

Action professionals' association for the  
people (APAP)

# INNOCENT OFFENDERS

## **INTRODUCTION**

Precipitated by such factors as the break-up of family structures, the displacement consequent to armed conflict and natural disasters, the lack of opportunity, the lack of proper counseling and guidance services, the harsh discipline of parents and guardians, and the ever present and pervading face of poverty, many children are each year committing anti-social and criminal deeds. Behind each deed of crime committed by a child, there lies a story of desperation and woe. Each child in conflict with the law is a case of unfulfilled dreams of childhood, unsatisfied craving for love, and unappeased needs for the demands of a full life.

Organized society's primary mechanism for dealing with such deeds, the criminal justice system as it is in Ethiopia, has not yet managed to develop the infrastructure facility, and specialized capacity to fully and adequately respond to these children and to their needs. Incapacitated by lack of expertise, and resources, there is much that needs to be done for the criminal justice system to realise its avowed inspiration of "...the welfare and, indeed, the rehabilitation of the individual accused of crime"<sup>1</sup>. Nothing is more telling of this than the fact that there is only one remand home, and one judge in the whole of this country, where children reportedly constitute nearly half of the total population, to specifically deal with the problem of children committing crime.

Truly, poverty has much to explain about this failure. Lack of budget, lack of premises lack of trained manpower, lack of proper registers, virtually lack of everything that a properly functioning juvenile justice system need. Perhaps, though, the poverty in spirit and values underlies all of these. The spirit of brotherhood and sisterhood that should form the basis for social interaction, the value of respect for the dignity of the individual human person irrespective of his or her station in life, the value of according priority and worth to children and their future. The story of children in conflict with the law and the juvenile justice system is a story where such spirit and value count little. Wittingly or unwittingly, it is a story where the rights of the child as recognized in Ethiopian law as well as several international instruments are not fully realised.

This report is such a story. It is about children who have committed or are suspected of having committed some crime or exhibited some anti-social behavior. It is also about how the criminal justice system deals with these children. No less importantly, it is also about the spirit and attitude prevalent in Ethiopian society as to the nature of childhood, and what children in general and those in conflict with the law should be entitled to. Inevitably, it points to blunders, shortcomings and sometimes wanton violations of substantive and procedural rights. It paints a picture of debilitating limitation-in terms of values, institutions, resources, and procedures-in the juvenile justice system.

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<sup>1</sup> Preface to the 1987 Penal Code of Ethiopia

This tone of desperation, however, should not belie the fundamental optimism of the report, at least the optimism that led to the preparation of the report. There is the official commitment to the realization of the rights of children evidenced by the ratification of the UN Convention on the Rights of the Child and more recently by the adoption of the Constitution of the Federal Democratic Republic of Ethiopia - a remarkable document explicitly dealing with the rights of children in general and those in conflict with the law in particular. With the end of the long years of war, the move to democratic governance, decentralization of power and concern and action for attaining overall development, increased attention is being paid to important issues of social welfare which were relegated to a very low position for long. A culture of accountability and redress for wrongs is being built up. No less importantly too there are untapped resources that can be mobilized to deal with the problem of children coming into conflict with the law if only one looks hard. The report is also about these resources. However meager they may be, it is our firm conviction that given the will and time they, together with all the hopeful signs we are witnessing everyday, can be made to bear fruit.

It is in the context of such optimism that the report has to be viewed. It is not at all a condemnation of anyone, least of all those charged with the unenviable task of dealing with children in conflict with the law. In a terrain virtually un-researched, this report tries to provide an eye opener to the problem of children in conflict with the law, and those dealing with them. It attempts to indicate areas of concern, and to chart a course of action for those committed to the promotion and realization of the rights of children. No one is more quick to point to its weaknesses and omissions than its writers. We believe, however, that it is the first major step in the right direction, if for nothing else, to generate a positive and constructive dialogue.

The report is divided into seven Chapters. The first Chapter deals with the overall and specific background of the report. A brief presentation of the socio-legal setting as it exists in Ethiopia is followed by a description of the objectives of and methodologies employed in preparing the report and in conducting the study to assess the situation of children in conflict with the law, of which the present report is an outcome. The second Chapter examines in detail the provisions of Ethiopian law in relation to children committing crimes. The penal and criminal procedural rules are considered and examined on the basis of the minimum international standards on the administration of juvenile justice as well as such fundamental legal documents as the Constitution of the Federal Democratic Republic of Ethiopia and the United Nations Convention on the Rights of the Child.

The next four chapters present the observations made in the course of conducting the assessment. In presenting these observations of the assessment it is found necessary to first divide this into three major parts depending on the nature of the problems to be assessed. At the root of the division of the problems and the Chapters is an important assumption that the realization of any right is a function of three components. One is the law defining the right. The second is the attitude of the community at large as well as those enforcing the law regarding the significance and content of the rights. The third is the availability and functioning of structures for the enforcement of the rights. As the report sees the problem of children conflicting with the law from a legal and particularly child rights perspective, its specific assumption is that the realisation of the rights of children in conflict with the law demands adequate laws, a conducive attitudinal framework, and properly functioning structures. As the second Chapter deals with the legal provisions concerning children in conflict with the law, the remaining two components, i.e., the attitudinal framework and the structures and procedures of enforcement will be dealt with in these four Chapters.

Thus Chapter 3 is devoted to a discussion of the societal attitude towards children in general and children in conflict with the law in particular. Chapters 4 and 5 present the structures and processes involved in the administration of juvenile justice concentrating respectively on the situation in the Regions (covering, and used in the report to refer to the Oromiyaa, Amhara, Southern Ethiopia Peoples', Tigray, Somali and Harari Regions and the Dire Dawa Administration) and that in Addis Ababa. This was called for because of the basic difference between the juvenile justice systems followed which stems from the presence of a Corrective Institution for male young offenders (and the irregular presence of a juvenile court) in Addis Ababa which are absent in the rest of the Regions. Chapter 6 looks at traditional institutions relevant to children conflicting with the law. This Chapter details the role of traditional structures in the provision of social support which is believed to contribute to the prevention of children from resorting to crimes due to poverty; in norm-setting and enforcement and in dispute settlement in the event where children are in conflict with the law.

The final Chapter of the report tries to draw lessons from the findings of the study. This is not done in an academic sense of trying to prove or disprove one theory or another, but in the sense of contributing to the development of a workable plan of action to address the problem of children in conflict with the law. It thus tries to put forward a set of recommendations for possible action and broad outline of the direction of moves to ultimately develop a humane and effective system of dealing with the problem of children coming into conflict with the law.

For the purposes of this report, the term "child" is given the meaning it has in the Convention on the Rights of the Child as a person below the age of 18<sup>2</sup> " Children in conflict with the law" is generally taken as a term referring to children who commit crimes as defined by criminal law, but may also refer to children who exhibit other anti social or socially un accepted behavior. Those children for whom Ethiopian law provides special protection in the process of criminal justice are referred to as " young offenders" using the term of the law. These are children who have committed a crime being below the age of 15 but above age 9.

The assessment and this report are the results of a joint project of the Children and Youth Affairs Organization (CYAO), Save the Children Fund (UK), and Radda Barnen. The research work for the assessment and the writing of the report was undertaken by a six person team of researchers which was coordinated by a principal consultant. The CYAO, SCF (UK), Radda Barnen as well as the researchers would like to extend their appreciation to the Regional State Councils, the Regional, Zonal and Woreda Bureaux of Labour and Social Affairs, Police, Public , Public Prosecution, and Judiciary, the Kebeles, the schools, community members and the children themselves whose cooperation was indispensable for obtaining the information on the basis of which this report is written.

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<sup>2</sup> This also accords to the major bodies of Ethiopian law. thus the Civil Code defines a minor as a person below the age of 18. Though the Penal Code established the age of criminal responsibility at 9 and defines as young offenders those between 9 and 15, it also prescribes for a special consideration in the case of offenders above the age of 15 but below 18.

# **CHAPTER I**

## **BACKGROUND**

### **A. OVERALL BACKGROUND**

Located in the region of confluence between the Arabian (and through that the Euro-Asian) and the hinterland African worlds, Ethiopia is certainly a country of varied social and cultural systems. The mainstream religions of Orthodox Christianity and Islam are commingled with traditional beliefs and practices. Over seventy languages are spoken by no less number of ethnic groups. Ethiopia is also noted for its over-population, (being one of the most populous countries in Africa) and under-development (signified by the fact that 60% of the urban and 65% of the rural population living below the absolute poverty line\*).

For most parts of their history, Ethiopians have lived in virtual isolation from the rest of the world, in-fighting among each other, and being governed by traditional systems ranging from an egalitarian one of clan/tribe rule to a sophisticated feudal system of absolute (at least ideologically) monarchy. The last and present century saw the reversal of this situation heralding in two important changes: the increased centralization of state power, and the reception and integration of external, particularly European, influences. Leaving aside the causes and consequences of these changes, it can be observed that nowhere were these changes more marked as on each other. Hence, the centralised state power both used external models and influences to consolidate and legitimize the process of centralisation of power, while at the same time acting as the promoter of external models, attitudes and systems. The process also had other related aspects from among which the increased level of urbanisation and modernization of the economy can be prominently cited.

These were all changes that deeply influenced the character of the Ethiopian legal system. During the preceding period dispute settlement had been the most important single function of the legal system though this cannot be said to be discharged uniformly as each ethnic, religious, local, or other grouping in the country had its system of dispute resolution and adjudication. Even the Fetha Negest, the juries corpus of Roman-Syrian origin, was applied rarely and in matters of concern for the very highest echelon of feudal Christian Ethiopian Society. As a result, a rich body of customary laws and practices with traditional enforcement institutions and mechanisms had developed among several groups. Certainly this means uncertainty about the existence, normative effect, specifics of application and content of any law, and arbitrariness and regional variation in the application of laws. The need to transform this situation and to unify and universalise the legal system has been a felt one since at least the time of Tewodros II (1855 to 1868)

\* UNICEF, The state of the World's Children 1996. Oxford University Press, P.90

though such need was in evidence quite earlier as can be gathered from the introduction, translation into Ge'ez, and sporadic application of the Fetha Negest. Tewodros was also remarkable in trying to use the law as a means of bringing about social change. This latter function came to be more and more pronounced during the two major emperors that seized the "Throne of Tsion" after Tewodros (Emperors Yohannes IV and Menelik II). Menelik was particularly noteworthy for his introduction of the agencies of state executive power (ministries), and his frequent use, and improved style, of legislation. The trend of centralisation continued with the ascendance to the throne of emperor Haile Sellasie I, by then a "radical" and "modernizer", and got even further impetus with the Italian presence of five Years (1936-1941) in their unsuccessful bid at colonization.

By the late 1950s early 1960s the level of modernization, urbanization and centralization of state power was such that a vigorous process of instituting a uniform modern legal system was set in motion by the introduction of codes of law modeled after European Codes covering every conceivable aspect of social life. (The codes introduced at the time were: the Civil Code, the Penal Code, the Commercial Code, the Maritime Code, the Civil Procedure Code and the Criminal Procedure Code. They were enacted between 1957 and 1965.) this was accompanied by an earlier started process of institutionalizing the law enforcement (the police and public prosecution) and judicial functions.

Though rousing much hope and expectations at first, the validity and workability of the "reception" of western modeled laws soon began to be doubted. This uncertainty set in as it became clear that the law was unable to reach out the majority of the population both rural and urban, and that its full application was impeded by lack of institutional capacity and the prevalence of attitudes and practices antithetical to its inherent values.

The two decades dark interlude of the Derg regime with its high disregard for the rule of law and its fanatical adherence to "revolutionary justice", the wide scale civil war, the deteriorating economic conditions and the dismantling of old structures and social relation in the wake of the revolutionary upheaval following the fall of the Imperial regime widened even further this dichotomy between "official" state law as it exists in the law books, and the unofficial rules, procedures and practices ranging from tradition to administrative edicts which govern the life of most Ethiopian outside court rooms.

Indeed, for many Ethiopians the law is not what is provided in the codes of law or the Negarit Gazettes, but what the local Kebele or Wereda chairperson rules. this was formalized in the extensive judicial powers bestowed upon the Keble and Wodreda judicial councils. In matters where these bodies do not have jurisdiction, elders and other traditional authorities make rulings based on usage, or their sense of righteousness and fairness. Thus, during this period, the significance of the "formal" law and judicial structures come to be limited to matters of personal/business interest among the urban and semi-urban relatively well-to-do matters of nonpolitical crimes.

It might be too much to expect any significant change in this overall situation during the past five years since the fall of the Derg. Indeed the adoption of several international human rights instruments, including the Convention on the rights of the Child, and the official ideological commitment to respect the rule of law and human rights may be seen as positive developments. On the other hand, the regional (federal) structuring of state power including the law enforcement and judicial functions and the constant shuffling of court, public prosecution and police structures and personnel are strong factors that at least temporarily, widen the existing wedge between the “formal” law and the reality on the ground.

It is within this setting that one has to view the Ethiopian law relating to juvenile justice. That such law is necessary is an obvious proposition. As per the 1994 population census conducted by the Central Statistics Authority the total population of Ethiopia is 54.9 million; while that of children below the age of 15 is 26.7 million. According to the draft national social welfare policy, the number of children in especially difficult circumstances is 22.5% of the total child population and only about 1.5% of these children get organized and systematic services.

Both man-made and natural calamities such as the protracted civil war and the recurrent drought are mainly responsible for the appalling situation of children. For instance, the CDPP has estimated the total population affected by the 1987 - 1988 drought and famine to be over 6,000,000 of which 43 per cent were children. Official reports of the CYAO indicated that 25,000 orphaned and destitute children received institutional care; 20,000 children benefited from family support program; and 3,000 children received foster placement, adoption and reunification services. therefore out of the total needy children in the country at that time, only one percent received the required social welfare services.

Today there are estimated to be more than 100 thousand street children in Ethiopia most of who are orphaned,\* while others had to take-care of their poor parents besides themselves. A large proportion of these street children have never set their feet inside a school compound. In fact, according to “**The State of the World’s Children 1996**”, of the total school-age children (below 15) only 26% of the male and 18% of the female children are enrolled at the primary school level. Moreover, the same source indicated that 78% of the children enrolled at the primary school quit before reaching grade 5. Taking 1986-1993 as base years the percentage of central government expenditure allocated for defense education and health were, the report continued, respectively 39,10 and 3.

Clearly thus there are several factors which are fast changing the traditional scene of a settled mutually supportive family. The long years of civil war and repeated famine have dislocated hundreds of thousands. The narrowing economic base for rural subsistence farming forces many to move to the major urban centers. Economic stagnation leave many unable to cover their basic needs. External cultural influences cast doubts on the wisdom of traditional values. All these tremendously affect children. In their efforts to adjust to these new situations, in many cases by themselves, it is natural to expect children to exhibit deviance which may lead to conflicts with the law.

This is clearly indicated by the high number of children involved in the commission of criminal offenses. The Federal Police commission reported that in the Ethiopian calendar year of 1987 (1994/1995) 3286 children below the age of 15 were officially suspected of committing crimes. This figure does not include the significantly more number of crimes that are not reported to the police, not those whose perpetrators remain unknown to the police. The breakdown of offenses and the number of children suspected is presented in the following table adopted from data provided by the Federal Police Commission.

\* Presumably, the number of orphaned children will continue to rise as a result of the recurrent drought and the effects of AIDS which is spreading at an alarming rate. The number of children expected to be orphaned due to AIDS by the year 1995 is estimated at 95,000.

**Table 1.1 Offenses Committed by Young Offenders.**

| <b>No</b> | <b>type of Offense</b>  | <b>Male</b> | <b>Female</b> | <b>Total</b> |
|-----------|---|-------------|---------------|--------------|
| 1         | Damage to property including arson and its attempt                                | 55          | 8             | 63           |
| 2         | Destruction of forest   | 64          | 1             | 65           |
| 3         | Intentional homicide including its attempt  | 122         | 26            | 148          |
| 4         | Negligent homicide and homicide by mistake and accident                           | 12          | 2             | 14           |
| 5         | Bodily injury and brawling  | 718         | 228           | 946          |
| 6         | robbery and burglary  | 157         | 22            | 179          |
| 7         | Theft and related offenses  | 857         | 93            | 950          |
| 8         | Fraudulent misrepresentation and breach of trust                                  | 82          | 27            | 109          |
| 9         | Illegal use and trade in Arms   | 15          | 7             | 22           |
| 10        | Rape and other sexual offenses  | 26          | 6             | 32           |
| 11        | Embezzlement, contraband, bribery, illegal use and trade in minerals and currency | 15          | -             | 15           |
| 12        | Use of narcotic drugs and other offenses against public health                    | 10          | -             | 10           |
| 13        | Petty offenses  | 379         | 127           | 506          |
| 14        | Other offenses  | 171         | 56            | 227          |
|           | <b>Total</b>  | <b>2683</b> | <b>603</b>    | <b>3286</b>  |

**Source: Federal Police commission.**

It seems that the Ethiopian law maker had anticipated this long before the said factors become exceedingly manifest, when it adopted the penal Code with its section on Young offenders in 1957. There is clear indication that the law-maker was immensely influenced by developments in the fields of criminology and juvenile justice at the time. Essentially, the purpose of the law was that of reforming the child offender with his or her best interest in mind. For this a number of measures and institutional mechanisms were presumed to be functioning - Corrective institutions, Medical institutions, and Educational institutions. The “best interest of the child” was the value underlying the Code’s provisions. Unfortunately, none of these institutional mechanisms and value frameworks were present at the time the code was promulgated. Regrettably, as well be seen subsequently, they are not even today in existence in any meaningful sense.

## B. BACKGROUND TO THE PROJECT

The present report is the outcome of the study to assess the administration of juvenile justice in Ethiopia. The assessment was conducted in the period between February and August 1996. Although the assessment was initially intended to cover children under difficult circumstances (and the response of the legal system to the problems and needs of such children) it was found necessary to limit its scope to children in conflict with the law. This was due not only to limitations in time and resources but also to the facts that the problems of these children are more pronounced and the legal system's responses are more direct than is the case with children in other difficult circumstances. A primary consideration in the formulation of the assessment was that it should not be limited to a purely academic exercise. Rather, the assessment was seen as a means of gathering information for possible future action in addressing the problems of children in conflict with the law.

In this light, the objectives of the assessment were set out to be:

- a) an examination of the adequacy of existing legal and institutional arrangements in realizing the rights and guarantees provided to children in conflict with the law; and
- b) an assessment of the nature and extent of the problem of children in conflict with the law and identification of existing societal structures which do or can address the problem.

These broad objectives were related in more refined and focused terms as the assessment was to have as specific goals the following:

1. presenting a general view of the system, problems and constraints of the administration of juvenile criminal justice;
2. examining the compatibility of existing domestic laws to accepted international minimum standards of juvenile criminal justice;
3. examining the availability and compatibility with legal standard of traditional mechanisms of juvenile justice administration; and,
4. assessing the overall societal attitude towards the problem of and rights of children in conflict with the law.

To attain these, it was essential to employ several methods to gather information. These included:

- a) **Desk study** of legal instruments dealing with the administration of juvenile justice was essential to examine the adequacy of the existing legal regime in providing guarantees and rights to children in conflict with the law. This was also necessary to develop checklists to examine the conformity of the practice

of juvenile justice administration to the legal standards. An examination was also made of existing literature as was available and could be found that deal directly or indirectly with the subject to be examined, i.e., the problem of children in conflict with the law and the administration of juvenile criminal justice.

- b) **Questionnaires** were used to gather information from the police, courts, public prosecutors, children, and prison wardens. The information, thus, gathered related to the nature and compatibility of the law with the practice of juvenile criminal justice administration, the level of awareness of informants as to the rights of children in conflict with the law, and the institutional capacities of law enforcement and judicial bodies to deal with the problem of children in conflict with the law.
- c) **Interviews** were conducted with the subjects of the questionnaires in a structured manner. Semi-structured interviews were conducted with advocates, officials of Bureaux of Labor and Social Affairs, and judges. These types of interviews were also conducted with selected children in conflict with the law to elicit information on their life styles and treatment in the process administration of justice.
- d) **Focused group discussions** were conducted with members of communities to determine attitudes and perceptions towards the problem of children in conflict with the law, non-formal and traditional mechanisms of dealing with the problem, and awareness about the rights of children in general and of children in conflict with the law in particular.
- e) **Direct observation** of the situation of children in conflict with the law particularly as they are being held and treated in custody was also made use of. Such observation also relates to an overall assessment of the attitude and capability of different agencies in dealing with the problem of children in conflict with the law.

Forty-eight urban and semi-urban sites were covered in the assessment in six regions. Sites in Addis Ababa and Dire Dawa were also covered. A total of 623 informants were contacted through various means. A detailed breakdown of the sites, informants and methods employed is attached as an appendix.

# **CHAPTER II**

## **LEGAL FRAMEWORK**

### A. **GENERAL**

The Ethiopian legal system follows what is known as the “Continental” or “Roman” model with codified laws and statutes forming its essential pillars. Judicial interpretation does not, in general, have the binding nature that it has under the principle of stare decisis in legal systems that follow the “Anglo-Saxon” model. There are six codes of law which constitute the main framework of the Ethiopian legal system of which two—the Penal Code of 1957 and the Criminal Procedure Code of 1961 - are of main interest here.

Both codes date back to the mid-50s and early 60s to the time of a flurry of activities relating to the “reception” of “modern” European modeled laws. The Penal Code in general follows the continental European approach in its organization, definition of crime and specification of guilt and penalty. The Criminal Procedure Code, on the other hand, follows the Anglo-Saxon model as applied in former British colonies with continental European elements incorporated here and there. Despite claims by the law maker and an all too rare reflection of Ethiopian (at least highland Christian) sentiments, the codes are the products, and the synthesis, of Western value systems. More significant than that, they are presumed to be operational in an institutional and attitudinal framework, to be modeled after that as exists in the places of their origin, which has never been fully in place.

