the special protection. For instance, the principle of keeping young offenders separately from those of adult offenders may not be difficult if the number of juvenile offenders is less.²⁵ But this does not mean that it solves the problem fully rather it has contribution in effecting the purpose.

Courts shall take into account different factors in deciding an order of treatment (i.e. either measures, penalties or both, as the case may be) to make the order appropriate and proportionate in rehabilitating the young. The social back ground investigation focuses on evidence including written and oral reports relating to the juvenile's family, environment, school history (if any), friends and other material that may be helpful in obtaining an accurate picture of the juvenile's circumstances. Further more the court when assessing the sentence, take into account the age, character, degree of mental and moral development of the young offender, as well as the educational value of the measures to be applied. While assessing the sentence courts need and take important recommendations and opinions of experts regarding to the conditions of the young person, for instance health conditions. And of course, these views and opinions of different experts help

the court to decide what measures and treatment of an educational, corrective or protective kind would be most suitable.²⁶

In practice, courts face different problems while taking and determining the above mentioned factors. Because, sometimes they come up with difficulty to get the real evidence as to them. For instance, so far as there are no available birth certificates that clarify the real age of the offenders, courts face difficulty how to determine the age. In Tigray, and of course in all regions of Ethiopia, when there is a difficulty to determine the age of the offenders, courts tend to use an expert enquiry (example: doctor's examination). There fore, to deduce the problem every one shall be expected to have birth certificate and to do this, every responsible organ shall necessitate the society to have birth certificates. The government should also make efforts for birth certificates to be available in all areas of Ethiopia including rural areas.²⁷

Where a young person is brought before the court, all the proceedings shall be held in chambers. No body shall be present at any hearing except witnesses, experts, the parent or guardian or representatives of welfare organizations.

In practice, the court tries to respect the law and to follow this rule. That is for the purpose of averting any dissemination and to give a chance of free speak (i.e. liberty) the court proceedings are held in chamber. If any third party other than the above mentioned persons is allowed to enter into the juvenile proceedings, there may be occurrence of un necessary publicity as to the proceeding and the case. This is just like the dispute between

spouses and the case between them relating to sexual intercourse in which no other third party is allowed to enter in to the proceeding.²⁸

But, though the law provides the necessity of the proceedings to be held in chamber, some issues may be raised here. First, there is apparently no legal prohibition upon publicity in news papers, etc. of the proceedings, unless in the particular case the court should make a special order declaring the matters secret and forbidding their divulgence and publication. There is evidently no standard practice at the present time for the fact to do this. Secondly, public knowledge of the proceedings and sentence is likely to be widespread, particularly in small communities and where the court imposes measures or penalties which involve restrictions upon the young offender's liberty.²⁹

Article 174 of the criminal code attempts to restrict public access to the young offender's criminal record by providing that in juvenile cases the court may never order the measure of publication of the judgment under article 155 criminal code. This provision, some what more protective than the rule governing adult cases, is meant to ensure that no unnecessary publicity is given to the juvenile's conviction. But still some kind of publicity may be occurred, though not the courts purposely and intentionally do. In this case there is no as such practical liability of the court for the publication, because though article 174 of the criminal code forbids publication of any record of the young offender, it does not expressly provide the real consequences of the trespass of this provision.³⁰

In any case where a young person is involved, he shall be taken immediately before the nearest woreda court by the police, the public

prosecutor, the parent or guardian or the complainant.³¹ Giving emphasis here to the word “immediately”, it seems taking of juveniles to the nearest court without any delay (i.e. except the time taken by the journey). That is, this rule clearly implies unnecessary delay is prohibited and juvenile cases should be immediately taken to the court.