Be that as it may, it can generally be said that both codes in their essential nature follow the universal trend in criminal justice and its procedure. This trend may be said to have as its components the individualization of guilt and crime, the emphasis on punishment more as reformative than as retributive, the recognition of the inherent dignity of the human person, and the recognition of universal standards of dignity, fairness and due process of law in the administration of criminal justice. Indeed, the time when both codes were enacted was a time of much activity in the realm of standard setting in international human rights law and this has left its mark on both codes.

An area where this last statement is very much true is the law (both penal and criminal procedure) that deals with the administration of juvenile criminal justice. Before dealing with the specific provisions of the law in the area, it is in order to state in very general terms that the Ethiopian juvenile criminal justice system as it is provided for in the Penal and Criminal Procedure Codes largely conforms to the basic tenets of the internationally accepted standards of juvenile justice. It is, however, equally important to hasten to add two major qualifications to this statement. Firstly, the statement should not be construed as to mean that the Ethiopian legal system has adequately detailed rules to realize the said standards. Secondly, and more importantly, the statement does not in any way imply that the law is actually applied. Indeed, unfortunate as it is, and as well be seen in subsequent parts, the converse is more true than otherwise.

## **B. CONSTITUTIONAL RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW**

The most fundamental legal instrument in relation to the rights of children is the Federal Constitution of Ethiopia of 1994. In line with current trends in the development of provides for an article, under the fundamental rights and freedoms Chapter (Chapter three, Arts. 13-44) wholly and exclusively devoted to the rights of children. This does not however, mean that Art. 36 is the only Constitutional provision that deals with the rights of children. As citizens children are entitled to all other rights and freedoms that are enshrined in the Constitution. But when extending these other rights and freedoms to children one must be guided by the basic principles specified in Art. 36 in order not to violate, contradict or preclude special protections and privileges accorded to children because of their special circumstance.

Sub-article 3 of Art. 36 of the Constitution specifically deals with juvenile offenders and provides that they shall be kept separately from adults. With regard to juvenile justice the main significance of Art. 36 lies not so much in the provision of detailed regulation on the wide spectrum of the substantive and procedural rights as in laying the founding principles and guidelines that would help in determining and construing the other rights and freedom contained either in the Constitution itself or in other subsidiary legislation is such a way as befits the special circumstance of children. Indeed, the core principle is spelled out in Art. 36 (2) which reads:

*In all action concerning children undertaken by public and private institutions of social welfare, courts of law, administrative authorities of legislative bodies, the primary consideration shall be the best interest of the child.*

Because the best interest of the child is the guiding principle, often the rights accorded to juveniles are more favorable than those rights that are accorded to adults.

In principle, no person, including children, may be arbitrarily arrested or detained without trial or conviction (Art. 17(2)). But should any one person be arrested she/he has the right to be promptly informed the particulars of the charges and the reason for the arrest (Art. 19(1)). Moreover, such arrest could only be made in accordance with procedures established by law (Art. 17 (1)). All persons in custody, including sentenced prisoners, have the right to conditions which respect human dignity. the detainee has also the right to be promptly informed that she/he has the right to remain silent during police interrogation and to be further notified that any statement she/he has made or evidence she/he has given may be used against him/her in court (Art. 19(2)). The Constitution further provides that all persons have the right to protection from bodily harm and that no person shall be subject to torture, cruel, inhuman or degrading treatment or punishment (Art. 16 cum Art. 18 (1)).

In the case of children, these provisions are further strengthened by Art. 36(1) (e) which states that every child has the right to be free of corporal punishment be it in schools or other institutions responsible for the care of children. If the arresting authorities used coercive measures to measures to obtain/secure confessions or

admissions from the arrested person incriminating himself/herself, statements as such obtained shall not be admitted by the adjudicating body as evidence (Art. 19(5))

Generally, arrested persons have to be produced before a court of law within 48 hours and the arresting authorities will be required to give explanation of the reason to the arrest (Art. 19 (3)). When, however, the arrested person is a juvenile below the age of 15 years inclusive, the criminal procedure code requires that she/he be immediately produced before the nearest Woreda court. If, nonetheless, the arresting office or agency fails to bring the child before a court of law, the child himself/herself or his/her parent/guardian can petition any court for a writ of *habeas corpus* (Art. 19 (4)). No court can deny this right. However after hearing the reason for the arrest and where the interest of justice so require, the court may order the arrested person to remain in custody for no longer than the time strictly required in order to carry out the necessary investigation (Art. 19 (4))

It is also constitutionally guaranteed that persons in detention shall have the opportunity to communicate with and to be visited by relatives, friends, religious counselors, lawyers and medical practitioners (Art.21(2)). More importantly they have the right to be released on bail (Art.19(6)).

The basic precept of equality, that is, all are equal before the law and are entitled to the equal protection of the law without discrimination of grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth or other status, is enshrined in Art. 25 of the Constitution. Public trial, too, is constitutionally guaranteed except in those instances where protection of the right to privacy of the parties public morals or national security dictated the court to hold the hearing in a closed session (Art.20 (1)). Herein lies another difference between adult and juvenile offenders. Juveniles are not regarded as criminals. Hence, any proceeding against them is held in strict confidence so as not to violate their rights to privacy.

It is again constitutionally guaranteed that all accused persons have the right to be informed with sufficient specificity of the charge and to be given the charge in writing. In cases involving juveniles, however, the special provisions of the Criminal procedure Code preclude the very idea of framing a charge against children, unless the offense is a very serious one that carries a penalty of no less than 10 years imprisonment or death.

Until proven guilty all accused persons have the right to be presumed innocent. Moreover, no one can be compelled to testify against himself/herself during the trial (Art. 20 (3)). The accused shall also have the right of full access to any evidence presented against him/her own defense; and to obtain the attendance of other witnesses on his/her behalf before the court (Art. 20(4)).

Another important right given to the accused is that of the right to be represented by a legal counsel of his/her choice or in the event where the defendant is indigent and substantial injustice would otherwise result, to be provided with legal representation at state expense (Art. 20 (5)). For juveniles, however, the special law does not employ the test of indigence. But, perhaps on the belief that substantial injustice would otherwise result, juveniles are entitled to a court appointed legal counsel, on the one hand, if for whatever reason their parents/guardians could not be present and on the other hand, even

in the presence of the parents/guardians, if the offense with which they are charged carries a penalty of 10 years imprisonment or the death penalty.

Finally, if there be any dissatisfaction with the ruling or the judgment of the trial court, the accused has the right of recourse, by way of appeal or review, to the competent higher courts. (Art. 20(6)). Besides, where they cannot understand the language of the court, the accused have the right to have all the proceedings interpreted at state expense (Art. 20 (7)).

### **C. OFFENCES COMMITTED BY, AND THE PUNISHMENT OF CHILDREN**

The penal Code, as is the case with modern criminal law in general, is based on two fundamental principles. The first is that crime exists where there is criminal responsibility. In the words of article 48 of the Penal Code “the offender who is responsible for his acts is also liable to punishment under the provisions of criminal law”. Criminal responsibility is a legal term signifying one’s ability to understand one’s action at the time such action takes place. The second principle is that crime entails punishment. “Punishment”, says the preface to the penal code, “cannot be avoided...”

In fact as the very first article of the Penal Code puts it, the purpose of criminal law is said to be served by giving due notice of what constitutes, and the penalties for, crimes,...”... and should this be ineffective by providing for the punishment and reform of offenders”. Punishment is viewed as serving different purposes ranging from justice/ retribution to “prevention and suppression of crime (and) for the welfare and, indeed the rehabilitation of the individual accused crime”, again, in the words of the preface to the penal Code.

It is these principles that set the framework of the legal regime governing children committing crimes under the Penal Code, too. The Code’s treatment of children is based on the presumption that children may not have the mental capability to be as responsible for their action as adults are. Based on this presumption, it essentially sees the measures to be applied on children who have committed crimes as directed at education rather than retribution. It, thus, provides a favorable legal framework for the treatment of children.

The basis for this framework is the definition of childhood. In consonance with the UN Convention of the rights of the Child (the UNCRC, 1989), a child under Ethiopian law is defined as a person of either sex who does not attain the full age of 18 years (Art. 198 of the Civil code, 1960). But for the purpose of criminal responsibility, the Penal Code of Ethiopia has classified children into the following three age groups:

- a) Children who have not attained the full age of 9 years;
- b) Children between the ages of 9 and 15 years inclusive; and
- c) Children above 15 but under 18 years of age.

The first group are presumed to lack the necessary mental state to be responsible for their action, while the second group are thought of having such a mental that they are seen as having limited responsibility for their action. The last group are seen as having full responsibility, but being young are thought of having the capability to be reformed

and educated. Consequently, children who may commit crimes are dealt with differently depending on the age group to which they belong. Accordingly, a child who has not attained the full age of 9 years is totally exonerated from criminal responsibility, the assumption being that such a child is incapable of either understanding the nature of the consequences of his/her act, or regulating his/her conduct according to such understanding (Art.48(1) cum Art. 52 of the Penal Code, 1957). Where an offense is committed by such a child, appropriate steps may be taken by the family, school or guardianship authority (Art. 52 P.C). Under the Civil Law, the guardian is entrusted with the function of directing the education of the child. For the purpose of ensuring the child's education the guardian may inflict light bodily punishment of the child (Art 267 Civ. C.). However, if it appears that the child has committed an offense due to bad education or the guardian's failure to educate the child at all, the court may remove the guardian (Art. 231(3) Civ. C.).

The phrase, "young offenders" as used in the Penal and Criminal Procedure Codes refers to those children, between the ages of 9 and 15 year inclusive, who are alleged to have committed an offense. under Ethiopian law, young offenders must not be subjected to the ordinary penalties applicable to adults (Art. 53(1) of the Penal Code). Special set of measures and penalties applicable to them are provided for in Arts. 161-173, Chapter IV, Book II of the Penal Code. It is also explicitly stated that the court may not make an order for the application of such measures and penalties before the child alleged to have committed the crime is convicted (Art. 53 (2)).

On the other hand, if at the time the alleged offense was committed, the child in conflict with the law was over 15 but under 18 years of age then she/he shall be tried under the ordinary provisions of the Penal Code (Art. 56(2)). However, the court may, in assessing the sentence, take into account, inter alia, the age of the child either to accord ordinary mitigation of penalties or to apply one of the special penalties specified for young offenders (Art. 56(2)). With respect to sentencing there are also other privileges accorded to children. One is that the death penalty can not be pronounced on children below the age of 18 years (Art. 118P.C.). Another is that child prisoner should be kept separate from adult prisoners in general and from dangerous prisoners, prisoners of bad character, recidivists or prisoners sentenced to rigorous imprisonment or internment in particular (Art. 53 (1) cum Art. 109 (2)).

It is with the intention of expeditiously disposing cases involving children in conflict with the law that, in principle, Ethiopian law does not require the young offender to pass through the rigorous of independent police investigation nor that of the framing of a formal charge by the public prosecutor (Art. 22(2) cum Art. 40 (2) cum Art. 108 (3) of the 1961 Criminal Procedure Code). It is with the same spirit that unlike adults, young offenders are also exonerated from the preliminary inquiry procedure when charged with first degree homicide or aggravated robbery (Arts. 80-93 C.P.C). Be that as it may the police, the public prosecutor, the parent or guardian or the complainant who apprehends a young offender is duty-bound to immediately take him/her to the nearest Woreda court (Art. 172(1), C.P.C). The court shall, then ask the person bringing the child to state the particulars and the witnesses, if any, of the alleged offense or, where appropriate, to make formal complaint (Art. 172 (2)). If the child is brought before it without the company of

the parent, the guardian or any other person in loco parentis, the court shall immediately inquire whether such persons exist and shall summon them to appear without delay (Art. 173 C.P.C.). In the event where no parent, guardian or other person in loco parentis appears to represent the child or even in their presence if the offense with which the child is charged carries a penalty of 10 years rigorous imprisonment or death, as a possibility, the court shall appoint an advocate to assist the child (Art. 174 C.P.C.)

Except in those instances where it believes that further investigation is necessary in which case it may give instructions to the police on the manner of investigation (Art. 172(2) C.P.C), or where the accusation relates to an offense that entails a penalty of rigorous imprisonment exceeding ten years or death, as a possibility, in which case, it shall direct the public prosecutor to frame a charge (Art. 172 (3) C.P.C)., the court shall directly proceed to the trial provided that other essential procedural prerequisites are fulfilled. One such procedural prerequisite is that all the proceedings involving children shall be held in chambers where no one, except witnesses, experts, the parent or guardian or representatives of welfare organisations, is present (Art. 176 (1) C.P.C). It is worth noting that the presence of the public prosecutor is not required except when the case is pending before the High Court (Art. 176 (1) C.P.C). Perhaps, this is the reason why it is the court and not the public prosecutor as in ordinary criminal trials that shall examine all witnesses (Art. 176(6)C.P.C). Secondly, if any evidence or comment is going to be given which is undesirable that the child should hear, she/he shall be removed from the chamber for that while (Art. 175 C.P.C). Thirdly, all the proceedings shall be conducted in as much an informal manner as possible so that the child will not feel threatened or intimidated (Art. 176. (2) C.P.C).

This arrangement is clearly distinct and different from the case of the investigation of crimes allegedly committed by adults. In the latter case, a basic premise of the Criminal Procedure Code is that the investigation of crime commences when the agency entrusted by law to investigate crimes i.e., the police and in some cases the public prosecutor, is formally informed of the commission of a particular crime. In the case of young offenders, however, and investigation may only be conducted only after the young offender is presented to court. The court may, when presented with a young offender, dispose the case, investigate it informally, immediately and in camera. Police investigation may be ordered by the court also, but, presumably in exceptional cases. Thus, the court in juvenile cases is not merely an adjudication body, but serves as a mechanism for diverting the child from the harsh process of criminal investigation and trial. It is interesting to note the ingenious way in which the Criminal Procedure Code attempts to integrate the principle of diversion by using the court structures. This is very useful in the face of the extreme lack of expertise to handle juvenile offenders and the absence of structures of social welfare. Apparently, the code assumes that judges and courts will be in a better position to appreciate the problems and different situations of young offenders.

Camera-hearing, absence of public prosecutor, informal proceeding and exclusion of the child from hearing testimonies or comments that may have damaging effect on him/her are among the features that distinguish the trial of young offenders from the trial of adults. The law also prohibits the detention of a child together with an adult.

Once it is satisfied that the child is well represented and other procedural safeguards designed to assure the speedy, informal, fair and confidential nature of the trial are in order, the court shall, first, read out to the child the accusation or complaint under (Art. 172(2)) or the charge under (Art. 172(3)) and give the child a chance to respond. Depending on the nature of the child's response, the court may take either of two courses of action:

- a) If the child fully understands and admits the accusation or charge, the court shall record what she/he said and may convict him/her immediately (Art. 176(4)); or
- b) If the child fully understands and does not admit the accusation or charge, the court shall inquire as to what witnesses should be called to support the accusation or charge (Art. 176(5)).

Witnesses, thus, produced may thereupon be cross-examined by the child, his/her representative or advocate (in short the defense) (Art. 176(6)). Moreover, the defense may cause any witnesses to be summoned in its favorite (Art. 176(5)). When the evidence is concluded, the defense may sum-up and there after the court shall give judgment.

It is interesting and indeed comforting to note that, unless perhaps the Woreda court instructs the police otherwise, Ethiopian law does not as a rule authorize the pre-trial detention of children in conflict with the law. On the contrary, the law emphatically states that such a child should stay within a family environment pending the final disposition of the case. Thus, Art. 172(4) of the Criminal Procedure Code reads:

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

If the child is found to be not guilty, he shall be acquitted and set-free forthwith; whereas if he is found guilty, the court shall impose the appropriate measure or penalty under Art. 162 and the subsequent provisions of the penal Code as per Article 177(1) of the Criminal Procedure Code. Unlike the ordinary penal law, juvenile justice has no punitive objective. Its main objective is that of taking care of the mental and physical well-being as well as the promotion of the best interest of the child. This guiding principle is enshrined in Art. 177/2/ of the Criminal Procedure Code which reads “[t]he court may call before it any person or representative of any institution with a view to obtaining information concerning the character and antecedents of the child so as to arrive at a decision which is in the best interest of the child”.

The fact that the whole purpose of juvenile justice is designed to safeguard the well-being of the child and to promote the best interest of the child is further reflected in the measures and penalties themselves. Here it is worth noting that there is a distinction between measures and penalties, in that, the latter have some punitive element. measures taken under the provision of paragraph one include: admission to a curative institution (Art. 162), supervised education (Art. 163), reprimand and censure (art.164), school or

home arrest (Art. 165), and admission to corrective institution (Art. 166). All these measures are not regarded as sentences passed under criminal law (Art. 169 Penal Code). One effect of this is that unlike adult offenders, the measures imposed on children in conflict with the law shall not, under normal circumstances, result in the loss of his/her civil rights (Art. 177 Penal Code). If measures under (Art. 162-166) have been applied and have failed, the court may sentence the alleged child with penalties such as fine (Art. 171) corporal punishment (Art. 172) or imprisonment (Art. 173), the latter only where the child is accused of committing a serious offense.

#### **D. COMPATIBILITY OF THE DOMESTIC LAW ON THE ADMINISTRATION OF JUVENILE JUSTICE WITH RELEVANT MINIMUM INTERNATIONAL STANDARDS**

International standard setting in the field of human rights, mainly under the auspices of the UN and its subsidiary agencies, is one feature that characterized the post WW II period. Spearheaded by the 1948 Universal Declaration of Human rights, a number of other international and regional human rights instrument such as the two International Covenants on Economic, Social and Cultural rights (the ICESCR, 1966), and on Civil and Political Rights (the ICCPR, 1966); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT, 1984); the Convention on the Elimination of All Forms of Discrimination Against women (the CEDAW, 1979); and the African Charter on Human and Peoples' rights (the Banjul Charter, 1981) have not only come into existence but also greatly influence both international relations and many a legal system.

In spite of the fact that children are the most vulnerable members of any society, the fashioning of minimum international standards concerning the rights of children in general and that of the rights of children in conflict with the law in particular was among the last to attract the attention of member states of the UN. Relatively, it is only lately that most of the international instruments on the different aspects of children's rights such as the United Nations Convention on the Rights of the Child (the UNCRC, 1989); the African Charter on the rights and Welfare of the Child (the ACRWC, 1990); the United Nations Standard Minimum rules for the Administration of Juvenile Justice (the Beijing rule, 1985); the Riyadh Rules on the prevention of Juvenile Delinquency, (1990) and the UN guideline on the Treatment of Detained children, (1990) were created. Though international instruments dealing with the rights of children are among the last to come to existence, it is gratifying to realise, for instance, that States are ratifying the acceding to the UNCRC with an unprecedented promptness and enthusiasm. With almost all States of the world, including Ethiopia being parties to it, the UNCRC is perhaps the only truly universal human rights instrument.

It is worth noting here that according to the new Constitution of Ethiopia not only are all international agreement ratified by Ethiopia an integral part of the law of the country, but also are the fundamental rights and liberties contained in the Constitution to be interpreted in conformity with the universal Declaration of Human Rights, international human rights covenants, humanitarian conventions and the principles of other relevant international instruments which Ethiopia has accepted or ratified. Hence, in the analysis of the compatibility of Ethiopian law on the administration of juvenile justice

to that of the corresponding minimum international standards, special emphasis will be given to those Conventions and international instruments to which Ethiopia is a party, particularly the UNCRC as the other international/regional instruments dealing with the rights of the child are either merely unbinding guidelines, e.g., the Beijing and the Ryhad Rules or are not ratified by Ethiopia.

The domestic law of Ethiopia on the administration of juvenile justice is, by and large compatible with the corresponding minimum international standards. Art. 172 of the P.C. which prescribes the use of corporal punishment to reform male young offender who happened to be contumacious is often cited as an example of the inconsistency of Ethiopian law to the international instruments. However, it will be difficult to maintain that Art. 172 of the P.C. is still valid and operational particularly when seen in light of Art. 36(1) (e) of the Constitution which recognizes the right of the child to be free from corporal punishment or cruel or inhumane treatment in schools and other institutions responsible for the care of the children and the provision of Art. 9(1) which reads, “The Constitution is the supreme law of the land. Any law, customary practice, an act of an agency of government or official that contravenes the Constitution is invalid”.

The fact that the existing domestic law on the administration of juvenile justice is compatible with the minimum international standard does not, however, mean that it is adequate. Rather it exhibits many lacunae and even those existing provisions are lacking in essential details. In this regard the most conspicuous shortcomings are: existence of disposition measures that are not congruent with the stated objective of juvenile justice administration; absence of early disposition mechanism such as diversion; and inadequacy of the existing procedures for the handling of young offenders.

Primarily, a child accused of or found guilty of an offense shall be treated at all stages of the proceeding in a manner consistent with the promotion of his/her sense of dignity and worth which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and assumption of a constructive role in society (Art. 40, UNCRC). Indeed, the founding principle upon which the international juvenile justice system is built is the protection and promotion of the best interest of the child. Hence, in the consideration and disposition of the case of a young offender, paramount importance is attached to the well-being of the juvenile and that the reaction to be taken must always be in proportion not only to the circumstances and the gravity of the offense but also to the circumstances and the needs of the juvenile as well as to the needs of the society (Art. 17, Beijing rules).

In harmony with these underlying principles and objectives of the administration of juvenile justice, the relevant international standards not only strongly discourage the institutionalization of young offenders but also urge national states to make available large varieties of alternative disposition measures (Arts 18 and 19, Beijing rules). The disposition measures to be made available may include care, guidance and supervision orders, probation, community service orders, financial penalties, compensation and restitution, intermediate treatment and other treatment orders, orders to participant in group counseling, and similar activities, orders concerning foster care, living in communities and other educational settings (Art. 18, Beijing rules), The placement of a

juvenile in an institution must, first, be a disposition of last resort and, second, it should be for the minimum necessary, period. (Art. 19, Beijing rules). The placement of a juvenile in an institution must, first, be a disposition of last resort and, second, it should be for the minimum necessary, period. (Art. 19, Beijing rules). This is because institutionalization, that is loss of liberty and separation from the usual environment have an acute negative effect on the juveniles.