But, the practice is so much different from the above guiding principle. In most cases, the juvenile offenders after they stay for some time in the police arrest, the police tend to send them to their home upon giving warnings with no taking of their cases to the court. What is the problem here is, some times the delay or the arrest extends even for months without getting the decision of the court. And, this is an act which is some what contradictory to the rehabilitative purpose of the law. For stronger reason, if we see practically, the environmental conditions of the police custody are not really suitable for the corrective or curative mechanisms of the young. Thus, it has its own unnecessary effect.³²

As the report of the Tigray police commission (i.e. six months’ report) on sene 20, 1996 E.C. indicate, many cases concerning young offenders are left with out getting courts’ decision and with no reach of to the court. About 49% of the cases concerning young offenders were not taken to the court, and the police have made these offenders to go to their home by giving necessary warnings.

The main problem here above is not only the manner of leaving young offenders without taking immediately to the court, but also it aggravates the number of offenders in the country. Because, it is clear that unless the juvenile offenders get appropriate treatment (example Curative and

corrective measures) in the needed time, they may be necessitated to commit a crime for a second time. Therefore, it is better to take them immediately to the court so that the court will give them an appropriate order of measures, penalties or both, as the case may be.

But, we have to remember here that it is not for any cases that the police fail to take young offenders immediately to the court. Thus, if the case is such a serious case, like homicide, the police can not send the offender to his home upon giving warnings. In this case it is mandatory to take it to the court.³²

3.2. Practice of the Penalties

Penalties should be ordered as a last resort after checking up of the failure of the measures to correct, educate or cure the young offender, as the case may be.

A young person who, following an initial conviction or convictions, has undergone one of the prescribed measures, may upon a new conviction for any criminal offence be sentenced to any of the special penalties provided, if in the opinion of the court the prior measures had failed.³³ This principle seems to mean that the court or courts are obliged to apply measures first and it orders penalty only if it proves the failure of the measures to correct or rehabilitate the young. This is a general principle.

In practice, courts even order penalties directly without applying measures. For example, the Adwa woreda court after examining all conditions of the minors, it passes a decision of six months imprisonment for accused No. 1 and 2 without any consideration of the initial application of the measures.³⁴

The penalties which are ordered in respect of young persons are vastly more lenient than those which an adult convicted of crime would ordinarily be punished. And the purpose of the penalties taken here is not to punish the minor but with the intention of correcting him. For this reason in practice, the court does not impose penalties that directly tied to specific offences according to gravity, rather the court imposes proportionate penalties in which it thinks that it will enable to rehabilitate or correct the offender.³⁵

The special penalties are fine and imprisonment. The third type of penalty (i.e. corporal punishment) which was included as one type of punishment in the 1957 penal code is now inapplicable, because, it is repealed by the criminal code and the FDRE constitution.

Practically, it is very rare that an imprisonment is ordered on young offenders who are found guilty of their acts. It is when they are found committing a serious offence such as homicide or other offences which are punishable with rigorous imprisonment of ten years or more. If a young is found convicted of such crimes he will be liable to be sentenced to imprisonment. But, one should know that, though the young is found convicted for such serious offences, in practice he is not punished or sentenced with the extent of the penalty specified in each provision of the crime. Rather the court impose penalties which are proportionate and are appropriate for the rehabilitation and reformation purposes.³⁶ In addition to this, the court may reduce the initial punishment imposed through time by observing the conditions, particularly when he is in showing up of behavioral changes. Then, if imprisonment is ordered, he is allowed to enter in to a corrective or other similar institution; in which the most practicable is to make them to be entered in to an ordinary prison but in a separate room of the custody.³⁷

The law also clearly provides the above fact under article 168 of the criminal code. If he is made to be entered in a corrective institution, special measures like, measures for safety, segregation or discipline can be applied to him. If the court finds that the youth is incorrigible and is a problem to the security of the public he is sentenced to an institution known as penitentiary detention institution, which is also similarly provided under article 168 of

the criminal code. This institution is just like the ordinary prison, but still the young offender is not by any means in contact with adult prisoners.