In consonance with the minimum international standards, the objective of administration of juvenile justice in Ethiopia is that of the rehabilitation of the juvenile offender. However, some of the disposition measures contained in the penal Code of Ethiopia such as corporal punishment (Art. 172) and up to 10 years imprisonment in a penitentiary institution if the child is incorrigible and is likely to be a cause of trouble, insecurity or corruption to (Art. 173); are geared more towards satisfying the vengeance needs of society than towards either reforming the behavior of the child or promoting his/her best interest and well being.

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Absence of non-judicial mechanism for diversion is the second area from which the domestic law of Ethiopia on the administration of juvenile justice suffers. Diversion is an instance where a juvenile is dealt without resort to formal trial by courts. Art. 11 of the Beijing rules provides that the police, the prosecution or other agencies dealing with juvenile cases be empowered to dispose of such cases at their discretion, in accordance with the criteria to be laid down for this purpose in the respective national legal system, without recourse to formal hearing. Diversion may consist of redirection to community support or other services and is designed to do away with the negative effects of subsequent proceedings and the stigma of conviction and sentencing in the administration of juvenile justice.

The Criminal Procedure Code's approach in this regard is quite interesting to note. Cognizant, perhaps, of the absence of any of the institutional and expertise requirements for effecting diversion, it provides that judicial bodies, in the form of courts, are to carry out this function. This approach, however, is taken in a rather round about way. First, the immediate presentation of a young offender is required before the court as soon as the child is suspected or apprehended. The accusation of the child has to be made to the court, unlike in the case of adults where it is made to the police. The court then begins immediately to consider the case asking the child of what s/he has to say. Police investigation is not required unless ordered by the court, which as a matter of general rule does the investigation itself. No formal charges are to be laid against the child. The court will then order, where the child is guilty, the alternative educational, rehabilitation or punitive measures of the Penal Code. During all these, the parents of

legal counsel (which may be, if parents are lacking, or the offense serious, court-appointed) have to be present being immediately summoned by the court. Significantly, also the hearings have to be done informally and in chambers (i.e. excluding the public).

On the other hand, the Code does not recognize any diversionary role to the police. The court is expected to act as a non-judicial diversionary mechanism. The code, however, seems to overlook the fact that it is the police who normally have the first encounter with a juvenile offender. Those who accuse young offenders and the police find it less troublesome to handle cases of juveniles without resort to courts. More disturbingly, the diversionary role of courts is not at all understood by courts, the police or the community at large. As the code does not regulate how police should handle young offenders, present police practices come to frustrate the very purpose for which diversion is required.

On the third count, the juvenile justice administration law of Ethiopia lacks in the details of the existing procedures. The Criminal Procedure Code of Ethiopia gives the impression that only the special procedures (Art. 171-180) should apply to young persons. As pointed out by Fisher, “inevitably, such brief coverage has kept many matters unsettled and it is often problematic whether and how much of the rest of the code [applicable to adults] should be used to fill the gap.”<sup>2</sup> Furthermore the lack of practical guidelines and detailed rules in handling young offenders in the process of administration of criminal justice has meant uncertainty and confusion resulting in children being treated no differently than adults by the police and even at times by the judiciary.

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<sup>2</sup> fisher, “Criminal Procedure of Juvenile Offenders”. *Journal of Ethiopian Law*, vol. VII, 1973 () p.127.

## **CHAPTER III**

### **SOCIETAL ATTITUDES ABOUT CHILDREN CONFLICTING WITH THE LAW**

#### **A. INTRODUCTION**

The present chapter deals with the issue of societal attitudes towards children conflicting with the law. In addressing this, attempt has been made to see the generally prevailing perception of communities in general and personnel of law enforcement agencies in particular on different issues of interest. Such issues include: who may be considered as a child; what offenses are seen to be committed by children and the reasons pushing children to commit offenses as perceived by these bodies; and what level of awareness exists regarding the rights of children in general and of children conflicting with the law in particular.

The assessment of societal attitudes towards children conflicting with law was conducted in both urban and semi-urban areas. Community members and personnel of law enforcement and judicial bodies were targeted for the assessment. In the case of the former, the assessment relates to attitudes on four main issues: children and their expected roles; offenses committed by children; responses to children committing offenses, and awareness about child rights. With the second set of targets the assessment was related to the level of awareness about the legal rights of children conflicting with the law. The findings of the assessment with regard to each of these issues are presented below.

#### **B. CHILDREN AND THEIR ROLE IN SOCIETY**

With regard to who should be considered as a child there is a considerable confusion among all targets of the assessment, and particularly among those with no legal background. The confusion prevails not only at different sites covered but also amongst participants of the focus group discussion at every site. For instance, in one site (Sodo) from 6 (six) community members interviewed 2 (two) interviewees marked 14 as the age limit of childhood while three of them marked 9 and remaining one at 5. This confusion is prompted by two reasons. The first is that of terminology. Among Amharic speaking targets the term ‘ *ገረግሪ* ’ (which is in the context of UNCRC, taken as the equivalent of “child”) is conventionally used to describe the infant. This was also true of other languages such as Tigrigna. In this sense, many tend to regard as child those below the age of 7, with some occasionally suggesting five or even three as the cut off limit.

The second confusion was more conceptual in nature. Even though, many tend to agree that protection should be accorded to children (under whatever designation they may be called) they lay emphasis on physical and mental maturity and independence from parents (in the sense of economic independence from, or substantial economic contribution to the family) as the characterizing features of adulthood rather than age. Many attempted to use a more objectively ascertainable criterion. Most tried to do these

by setting an age at which children can be expected to fulfill these tasks, while others (particularly in more urbanized areas) used completion of the formal education process as such criterion. For the majority of those who resort to an age limit, 9 years marked the end of childhood, while a few considered 18 years as such. On the other hand, religious people have tried to define the limit of childhood from religious perspective. For the followers of Orthodox Christian faith it is the age of 7, at which a person is required to behave like an adult (for instance, when he/she has to begin fasting), whereas for Muslims it is 15, when a person is considered as a grown up and would be held responsible for his act.

The following table shows how varied the conception of childhood is amongst the community members interviewed at all sites.

**Table 3.1 Age limit of childhood as expressed by community members**

| Age limit of childhood | below 5 | below 9 | Below 14 | below 18 | below 25 | Total |
|------------------------|---------|---------|----------|----------|----------|-------|
| Interviewees           | 30      | 48      | 40       | 20       | 3        | 141   |

It should be noted that it is the expectations from children than the protection to children that seems to define the consideration of what childhood is. Invariable, children are expected to contribute to the economic activities of their parents (whether in monetized form or otherwise) which is described as children should assist their parents/families". Implicit in this statement is the belief that the economic activities of children should be subordinated to the will and activities of their parents or families. A related expectation from children which is given equal emphasis is that children should respect their parents. That is probably why disobedience (to parents) was mentioned at many sites as an offence. At Maqalle and Dessie, for instance, participants of the focus groups discussion cited disobedience as the most serious offense children commit. Indeed, that children everywhere respect their parents is an accepted fact which is expressed in terms of their being obedient to their parents and elders and their assisting families. Out of 141 community members interviewed at all sites 92 responded that children are respectful towards their parents.

Other expectations from children seem to be subservient to these "primary" expectations. Children should be educated, of course, as their parents order them to attend school, and so that they will be able to support their families. Children should also have time to play, but after they have carried out the orders of their families, and if there is no work to be done at home.

The personality of children is not viewed as anything but that of the extension of their families. Children are thus accorded no significant role or voice either in the family, or the community at large. Their place is relegated to a virtual non-position where they are not only not expected to be having a voice of their own but also where their interests are identified with the interests of and defined by their parents. The fact that children are not allowed to give their opinion in the family affairs is true everywhere except in some sites in Tigray, for instance, Abiy Adi where some participants of group discussions

assert that, after the TPLF took control of the region, children have an equal voice as parents, having the right to air their opinion and take part in decision making on family matters and on their own fate.

The ultimate goal of childhood and the mark of a successful childhood is the ability to fulfill one's parents wishes and support one's family. The prevailing attitude as to the role of the family with regard to its children is thus that of providing for the basic necessities of life for (and in many urban areas for the formal education), and proper disciplining of the child, so as to enable him/her to grow up and support his/her family. Quite clearly, this role of the family has the necessary duty on the child - that of repaying its debt ( ) to its parents. Indeed, this results in a very strong sense of obligation (to be able to support one's family) on children that in many cases subsists in to adulthood. It is possible to conjecture that this might be the very attitudinal basis for the mutual support system of the extended family. In relation to children, the role of other agencies in society including the state is seen as that of providing generally material but occasionally moral support to enable families to carry out their roles.

Be that as it may, it is very difficult to envision the child as a bearer of rights within this attitudinal framework. Even the positive things parents do to their children everywhere, such as, providing them with food, clothes and sending them to school, are not understood as a duty on the part of parents, but, so that the children will repay or support them when they grow up. Indeed, in many discussions, the subject of the rights of children was merely seen as what children could be provided, not even necessarily claim, by way of basic necessities. Children as subjects of rights on their own, climbable from a universality of duty bearers families, the community at large, the state-is not a common, if not an alien view.

There were several interesting illustrations of this. In Guder, when they were briefed about the rights of children particularly about the prohibition of corporal punishment under the Convention, participants of the discussion shouted at facilitators to keep quiet so that children outside discussion room may not listen to what has been said. Participants in Kemissie and Injibara have the same conception and substantiate their view as having a religious and cultural basis. In Desie, even though, participants are aware of the rights of children on this same issue, they all said that corporal punishment against children is the measure they will never give up from taking.

### **C. OFFENCES COMMITTED BY CHILDREN**

In virtually all sites covered by the assessment, whether urban or semi-urban, there is a strong feeling that more children are becoming unruly, and offenses committed by children are on the increase. These, for those covered by the assessment, are generally the results of parents being unable to properly raise their children. Both propositions become more interesting when further details are concerned.

To begin with the first, the nature of the offenses committed by children are conceptualized in a significantly different manner than is the case with the Penal Code.

In many sites cigarette smoking, chewing chat, watching video films, playing Jotenni, fashionable dressing, drinking alcohol, pregnancy, and courting are enumerated as wrong doings committed by children none of which are specified as criminal offenses for children by Penal Code. Of course, there were also proper crimes that were cited such as stealing brawling, robbery, and sexual harassment, in some cases rape and gang rape which were recognized by the penal law, too. However, the general attitude prevalent among the community members interviewed indicates that offenses committed by children are defined by communities not on the basis of consideration of legal principles, but by having regard to an ideal standard of behavior that is derived from a conception of children as obedient and conforming to the wishes of their parent and the community at large. At Maqalle participants of the focus group discussion have mentioned the fashionable dressing and bizarre hair styles of children as unwelcome act. Whereas in Harar where the community is predominantly Muslim, the way young girls wear (western style) clothes was cited also as an unwelcome act when they are required to wear Muslim dresses. Also in sites where one (religion) faith is dominant, converting to other faith was considered a crime. In Maqalle, Aksum and Shire participants of discussions were mentioning that converting from Ethiopia Orthodox faith to Protestant as an offense children are committing. This understanding of the nature of offenses committed by children in many cases such as video watching, of fashionable dressing is more indicative of a gap in values between the generation of children and their families than the presence of serious threat to the fabric of the society.

More disturbing is the fact that there is a widely prevailing view, though varying generally between urban and semi-urban areas in the strength of its expression, and from site to site, that the problem of children committing 'proper' (as defined by the Penal Code) offences is present and increasing. There are two important points that should be borne in relation to this belief. The first is the widely held belief entertained in various places differing very significantly in their degree of urbanization that children do commit crimes. Whether such belief is justified or not, it is also important to note the accompanying threat that different communities feel from children committing crimes. This second point is of significance also in considering the responses by community members to measures that are taken or should be taken when children commit crimes.

With regard to the cause that leads children to committing offences, it has been stated that the major reason has been identified as failure of parents to properly raise their children. Several interesting factors were suggested as in their turn causing this parental failure. The major one is that of poverty preventing parents from providing for the basic necessities of life and leading children to commit crimes. Nonetheless, when asked to describe the socio-economic background of children who commit offenses and of their parents, those covered in the assessment would make no distinction between the rich and the poor. In explaining this, such factors as video taped films (Presumable western and violent ones), gambling games, allowances paid by families, friends and peer groups, the absence of moral education, sometimes, natural behavior were cited. All these are believed to contribute to children being more independent of family control, and a weakening of parental disciplining which lead to children committing crimes.

#### **D. RESPONSES TO CHILDREN COMMITTING OFFENCES**

When a child commits an offense that the primary responsibility of disciplining such child should be that of parents and members of the immediate or extended family seems to be a matter of agreement. In many cases also, such responsibility of parent seems to be limited to offences and misbehavior that are not “serious”. Although offences that are prescribed in the Penal Code would qualify as serious, the latter as perceived by community members may be broader including, depending on locality, watching video films, or playing table tennis or jotenni for money. Where the wrong doing of the child is not serious too, neighbors and the community at large are seen as entitled to take correctional measures. Unlike parents, however, the measures that these bodies can take should be no more than advise, although very close neighbors can take similar measures as parents do. In many sites, whether urban or semi-urban, participants of discussions mentioned a change of attitude on the part of children, that they have become less respectful nowadays towards their parents and the community. Some trace the beginning of such attitude after the coming into power of the Dergue regime.

Despite this, participants in group discussions strongly believe that parents are entitled to take whatever is necessary by way of disciplining their children. Advise, reprimand, throwing out of home, and heavy work are some of the measures that parents can take. Corporal punishment seems to enjoy universal acceptance. Even in Tigray where there seems to be some debate on the subject, people who are strongly supportive of the TPLF seem to be apologetic when the TPLF’s prohibition of corporal punishment is raised, or to deny or qualify the existence of such prohibition. Nonetheless, out of 40 community members interviewed in Tigray region all, except 2, responded that the administration of corporal punishment against children still exists. That corporal punishment should also be used by teachers at school is also generally accepted not only by lay community members, but also by teachers themselves. One participant of group discussion at Maqalle who is a high school teacher is allowed to administer corporal punishment than at the time when teachers were prohibited from doing so.

The intervention of the police (and sometimes kebeles) was also a point of agreement among different groups when the wrong by the child is serious. Many, however doubt the efficacy of the police and courts on the ground that offenders who are caught are released immediately. Many also complain since they doubt the investigative capabilities of the police.

Nonetheless participants in group discussions were sympathetic towards children. Generally, participants of discussions were not suggesting harsh punishment to child offenders, save light corporal punishment. The exception to this is seen in very big towns such as Dire Dawa, Dessie, Gondar and Bahir Dar where participants want to see more serious measures being taken against child offenders by the police and court because parents are not capable of controlling their children or street children by themselves. Rather, strengthening family control, providing recreational facilities, helping (financially) poor families, closing down video shows, jotennis or table tennis games were suggested as a solution to combat juvenile delinquency.

In all sites in Tigray region, the National Service Program was cited repeatedly as the most effective mechanism in reducing the frequency of crimes committed by children, particularly those crimes committed by grown up children, and converting the notorious ones in to good citizens. Similarly, in many sites, like Guder and Urumu, it was asserted that the fact that children are attending school only in the morning or in the afternoon has forced them to involve in criminal acts for they have no other place to go to or anything to do during their leisure time.

#### **E. AWARENESS ABOUT CHILD RIGHTS**

It should from the very outset be stated that the level of awareness among those covered by the assessment concerning the rights of children in general and of children conflicting with the law in particular as provided for the UNCRC, the Constitution of the Federal Democratic Republic of Ethiopia, and other laws is virtually nil. At the general community level there is almost no familiarity with the rights of children though some individuals may be aware of the fact that children constitute a special group which has certain rights. This is true of all types of participants in the group discussions and interviewees from housewives to high school teachers. However, at every site participants have said that parents have the duty of providing for the clothing, feeding and education of their children as their economic position allows though they are not aware that such privileges are rights of children. With regard to the various protections accorded to children in the Penal Code and Criminal Procedure Code, participants seem to have a vague idea that children below 18 are not criminally responsible and therefore cannot be prosecuted. This is derived from the practice of non prosecution of young offenders in almost every site, except Maqalle. They have no knowledge that child offenders above the age of 9 (nine) years can be prosecuted in special procedures applicable differently from adult offenders. Only participants in Tigray region were asserting that they have been thought by EPRDF about the rights of children. But their understanding is no more than skin deep and is focused only on some of the rights children enjoy. At most they are aware of the controversial one which is that children should not be subjected to corporal punishment.

On another level, even though many personnel of law enforcement agencies and the judiciary are somehow aware of the legal procedure envisaged for children conflicting with the law, they are neither deeply and professionally conversant with the rights of children, nor for the most part, does such awareness as they have has any significant impact on their attitudes towards children, their behavior and their practice. The fact that many children interviewed at every site reported the severity of the beating administered by the police against them may clearly explain the latter's attitude and behavior towards the former.

## **CHAPTER IV**

### **THE PROCESS OF ADMINISTRATION OF JUVENILE CRIMINAL JUSTICE IN THE REGIONS**

#### **A. INTRODUCTION**

The present chapter tries to describe the process of the administration of juvenile justice as it takes place in the regions of Oromiyaa, Amhara , Southern Ethiopia, Tegray, Somali, and Harar Regions and the Dire Dawa Administration. An attempt is made to describe the juvenile justice system functions as practiced: an overview of the process of criminal justice starting from the apprehension of a suspect to the final disposition of the case as relates to a child. The description extends to related structures of modern law enforcement and adjudication. In presenting these, focus is laid on general patterns and commonalties rather than on specifics. though this will certainly reduce the impact of the human drama, it is seen as useful in pointing to recurrent and common problems and challenges faced by the legal system, law-enforcement and judicial agencies and the children.

As is well known the administration of criminal justice in the modern state is a function of the state stemming from its assumption of sovereignty and exercised by specialized agencies. In Ethiopia, too, the law presumes this to hold true and assigns the task to essentially three bodies - the police, the public prosecutor and the courts. The respective role of each body may be summarized as the investigation, prosecution, and disposition (in the form of decisions acquitting, or convicting and sentencing) of criminal cases. The administration of criminal justice thus involves all these bodies and their functions in relation to a particular criminal case, or to crimes in general. In describing the administration of juvenile criminal justice, as it relates to children in conflict with the law, it was found useful to broadly categorize the major actions that are involved in this process. These are commencement of criminal proceedings and, investigation (including arrest, detention, age ascertainment, trial and sentencing). Each of the sub-sections below present the observations made during the assessment in relation to each of these categories, after a description of the nature of offences in which children actually are involved or suspected to be involved.

#### **B. NATURE OF OFFENCES COMMITTED BY CHILDREN**

The nature of the crimes children commit (or are formally suspected of committing) are very similar in all localities covered by the assessment. Prominent amongst these is theft which is the most frequent crime committed by children. Not only that police, in almost all sites covered, reported this but a high proportion of children under detention are also incarcerated for this reason. What is surprising, however, is not the fact that there is a high incidence of theft committed by children, but that many crimes suspected of being committed by children are not theft related. Though not as frequent as theft, other crimes committed by children include assault, robbery, fraudulent

misrepresentation, homicide, arson, using narcotics, and gambling. Indeed, children commit these other crimes taken together more frequently than theft.

Another striking point about these crimes is the element of violence most have. Indeed, if the categorization was to be made on this ground, then violence related crimes would have been very close in frequency of occurrence to that of theft. It should also be observed that these types of crimes are relatively more frequent in semi-urban than urban areas; while the frequency of theft and misrepresentation as well as other crimes such as using narcotics and gambling increases in more urban areas.

Though it is very difficult to exactly specify why children commit crimes, it is possible to conjecture some reasons based on these figures and the responses of the interviewees (both the police and children). Poverty clearly seems to be at the root of most crimes committed by children particularly those related to theft. The life of only a few kids illustrates this. Samuel Zenebe is a 12 year old boy who joined street life in Jijiga after both his parents died. As he is living in the street and has no one to support him and provide him with the basic necessities of life he began begging in the street and sometimes selling some small items such as vegetables by collecting them from market places. However, when what he earns both from begging and trading does not suffice to cover the requirements of basic necessities such as food and clothing, he resorts to stealing.

Unlike Samuel, Haftom Sebhat, 11 years old, from Maqalle, Tigray Region has got enough to eat at his home but has resorted to stealing because his parents can not buy him decent clothing due to their poverty and/or unwillingness. Yohannes Ayenew, 14 years old, from Gondar also shares a similar fate. As the 85 Birr pension that his father gets monthly is not enough, he had to support himself by carrying luggage in the streets where he learned to steal. Sometimes this may have a traumatic feature as is the case of Yewegnesh Anjete who is imprisoned at the Bahir Dar prison for infanticide. She dumped her 10 days old child in river because she can not care for him as there is no one who helps her.

Taking into account the correlation between the background of the children committing the offences and the offences themselves, however, it is possible to argue that it is not merely the lack of provisions which leads children to commit crimes but also the inability of family and other communal support structures to guide the child to obtain these provision which leads the child to the commission of crimes. This assertion is supported by the disproportionately large number of children of divorced parents who are involved in the commission of offences.

In other cases, such communal structures may themselves provide the motive for committing crimes as is the case with the tradition of “revenge” (in Amharic literally “blood”) whereby male members of a family are under obligation to avenge anyone (and his relatives) who has wronged (usually by murder) members of their family. The ability of family and other communal structures to guide the child is besides frustrated by increasing urbanization and poverty(as family members are forced to leave their locality in search of opportunity).

## **C. COMMENCEMENT OF PROCEEDING AND INVESTIGATION OF CRIMES COMMITTED BY CHILDREN**

### **1. COMMENCEMENT OF PROCEEDINGS AND INVESTIGATION OF CRIMES COMMITTED BY CHILDREN**

#### **1. Commencement of Proceedings**

In general, it is the police who directly deal with suspected young offenders and that before getting any authorization from any court. In many places, particularly in semi-urban areas where the police are not strongly present, peasant and Kebele associations and their militias have been observed to have started the process of criminal proceedings. This is clearly not congruent with the arrangement provided under the criminal procedure code where the investigation of crimes in which young offenders are suspected to be involved has to start at the court. It thus deprives children of the mechanism of diversion envisaged by the code.

How the police deal with suspected young offenders is also noteworthy. In many places, the police admit that they usually beat children they find committing a minor crime at the site of the crime and release them. They also relate that if the crime is more serious, such as theft, they may apprehend and detain the children for a few days at the police station and release them after reprimanding them. Many gave the startling reply that “the court will release the children if presented to it” for the question of why they do not present the children to court. In some places, such as Gondar, the police admit to the practice of detaining children (particularly street children) en masse on the eve of market days so as to prevent them from pickpocketing the rural populace that come to the town on such days. In other places, such as Wolkite, Adigrat and Jimma, the police relate that when a crime such as theft in a market place is reported to them they usually resort to detaining children around the place for the purpose of eliciting information as to who the culprit may be. Thus, criminal proceedings against young offenders are generally commenced by the police. Even more significantly, a formal process of investigation is the course usually followed by the police. The process itself is started by the arrest and detention of the suspected children by the police.

#### **2. Arrest, And Procedures Following Arrest.**

Since arrest and detention represent serious curtailment of the liberty of an individual the law provides for some procedural guarantees (which are usually constitutional rights) that should be observed in effecting them. These included the rights to be informed of the reason for arrest, to be promptly presented to court, to humane treatment, to consult with legal counsel and to speedy trial. In the case of children, these are supplemented by the right to be held separately from adults. Indeed,, the detention of children before conviction is seen by the law as one that can be employed only as a last resort and for the shortest time possible given the extreme difficulty of releasing the child and provided the child’s interest is served by it (as for instance where the security of the child is likely to be threatened).

This ideal of the law, however, is very far from being a reality. The pre-sentence detention of children is so common a practice across all the regions covered by the assessment that it is not worthwhile to try to answer whether or not children are detained, as the answer is an obvious yes. It is rather useful to see the details of how the arrest and detention of children take place.

Children are usually brought under arrest when a crime is committed in the presence of the public or the police (technically called flagrant offences), or when the commission of a crime has been reported to the police. In some cases, children are also arrested and detained merely to prevent the commission of a crime. A case in point is Binham Demissie, a 13 year old boy, who is now imprisoned in the Dire Dawa main prison. He said:

*I have already been detained three times. The first two for an alleged theft, while the remaining one being to elicit information from me about individuals who robbed a victim last evening. After these incidents the police identify me as a dangerous criminal. I am now in prison alleged to have committed a crime of theft which I did not actually commit.*

Yohannes Ayenew from Gondar, mentioned above, has also reported the following:

*One day, I saw a person stealing money from another man's pocket and I was intending to inform this to the police. Then, the thief approached me and put a 10 Birr note in my pocket which kept me quiet. I was, nonetheless, subsequently caught by the police because the other children had reported on me. From this time on, the police began detaining me every time I showed up around the bus station on the pretext that I have come there to steal.*

Another child, Shamber Assefa of Kemissie, too, has related his case as follows:

*I live on the street and earn my living by shoe shining and cigarette vending. The police detain me every Thursday morning and release me in the evening. This is because Thursday is a market day in Kemissie and the police say this is to prevent me from stealing the marketers.*

Several children, usually those living on the street, are brought into police custody in this manner before a crime has been actually committed. Even where a crime has been committed and reported, the police, do not usually apprehend only those children who have committed or against whose participation in the commission of the crime there is evidence. Indeed, in many places, for instance, in Jimma, Wolkite and Adigrat the practice of the police seem to be that they will detain any child they find around the scene of a crime with a view to eliciting information from the children who the culprit may be. Of course, the practice is resorted to in cases of reported theft usually taking place in markets or other crowded places and in many cases involving pickpocketing. The motive for detaining children in this situation is that of obtaining information, and thus can prompt the detention of children in any other crime too.

However, not all children fall victim to this practice. The police in every locality usually have a group of children whom they would pick on at the mere reporting of a crime (usually related to theft, pickpocketing or fraudulent misrepresentation) occurring around specified areas. Usually, these are street children who the police may have already detained previously and have now come to label them as perpetual criminals. The police justify this by relating that these are children who have made committing a crime a habit or way of life, and thus are likely to commit the reported crime or to know who actually does so. They are also ready to relate “success” where the detention of such children lead to the solution of, or information about the commission of, the reported crime.

Leaving aside the validity of such procedure and its conformity to legal standards, one wonders as to its very efficacy as a tool of investigation. The case of Getahun, a 13 years old boy from Gondar, who was interviewed while under police detention is illustrative of this. He was first arrested soon after he came to the town of Gondar from the nearby rural area. Another child whom he saw pickpocketing and reported to the police told the police that Getahun, too, was an accomplice. He was thus brought to the attention of the police. He was released after some two weeks of detention without ever being presented to court. Each time a theft occurs afterwards around the long distance buses terminal area (where Getahun tries to earn his living by carrying luggage) and before market days when the police want to clean the city of pickpockets, he would be arrested and detained for some time. The police now consider and describe him as a hardened criminal though he has never been convicted for any crime. At the time of the interview he was detained in connection with a theft that took place when he was not even at the area. The police believe he will give them information as to who might have been the actual thief who, according to them, must be one of his friends. He denied having any knowledge of the matter. While the contest continues, he has already been detained for four weeks at the police station.

When a person is arrested, the law requires that the arresting officer inform the person to be arrested the reasons for his/her arrest and that he/she may remain silent. The law thus sees arrest as a gentle process whereby the person to be arrested is informed of his/her rights, is humanely treated, and where force and violence are resorted to only in case where there is resistance to arrest. A person under detention has also the constitutional right to be held humanely, to consult a lawyer and to be visited by those close to him and by physicians.

These are hardly respected where children are concerned. In some areas covered by the assessment such as Mettu, Awassa, Nekemte, Sodo, none of the detained children have been informed of the reason for their arrest. Of those detained children who have specifically been asked if they were informed of the reason for their arrest 3 out of the 22 in the Amhara region, 6 out of the 13 in Oromiyaa, 4 out of the 8 in Southern Peoples’ and 3 out of the 27 in Tigray responded that they have been detained without being told of the reason for their arrest.

Many police also admit that they do not inform the children of their right against self incrimination. The reason as admitted by many police is that such warning would

make the children hide vital information that could be used to solve the case. Whether any such information and warning is made by conscientious police, there is no standard procedure to ensure that the police do tell such information to the person to be arrested (whether a child or not). It is thus a matter that depends on the discretion and convenience of the arresting police who may not care about such legal niceties in the absence of clear and definite requirements and rules.

### **3. Procedures Following Arrest and Detention.**

Once arrested, the general practice, contrary to the rule of the criminal procedure code, is that children are taken to the nearest police station where they are detained in they are not immediately released. The purpose of police detention in the case of adult offenders in accordance with the Criminal Procedure Code, is generally that of investigation. But as already stated, many children are also detained to either prevent them from possibly committing an offence, or simply because they are seen as a nuisance. Indeed the number of children detained for no particular reason or without being suspected of committing a crime is sizable. From among the 42 children detained in the Amhara Region, 7 were detained for no reason as were also 4 out of the 16 detained children in Oromiyaa, 2 out of the 12 in the Southern Peoples' and 1 out of the 36 in Tigray regions. The story of a 14 year old boy who was interviewed at Gondar's Second police Station is illustrative of the experience of many of these children. At the time of the interview, he has already been detained by the police more than 15 times. At no time was he taken to court. On one occasion, he said, he was detained at the police station for 48 days. Like him most children detained without a valid ground are frequent visitors of the prison, staying at times, for an extended period.

There are different procedures that follow once a child is detained depending on the seriousness of the offence and the likely age of the child involved. In general, if the offence is a simple one (usually involving theft of a property of not so significant value, or where the stolen property is found and returned to the owner) and, unless the offence is very serious and where it is very obvious to the police that the child is below 15 years of age, then the police simply detain the child for a period extending from a few hours to a few months at the police station.

The detention of children by the police is prompted by two considerations. The first is that in such cases, it is very difficult to obtain willing witnesses (who should normally be the victims of the crime) who can be presented to court. The second and more worrisome reason is that the police know and expect that if the child is presented to court he will be released. The police therefore feel that the child offender will not be punished as should be and thus take it upon themselves to see to it that the child is punished and has taken a lesson.

Where a child below the age of 15 years commit a serious offence, the police normally present him/her to the nearest court. What constitutes a serious offence depends on the value of the property affected, the nature of the crime as well as the insistence of the victim of the crime to see the offender punished. The time spent before such presentation is usually said by the police to be 48 hours, the legal limit allowed by the Constitution and the Criminal Procedure code, for first appearance before court after

arrest. This is surprising, since, unlike adults who may be detained upon the authority of the police for up to 48 hours the legal requirement for the presentation of a young offender is as soon as apprehension takes place. Nonetheless, one should also note the fact that the present structuring and functioning of courts would not have allowed for such an immediate presentation as it calls for much formality and paper work.

Interviewed children, however, report that the police do not present them to court as promptly as they (the police) claim. Many children have reportedly been detained under the police for a period of from a few days to a few weeks before being presented to court.

***Table 4.1 Length of Detention Before Presentation at Court.***

| REGION    | NUMBER OF DAYS OF DETENTION BEFORE BEING TAKEN TO COURT |     |      |       |          |
|-----------|---|-----|------|-------|----------|
|           | 1-2   | 3-7 | 8-15 | 16-30 | >1 month |
| Amhara    | 1   | 5   | 5    | 2     | 1        |
| Oromiyaa  | -   | -   | 2    | 3     | -        |
| S/Peoples |   | 2   | -    | 3     | 3        |
| Tigray    | 7   | 9   | 3    | 5     | 8        |
|           | 10  | 16  | 10   | 13    | 12       |

It is very easy to accept this assertion of children due to several reasons such as the overburden of work on the police, the absence of strict supervision mechanism to check police maltreatment and abuse of power, the strong desire on the part of many police officials to see criminals including juvenile delinquents punished and their skepticism concerning the role of courts, and the absence of an interested body for many children who follows things on their behalf. Another factor worth noting is the complete ignorance on the part of the children and their close relatives regarding the powers and roles of the police and the judiciary which are seen as the same and all powerful.

Once the suspected child is presented to court, there are basically two procedures followed. Where the offence is one that is bilabial in accordance with the Criminal Procedure Code and the age of the child is obviously below 15 years, courts may order that the child suspect be released on bail and remain with parents or relatives. This procedure is followed on the fulfillment several “ifs” which include, in addition to the above, the ability of the child to get the necessary guarantors to ensure payment of bail, the availability of parents, near relatives or others who can ensure that the child will be provided for his/her upkeep and presented when called, and if the offence is serious, the willingness of the police to conduct investigation without having the custody of the child, i.e., without detaining the child. This long list of conditions make it quite difficult for suspected children to be free from police detention for the purpose of investigation. Of the 21 police stations covered in the assessment and which replied to the questions on bail, only 9 replied that no child is either in detention or on bail. of the remaining 12, it is only in four police stations that the number of children on bail more than those in detention as can be seen in the following table. Indeed, if the first four police stations in Tigray were to be left, the number of detained children would have been triple (10to30) to that of those out on bail.

**Table 4.2. Number of Children Under Detention and on Bail**

| Region            | Site         | Children under Detention | Children on Bail |
|-------------------|--------------|--------------------------|------------------|
| Tigray            | Shire        | 1                        | 5                |
|                   | Adigrat      | 5                        | -                |
|                   | Maqalle      | 9                        | 54               |
|                   | Adwa         | -                        | 2                |
| Amhara            | Debre Tabor  | -                        | 3                |
|                   | Debre Markos | 5                        | 2                |
|                   | Woldia       | 9                        | 1                |
|                   | Gondar       | 5                        | 5                |
| Southern Peoples' | Arba Minch   | 4                        | -                |
| Oromiyaa          | Yabello      | 2                        | -                |
|                   | Jimma        | 4                        | -                |
|                   | Nazerth      | 1                        | -                |
|                   | Agaro        | -                        | 2                |
| <b>Total</b>      |              | <b>45</b>                | <b>74</b>        |

Where any of the “ifs” for the release on bail of the child are missing, the suspect child is remanded to police custody. Usually, the reason for this is that the police do actually request for further detention for the purposes of investigation (technically referred to as remand). Courts presented with such requests are usually lenient in granting consecutive remands of up to 14 days each time. Thus, the young offender continue to remain under police detention but now with a court order. It is common to find children who have been detained for a few months this way.

Ostensibly, the reason for such remand is the necessity of detaining the child for further investigation. This is quite acceptable for adult suspects. In the case of young offenders, however, though in practice accepted, it is not something envisaged, at least as a normal course by the Criminal Procedure Code. The Code sees the primary agency of investigation as the (informal and in camera sitting) court. The mode of the custody of the child is also envisaged to be the family or other community institution rather than the police cell. Thus, the detention of children for investigation is not consistent with the arrangement or spirit of the Code. This inconsistency is further compounded due to the fact that the purpose of detention is sometimes not limited to, or does not actually facilitate the investigation of the alleged crime. Many children detained on a remand of up to 14 days sometimes for consecutive periods relate that their encounters with the investigating polices are limited to no more than two or three meetings of a few minutes duration during the entire period of their detention. Many police investigators admit this essentially. Although, they feel the need for urgency and attempt to exert as much effort as possible to quickly dispose cases of young offenders, the extreme load of cases they have to investigate (which in the majority of cases are more serious) and the infrastructural, and the capacity constraints they work under debilitate their efforts. They also admit that the ill-will among the community that exists and will result from the immediate release of children caught or suspected of committing crimes is a serious factor that pushes them to drag their feet in having young offenders released quickly from police custody. Where the young offenders are caught red-handed also, many police express the view that their detention for a few days in police custody, even without being

presented before court, will help them to be deterred from committing a crime in the future.

#### **4. Conditions of Detention**

As a result of these, many of the children suspected of committing crimes, remain in police custody for an extended period of time. This means that the suspected children will be detained at police stations with adults suspected of crime. No police station in all sites covered, except in Maqalle, does have a separate quarter for child suspects, and children are invariably detained with adults.

A matter of serious concern is the allegation by children that beating by police continues during their incarceration in police stations. Indeed such beating is reportedly very common at the time a child is arrested. Eighteen of the 34 children who were or are currently detained in the Amhara Region said that they have been beaten by the police while the remaining 16 replied that they have not been beaten by the police. Thirty-two out of the 41 children of the same status in Oromiyaa region replied that the police have beaten them; 13 out of 26 in the Southern Peoples' Region and 26 out of 48 children in Tigray Region reported to have been beaten by the police at the time of their arrest. It tends to be more sinister in motive and grave in effect when the children are under detention. A 14 year old child in Gondar reported that he was flogged with an electric wire and made to roll over a mud together with five other friends who altogether happened to be found around a certain area where somebody reported to have had his money stole. Another 13 year old boy imprisoned in Dire Dawa main prison, reported to have been beaten by the police in order to extract information from him about a robbery which he did not witness. But, because the beating went on for many hours (many policemen participating), he stated that he was forced to confess to the crime. Still another child, a 15 year old boy from Maqalle, alleged to have been flogged with a plastic hose hand to have confessed to a crime he did not commit. Some children also reported to have sustained bodily injury ranging from small bruises to serious ones leaving scars as a result of such beatings by policemen. Verbal abuse, threats and beatings sometimes using such instruments as whips and electric wires are also reported by the interviewed children to be very commonly used by the police while they are under police custody. More usually than not, the fear of physical violence whether actual or threatened, was said to be the reason why those children admit to having committed a crime which they did not. Many children report about such maltreatment in varying degrees as can be seen from the responses of 12 out of the 42 interviewed children in the Amhara Region, 13 out of 33 interviewed children in Oromiyaa Region and, 10 out of 49 interviewed children in Tigray region who have reported that they have been beaten by the police after being taken under custody.

It may be difficult to accept wholly and prima facie these allegations of the children particularly the extreme tales of cruelty and deliberate torture. However, beating children, particularly those suspected of committing crimes, is so common that it is taken as normal not only by the police, but also by the children and the community at large. The police, for that matter, admit to a few slaps on the face or knocks on the head as something they apply on children they find committing minor offences, as much as any

parent or concerned neighbor will do. They strenuously deny, however any charge of using physical violence as a tool of investigation.

Even without such cruel practices, conditions in police stations are very difficult, to say the least, being virtually the same everywhere. Cells are filthy and overcrowded accommodating at the least double their capacity. The table below may illustrate how over crowded are some police stations prison rooms.

**Table 4.3 Room Size of Cells and Number of Inmates**

| Site       | Room size | No. of inmates |
|------------|-----------|----------------|
| Durame     | 3x4       | 25             |
| Hosanna    | 3x4       | 20             |
| Shoa Robit | 4x5       | 30             |
| D.Birhan   | 3x4       | 25             |
| A.Minch    | 3x3       | 20             |
| Dire Dawa  | 3x4       | 15             |

In many places, suspects have to sleep in turn since there is not enough space for all to sleep together. Even in those “spacious” cells where everyone can sleep at the same time the space one is followed is limited to a measure of one’s length. Corners are reserved for barrels in which those detained urinate during the night time. Sleeping spaces near these barrels are assigned (by Kapos who are inmates responsible for in cell discipline) to new comers, and to children. Sleeping materials are not provided even for those who cannot afford them, and many children sleep either in their day time clothing or on rags left by previous in-mates. Asked whether they get adequate space for sleeping 31 children said they do while 76 children assert to the contrary. the words of a 14 years old boy detained at the Second Police Station at Gondar is quite illustrative of the situation:

*There is no provision of food in here. I survive by eating the leftover of other detainees who are supplied with food by their relatives. We are locked in the room all day long but are allowed for two or so hours to bask and to go to toile. As there is no mattress to sleep on in the police station cells, I had to sleep on the bare and rough cemented ground. I also have no blanket of any other thing to wear at night. Worse still, it is not uncommon for me to wake-up in the middle of the night soaked with urine over flowing from the pot, put for that purpose. The other detainees are adults suspected of different crimes including theft, robbery and homicide.*

No police station has allocated budget to provide food or regular medical treatment. Child detainees, as well as other inmates, have to get their food by themselves. Usually relatives of inmates will bring them food. For many, however, this is a matter of luxury. Necessity has therefore forced many police station to provide food by saving from their

other expenses. This means that the food provided is of the lowest price and cheapest quality available offered at the most essential (and possible) meal time. In many places, the food provided is limited to one to two loaves of bread and tea. More fortunate ones may also get injera made from maize or other cheaper grain. In the Amhara and Tigray regions detainees in police stations are provided sometimes with roasted chickpeas and other cereals if they have no food supplies. Of those asked whether they are provided with food (by the police stations or from outside) 62 of the detained children said they get such food supplies while the rest state that they do not get such supplies. The meals of most, if not all, child detainees is limited to what the police can provide them as they neither have relatives nor the money to buy their own food.

Only those falling seriously sick may get medical attention. Let alone having regular medical examinations, those complaints of sicknesses will only be taken to medical institutions, when their sickness comes to be very serious and obvious. Those with communicable diseases are detained with others in conditions which escalate transmission. Most commonly one sees tuberculosis patients detained in very crowded stuffy and ill ventilated rooms with other prisoners. Lice, fleas and bed bugs infest the rooms, providing the inmates with a distraction. Indeed, reaching and killing lice and fleas is not only a pastime but a serious occupation for in-mates which is interrupted only at meal times.

Routines are also the same almost everywhere. At around 6:00 a.m. doors are opened and inmates are allowed to go to toilet and empty contents of both their bowl and the urine barrel. In many places toilets mean open spaces which are indeed better than where pitlatrines are available, the latter often being full and foul smelling. In-mates stay out in the sun till around 8:00 a.m. and then are herded back into their rooms. They are once more allowed the same freedom at around 4:00 or 5:00 p.m. after which they will be locked for the night. There are no activities in mate may engage in except talk among each other recounting their deeds and misdeeds. In some areas the police state that detainees are allowed to move around inside the compound during the day time. This is usually justified because of the high temperature in the area. Such sites include Dire Dawa, Jijiga, Harar, Kemisse, Shoa Robit and Bahar Dar.

Inmates are provided with neither recreational facilities nor instructional programs nor any distraction except a call from the police, or being taken to the court. Indeed, those who have relatives may have visitors. Encounters are usually very short limited to handing food and clothing brief greetings. No private discussion is possible since conversation has to be conducted in public at an inconvenient distance - the police standing in between.

## **5. Examination of Age**

A major fact to be ascertained during investigation is the age of the suspected young offender which unlike expectations is a very difficult process. The problem essentially stems from the absence of a nation-wide system for recording births - what is known as the proof of civil status. Births are not officially recorded in a systematic manner anywhere in the country. Though the Civil Code when promulgated in 1960 had

extensive provisions detailing the recording,, administration, and institutions of proof of civil status the relevant provision have been at the time suspended, and remain to be so even now after 30 years of the promulgation of the law, on the ground that there are no sufficient institutional arrangements to carry them out. As a result, Ethiopians do not have an official record of birth drawn up at the of their birth. What are taken as proofs of age-school certificates, certificates issued by religious bodies and municipalities - are not only un systematized, but also are very easy to manipulate. To a large extent the age of a person is what the person or others say or think is his/her age. When the age itself comes to be an issue, as is the case with young offenders, there is no ready proof to ascertain it.