The changing characters of the young will have an effect in the situation that whether the court is allowed to release from the corrective institution in which he was ordered to be entered or instead to be sentenced to a penitentiary detention institution. In this case, a youth sent firstly to a corrective institution may subsequently be transferred to a penitentiary detention institution in two cases: where he has no as such expectable reformation or behavioral changes in the corrective institution, and where he reaches the age of eighteen and his sentence was for a term extending beyond his majority. But, here with out any ambiguity, if the minor reaches the age of eighteen and his sentence was for a term extending beyond his majority, the principle of separation or segregation will not apply.³⁸ This is because, the principle of segregation immediately ends as of the attainment of majority age, with the exception to the other factors that forced the court to order individualization or classification. For instance, two persons who attained the age of majority, but the one with bad history of conviction of criminal acts and the other one is of a first time offender, they may ordered to be separated each other.³⁹

In practice, if a young person is found to be committed a serious crime such as homicide or any other offences which are normally punishable with a term of rigorous imprisonment of ten years or above, there is a situation that the court ordered him to enter into an ordinary prison (i.e. penitentiary detention institution) of a separate room from those of adult offenders.⁴⁰ Here, one might criticize the law's harshness in that it is difficult to visualize any crime committed by a ten or twelve year old which would justify

depriving him of different liberties and it is irreconcilable with the criminal code's paramount aim of rehabilitating the young offender. The same demurer might be entered with respect to the court's power under article 168, criminal code to order the young offender to serve a sentence of imprisonment in an ordinary prison rather than in a corrective institution. No matter how horrible the crime committed, it is hard to accept that society might write off a child of ten or twelve years as incorrigible. Surely, at least until middle adolescence, there is hope that every youth may be shown behavioral changes by appropriate care and discipline.⁴¹

As we have tried to discuss here above, courts shall follow special procedures in adjudicating juvenile cases.

Procedurally the prosecutor does not have the power to institute proceedings against minors. If it appears necessary to prosecute minors the court must order the prosecutor to do so.⁴²

But, in practice there are situations that the prosecutor institute proceedings against young persons who are committed an act which is prohibited by law. And this is really a procedural error.⁴³

The second point that courts apply some times is that after the court decided to detain the minors who are suspected of committing crime in police prison until the next session, it heard the cases of those minors together with the cases of those adults or who are attained majority.⁴⁴ But, the law, in particular the criminal procedure code provide the principle that no young person may be tried together with an adult.⁴⁵

A police investigator or any other person who has the authority to interrogate shall give necessary warnings before he start asking questions of interrogation. And a confession given with out the necessary warnings is void.⁴⁶ But, in practice this rule some times fail to apply by these authorities that have the responsibility to do so.

There are court decided cases that show juvenile cases are adjudicated or tried together with those of adult cases. For instance, some times a 15 year old young person is found tried together with a 40 year old adult man. And this is in violation of the principle no young person may be tried together with an adult man. Not only this but even the judgment it self is assessed with out due consideration of the minority age as some cases indicated. A 40 years old man and 15 years old minor, for being they are accused as coofenders in injuring a woman (W/ro Tible), they are punished equally with out any due consideration of the minority age to be imprisoned for two months or to pay 200 birr.⁴⁷

Here, we would say that though these persons are participated in the same offence, the court would have been taking into account the age in assessing the sentence, but it fails to do so.

END NOTES FOR CHAPTER THREE

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5. Steven M. Cox & John E. Wade, The criminal Justice Network/ An Introduction, (3rd ed. 1998) P. 258
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9. Id
10. Tilahun Teshome, “The Child & the Law in Ethiopia; the case of UN Convention on the Rights of the Child,” 18 Journal of Ethiopian law, August 1997, P. 59
11. Supra note at 8, P. 117
12. An interview held with a Judge of Eastern Zone High court (Adigrat), Ato Solomon Yikuno
13. An interview held with a Judge of Tigray State supreme court (Mekelle) Ato Hailemariam Kahsay
14. Id
15. Id
16. An interview held with a Judge of Adwa woreda court Ato G/her Tekelehiwot

- 17.Id
- 18.An interview held with Ato Yohans Gashawbizu (Judge in Jimma Town woreda court)
- 19.Supra note at 8, P. 118
- 20.Supra note at 5, P. 269
- 21.An interview held with Ato Negasi Fessha (head of Adwa woreda police Bureau)
- 22.Id
- 23.Supra note at 5, P. 269
- 24.The UN Guidelines for the prevention of Juvenile Delinquency (Riyadh Guidelines) Arts. 1 & 2
- 25.Supra note at 13
- 26.Supra note at 5, P. 260
- 27.Id
- 28.Supra note at 16
- 29.Id
- 30.Id
- 31.The cri. Pro. C. of the Empire of Ethiopia, Neg. Gaz., Extra ordinary issue No. 1 of 1961, A.A., Art. 172 (1)
- 32.Supra note at 21
- 33.The cri.c. of the FDRE, Proc. No. 414/ 2004, (9th of May, 2005, A.A.) Art. 165
- 34.Woreda court, Adwa, criminal File No. 159/95 (unpublished)
Public prosecutor v. defendants
- 35.Supra note at 18
- 36.Supra note at 12
- 37.Supra note at 8, P. 122

38.Id

39.Id

40.Supra note at 16

41.Supra note at 8, P. 123

42.Supra note at 31, Art. 40 (2)

43.Supra note at 34

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45.Supra note at 31, Art. 5 (1)

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Public prosecutor V. defendants

CONCLUSION AND RECOMMENDATION

CONCLUSION

It is by no means easy to decide when human beings should become subject to criminal law. And the age limit which marks the end of infancy actually varies from place to place as a result of the Economic, Social and Cultural development variations. It is not at random that countries fix the age limit. Rather different conditions should be taken in to account. For instance, conditions which influence a child's biological or physical maturity should be taken into account.

Starting from the earlier time (i.e. about four thousand years ago) with the code of Hammurabi, different laws and legislations, conventions, declarations etc. which focuses on the need of the special protection or treatment of young offenders were developed through different times and are now becoming modern and so much comprehensive at the international level. Among the international conventions and legislations deal with the special treatment of young offenders and its need, include the Convention on the Rights of the Child (CRC) and the UN Standard Minimum rules for the Administration of juvenile justice.

For purposes of criminal responsibility, young according to the Ethiopian criminal law is a person between the ages of nine and fifteen.

Young persons are subjected to the criminal law for their criminal acts. This is because, now they are becoming grown to the stage of adults and unless they are directed to have good character by applying and undertaking appropriate means it will be difficult to divert them from their

antisocial behavior if the time of correction is passed. There fore, it is the real time to divert them to the extent possible.

Young person need special protection and care. Because, they are vulnerable to abuse as of different reasons. Taking this in to account Ethiopia adopts different provisions deal with treating young offenders in great care and with special purpose. For instance the constitution has an article to treat the various facets of child rights which is an incorporation of widely accepted values of international behavior with respect to children. The criminal code and the criminal procedure code further provide a detailed but sparse provisions deal with the special treatment of young offenders.

The criminal code include special scheme of measures and penalties applicable to the convicted young person. But it is sufficient to note here, before passing on two procedural matters, that the criminal law applies in Ethiopia to convicted young person is characterized by mixed aims. On the one hand, its main goal is rehabilitation. On the other hand, it seems harsh while it imposes penalties such as imprisonment in penitentiary detention institution (i.e. similar to ordinary prison) for crimes that are serious in nature and of the consequences they caused. But it is clear that in the system of measures and penalties applicable to young persons the rehabilitative goals are more prominent than they are in the provisions applicable to adult offenders: the juvenile is recognized as more "treatable", and hence, there is increased emphasis on supervision, education and flexibility of treatment.

The relative importance of offender rehabilitation as against satisfaction of community demands for protection and revenge is shown by the especially broad discretion given the sentencing judge in deciding on the

most appropriate treatment, and to the administrative authorities in recommending when restrictive measures should terminate.

It is also shown by the special efforts to ameliorate the effect of a juvenile conviction and sentence, and to facilitate early reinstatement.

Treatment can only be ordered after the young person has been convicted of a crime, and it may consist of penalties in addition to or along side of curative and protective measures, if measures alone have been tried and failed.

What matters the law is providing punishments or penalties such as imprisonment and fine is still for re-informing and rehabilitating from his or here illegal acts or antisocial behavior.