In cases of children coming into conflict with law, this poses a serious setback as no police at any time inform young offenders of the legal ramifications that result from being 15 or being under 15. Thus, when suspected youngsters respond to the routine police question of what their age is, they are making an unconscious decision whether or not they will forego basic substantive and procedural guarantees.

Ascertaining the age of suspected young offenders may follow as a rule when the children say their age is 15 or below, or where this is obvious from their physical appearance. There are however other factors considered by the police and courts to ascertain the age of suspected young offenders. These other factors are related to the seriousness of the crime the children are suspected of and whether or not they are habitual offenders.

Other problems occur from lack of proper procedure and safeguards that need to be applied in determining when age examination should take place and from the way it is conducted.

The practice followed by the police in this regard and the problems associated with the practice may be seen from the responses given by the police to the specific questions relating to medical examination.

**Table 4 - Police Responses on Medical Examination Practice.**

| Question  | Response and No. of respondent Police |                      |                     |
|---|---------------------------------------|----------------------|---------------------|
|   | Always                                | Sometimes            | Never               |
| Do you need a court order to have the age of a suspect medically examined | 32                                    | 50                   | 4                   |
| When do you seek medial examination of age                                | Before investigation                  | During Investigation | After Investigation |
|   | 35                                    | 38                   | 5                   |
| How long does it take to medically ascertain the age of a suspect         | 1-6 Days                              | 7-15 Days            | More than 15 Days   |
|   | 45                                    | 24                   | 5                   |

Fifty of the policemen stated that the recurrent problem is related to the inability of medical institutions to make the age examination and report the result in a short period of time. It was also possible to note in one site, Dire Dawa, that the hospital which used

to examine the age of children has distributed a letter to all police stations saying that it can not conduct age examination for lack of a radiologist.

The presentation to court, demanding an order for age examination, where it is sought takes place after the suspect has been detained for some time with the police. Although many detained children report that they had remained with the police from a few days to a few weeks, the police normally state this detention not to last longer than 48 hours.

The ascertainment of age is made at nearby medical institutions. In many places where there are no such medical institutions, this involves accosting the child to the next big town. the cost will normally be borne by the victim of the crime, or by the police. Constrained with budget limitations, and shortage of manpower, it is easy to understand the lack of promptness by the police to have the medical examination done swiftly. That sluggishness however, is also present among the medical institutions which do not see examining the age of possible culprit health gangster as a priority in the over worked and overcrowded environment they work under. Thus, the examination may take anything from two to three days to three to four months.

There is no standard procedure used in medical examination to ascertain age. In many areas, where there are only health stations and clinics, the examination is nothing more than an observation of the physical appearance of the examine. In more adequately furnished institutions, it involves x-rays too. At the end of the examination the institutions issue certificates usually stating the age of the examine in ranges such as between ages 14 10 17. Usually the police take the upper age as the age of the suspect though in many cases courts take the lower age when the suspect is presented to them charged. When the medical examination results in a certificate stating the age of the examinee to be younger than 15, the process of investigation usually ends there. The police may present the suspect and the results of examination to court which almost invariably releases the child or release the suspect on their own. If the result of the examination, however, state the age of the suspect to be 15 years of age or above, the investigation and other procedure follow the normal course.

#### **D. CHARGING, TRIAL AND SENTENCING**

##### **1. General**

The charging and trial of children suspected of committing criminal offences is perhaps the easiest to describe in the process of administration of criminal justice in the regions covered in the assessment. The reason for this simplicity is however, a very odd one. Essentially there are two courses open when the police investigation of a young offender is completed. If the child is less than 15 year of age, the case ends and the child is set free despite the fact that he or she might have committed the alleged crime. No court in any of the sites covered has taken any measure against a young offender whether correctional or educational. The reason for this as admitted by all judges interviewed is the absence of any of the institutions that can carry out the measures prescribed for young offenders by the Penal Code.

This is not, however, completely true if one considers the institutions the Penal code envisages for the purposes of enforcing the measures that may be ordered against a young offender. The envisaged institutions are the family, schools, medical institutions corrective institutions (which are “special institutions for the correction and rehabilitation of young offenders), penitentiary institution (where young offenders are to be detained segregated from adults and charitable organizations of a public or private nature whose duties “consists in affording offenders who have to readjust themselves to live in the community”). When judges assert that there are no institutions to carry out the measures they may proscribe against young offenders thus the statement implies something more than mere physical in existence, and comes to be clear when one considers the state of each of the above named institutions.

In relation to the family, indeed where a member of the family of the young offender has appeared with him, judges do entrust the child to such family member. There are two problems in this, though. The first is that for most of the young offenders family member are either not available (the youngsters being separated from them) or in other cases are not interested. Unlike the Penal Code’s arrangement, parents or other guardians are not obligated to be present during the trial of or to take care of the sentenced young offenders unless they are willing to. Secondly, even where such family members are to accept responsibility of the convicted young offenders there is no system or mechanism to ensure that they are discharging their responsibility of providing the young offenders with sound moral, general and vocational education. The situation is some what similar when schools are considered. The majority of young offenders are not attending schools, and even if they do, there is no mechanism of following on the performance and behavior of the offender in school.

The case of medical institutions is an interesting one. The Penal Code rules that where the health condition of the young offender requires treatment and where s/he is feeble minded, abnormally arrested in his/her development, suffering from a mental disease, blind, deaf and dumb, epileptic or addicted to drink, his/her admission to a medical institution is to be ordered where his treatment will include education and instruction. No court has been found to have made such an order. This may be due to the absence of such institutions to some extent. It appears, however, more likely that the measure is not likely to be ordered too because the grounds for the measures are not raised in the trial. Indeed, in the absence of proper legal representation it is very unlikely that defences of illness will be raised by any accused person, let alone children, in a criminal trial. The costs involved in raising such a defense, too, is highly exorbitant so as to be prohibitive.

Thus, the impossibility for the utilization of these three institutions rather than their absence is the factor behind courts not taking at least some of the educational measures prescribed in the penal Code. In the case of the other institutions - special corrective institutions, penitentiary institutions with separate facilities for young offenders, and charitable institution - however, the judges’ statement is fully borne to be true. In no region is there any special corrective institution established to cater for the correctional needs of young offenders. The same is also true of charitable organizations. In no region is there any charitable organization, whether public or private, that has the specific task of seeing to the reintegration into the community of convicted young

offenders (bodies such as schools or the family). Except in Maqalle, no penitentiary institution in the regions has a separate facility for incarcerating young offenders.

This fact heavily bears upon the administration of juvenile criminal justice as practiced in the regions and influences every stage of the criminal justice process. Judges relate that since there is no corrective institution or penitentiary institution where young offenders can be held segregated, they will not sentence such offenders. The measures that they apply are limited to reprimanding the young offender or if they are available, the family of the young offender, too. As already noted, since the police know the likely outcome of a court process in the case of young offenders, they are sometimes tempted to resort to detaining children suspected of committing crimes without presenting them to court so as “to educate” them. At least in some instances, the courts are also seen sharing the same view with the police. The story of an 11 years old child interviewed in Maqalle prison is a telling one:

*After a week or so of detention in the police station, I was presented to court. Observing my appearance and after hearing the charge from the police (which is theft) the judge warned me not to get involved in similar acts in the future. To this the police, the one who was beating me at the police station, gave a remark that I should better stay in prison for some time. The judge then gave an order that says I should appear before the court after seven months of detention in prison.*

Perhaps the most significant influence of the absence of corrective institutions and penitentiaries with separate facilities is observed in the trial itself. Reportedly, courts in the regions do not go into the full scale trial of a young offender presented to them. This means that procedural requirements of camera hearing and informality of the proceeding, among others, are not respected. The trial of the young offender proceeds as any other criminal trial in public and formally, until such time that the age of the young suspect is established to be below 15. The only exception among the sites covered is Maqalle where the penitentiary has a separate facility for young offenders. The Woreda Court hears cases in which young offenders are involved on a special day in chambers.

## **2. Family and Legal Representation**

Envisaging the process of juvenile justice as starting from the presentation of the suspected child before the court, the Criminal Procedure Code provides for the immediate summoning and presence of the parents or guardians as soon as the process starts. Where the child is without such persons taking care of her/his or where the offence allegedly committed is one that entails 10 years imprisonment, an advocate is to be appointed to represent the child. Thus, neither the investigation nor the trial of a young offender is to take place without a child’s family or lawyer being present. This is due not only because the disposition of the case will depend to a large measure on what has been revealed during investigation, but also because the outcomes of the investigation will depend on how it has been conducted which has to comply with several legal requirements from, and restrictions on those conducting the investigation and guarantees to the suspects. These legal and technical restrictions, requirements and

guarantees, such as those on interrogation, search and seizure, are actually mechanisms for guaranteeing individual liberties and fundamental rights in the process of administration of justice. Naturally, those entrusted with the task of investigation such as the police are, apt to consider these as encumbrances and tend to disregard them in form or content where it is convenient to do so. This is true not only for the police in Ethiopia-under staffed, constrained in resources, and technically not so trained and competent as any police in developing countries, but also of the more professional, technically competent police of developed nations which has more resources at its disposal. In this situation, the absence of lawyer representing interest of the suspect may mean free rein to the police to abuse the powers of investigation. This in turn not only leads to violations of the fundamental rights of the accused, but also to the possible vitiation of the outcome of the investigation itself. Given all these, the seriousness of the absence of a lawyer to consult children under investigation cannot be overemphasized.

Yet, the presence of either family or a lawyer whether retained (i.e., employed by the defendant) or assigned by the court, is an extremely rare occurrence at the time of investigation. To the question whether or not their parents or guardians have assisted them when they appeared before the court only 11 children gave an affirmative answer while the remaining 47 children who responded to the question state that they have never obtained such assistance. When asked whether they were assisted by lawyers only 3 of the 54 children responding to the query gave a positive reply. The remaining 51 have never consulted with any lawyer. Seventy five percent of the policemen have also said they have never encountered children assisted by their parents during investigation. Even if such consultation were to take place the police almost everywhere emphatically state that they would not allow it to take place in private, since they believe suspects might be advised by lawyers not to reveal useful information. Any legal services that children suspected of committing offences may get is thus what their parents could arrange for them from outside. In the few instances where interviewed children had lawyers, the latter had never visited the children in detention.

Indeed, the demand for legal services for children under investigation is very limited itself. Such demand comes only from parents or relatives who care for the child being under detention and who have the means and access to obtain legal services. In terms of issues also the service of lawyer is a practice very limited to virtually request for bail from court when the police refuse to release the detained child. Normally, those who want to get such application prepared get it from what are known in Amharic as Raport Tsehaftwoch who are untrained and unlicensed scribes sitting in small stalls around court buildings writing legal applications for payment of from two to five Birr. The service of the Raport Tsehaftwoch itself, cheap and unqualified as it were, is not even available for the majority of children who are under investigation whether in detention or released on bail.

Indeed, the involvement of advocates as defense counsel in criminal cases even for adult suspects is very minimal. The provision of public defence where the state assigns a lawyer for the criminally accused is limited to very serious cases such as intentional homicide, or in some cases aggravated robbery. Children will get this service if only they are charged with these capital offences. The service itself, however, is extremely scarce as can be seen from the following table.

**Table 4- Provision of public Defense Service Regionally.**

| <b>Region</b>     | <b>Total Number of Public Defenders in Regional Courts Visited</b> | <b>Total No. Of courts visited</b> |
|-------------------|--|------------------------------------|
| Amhara            | 8  | 15                                 |
| Tigray            | 1  | 9                                  |
| Oromiyaa          | 3  | 10                                 |
| Southern Peoples' | 2  | 9                                  |
| Somali            | None   | 2                                  |
| Harar             | None   | 2                                  |
| Dire Dawa         | None   | 2                                  |

Legal representation for young offenders during trial is hence observed to be almost non-existent. Children of all ages, whether young offenders who are below 15, or those below 18, generally defend themselves. In the absence of proper legal counsel, they are usually advised by fellow inmates if they are in penitentiaries during their trial. “Senior” inmates are helpful in advising children to raise their age as a defence or to appeal a conviction. In many prisons, there are also prisoners who prepare applications for courts on these grounds for minimal payment for those who are able to afford such payment.

### **3. Conditions of Prisons**

Children under trial and children below the age of 15 who are convicted are detained in penitentiaries (prisons) which are administered by a separate body (the Penitentiaries Administration). Indeed, it is only exceptionally that one finds an inmate of less than 15 years in these penitentiaries. Inmates in penitentiaries are generally segregated on the basis of sex, and on the basis of whether or not they have already been convicted. Save for the fact that the different groups are held in separated facilities, there is not so much a difference in the conditions the inmates are held.

Generally conditions are far more better in these penitentiaries. With regular budget allotted to inmates upkeep, regular food available, the medical care being provided, one readily understands why children detained in these penitentiaries prefer them to the police station or even sometime to the lives of freedom they had. Most of the children say the prisons are better than police stations.

*A 14 years old boy interviewed in Woldia prison has said:*

*At the police station I was detained with adults. I was not supplied with any food, though the others used to share theirs. I prefer this prison to the police station. Because here I can get food and water, move around the compound freely in day time and play foot ball and other games.*

This, however, is just a matter of relativity. Though food is regular, it is neither nourishing nor tasty in many prisons, *sigawot* (stew made of beef) being provided only once in every two weeks. Medical care is provided only when an inmate falls seriously sick. Though, there are feeble attempts to provide academic and vocational training to inmates, these are usually limited to the efforts of inmates only. As such they are neither comprehensive covering only a handful of inmates, nor systematic lacking a sense of direction and fully worked out curriculum.

#### 4. Children Detained with their Mothers.

One fact needs to be emphatically mentioned in relation to prison conditions and children. Despite the fact that not many child inmates are to be found in prisons, a disproportionately large number of children are present among prison population. This is due to the fact that many women inmates are lactating mothers who are detained with their children. Since there is no alternative for these children (usually infants from less than a year to five years old) they have to accompany their mothers in their incarceration. There is no budget allotted to such children. Hence, not only that they have to share the food, and accommodation that their mothers get, but also that there is no arrangements made to look after their physical and moral upbringing. They are thus exposed to the harsh conditions of prison life and its brutalizing effects without getting the advantage of positive socialization agencies such as schools. They are seen simply wasting their time away at most doing errands for prison guards and inmates. The following table shows the number of children who are in prisons with their detained mothers:

**Table 4.4. Children Detained With their Mothers**

| SITE         | NUMBER OF INFANTS |
|--------------|-------------------|
| DESSIE       | 10                |
| AKSUM        | 3                 |
| MAQALLE      | 3                 |
| SHIRE        | 4                 |
| GONDAR       | 4                 |
| DIRE DAWA    | 5                 |
| ADWA         | 5                 |
| DEBRETABO4R  | 5                 |
| DEBREBIRHAN  | 8                 |
| JUJIGA       | 1                 |
| <b>TOTAL</b> | <b>48</b>         |

From the preceding, it is easy to conclude that the system, if any, of handling children in conflict with the law is not properly functional at all in the regions covered. The law's intended goal of reforming and rehabilitating a criminally disposed child merely remains an ideal and is seen as a hindrance only or a best as something unrealizable. Several factors account for this. The unclarity of the law on the procedures to be followed in handling and institutions to deal with young offenders is one. Limitations in resources and capacity of law enforcement and judicial bodies is

another. The severe limitations of the legal profession which is unable to meet the demands of the legal system as it is manifested in the inability of many accused of crime to get legal counseling has also to be mentioned. The absence of any of the legally envisaged institutions to administer the educational measures prescribed by the Penal Code is seen as tying the hands of the judicial and law enforcement bodies.

It may appear that the absence of a corrective institution in any of the regions is a significant factor accounting for the absence of a working system in administering juvenile justice. This however is merely apparent for at the root of the problem one finds not the mere absence of a designated institution, but the failure of the law to harness existing structures for its purposes and infusing the community it is supposed to serve with its ideals and values. This is clearly demonstrated in the process of administration of juvenile justice in Addis Ababa where there is a corrective institution in place, but where the results are substantially the same as those described above.

## **CHAPTER V**

### **THE ADMINISTRATION OF JUVENILE JUSTICE AS PRACTISED IN ADDIS ABABA**

#### **A. INTRODUCTION**

One outstanding feature that distinguishes the administration juvenile justice in Addis Ababa when compare to that of the other regions is that there is a Corrective Institution - the only of its type in country - although other institutions envisaged by the Penal Code and are essential for the proper administration of juvenile justice such as a center for supervised education do not exist.

In this assessment different bodies such as the staff and inmates of ten selected Woreda Police Stations, the only Corrective Institution, and the Addis Ababa Prison (commonly known as Kerchele), and concerned officials of the special juvenile court, the special juvenile prosecution office, and two hospitals (namely Black Lion and Yekatit 12) were approached. The methods described in the first chapter were used to gather the information used in making the observations in this chapter. The assessment was conducted for a period on one month during August 1996.

The ten Woreda Police Stations selected out of the 28 existing in Addis Ababa are Woredas 1, 5, 7, 11, 14, 16, 20, 21, 25 and 26. The areas particularly targeted for the assessment are respectively Piassa, Merkato, Autobus, Tera, Shiro-Meda, Arat Killo, Sholla, Kerra, Cherkos, Kolfe and Akaki because they are commonly known to have relatively high prevalence of offences committed by children. The methods particularly employed in assessing the Police Stations were that of holding audience with Chief of the Police Stations and getting the questionnaire prepared for the police filled by three staff members, preferable, the Chief, the Head of the Crime Investigation Division and one Police Investigator. Besides, in those Police Stations where there were detained children, they, too, were interviewed and made to fill the questionnaire prepared for children.

Detained children were found only in four Woreda Police Stations namely Woredas 5, 20, 25, and 26. The respective number of children found in these Police Stations at the time of the assessment were 15, 1, 2, and 1 of who the sample size taken for interview is 6, 1, 2, and 1 respectively.

The next place assessed was the Corrective Institution. Before the actual work of the assessment began, a preliminary discussion was held with the administrator and the Guidance and Counseling Officer.

The total number of children detained in the Institution is about 140 of whom only 40 are sentence serving, the rest being yet under trial. Not all these children were however, in residence by the time the assessment was made. Most of them were given leave of absence to stay with their parents, since the school and the vocational training centers were closed for the summer vacation. Hence, the actual number of children was

46 of whom only 11 were sentence serving. All the children detained in the Institution are male, there being no facility arranged for female children. For the purpose of the assessment, only 20 children were selected in as much a representative way as possible. Accordingly, in the sample were included, the youngest as well as the eldest, the sentenced as well as the under trials, the recidivists as well as the first timers, and the perpetrators of the common as well as the unique offences.

By the time the assessment was conducted the juvenile court has ceased functioning. This dates back to May 1996 when the Region 14 (Addis Ababa) judiciary was restructured and the only judge at the juvenile court recalled. Since then, the regular Federal First Instance Courts were established and had begun functioning. Yet, until the time the assessment was held no judge was appointed at the juvenile court. Ironically, there is a special juvenile prosecutor whose presence the law does not require except under certain circumstances and when only when the court specifically instructs. Below are presented the findings of how juvenile justice is being practically administered in Addis Ababa.

## **B. APPREHENSION AND INVESTIGATION**

From interviews held with and questionnaires administered to the police and the children themselves, it is clear that almost all the children detained both at the Police Stations as well as at the Corrective Institution were apprehended by either victims of the alleged offence or that of the police. Contrary to what the law says, nearly all such children were taken to the nearest Police Station and none to the nearest Woreda court. Invariable, the police, too, assume that accepting complaints and investigating cases involving children is within their mandate.

Almost every child who is apprehended on the ground of committing an offence however minor it might be, is kept under police custody for investigation for sometime. The largest number of detainees, that is 15, was found in Woreda 5 (Merkato) Police Station. Of the 15 children, six were interviewed and made to fill the questionnaire. Unlike in most other Police Stations, here there is separate room for detaining children. The facility was built with the support of a local NGO. Though the good-will behind the construction of the facility, and the readiness of the police to handle juveniles is to be very much appreciated, it is nonetheless apt to point to the oddity of the arrangement. Both the minimum international standards for juvenile justice administration, and Ethiopian law prescribe the diversion of juveniles from the formal police investigation and judicial process. Indeed, Ethiopian law envisages police investigation and particularly detention as an exceptional and extreme scenario which, if to be resorted to, can only take place with a court instruction. Where the child is to be kept in custody for investigation, thus, he or she will have to remain with parents or other community structures. The building of separate police detention facilities is generally speaking, not consistent with this spirit of the law and the international minimum standards. One should, however, hasten to add that such facilities are by far better than existing and widely prevailing arrangements where young offenders are not only detained for investigation by the police, but are also not segregated from other (adult) suspects. The construction of such facilities should not nonetheless, replace the necessity of diverting juveniles from the formal police and judicial process, and should in the long run be

replaced by diversionary procedures and services. Indeed, it has been reported that efforts are being made to supplement the already constructed facilities by training police and establishing counseling services. These are encouraging efforts which also go much to show the concern and dedication of both NGOs and the police for the better treatment and rehabilitation of young offenders. It is also important to look carefully into how the children detained in these facilities fare as the mere existence of a separate room does not protect the youngest ones from being attacked or harmed by those who are relatively older in age. It suffices here to mention the case of a nine year old boy who, asked whether he could sleep comfortably in his prison room, replied:

No, I could not sleep comfortably. There is no mattress nor is there any other warm cloth to put on or spread underneath. I had to sleep on the cement floor. I have no other clothes except this one ( he refers to the shorts and a torn short sleeved shirt that barely covered his upper torso). The Drito I used to wear at night before my detention is left on the veranda where I was sleeping. Besides, there are three gangsters in the room who made prison life miserable. If only we could get them removed from the room?