In many countries there has been developed the juvenile court system, in which it can be described as a special court designed to apply the criminal code, or special modification of the criminal law, to children and young persons. But, in Ethiopia there are no juvenile court systems which exclusively deal with juvenile cases only. In practice, it is the same courts (i.e. the ordinary court) that entertain both adult and juvenile cases.

Though the criminal code of Ethiopia provide different measures of treatment such as admission to a curative institution, supervised education, reprimand, school or home arrest, or orders for admission to a corrective institution, the realization of these objectives depends to a great extent on the availability of the institutional frame work for their implementation.

Since, there are no as such available and appropriate institutions in the particular area of study; it hinders the practical enforcement of the above mentioned measures. And of course this is a problem of the whole country. Not only are the non availability of the special institutions, but also the existed institutions in operation (i.e. mostly the ordinary prisons) are with very limited man power and less financial support. There fore, because of these problems, all the objectives of the law may not be effectively enforced.

In practice, though courts decide an order of appropriate measures of treatment, the institution (s) in which the young is ordered to be entered is/ are not giving effectively all the needed services. They lack capacity to perform all the orders of treatment.

The other important thing regarding the treatment of young offenders is giving concentration as to the competence of law enforcing officials such as judges, police and prosecutors etc. The practice in Ethiopia with regard to the function of training and specializing personnel is not satisfactory. There are no special trainings given frequently and timely to these law enforcing officials. As a result of this there are police men who believe or are corporally punished to youths for the mere expectation of rehabilitating him. But really this is un constitutional act. The same is true as to judges, in which some times they are carelessly adjudicating both adult and young offenders cases at the same time or they tried together with out due consideration to the young. Therefore, appropriate trainings should be given to the law enforcing officials that enable them to apply practically the special consideration and protection of the young offenders.

The last but not the least we have to consider is also as to the juvenile delinquency prevention mechanisms. Though not as such developed and practiced in Ethiopia, by applying the prevention mechanism; such that by engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and out look on life, young persons can develop non-criminologenic attitudes.

RECOMMENDATIONS

Children are universally recognized as the assets of any nation. The endeavors of any society should be hence, to offer them an environment which is replete with the opportunities for their education, growth and development. However, in area which is with out full and appropriate institutions to effect the treatment, in the absence of enough trained, competent and well qualified law enforcing officials and in the absence of appropriate facilities that help the treatment; the struggle to the special treatment of rehabilitating and reforming young offenders becomes difficult. And, unless to the extent possible the above mentioned problems and other similar obstacles of the special treatment of young offenders are solved or modified, though not fully but at least in a little way, the purpose and objective of rehabilitating juvenile offenders may not be effective.

It is clear that no miracle cure exists to solve all the problems of the special treatment or it may be impossible to change the situation overnight. Though little practice is exercised such as education and other vocational trainings even in the ordinary institutions and is appreciated, it is still important to recommend some points as follows:

1. Special juvenile courts shall be created. Because those of ordinary courts (adult courts) which are in application at the present time may not fulfill or satisfy the needs and objectives of treating youngsters effectively. This is important because, if juvenile courts are established juvenile cases will become adjudicating specifically from those of adult cases. Since, juvenile courts are exclusively dealt with determining and adjudicating juvenile cases only, full attention will be created in treating young

offenders. And this helps in effecting the objective of rehabilitation and reformation.

2. Facilitating youngsters' expression about legal issues, their rights and enabling them to take part in discussions concerning their issues, will be of vital relevance as they would, and to some extent protect them selves from abuses. They should be given the chance to advocate on their own interest; then a forum where their voices can be heard and can make an impression on law enforcing bodies. In addition, this system helps juveniles to develop their legal knowledge so that to become self law respecting citizens and to teach and learn each other.
3. There have to be efforts to encourage the conducting of research as to the number, constraints and over all situations of young offenders. If there is timely conducting of research as to all the situations of young offenders, it helps to direct appropriate steps of treatment as it may be found necessary. If an effective research is done as to the circumstances of young offenders, the law enforcing bodies may necessitate finding out other mechanisms of treatment if the initial mode of treatment is found non effective.
4. Special institutions shall have made for the effective treatment of young offenders. Because, most of the time, because of the absence of appropriate institutions young offenders send to the ordinary prisons which are not appropriate for the special treatment. It is known that the institutions in which the young offenders are admitted to enter does not fulfill as it needed. And, practically this hinders the effective treatment of young offenders and the real objective of rehabilitation. Therefore, to the extent possible, special institutions with appropriate facilities shall be

found so that the rehabilitation and reformation purposes will become encouraged.