Q. What did they do to you?

You know, one day I was deep asleep, All of a sudden, I felt a burning sensation in between my feet. Then, I woke up crying only to find that my room mates were all laughing. First, I thought I was dreaming. Then I saw a pile of smoking papers exactly where my feet were laying. Later on, I learned that it was the three guys, who put shreds of papers between my feet and lighted it on with matches. Since that night I could hardly sleep before they fall asleep. The blister I sustain from the burn heated only lately leaving the scar and the nightmare behind.

Q. Did you not report this incident to the Police?

Yes, I did report that to a policemen in the morning. He, too, laughed and orally admonished them. That night I dearly paid for reporting on them. Since then I learned by lesson and stopped speaking on them.

Despite the fact that all children are detained even for a short time for purposes of police investigation is also encouraging to note that once the interrogation is completed most Police Stations release children on executing a bail bond. As a result, the majority of children conflicting with the law are, unlike the situation in the regions, released on bail - a significant factor for the relatively low number of children detained in police custody. However, if a child fails to produce a bond, s/he could indefinitely be detained. For instance, there is an orphaned boy detained in Woreda 26 who was caught re-handed stealing 50 Birr from a lady. His uncle whom he was living with before detention refused to execute the bond. As a result, the child is already detained for more than three months. Besides, he is sill awaiting the result of his age examination.

One subject of investigation is the ascertainment of the age of a suspect. The police in Addis Ababa resort to medical examination when, during interrogation, the accused stated that his/her age is below 15. The medical examination of the age of a suspect is conducted by only two of the hospitals in the city. hence, the hospitals usually

take not less than a month to ascertain or rather to approximate ages of children referred to them by the police or the court. As a result, the investigation children takes longer time than is required for investigation of a similar offence if committed by an adult under the same condition.

In practice the police routinely carry out investigation of cases involving children as they will do in ordinary cases. The problems associated with police investigation and detention seen in the regions are also reportedly present in Addis Ababa, too.

### C. TRIAL

Though the law excludes the formal charging of a young offender, there is a special juvenile prosecutor who frames a charge for each and every case completed and presented to it by the police. Indeed, there is no single case pending before the juvenile court for which the public prosecutor does not frame a charge nor was there a trial in which the public prosecutor did not appear. As the exclusion of the formal charge and the public prosecutor are designed not only to speed up the trial but also to make it as informal as possible, the current practice is not only surprising, but also deprives the rules on juvenile justice procedure their very *raison d'être*.

By law every Woreda Court is mandated to undertake the trial of children alleged to have committed offences. However, questionnaires administered to the police revealed that Woreda courts in Addis Ababa reject such cases on the ground that there is a special juvenile court established for the purpose. There is only one juvenile court for the whole of Addis Ababa and at anyone time no more than one judge has been appointed to it. Oftener than not, too, the juvenile court is without a judge even at the best of times.

The idea of having a special court could, of course be justified on several grounds such as assuring privacy of the hearing, separation of the trial of children from adults, assuring speedier and informal trial, and developing expertise. But, examination of the way it is operating does not warrant any of these desirable ideals. For instance, by law where the case requires to be adjourned, the child shall be handed over to the care of his/her parents, guardian or relative and in default of any such person to any reliable person who shall be responsible for insuring his/her attendance at the trial (Art. 172(4) C.P.C.). However, more than 70% of the inmates of the Corrective Institution are under a trial which is adjourned.

The trial of children proceeds at an unduly slow pace. The adjudication of cases at the juvenile court take unduly long time. As a result number of children, at the Corrective Institution, are already detained for an extended period. Children are detained for as long as 2 years or more pending trial. Sometimes, the period in which suspect remain detained while on trial exceeds the period of incarceration that may be imposed as a sentence if they were found guilty. The case of the 11 year old boy who is still in detention while his other two adult accomplices who remained at the Police Station are released a long time ago is illustrative.

#### Q. **What are you charge with?**

A. One day while I was in school two of my friends, who are older than I am, asked me if we should skip class and go to Merkato. I agreed. The three of us went to Merkato. Without consulting me, one of the two picked a sweater and run away. Stunned by the incident, the two of us run after him. The owner of the sweater was chasing us. I could not run as fast as the other two. I fall easy prey to the owner. They, too, were caught and the three of us were taken to the Police Station. Thus, I am accused of being an accomplice.

Q. Can you tell me what has happened since you were first detained at the Police Station?

A. It is now almost two years since I have been detained. Medically examined I was found to be between 9 and 10 years of age. The police brought me to the juvenile court while the other two being more than 15 years of age were produced before the regular Woreda court. I learned that they were released long time ago but I am still languishing at the Corrective Institution. I have not as yet received any judgment because there is no judge at the juvenile court. In only I was at the Police Station I could have been released long time ago together with my friends.

In as far as legal representation and services are concerned the situation in Addis Ababa is no different from what has been said about the regions. Thus, virtually no young offender gets legal services of any form in any significant manner neither at the time of investigation nor at trial.

#### **D. THE CORRECTIVE INSTITUTION.**

The “Tsebay Maremia” is the commonly used name of the Corrective Institution which is the only such body in the whole country. Designed to serve the entire country its mandate is now limited to the Addis Ababa Region. The compound within which it is located is unkempt and decrepit with half century old buildings that are for long in need of refurbishing. The compound indeed is the seat of the major part of the juvenile justice system supposed to be functional in the city. The buildings seen on the right side are the residences of the detained children and the school, whereas those buildings on the left side housed the administration, the juvenile court, and the vocational training center.

The very purpose of the building (at least of those meant as residential) is curious. The law explicitly states that “no child shall be committed to the Corrective Institution unless s/he is convicted”. In practice, however, the juvenile court commits young offenders so much so that more than 70% (that is 100 out of the 140) inmates of the Corrective Institution are detained pending trial. It is a very basic principle of law and human rights and is also recognized in the Ethiopian Constitution that “unless proven guilty everyone is presumed innocent”. In line with this basic principle, the law requires that those who are under trial shall be kept separate from those who are serving sentences. At the corrective Institution, however, both categories of children are kept together. The minimum international standards for the administration of juvenile justice go even further and prescribe categorization that fits the specific situation of the individual child with respect to sex, age, behavioral disposition, health requirement and so on. In fact, the Corrective Institution does not readily lend itself for such classification.

Compared to the situation at the Police Station, the food, clothing, bedding and sanitary facilities available at the Corrective Institution are better. The children receive three meals a day, though the nutritional quality and the quantity offered are not quite satisfactory. As can be gathered from the questionnaire filled by the children breakfast

consists of one loaf of bread and cup of tea for each child; while lunch consists of one full injera (Ethiopian bread) together with shiro-wot (stew made of peas' powder) or alternately stew made of split peas or lentils. Dinner is the same as lunch. Most children complain that the bread offered for breakfast is too small and that there is neither meat nor any milk product in their diet. They said, meat is served only during public holidays. The concerned staff of the Corrective Institution, however, stated that meat is served to the children once every two weeks and that breakfast is sometimes alternated with rice or Kinche (made of broken and boiled wheat).

There is no prison uniform but the Institution provides the children with normal clothing which consists of a sweater and a pair of trousers once and whenever the budget allows twice per annum. A foot wear (canvas sport's shoe) is also contingent upon the adequacy of the budget. Children are also allowed to put on their own private wearing apparel if they have one. Each child has his own bed with a sponge mattress and a blanket. The bed rooms are two big halls each accommodating 80 children. Since the number of children currently in residence is less than 50 only one of the two halls is being used, the other one being vacant. At the center of the hall is located a small bedroom, with glassed windows on both sides, allowing the tutor to watch the children overnight. The tutor room of the vacant hall presently serves as a dark cell for the solitary confinement of children who violated the disciplinary regulation of Corrective Institution.

Inside the sleeping halls there are properly installed taps for drinking water, showers for bathing and flush toilets. Outside, within the courtyard, there is a fountain that flows water from a dug-well all day long and there are also pit-latrines. The water from the fountain is warm and salty to be drunk and the children are not allowed to enter their sleeping halls during the day time. This effectively deprives the children from accessing both the potable tap-water and the shower service in the course of the day. If they feel thirsty during the day time, they can only drink from the warm and salty well-water which hardly quenches their thirst. The children can go to the pit-latrines every time the need arises. The children could take a bath at the fountain any time they wish, but are obliged to wash their clothes and take a bath every Saturday.

The medical care the children may get if they fall sick can not be said to be satisfactory. In fact, there is a clinic which is staffed with only one nurse within the compound. The children do not feel well disposed towards the clinic reporting to improper or inadequate treatment. Discussions held with the nurse and the Guidance and Counseling Office revealed that the health service at the clinic is as bad as non-existent because the budget allotted for health care for 150 children for a period of one year is only Birr 1,000 (one thousand Birr only) which is about one-tenth of the minimum budget, as estimated by the Corrective Institution, required to render essential/basic health services. It is also comforting to learn that the health care budget is raised to Birr 3,000 (three thousand Birr) for the coming year which, though not adequate, is expected to ameliorate the situation.

The corrective Institution offers both vocational training and formal education only for convicted children. Vocational training is offered in the fields of wood-work, metal-work, leather-work, tailoring and agriculture; whereas formal education is

conducted up to grade 8 following the regular curricula of the Ministry of Education (MOE). Both the vocational training and the academic education programs follow the academic calendar year as set out by the MOE. As a result, children convicted subsequent to the commencement of the academic year will be admitted neither to the vocational training nor to the academic education programmes until the beginning of the next academic year. By the same token, if children, registered for the vocational training or the academic education, are released in the course of the academic year, they will be forced to quit both unfinished.

The vocational training workshops are all staffed and run by 10 professionals who are skilled in the relevant fields and are employees of the Corrective Institution. The workshops fall far short of addressing the training needs of the children. For instance, in the academic year 1988 E.C. (1995/96) only 19 children were being given vocational training out of the 40 convicted and the 140 total inmates of the Corrective Institution. The training is offered for a period of two years. As can be gathered from the questionnaire filled by the heads of each vocational workshops, shortage of instructional manuals and teaching aids are the two most pressing problems that beset the vocational training programmes. The children are not paid in cash for works done either in the workshops or the agricultural fields. But part of the proceeds (the regulation states 50%) out of the sale of office and household equipment made in the workshops and agricultural produces are used to augment the clinic budget and to provide some recreational facilities. At the time of the assessment a foot ball was purchased out of the proceeds of the sale of vegetables the children grow.

The majority of teachers, that is 9 out of 13, at the Corrective Institution are seconded by the MOE. In the current academic year, 1988 E.C., the number of children who attended school was 53. Children can attend class so long as they stay in the Corrective Institution and that they have not completed grade 8. If a child happened to be above grade 8, the administrator of the Corrective Institution said, that very fact will be taken into account to release the child on probation. Teachers made to fill questionnaires prepared for the purpose mentioned absence of qualified staff from among the teachers to give guidance and counseling for the children, and the absence of a library where children could read instructional and recreational books and periodicals, as major problems in discharging their functions. They also strongly recommended that the tutors and guards who are in charge of day-to-day follow-up of the children be given a training on the behavior of and on how to care for children in conflict with the law.

As can be gathered from the table below, the staff of the Corrective Institution are about 70 and are generally classified as programme and support staff. The Corrective Institution is a place where children in conflict with the law are supposed to be given behavioral therapy, skill training, education and be transformed into useful members of society. Given the indispensable role behavioral science could play in this process, the absence of a psychologist or any personnel trained in behavioral science to whatever level is strongly felt. Indeed, the only staff members who are relatively better equipped to dispense advice or guidance are two. One is the administrator who has obtained two diplomas one in sociology and another in law. The other is the guidance and counseling officer who has obtained a B.A degree in Sociology.

Table 5.1. Staff of the Corrective Institution.

| PROGRAMME STAFF                          |             |           | SUPPORT STAFF   |           |          |
|--|-------------|-----------|-----------------|-----------|----------|
| SECTOR                                   | TOTAL       | SAMPLE    | SECTOR          | TOTAL     | SAMPLE   |
| Administrator (Acting)                   | 1           | 1         | General Service | 10        | 1        |
| Deputy Administrator                     | 1           | 1         | Accountants     | 5         | 1        |
| Guidance and Counseling Officer (Acting) | 3           | 1         | Secretaries     | 2         | -        |
| Tutors                                   | 2           | 2         | Messenger       | 1         | -        |
| Probation Officers                       | 2 (planned) | -         |                 |           |          |
| Vocational Trainers                      | 10          | 4         |                 |           |          |
| Academic Teachers                        | 13          | 3         |                 |           |          |
| Clinic (Nurse)                           | 1           | 1         |                 |           |          |
| Catering Service                         | 7           | 1         |                 |           |          |
| Guards                                   | 13          | 3         |                 |           |          |
| <b>TOTAL</b>                             | <b>53</b>   | <b>17</b> | <b>TOTAL</b>    | <b>18</b> | <b>2</b> |

Source: Discussions held with and questionnaires filled by concerned staff members of the Corrective Institution.

Before the Corrective Institution was made to serve only Region 14, following the institution of the Federal mode of administration in 1992, there used to be 7 psychologists serving as guidance and counseling Officers and 6 Probation officers. Since 1992 all the psychologist and probation officers were assigned to the Labour and Social Affairs Bureaux of Various Regions. As at the time of the assessment the function of a probation officer was being discharged by the administrator himself. without undermining the important role being played by other staff members such as the vocational training, education, tutoring, catering etc., the Corrective Institution is clearly under-staffed to properly discharge its responsibility.

The Corrective Institution has developed a code of conduct which the children should adhere to while under its custody. Though revised and adopted only in May 1995, it does not integrate some of the essential features of international minimum standards of the administration of juvenile justice which Ethiopia has accepted. Cruel and degrading penalty measures such as flogging, putting legs in shackles, locking in a solitary dark-room, punitive physical exercise, reduction of meals and denial of family visits are prescribed in various degree of severity and duration depending on the level of seriousness of the violation. The assessment team has come across 4 children whose legs were put in shackles two of them individually and the other two together. The latter two were asked why they are put in shackles. They replied, "...because we were suspected of conspiring with and instigating other inmates to escape".

**Q. Were you caught in the act of conspiring or instigating?**

A. No, not at all. Last June some children escaped from here. The two of us were not involved, but because both of us have previous record of escape the authorities, for one, thought we have instigated the others, for another, they fear that we might as well escape.

**Q. How long have your legs been in shackles?**

A. Since last June [ 1996 ]

**Q. Can you tell me why you escaped last time?**

A. Yes, I will tell you. It is now more than three years since I was brought to this Corrective Institution. All this while I am under trial. Those who are sentenced know when they are going to be release; while the rest of us are kept indefinitely waiting. I missed my parents. There being no recreational facility or anything else to be busy with, I really got bored and decided to escape.

**Q. How come you are here then?**

A. I was again caught and brought back by the police.

**Q. Were you penalised for that? If yes how?**

A. Yes, I was penalized. As soon as I arrived here my legs were put in shackles and then I was locked in a solitary dark-room. I spent the night there Early in the morning three guards came, opened the room and took me out to the court yard. First, they turned on the fountain and placed me underneath. When I was soaked all over, they throw me on the dirt ground and made me roll over time and again. Each guard was shouting different instructions. Each one beats me with the short thick stick he carried when I failed to do as he instructed. They beat me all over my body, particularly by limbs, until I was too tired to roll over any more. When they were satisfied they locked me again in the dark solitary room.

It is worth noting that the guard(s) during whose shift detainees escaped will be subjected to different types of measures such as fine, obligation to search for the escapee during his rest period and in serious cases dismissal from job. So, whenever children are recaptured, the guards tend/ will be tempted to retaliate in the name of administering punitive physical exercise.

\* \* \*

With a population of nearly more than two million, Addis Ababa is perhaps one of the biggest cities in Africa. Geographically, political and economically at the center of the country, it has experience a high degree of population growth, urbanization, and cultural intermingling. The problem of children conflicting with the law had come to notice some time before even the adoption of the Penal and Criminal Procedure Codes in the early 1950s. It was at this time that the practice of handling young offenders separately by the police, courts and reformatory institutions started. The beginnings of this practice had an incidental character with the belief that the juvenile police and courts as well as the corrective institution will have a more formal and institutionalized basis with the adoption of the codes of law. For the past nearly forty years this has not come to pass. Indeed, the situation has regressed. Early and encouraging practices and institutions-such as that of releasing children by the police and the separate juvenile police division - have died. What is now seen in the city is thus not much different from what takes place in the regions as shown in Chapter 4. Despite the apparent difference in handling cases of young offenders, there is practically very little, if any, lesson that Addis Ababa can offer to the regions.

Taking into account that the city is one where the legal system is at its best, in terms of its effective control, and the resources that it has at its disposal in comparison to the other regions, this may appear as curious. A deeper look however belies this appearance. During the past five years, the judicial system which is the pillar of the legal system has been undergoing successive transformations and has not yet emerged as an efficiently functioning body. The police have also been going through the same process. Moreover, their institutional and human capacity are not yet at par with the huge task of ensuring law and order in a big and complex city like Addis Ababa is. As far as these institutions of the formal modern law are concerned thus the same situation holds true as what prevails in the regions.

The Corrective Institution which has been singled out as the distinguishing mark of the juvenile justice system as it functions in the city has its only influence in how the police and the judiciary act. Unlike in the regions where its absence makes the police take “corrective” measures by themselves, and the judiciary refrain from being involved in cases where children are involved, in Addis Ababa, the presence of this institution has resulted in these bodies referring children to it where such referral is more convenient. In terms of realising its objectives however, the institution is far from being ideal, its whole setting being more punitive than reformative. Other institutions of education and reformation envisaged by the law are absent in Addis Ababa as well as in the regions.

These similarity in the weakness of institutions of juvenile justice administration also indicates to the same problems in attitudes that is witnessed in the regions. Despite the degree of urbanization, the higher level of education and exposure to mass information, the level of awareness concerning the rights of children in general and children conflicting with the law in particular is very low. Indeed, at the community level, the attitude towards children conflicting with the law may be even more hostile than it is in regional towns. For the most part, the police and personnel of the Corrective Institution are sensitive to the needs of children and ready to work for the better treatment of young offenders. Their good intentions are, however, largely crippled by

insufficient resources, inadequate infrastructure and facilities and lack of specialized capacity and expertise.

The failure of the law to integrate existing community structures in the process of handling the problem of children conflicting with the law is also a problem that is common to the city and the regions. Thus despite the very strong role that Idirs, for example, have in the city they do not have any say in the process of administration of juvenile justice.

One specific problem that is peculiar to the city and the system of administration of juvenile justice is the very incidental nature of the juvenile court and the corrective institution. After some forty years in existence none of these bodies have any legal instrument defining their structuring and responsibility. As a result one observes much arbitrariness in their set-up and functioning.

Due to its size and the complexity of its social problems as well as its being the center for migration from less urban and rural areas, that Addis Ababa should be a starting point for initiatives of addressing the problem of children conflicting with the law is self evident. Ultimately, the success of any such initiative will depend on its ability to be effective and sustainable in promoting and protecting the best interest of the child. For a problem such as that of children conflicting with the law which has a significantly legal nature, a top-down approach is undoubtedly essential. That such an approach cannot be sufficient by itself however is demonstrated by the juvenile justice system in Addis as well as the regions. Serving the best interest of the child through the involvement of communities at the grass roots level in the administration of juvenile justice comes to be not only a novel experiment, but a necessity as exclusion demands an outlay of resources and capacity that is not only likely but impossible to raise in the foreseeable future. The next chapter examines the roles traditional structures that are prevalent in the regions and Addis Ababa play which may be relevant and utilized in mobilizing community involvement.

# CHAPTER VI

## TRADITIONAL INSTITUTIONS RELEVANT TO CHILDREN CONFLICTING WITH THE LAW

### A. General Considerations

The previous sections of this report clearly demonstrate the inability of the modern institutions of the law to live up to the expectations of the law itself in according the right treatment to children in their best interest. Partly, this problem is due to the capacity limitation of these institutions relating to financial, infrastructural, and human resources. Partly, though, it is possible to attribute this failure to the very nature of the law and its assumptions. When the Penal Code and the Criminal Procedure Code were enacted much attention was paid to the “progresses” made in the realm of legal science in the “advanced” nations particularly of Western Europe. No corresponding consideration was, however, made of the value and institutional framework within which the law was to be realized. The assumption that “modern” institutions will implement the law has meant that “traditional” systems and institutions were completely ignored or side-lined. Indeed, the only traditional mechanism that the law - in fact the civil law - integrated in itself (though within a very limited sphere) is that of (literally “elders”) which has the task of “arbitration” in disputes arising in the family particularly those relating to marital disputes and divorce.

The fact that the modern institutions of the law exhibit serious limitation in giving effect to the spirit and words of the law dictates a probing into how traditional institutions can assist the efforts of the former. Certainly, this calls for a clarification to the very term “traditional institutions”. Without getting into the niceties of an academic discussion, and for the purposes of this report these may be taken as those systems (particularly of dispute resolution) structures, processes and mechanisms which have the legitimate acceptance of a community deriving from a tradition of long use, discharging an accepted community function. For the purposes of this chapter as well as the report, too, it may further be added that these are institutions which are not assigned any significant place by the formal law in the process of law making and enforcement.

Starting from such a definition, and from the previous statement about the nature of the law, it is natural to expect that traditional institutions have a very limited actual significance in the process of administration of juvenile criminal justice. This is also a conclusion that is well supported in the course of the assessment. Thus, at no site was there any traditional institution that explicitly deals with the problem of children in conflict with the law. As was shown in the previous sections of this chapter too, there has not been any instance in which law enforcement and judicial agencies make use of existing traditional structures in any stage of the process of juvenile criminal justice.

Several reasons may be cited to explain this. An important one is, as already noted, the very nature of the law and the legal system. Not only that it has not taken these institutions into account when enacted, but also that it has not provided for their incorporation in the process of its enforcement. This is particularly true of criminal law and procedure. Not only that crime is defined (and its punishment decided) by criminal law, but also the prosecution and administration of punishment is a function that is exclusively reserved for the institutions that the law itself has created - the police, the prosecution, and the judiciary. Consequently, where the legal system is properly functioning, traditional structures have virtually no formal role in the process of administration of juvenile criminal justice.

Thus, if traditional institutions have to be examined in terms of their relevance to the process of administering juvenile justice, it should be from two points of view. One is the perspective of the potential of these institutions filling in lacunae in the functioning of the structures of the modern law. The second is from the perspective of these institutions actually replacing or parallelly functioning with the modern law and its structures where the latter completely fail to have their presence felt or are so ineffective as to call for the continued functioning traditional or the emergence of new institutions. Both of these perspectives can be covered by looking at the role traditional institutions play in their respective communities and the potential they have in addressing the problem of children conflicting with the law.

There is one point that needs to be emphatically stated at this stage. The problem of children conflicting with the law has to a large extent a formal legal content. This content derives from the nature ascribed to crime by the formal law since what is crime has to necessarily be defined as such by the criminal law. Furthermore, the manner of handling crime is a function of the state which is regulated by the law. A realistic assessment of the role of traditional institutions has to be one which looks at these institutions ultimately being used to realise the stated goals of the formal law within the framework provided by the latter. The main challenge in this regard is that of getting the involvement of communities in the process of addressing the problems of children conflicting with the law. This consideration dictates that the assessment, in looking at traditional institutions, stress traditional structures which can mobilize and harness community resources. This is also the approach followed herein where the terms are frequently interchangeably used.

## **B. The Role of Traditional Structures**

With the size, population and cultural variety that Ethiopia enjoys, it is evident that there will be multifarious traditional structures and mechanisms which address different needs of their communities. From amongst these, however, it is important to concentrate, for the purposes of this report, on those which are or can be relevant to addressing the problem of children in conflict with the law.

Certainly, whether a traditional institution can be relevant in addressing the problem of children conflicting with the law depends on what role such a structure has in the community. Traditional structures and mechanisms have as varied a function as

the needs they are meant to address ranging from that of mobilizing needed human power, to the allocation of communal resources. It is necessary, however, to single out those roles which are pertinent to the problem of children conflicting with the law. Moreover, this selection has to mainly, though not exclusively, have a legal perspective as the report itself is seen as having a legal nature.

Looking at the issue this way, it can broadly be stated that traditional structures have a dual role in relation to the law as already indicated. The first is that of supplementing the law and its structures. This role can only be discharged where the law and its institutions explicitly or implicitly recognize a role for traditional institutions, or at the least where the former do not explicitly deny the latter a place. The second role, that of replacing the law and its structures, can only be exercised where the law and its structures lack effective control on the life of a community or fail to be meaningfully and efficiently relevant to the needs of the community. Both roles can be realized by a number of functions that traditional institutions perform. Such functions include: provision of social support, norm setting and enforcement and dispute resolution. The following sub - sections will try to explain these functions, and the available traditional structures and mechanisms carrying out the functions together with their potential and limitations in addressing the problem of children conflicting with the law.

### **1. The Provision of Social Support**

the term provision of social support is broadly understood as inclusive of all the social welfare provisions and moral guidance and education provided by traditional institutions. The significance of such support lies not so much in its role in the process of administration of juvenile criminal justice nor to its being akin or parallel to what the law and its institutions carry out. Rather, it is necessary to look at this function because it is intimately related to the factors that lead children to conflict with law. As already stated, a possible major factor leading children to committing crimes is the failure to obtain the means of sustaining life and the guidance and supervision which the family normally provides. As the nucleus family in many community is unable to provide these on its own, there are several traditional structures which supplement or provide the support the family gives.

Perhaps among those observed the most remarkable of these types of structures is that of the clan among the Somalis. Thus, any Somali and particularly a Somali child can always count on the support of members of his or her clan wherever they may be residing. Attachment to the clan also inculcates a deep sense of caring for the name and honor of the clan and serves as a strong inhibitor of anti-social behavior. The clan structure is thus both a mechanism of social insurance and of social control. The organization of the clan structure follows what is traditionally considered as the blood-line of the clan with traditional leaders being responsible to its smooth functioning. The clan structure and its provision of social support are still very strong and present even in the more or less urban area of jijiga. Perhaps as a result of this participants in the group discussion in the town do not consider the problem of children conflicting with the law as a serious one.

Other ethnic groups also have similar mechanisms of providing social support. The practice of *gudifecha* (literally adoption) practiced among the Oromo, and the system of mutual aid and co-operation among several Guraghe groups is worth mentioning. “Idirs” and similar institutions which are now part of the urban and semi-urban scene do sometimes provide such support though for limited duration or purpose.

Noteworthy also is the role religious institutions play. In many of the group discussions, it was seen that participants strongly believe in the positive effects of religious education. (This generally refers to religious education as offered by the Orthodox Church and Mosques. While there was the same view with regard to education by Protestant churches at sites in the south and western parts of the country; participants in the north strongly oppose this as an attempt at unwelcome proselytizing). Churches and Mosques also encourage their followers to cater for the material requirements of the needy, as well as themselves trying to cover these, though to a very limited scale.

In the whole scheme of the legal system, however, there is very little consideration made and space allowed to traditional structures which carry out this important function the Civil Code in establishing the obligation of caring for the well being and person the child enumerates as responsible only those individuals who are within a limited degree of relationship in the extended family. This obligation, moreover, is seen not as one of a collective body, but as one of single individuals. Furthermore, there is no mechanism provided for by the law to ensure that even those enumerated as having the obligation of the guardianship, including parents are undertaking their duty whether by forcing them to discharge their obligation, or by providing them with support to enable them to do so.

Not even that much role, however, is explicitly assigned to these types of structures in the law dealing with child offenders. The only institution mentioned as having any role in relation to children conflicting with the law is the family which presumably is limited to the nucleus family. The family may thus represent or assist the child during the latter’s trial, and the administration of corrective measures may be entrusted to it. It may also be reprimanded for failure to properly bring up the child. Both codes, however, have some room which may be extended to accommodate the other communal and traditional structures. Thus, the custody of a young offender and the administration of corrective measures on such a child may be entrusted to a “respectable individual” or a “charity organization”. Though, the law presumes these to have the character of being a formally and officially organized entity (as distinguished from an unofficial collective) a positive interpretation of the relevant phrases can extend the terms to cover these traditional institutions.

If this was to be the case, there are two positive contributions which are immediately observable that such structures can make to the process of administration of juvenile criminal justice apart from preventing children from being involved in the commission of offenses. The first is that of having the custody of and providing for the needs of a suspected young offender while investigation and trial are underway. As already pointed out, several children remain in police custody simply because no one

offers to bail them out. They also suffer from extreme deprivation and negative influences while under such custody. The involvement of community based structures would certainly contribute to easing this problem. Secondly, such structures may also be entrusted with the task of administering the measures of correction and rehabilitation which may be ordered for those children who are convicted. The absence of institutions to carry out these measures, as discussed, not only has a very negative impact on the whole process of administration of juvenile criminal justice. It has also deprived of children conflicting with the law a mechanism for positive socialization. Certainly, traditional structures can fill in the gap.

This should not mean, however, that such traditional structures are just ready to assume these roles immediately. There are several limitations that one has to take into account. The first is that in many cases these structures are loosely and informally organized as to be difficult to specify existing responsibilities let alone imposing new ones. The nature of the measures as are prescribed by the Penal Code are also ones which are presumed on “modernity” and may not be in complete consonance with the nature and functioning of the traditional structures. Whether the structures themselves will be willing to assume a role which is non-traditional is also a factor that has to be borne in mind. The fact that some of these types of structures are based on relationships of blood which loses its significance in an urban setting (where the problem of children conflicting with the law is most present) needs also to be taken into account. One needs, however, to point to the fact that in many urban and semi-urban areas, the Idirs which are formally organized usually on neighborhood basis are taking over this function to a limited extent. Thus, despite the seriousness and validity of the latter statement about the limitation of traditional structures, it is still possible to maintain the statements relating to their potential in the administration of juvenile criminal justice.

## **2. Norm-Setting and Enforcement**

Setting norms for the behavior of community members and enforcing these by applying sanctions is the second function that traditional structures perform. The significance of this function in relation to the problem of children conflicting with the law lies in that it provides for the normative framework of what may be considered as legitimate and accepted. It is thus a major factor in setting the attitudinal context which may hinder or facilitate the implementation of the law.

Several traditional structures are reported and observed carrying this function out in both semi-urban and urban sites. Thus the elders of the Guraghe sitting in council are said to be responsible for setting the Sera - the norms which are said to regulate the interrelation among the Guraghe. Around the Idibir area, the council of elders is reported to have abolished the practice of dowry when a tragic incident occurred in the area. In some cases traditional structures perform the function of norm setting in the course of applying existing traditional norms to new situations. For instance, among the Somalis clan leaders are reported to be setting new rules on wrongs and penalties when existing rules do not cover the particular situation. The same can be said to be true among the Oromo and Sidama. In many urban areas such as Dessie and Harar the Idirs and similar structures are very active in setting the behavioral standards of their members. The role of religious institutions, particularly the long age Orthodox church and Muslim religious

leaders is also substantial. The former, particularly at the parish level, are very strong influence among the Amhara and Tigray.

The mechanisms of enforcement that these institutions employ are dependent on the consensual and cooperative nature of the structures themselves. The most extreme form of sanctioning is that of exclusion from the structure concerned. In the application of any sanction, however, it is not so much the material consequence that is so crucial as the prospect of being a pariah and losing the esteem of the community that makes the penalty a very heavy one even though the material consequence and loss may also be substantial.

From the perspective of children in conflict with the law, the relevance of traditional structures of this type is, as already stated, in formulating the attitudinal framework for the realization of the rights of the child. As reported in the first section of this chapter, most of the attitudes towards children and their rights cannot be said to be conducive to the realization of the rights of the child. A case in point is the attitude about corporal punishment which is seen as an essential part of the process of education and disciplining children and condoned even when it is evidently cruel and inhuman. Another instance of the function of norm setting and enforcement becoming relevant is that of providing mechanisms of care to children. In many areas where the process of urbanization has set in, the traditional sense of obligation to the extended family is being eroded resulting in many a child being without familial support. The revival of such values and the corresponding obligations is a role traditional structures can play.

### **3. Dispute Settlement**

Perhaps the most noted function of traditional structures is that of dispute resolution which may be taken as the peaceful settlement of conflicts between individuals or groups in an accepted and legitimate manner. This is also a function which approximates the prominent function of the formal law and its structures.

Ethiopian law, allows only one major instance where traditional structures can perform this function. This is what is called *yebeteseb shimgilina dagninet* (the institution of family arbitration). Arbitrators in a family dispute are to be appointed by the two conflicting spouses and have the power almost to decide on any point of dispute arising in connection with the marriage. In addition, the civil and civil Procedure Codes also permit for the recognition and legal enforcement of decisions of arbitrators appointed by the disputing parties in a civil suit. There are, however, no instances where traditional systems and structures are made use of in the penal law or the process of administration of criminal justice.

Despite the marginal place accorded to his function of traditional structures, it is to be seen that extensive use is made of these structures in settling disputes. Several ethnic groups have established systems of dispute settlement with permanent or ad hoc bodies being responsible for their being carried out. Before briefly describing some of these, it is in order to explain the nature of the relationship of these structures as they discharge the function of dispute resolution to the formal law and its structures.

Such relationship may take any one of three forms. The first is where the formal law explicitly recognizes the dispute resolution function of the structures. This is what is observed in the arbitration by elders in marital or other civil disputes. The second is where the law does not explicitly recognize the dispute resolution function of the structures, but where this function is exercised in relation to matters that are not regulated by the law. Such is the case, for instance in matters relating to customary practices and norms such as that of dowry. The third type of relationship is where this function is carried out by traditional structures in a manner that is exclusively reserved for the formal law and its structures. This last form of relationship is what characterizes the functioning of traditional structures in relation to dispute resolution where the dispute is based on an act that is defined as a crime by the formal law.

Evidently, the last type of relationship is not perfectly legal. It seems that there are two main reasons that dictate that such a relationship exist. One is the very weakness of the formal law and its structures to effectively control every community. This is particularly true of rural and semi-urban areas where institutions of police and the judiciary are weak and not so effective. There is, however, a more strong reason which allow traditional structures to be functional in dispute resolution particularly in relation to disputes arising from “criminal” acts. This is the conception of crime and punishment as entertained by the formal law and traditional systems.

For the formal law, crime is always individual and it has to entail punishment of the basis of the guilt of the offending criminal. Its emphasis is on guilt and punishment. Civil damage may be collected for the wrong caused, but criminal law and the institutions entrusted with the task of enforcing it are not interested in compensation. The opposite is true of most traditional systems where the emphasis is not the guilt to the individual or the penalty, but rather on compensation, and reconciliation. While the formal law and its structures see the conflict as one between the law breaker and the law, traditional systems see the conflict as disruptive of the harmony of the community. Consequently, while the formal law aims for the rehabilitation or disablement of the individual offender, the ultimate goal of traditional systems is reconciliation in the community.

As a result of the combination of these two factors, the inefficiency of the formal law and its structures and the accepted and more rewarding goal of traditional structures, one observes the prevalence to traditional dispute resolution mechanisms in both rural and urban areas. More or less permanent structures interlinked with clan relationships are seen carrying out this function among several ethnic groups. The gada system which is still in use among the Arsi, Borena and Gugi Oromo is age based system where legislative and executive power is rotated at regular intervals among clusters of families. At the apex of the system is the Aba Gadda who renders decisions in consultation with an elected body of councilors. The system is organized in such a manner as to allow community participation (by men) and review of decisions. Among the Somali, the task of dispute resolution is entrusted in clan leaders who enforce rules that are already known among the Clans. Among the Afari and the Guraghe, councils of elders are reported to be responsible for enforcing existing rules as well as setting new ones in resolving disputes.

In most parts of Amhara and Tigray, the resolution of disputes is carried out by elders who are consensually appointed by the parties involved. No designated body of individuals is exclusively entrusted with the task, and who may be reelected as an elder depends on the parties involved and the nature of the dispute. In almost any community, however it is possible to find some recognized and respected individuals who are noted for their objectivity and fairness, it is usually such individuals who are elected, particularly in serious cases, to act as elders. It is also noteworthy to observe that though religious institutions may have no direct role, the clergy and Muslim religious teachers are usually the ones who are elected to serve as or who took the initiative to reconcile disputants as elders.

This is also what is generally observed in urban and semi-urban areas. Thus, in every town and city the institution of elders is made use of in resolving disputes extensively. Though, the function may be carried out on an ad hoc basis, in many places Idirs and similar structures are also involved, at least at the level of their leadership.

An interesting example is that of the Afocha an Idir like structure among the Harrari in Harrar. It is reported that though there is an established formal law enforcement system in the city of Harrar, most disputes are settled through the use of Afochas.

In relation to children committing wrongs and becoming subjects of disputes, it is interesting to note that in virtually all systems children are not held responsible for their acts. Responsibility for their action and liability for compensation lies on their parents. Generally dependence on the family is what defines the childhood of a person. Among the Southern Oromo, the Afar and Somali, however, the age of 15 is also taken as the end of childhood perhaps due to the Islamic influence on these cultures. The fact that children are not made responsible for their actions does not mean that this accords to the desire to protect children. It is rather a mere consequence to the perception of children as the extension and property of their parents. This is observed in the fact that the disciplining of the child is usually left to the parents who may do it to the extent of disowning with almost no or insignificant community control.

Apart from these structures which are essentially not only traditional but also existing parallel to the formal law and its structures, mention should also be made of the Raptor Tesehafiwoch. These are individuals who sit in small stalls around court buildings and write application for a payment of a few Birr. They are intimately related to the courts whose proceedings, particularly in civil cases, are mainly written. Most of them have no training in the law though some may have had a few years experience as clerks or judges in lower (Woreda) courts. Most people who have cases in courts get their legal services from the Raptor Tesehafiwoch who may not, however, represent his client in court for the simple reason that he is not licensed.

There are three major limitations that are immediately observed when the ability of these traditional structure to address the problem of children conflicting with the law is examined. The first is that all of them give emphasis to the compensation of the

victim rather than the rehabilitation of the offender. Definitely no consideration is made of “the best interest” of the child offender. As a result the structures are unable in their present form to provide for the measures necessary to rehabilitate and educate the child. This limitation is further strengthened by the fact that the structures do not have the necessary resources to administer such measures.

The second limitation is that the structures function in a setting of consensus based on family or neighborhood relations. When a child who has no such ties to the community (as in the case with many of children conflicting with law) is involved, the effectiveness and fairness of the structures come to be questionable. The last limitation is a more formal one. Since the law does not recognize any role in conflict resolution to these structures in relation to crimes, their ability, particularly in urban areas, to handle criminal cases is very dubious unless all parties involved agree to their handling the cases.

Despite these serious limitations, one can still maintain the potential for these structures to address, though to a limited extent, the problem of children conflicting with the law. This essentially stems from their very effectiveness. In many cases, not only lay persons, but also law enforcement officials accept their utilization sometimes stopping formal investigation and trial procedures from proceeding any further. The fact that children are represented in their proceedings and are excluded for most of the time, the essentially consensus and fair nature of the proceedings themselves, and the absence of formal records are consistent with accepted standards. The same can also be said of the absence of punitive measures.

\* \* \*

The observations presented above should make one point clear, that one cannot be wholly nostalgic about traditional institutions and confident of their ability of ensuring the rights of children particularly those conflicting with the law. There are several constraints that one should bear in mind. Most important of all is the attitudinal frame within which these institutions operate. This is a framework which sees children not as subjects of rights but as property to their parents. The traditional mold in which these institutions are cast limits their initiative to take up new ideas and new roles is another factor. So is also the very fact that the formal law recognizes little space for their action.

There are also other limitations that are observed in their very set-up and organization. Most of them are dominated by traditionally powerful men with conservative attitudes. In many cases such structures are established on an ad hoc basis making it difficult to maintain long-term working relationships.

Despite these, there are also other factors which need to be taken into account. The first and the most important is the fact that they are accepted by people and communities identify them as theirs. As a result they have proved to be sustainable withstanding changes and turmoil social structuring, ideologies and religions. They owe their existence to the very allegiance of their constituency. The second reason is that

they are effective and less expensive than their formal legal counterparts. Their effectiveness has been demonstrated not only in regulating individual behavior but also in resolving inter-ethnic conflicts sometimes armed ones. No less an important consideration is also the fact that the formal law and its structures are as yet far less effective and efficient that would be considered satisfactory.

Taking all these into account thus, the conclusion that a formula is needed to make these structures functioning complementary with the formal law and its structure is a logical one. From the point of view of children conflicting with the law all three functions of traditional institutions are believe to be relevant. In an urban and semi-urban setting where the problem is most visible, the available traditional structures and mechanisms; the Idirs, religious institutions, and the Rapport Tsehaftwoch seem to provide ready and workable institutions to be targeted for assuming an active role in setting norms, providing social services, and settling conflicts relating to children conflicting with the law. Definitely, their doing so requires an enhanced capacity base, and more importantly a changed attitude towards children and their rights.

# CHAPTER VII

## CONCLUSIONS AND RECOMMENDATIONS

### A. SUMMARY OF PROBLEMS

If only one word was to be used to describe the state of children in conflict with law in present day Ethiopia it would have been “paradox”. On the one hand, we see the law as enshrined in the UN convention on the Rights of the Child, the Federal Constitution, the penal and Criminal Procedure Codes which aim at the rehabilitation, through an educative process, of children in their best interest. On the other hand is to be observed the harsh reality of children being subjected to inhumane treatment which has none of the reformative effective it is intended to achieve, but results in brutalizing hardening them as criminals. What lies at the root of this paradox?

#### 1) Adequacy of the law

First, there is the law. Good intention as it may have, it did not take into consideration the existing and available structures and resources necessary for the realization of its ideals. In incorporating progressive ideas, it has made several assumptions which do not hold true in a different societal context. It thus fails to provide detailed guideline’s in carrying out its lofty principles.

As was indicated in the previous chapters, this overall problem is manifested in several specific situations. Thus,

- i) The absence of an enforceable legal system of recording births is seen as a major cause for the unnecessary detention of many children. The rules of the Civil Code on officially recording the birth of a person are not yet given effect to. Whether a child is entitled to the protections that the law accords thus comes to involve a very subjective process which is characterized by arbitrariness.
- ii) The Penal Code, the main body of law which deals with the problem of children conflicting with the law is seen to be fairly in line with the international standards. This does not, however, mean that it is not without its limitations. These may be broadly related as follows:
  - a) The protection that the Penal Code accords to children above the age of 15 but below 18 is merely limited to that of segregation from adult convicts where the former are incarcerated and the exclusion of the death penalty and a term of life imprisonment. Except the latter indeed, even the protection of segregation cannot be meaningfully exercised due to the absence of separate facilities for these children at the corrective institutions.

- b) Even for children below the age of 15, the rules of the Penal code are not limited to the purposes of rehabilitation and education only as they also entrain a punitive element. Thus, one sees the exclusion of the principle of the consideration of the best interest of the child at least in some cases. Where even the “best interest of the child” is to be considered and the educational measures were to be applied, the penal code’s limitations become glaringly obvious, since no realistic consideration of existing structures for the application of these measures is made. As a result, on the one hand the law does not have detailed rules in which institutions are to apply these measures and on the other it fails to specify the responsibilities and controlling mechanisms of these institutions.
  
- iii. The Criminal Procedure Code, with its scanty provisions on the administration of juvenile criminal justice, is as important as the Penal Code. Dependent as it is on the Penal Code, however, it is also marked by the limitations of the latter as summarised above. In addition to these, moreover, it also has its own limitations.
  - a) One clear limitation of the Criminal Procedure Code is its lack of any non-judicial diversionary mechanism whereby the case of children conflicting with the law can be fairly but informally be handled. Indeed, the involvement of judicial bodies in such cases in a diversionary manner is made a necessary requirement. Due to the limited role the judicial bodies can play, however, one observes the emergence of unfair and negative practices which exclude the involvement of the judiciary and are harmful to the children concerned.
  