5. Comprehensive and progressive delinquency prevention policies and the systematic study and the elaboration of measures should involve different opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons. This is in fact supported by the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). To effect this there should be created appropriate coordination of prevention efforts between governmental and non-governmental agencies. This is important because it helps to reduce the number of juvenile delinquents and to increase the number of juveniles who are respecting the law. Thus, considering the material and human resources of the region or the whole country, there will be created a situation that treating small number of young offenders is easier than treating large number of them. While doing this efforts should establish to promote interaction and co-ordination between Economic, Social, Education and Health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.
6. Timely and appropriate trainings should be given for purposes of producing competent and well qualified law enforcing officials. Because, some times these personnel found in enforcing laws fail to perform their duties effectively may be as of carelessness or lack of deep knowledge. Therefore giving timely and necessary trainings for these personnel encourage for the effective special treatment. In addition to giving trainings, putting well defined responsibilities of these law enforcing

officials such as judges, prosecutors, police, etc. help and oblige them to perform their duties appropriately.

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ANNEXES

INTERVIEW WITH JUDGES

1. Is there any institutions which are prepared for giving special treatment or protection of young offenders in the region? How do you see the quality of the practical protection in relation to the purpose of rehabilitation?
2. What are the guiding principles in which these institutions are followed in treating young offenders?
3. Is there any special courts (i.e. Juvenile courts) established to hear juvenile cases only?
4. The criminal code provide that persons found between the ages of 9 and 15 shall treat differently from those of adults. Among other things, they shall be kept in a separate custody and their cases shall be adjudicated in chamber. How do you see this legal guideline in practice?
5. Some times we show that after juveniles are made to stay arrested at a police station for some time the police send them to their home upon giving warnings with out taking them to the court. Do you think this is fair or justice full? How do you see it with the legal principle?
6. We know that there are international conventions and legislations deal with the need and purpose of the special treatment or protection of young offenders. Do you think that the Ethiopian legal system is in line with these conventions and legislations? Explain briefly.
7. What factors are courts taken into account in practice while they assess the sentence regarding young offenders?

8. Is there any special training given to Judges to make them competent and well qualified in determining or adjudicating Juvenile cases different from adult cases? Do you think the trainings given are enough, if any?
9. How courts apply the penalties or measures in practice? How do you see the practice of courts in light of the objective and purpose of the law regarding the treatment of young offenders?
10. Do you think the absence of birth certificate may hinder the determination of age? What mechanisms do courts use in practice to determine age in the absence of birth certificate?
11. Is there any efforts done by governmental, non governmental or both that help in preventing juvenile delinquency? What contribution have courts in this prevention system, if any?

INTERVIEW WITH POLICE MEN

1. Which do you think is the difficult one and is in need of special skill and competency from being a professional of treating young offenders and being a professional of treating adult offenders?
2. Do youngsters committed crimes repeatedly are kept separately from those of first appearances to crime? What do you think is its purpose, if any?
3. Is there any special training given to policemen that enable them to treat youngsters appropriately different from adults? How do you explain the importance of this special training, if any?
4. What rules or guiding principles follow policemen while they are protecting young offenders? Are there any responsibilities against the failure of performing the profession effectively?
5. Do you think the separate treatment or keeping up of juveniles from those of adults is always applicable in practice? What about if there is an occurrence of lack of availability of institutions or even some times lack of enough separate rooms in an institution? What do you think is the exact practice? Explain it briefly
6. Since you have responsibility of supervising young offenders entered in prison or any other institution, more is expected from you in educating and correcting him. Do you think police men are always performing the court order (s) effectively?
7. Do you exercise or perform any efforts in preventing juvenile delinquency? What do you think is expected from the society and the government in preventing or to prevent juvenile delinquency?
8. Considering the material, financial and human power capacity of the actual institutions, do you think they are enabling to effect the

courts order? Explain briefly what you are followed in practice or what seems the real practice?

9. Do you take young offenders immediately to the court after you have arrested them? Why, why not?

10. Have you ever use corporal punishment for correcting juvenile offenders? How do you see this in light of the present legal system?

Adwa woreda court, central zone of Tigrai, 1999 E.C (criminal File No. 119/99)

Judge(s): G/her Teklehiwet

Plaintiff: Public prosecutor

Defendants:	age
1. Alem Abraha	38
2. Tsegay Berhe	15
3. Amanuel Beyene	16
4. Welay G/Tsadik	30
5. Solomon Hintsa	40
6. G/Medhin Hailay	19

The facts of the case are stated as follows:

On July 6, 1996 E.C. at about 12:00 the six persons mentioned above were charged as follows.

Accused No.1 caused injury on W/ro Tiblest's hand by hitting with a metal wood. Accused No.2 – 6 are also charged for hitting her different parts of body with stone. They are charged that they intentionally and purposely commit the offence provided under articles 32 (1) (a) and 538 (b) of the 1949 penal code on W/ro Tiblest who is living in Adwa Town Higher2 Kebele 7 and the offence is committed at the same place.

The defendants refused that they are neither committed the offence nor it is punishable offence. Then the court ordered the prosecutor to collect evidence and introduce it at the next session.

At the next session the prosecutor brought three witnesses:

1st The injured her self (W/ro Tiblest Abera)

2nd W/ro Seida Mohamed

3rd Kibrom Abera

The first prosecutor witness W/ro Tiblet Abera testified that the first accused hit her hand with knife and caused an injury; where as accused No. 2 – 6 helped him by hitting with stone different parts of her body.

The second prosecutor witness W/ro Seida Mohamed testified that accuseds Amanuel and welay touch her and Alem hit her hand with metal wood. In addition, accuseds No. 5 and 6 were standing around by touching knife. And, accused No. 2 hit her with stone.

The third prosecutor witness testified that accused No. 3 and 4 touching her and Alem hit her hand with knife where as accused No. 5 and 6 are standing nearly touching knife. The other accuseds were threaten and refused to other persons who were coming to compromise or conciliate the situation.

After listening all the evidences of the prosecutor, the court ordered the accused to bring a defense against the evidence given and collected by the public prosecutor. But they said that they have not personal evidence rather they had written evidence prepared by the administrator of kebele 7. This written evidence stated that the family or relatives of w/ro Tiblet Abera are always caused problems to the surrounding society and are found at different times initiators of problems. After examining these written evidences the court found that they are not consistent with the statement of claim raised by the public prosecutor, and, there fore, the defendants are not effectively defend against their accusation. In addition, the defense they

brought can not prove the fact that they are not responsible for the offence they are accused and it can not ascertain that they have not a guilty mind. Then so far as they lack capacity of evidence to defend effectively, the court found them liable.

In determining the condition of the injured part of the body (i.e. the actual condition at that time) the court take in to account personal evidence and written evidence from Adwa Hospital, which ascertain a finger of one hand was broken but now it is well.

After all this the court decides that since there is not any disablement or no part of a body is cut; and, based on the testaments given by the prosecutor witnesses:

So far as the first accused is proved guilty for being he hit with metal wood he will be subjected to article 539(2) of the penal code. Accuseds No. 2 – 6 are also subjected to article 539(1) of the penal code as cooffenders being they are facilitated and helped for the commission of the offence by touching her and by threatening people coming to conciliate the condition.

Finally, the court sentenced to the first accused Alem Abraha for six months imprisonment and two months imprisonment or payment of 200 birr for accuseds No. 2 – 6.



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