  - b) Another major limitation of the Criminal Procedure Code is the absence of detailed rules and guidelines on the application of its protections and guarantees. Thus, for instance, the procedure mechanism of enforcement of such principles as informal hearings, parental and legal representation, administration of educational measures, and secrecy are not provided for. Consequently one observes either arbitrary application or a complete neglect of these principles usually to the detriment of the children.

## 2) **Institutions of Juvenile Justice Administration.**

For the law and its presumed protections to children to have any effect, there ought to be an adequate institutional structure and capacity in place. This is not the case. The institutions that are to enforce this law are ill-equipped to carry out their functions or are even completely absent. Police and the judiciary suffer from a clear lack of familiarity with the words and spirit of the law protecting children in the investigative and judicial process. Carried away with the task of enforcing the law and ensuring peace and order, the police indeed commit serious blunders that amount to violations of the law. It is thus observed that:

- a) Major institutions for the administration of juvenile criminal justice are non-existent. There are no institutions which are organized for the purposes of reforming and rehabilitating a child conflicting with the law. The only such institution purported to

have this objective, the corrective institution at Addis Ababa, is far to short of being capable to realize the objective.

- b) Institution, such as the family and schools, which are present and are given a role by the Penal Code in administering measures of correction and education are not effectively integrated in the system of administration. There are neither adequate rules nor controlling mechanisms to ensure that these institutions function as presumed.
- c) The only institutions from amongst those presumed by the law and necessary for the effective implementation of the law which actually take part in the administration of Juvenile criminal justice are the police and the judiciary. Their effectiveness, however, is very much curtailed due to the absence of institutional arrangements and resources. The diversionary role assigned to the courts by the criminal procedure code is not at all understood by the courts nor the police. Hence, despite their willingness to help children, neither the police nor the courts have at the moment the ability to act as agents of reformation and rehabilitation of those who conflict with the law.
- d) Failure to utilize other existing structures in the administration of juvenile criminal justice is another limitation. Though, a range of existing structures could be used to supplement and carry out the purposes of the law, none of these are integrated into the system of implementation. This is true of traditional and community structures in both urban and rural areas. There is an extensive field for these structures to be utilized though, from that of providing support to children so as to prevent them from conflicting with the law, to that of assisting them in the course of the process of administration of juvenile justice (for instance by availing legal services and bail), to that of administering measures of education and rehabilitation.

### **3) Attitudes Relating to Children in General and Children Conflicting with the law.**

Certainly a major factor in relation to the problems of the institutions of juvenile justice administration is that of resources. It is not, however, the sole factor and it is observed that the attitudes regarding the rights of children prevalent among the community at large and law enforcement agencies are not conducive to the realization of the rights of children. These attitudes may be summarized as:

- a) A conception of children as the property of their parents and not as subjects of rights on their own;
- b) A strong belief in the potential of at least some children for criminality and a presumption of their incorrigibility;
- c) A conviction that punishment (mainly corporal punishment and incarceration) are effective in dealing with children conflicting with the law;

- d) As a result, pressure from the community at large on law enforcement agencies to deal as strongly as possible with children conflicting with the law,
- e) Inadequate consideration, and detailed articulation of the principle of considering the best interest of the child in applying to judicial and administrative measures, and
- f) A complete lack of understanding of the criminal procedure code's rules on diverting children from the formal criminal justice process.

The picture, therefore, seems to be extremely bleak. On the one hand, a growing number of children are coming into conflict with the law. In every urban and semi - urban site covered in the assessment, they have committed a criminal offence. Most do not enjoy the guidance and care offered by the family and other communal structures. This seems to be the fundamental reason that pushes them into this conflict in their effort to provide and care for themselves. As economic liberalization and urbanization take root, there is every indication to believe that such family and communal structures would further break up. The process will certainly be accelerated with increasing external cultural influences (including the abuse of substance) and the tolls of AIDS. It does not therefore demand much of a foresight to predict an even more extensive occurrence of the problem of children conflicting with the law with more children being added to the rank of an already swelling number.

To summarize, one finds a compound of problems at the root of this situation. These may broadly categorized as those relating to the law, to attitudes, and to resources and structures. The challenge is to make the law more responsive and realistic in its norm setting and enforcement, to bring about a broad societal attitude conducive to the rights of children, and perhaps more important, to harness more resources and structures to address the problem of children conflicting with the law.

## **B. RECOMMENDATIONS**

Meeting this challenge clearly requires a long term and sustained process in which all stakeholders are as much involved as possible. The ultimate goal of such a process can be nothing less than that of making the law more responsive, realistic, and effective in reforming children conflicting with the law in their best interest. To attain that goal the participation of communities in the administration of juvenile criminal justice through their existing and accepted institutions is indispensable. So also is the enhancement of the institutional and technical capabilities of the institutions of law enforcement. Institutions, whether traditional or modern, however, can be effective only if those who staff them and indeed all members of the community within which the institutions operate have the attitude consonant with the spirit of the purposes of the institutions. Side by side with these is also required a legal framework that facilitates the functioning of the institutions and sets enforceable norms for acceptable behavior and attitude.

There are thus three major actions that are required to bring about the above stated goal. These may be broadly summarised as: awareness creation, institutional development, and legal reform. Each of these actions may in turn involve a number of specific tasks which may be carried out in the short and long term. In an attempt to indicate some possible actions that may be undertaken, the following recommendations are suggested based on the nature of the problems as presented in the main parts of the Report.

## 1. MEASURES OF AWARENESS CREATION

The realisation of rights as already indicated demands there being the right attitudinal framework for it. As things stand now, one can hardly say that Ethiopian society at every level has yet developed the attitudinal framework that sees the child as a subject of rights and the child in conflict with the law as a child with special rights and legal protections. Yet, the rights of children in general and those of children conflicting with the law in particular necessarily calls for the prevalence of such an attitude. This is not due to academic reasons only, but also because of practical considerations. The outcome of whether a regional administration allocates budgets for juvenile justice administration, whether the police desist from viewing and treating children as incorrigible criminals, or whether a community organization volunteers to administer and educational measure prescribed for a child conflicting with the law, as well as a multitude of other practical queries will certainly depend on how the problem of children conflicting with the law and the rights of children in every setting are perceived and internalized by those who are confronted with the queries.

Thus sensitizing communities at large to the problems and rights of children conflicting with the law is a task that cannot wait. At a more advanced level, creating sufficient and effective understanding on the arrangements the law has provided to children conflicting with the law is also essential at least among those who have an actual or potential role in translating these arrangements into reality. It is thus recommended that:

- 1.1) Existing efforts at promoting the rights of children in general need to be strengthened and intensified. These efforts are currently being undertaken by several NGOs (such as ANPPCAN the Forum on Street Children) and the CYAO. They are also, in a limited sense, showing indications of success. For such efforts to bear fruit in the long term and result in a positive attitudinal change, they need to be expanded (in terms of scope and areas of coverage,) and concerted. The inclusion of such promotional work in the development activities of NGOs as well as other agencies should also be encouraged.
- 1.2) The inclusion of the rights of children in the formal education system should be strongly encouraged.
- 1.3 Sensitization and awareness creation programs on the problems and rights of children conflicting with the law need to be organized particularly in urban and semi-urban areas where the problem is on the increase. Such programs should target community leaders, law enforcement officials, local and regional administrators, religious institutions and educators in particular.
- 1.4) Special programs of sensitization and exposure should be organized for regional councils, judiciary and police to encourage the consideration by these bodies of the problem of children conflicting with the law as a priority problem.

1.5 The establishment of a constant monitoring and information gathering system on the state of children conflicting with the law is useful to ensure the continuity of interest in the problem and of efforts of awareness creation.

## 2. MEASURES OF INSTITUTIONAL DEVELOPMENT

It was pointed out that the institutions of law enforcement and adjudication that are intended to carry out the administration of juvenile justice are incapacitated by lack of resources and expertise while some institutions of reform and re-education are virtually non-existent. On the other hand, traditional institutions are assigned and play no role in the system. The ideal solution to this problem might be to have all corrective and educational institutions envisaged by the law installed and unction as planned. Not only that this will be unrealistic, but even if the institutions were to be in place there is not assurance that they would be functioning to satisfaction. Thus, while it is indispensable to try to establish and make functional these institutions envisaged by the law, it is also necessary to look at existing societal (particularly traditional institutions and to find ways of getting their involvement in the process of administration of juvenile justice. Thus, measures relating to developing institutional capabilities can be seen from the perspective of both types of institutions.

### a) With Respect to Institutions of Law Enforcement

In as far as the institutions envisaged by the Penal Code are concerned, it is clear that only the police, and to a limited extent the judiciary (and in Addis Ababa, the Corrective Institution) are the active ones. In many instances, the police are to be commended for the sensitivity they exhibit towards children, and their commitment to prevent them from committing offences. Given the extremely constraining environment, the readiness of these agencies to pay special consideration for children and their needs though manifested in isolated efforts is to be highly appreciated. Yet, their capacity and operation can not be said to accord to the ideals represented in the constitution and CRC. To a large extent this is due to the limitation in infrastructure and resource (both financial and technical) they suffer. Measures to address these problems should thus include:

- 2.1) encouraging the designation and training of special police and judicial officials to exclusively deal with the problem of children conflicting with the law;
- 2.2) Encouraging the establishment of correctional and educational institutions for children convicted of committing offences at least in the major urban areas;
- 2.3) Sensitization and training of police, prison, and judicial officials on the law and international standards dealing with the administration of juvenile justice and the rights of children;
- 2.4) Encouraging the establishment of nation-wide system of comprehensive recording of births through existing state administrative structures (the kebele structures);

- 2.5) Training of police and judicial officials on the need to divert children from the formal criminal justice process, and wide dissemination of the criminal procedure code's arrangement for dealing with this issue;
- 2.6 ) Discouraging the current practice of the police to deal with young offenders which subjects the latter to normal police investigation applicable to adults and encouraging judicial bodies to assume the diversionary role they are assigned by the Criminal Procedure Code;
- 2.7) Encouraging the judicial and police enforcement of parental responsibilities of caring and disciplining in general and in cases where the child is found committing an offence in particular and devising mechanisms of community control to ensure that such responsibilities are enforced and failure in discharging them is reported.
- 2.8) Encouraging the establishment of administrative mechanisms to monitor the handling of children by the police and courts;
- 2.9) Provision of community based custodial, and bail facilities to children that are suspected of committing crimes and discouraging the current practice of their being detained even for a short-time by the police.
- 2.10. Provision of legal services through lawyers and trained para legals to children conflicting with the law;
- 2.11) While the police custody of children should discontinue and needs to be discouraged, supporting those children that are detained by the police for investigation in getting bail, proper medical services particularly in terms of getting a prompt medical examination of age, and in being provided with educational and recreational service as well as adequate food and clothing.
- 2.12) Training para legals and Rapor-Tsehaftwoch on the techniques of providing legal services to children conflicting with the law; and
- 2.13) Supporting the Corrective Institution at Addis Ababa to be reformed and to serve as a model institution for other regions such support may include financial support and intensive training to the staff.

Most, if not all these measures, may be carried out by and within existing structures. There are, however, two bodies whose establishment is suggested as essential for the continued undertaking of the present measures and for the long-term process of realizing the rights of children in general and those conflicting with the law in particular. These are:

- 2.14) A Children's Defence Fund to be composed of judicial, law-enforcement, administrative bodies and NGOs could serve as an interested institution to see to the implementation of these or similar measures. The most important task of the Fund, however, can be that of provision of legal services and of bail to children conflicting with the law in cooperation with local agencies, traditional structures and others. It

can also work on the identification of relevant institutions to administer measures of correction and education, and

2.15) A children's Rights Monitoring Agency in the form of an ombudsperson is indispensable for the long term institutional monitoring of the rights of children. Even if the agency may not be established as a separated organ, the monitoring of children's rights by a semi or fully autonomous agency is highly desirable. At this juncture, the need for a coordinated call for such a body is especially felt since the Council of Peoples Representatives has expressed its intent to establish human rights institutions this Ethiopian year.

#### **b) With Respect to Traditional Institutions**

Measures under this category should aim at encouraging traditional institutions to take part in the process of administration of juvenile justice. Even though the law does not envisage these institutions as a part of the process, as has already been shown in previous chapters, there is sufficient leeway for them to be involved in the process as well as in providing support and guidance to children to prevent them from being entrapped in conflicts with the law. However, the attitudes and capacity of these institutions are not yet such as to allow them to take up these roles. It is thus suggested that:

- 2.16). Sensitisation programs be organized to these institutions particularly to those in urban areas and their leaders to initiate interest in the problems of children conflicting with the law;
- 2.17) Training programs be organized to selected members of these institutions in providing legal services and administering educational and corrective measures to children conflicting with the law;
- 2.18) Efforts by these institutions to provide support to children and to address the problem of children conflicting with the law be supported technically and financially;
- 2.19) Training of trainers programs be organised for selected members of these institutions so as to engage them in the promotion of the rights of children; and
- 2.20) A study be conducted to identify ways of providing community bailing and supervision by these institutions.

### **3. Measures of Legal Reform**

The fact that Ethiopian law essentially accords to the international standards of juvenile justice has already been noted. Its flaw, however, is in the fact that it fails to provide detailed guidelines and it disregard existing institutions and resources. The measures of law reform that should be presumed are thus aimed at addressing these failures. Thus revision of the Penal and Criminal Procedure Codes with a view to

making them more comprehensive needs to be undertaken. Such revision should in particular look at :

- 3.1) including, beside the present judicial diversionary mechanism, non-judicial diversions;
- 3.2) explicitly detailing the present arrangement,
- 3.3) incorporating community based support, rehabilitation and re-education systems;
- 3.4) ensuring adequate safeguards to protect children from being sucked into the formal police investigation and judicial process; and
- 3.5) including traditional institutions in the process of administration of juvenile justice should be encouraged and defining the responsibility of such structures by accepting their modus operandi.

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The above stated measures are merely indicative of the steps that can be taken. The problem of children conflicting with the law has been present for decades. It certainly is manifested and, unless curbed, it is likely to be growing at a worrying level. There is thus every reason to take immediate measures. The effectiveness of these measures will depend on how well they are accepted and carried out by the community at large as well as by the agencies of law enforcement. The measure of their success will always be their ability to reform and educate a wayward child. The measure of their success will always be their ability to reform and educate a wayward child. The existing system of administration of juvenile justice clearly lacks much if measured by this standard. The responsibility of improving the system is a shared one among all concerned from the state, to the guardian at home. Where anyone of us fail in this and a child is in shackles our hopes of a better future will remain in chains too, as our future is in our children.

**APPENDIX 1 : SITE, NUMBER AND CATEGORY OF INFORMANTS**

| #  | Region   | Site      | Police | Courts | Children |                   |                |       | Prison Wardens | Community | Public | Corrective | Total |
|----|----------|-----------|--------|--------|----------|-------------------|----------------|-------|----------------|-----------|--------|------------|-------|
|    |          |           |        |        | Detained | Formerly Detained | Never Detained | Total |                |           |        |            |       |
| 1  | Tigray   | Shire     | 2      | 1      | 8        | 5                 | -              | 13    | 1              | 3         | -      | -          | 20    |
| 2  | Tigray   | Adigrat   | 3      | 2      | 5        | 2                 |                | 7     | 1              | 3         | 2      | -          | 18    |
| 3  | Tigray   | Aksum     | 3      | 2      | 7        | 2                 | -              | 9     | 1              | 3         | 2      | -          | 20    |
| 4  | Tigray   | Adwa      | 2      | 2      | 4        | -                 | -              | 4     | 1              | 6         | 2      | -          | 17    |
| 5  | Tigray   | Makale    | 2      | 3      | 8        | 4                 | -              | 12    | 1              | 2         | 2      | -          | 22    |
| 6  | Tigray   | Wukro     | -      | -      | 2        | -                 | -              | 2     |                | 5         | -      | -          | 8     |
| 7  | tigra    | Adi Gudom | -      | -      | 2        | -                 | -              | 2     | -              | 6         | -      |            |       |
| 8  | Tigray   | Adi Abun  | -      | -      | -        | -                 | -              | -     | -              | 5         | -      | -          | 5     |
| 9  | Tigray   | Abiy Adi  | -      | -      | -        | -                 | -              | -     | -              | 6         | -      | -          | 6     |
| 10 | Oromiyya | Mettu     | 3      | 1      | -        | 8                 | -              | 8     | 1              | -         | 2      | -          | 15    |
| 11 | Oromiyya | Agaro     | 3      | 1      | -        | 4                 | -              | 4     | 1              |           | 1      | -          | 10    |
| 12 | Oromiyya | Nazereth  | 2      | 1      | 1        | 3                 | -              | 9     | 1              |           | 1      | -          | 14    |
| 13 | Oromiyya | Jimma     | 3      | 2      | 8        | 3                 | 5              | 11    | 1              | -         | 2      | -          | 19    |
| 14 | Oromiyya | Ambo      | 3      | 2      | -        | -                 | -              | -     | -              | -         | 2      | -          | 7     |
| 15 | Oromiyaa | Urumu     | -      | -      | -        | -                 | -              | -     | -              | 4         | -      | -          | 4     |

| #  | Region   | Site         | Police | Courts | Children |                   |                |       | Prison Wardens | Community | Public | Corrective | Total |
|----|----------|--------------|--------|--------|----------|-------------------|----------------|-------|----------------|-----------|--------|------------|-------|
|    |          |              |        |        | Detained | Formerly Detained | Never Detained | Total |                |           |        |            |       |
| 16 | Oromiyya | Yebelo       | 1      | 1      | 5        | 2                 | -              | 7     | 1              | -         | 1      | -          | 11    |
| 17 | Oromiyya | Sire         | -      | -      | -        | -                 | -              | -     | -              | 5         | -      | -          | 5     |
| 18 | Oromiyya | Arjo         | -      | -      | -        | -                 | -              | -     | -              | 4         | -      | -          | 4     |
| 19 | Oromiyya | Seka         | -      | -      | -        | -                 | -              | -     | -              | 4         | -      | -          | 4     |
| 20 | Oromiyya | Gida Kiremu  | -      | -      | -        | -                 | -              | -     | -              | 4         | -      | -          | 4     |
| 21 | Oromiyya | Guder        | -      | -      | -        | -                 | -              | -     | -              | 2         | -      | -          | 2     |
| 22 | Oromiyya | Bedele       | -      | -      | -        | -                 | -              | -     | -              | 5         | -      | -          | 5     |
| 23 | Oromiyya | Ne.Borena    | -      | -      | 2        | 2                 | 3              | 7     | -              | 3         | -      | -          | 10    |
| 24 | Oromiyya | H.Mariam     | -      | 1      | -        | -                 | 4              | 4     | -              | -         | -      | -          | 5     |
| 25 | Oromiyya | Nekempte     | 4      | 2      | -        | 5                 | -              | 5     | 1              | -         | 2      | -          | 14    |
| 26 | Amhara   | Woldia       | 3      | 2      | 3        | -                 | -              | 3     | 1              | -         | 2      | -          | 11    |
| 27 | Amhara   | D.Markos     | 3      | 2      | -        | 6                 | -              | 6     | 1              | -         | 2      | -          | 14    |
| 28 | Amhara   | D.Tabor      | 2      | 1      | 8        | -                 | -              | 8     | 1              | 3         | 2      | -          | 17    |
| 29 | Amhara   | Dessie       | 3      | 2      | -        | 4                 | -              | 4     | 1              | 3         | 2      | -          | 15    |
| 30 | Amhara   | Gondar       | 2      | 2      | 7        | -                 | -              | 7     | 1              | 3         | 2      | -          | 17    |
| 31 | Amhara   | Injibare     | -      | -      | -        | -                 | -              | -     | -              | 5         | -      | -          | 5     |
| 32 | Amhara   | Amba Giorgis | -      | -      | -        | -                 | -              | -     | -              | 4         | -      | -          | 4     |
| 33 | Amhara   | Bahir Dar    | 3      | 2      | 4        | 2                 | -              | 6     | 1              | -         | 2      | -          | 14    |

| #            | Region      | Site          | Police     | Courts    | Children   |                   |                |            | Prison Wardens | Community  | Public    | Corrective | Total      |
|--------------|-------------|---------------|------------|-----------|------------|-------------------|----------------|------------|----------------|------------|-----------|------------|------------|
|              |             |               |            |           | Detained   | Formerly Detained | Never Detained | Total      |                |            |           |            |            |
| 34           | Amhara      | Kemisse       | 3          | -         | -          | 1                 | -              | 1          | -              | 2          | -         | -          | 6          |
| 35           | Shoa Robit  | Shoa Robit    | 3          | 1         | -          | 2                 | -              | 2          | 1              | 2          | 1         | -          | 10         |
| 36           | Amhara      | D.Birhan      | 3          | 2         | -          | 4                 | -              | 4          | 1              | 3          | 2         | -          | 15         |
| 37           | S/People    | Arba Minch    | 3          | 2         | 2          | 2                 | 2              | 6          | 1              | -          | 2         | -          | 14         |
| 38           | S/People    | Durame        | 2          | 2         | -          | -                 | -              | -          | 1              | -          | 2         | -          | 7          |
| 39           | S/People    | Wolkite       | 3          | 2         | -          | 4                 | -              | 4          | 1              | -          | 2         | -          | 12         |
| 40           | S/People    | Hosaina       | 3          | 2         | -          | 6                 | -              | 6          | 1              | -          | 2         | -          | 14         |
| 41           | S/People    | Awassa        | 3          | 1         | 3          | 2                 | 3              | 8          | 1              | -          | 2         | -          | 15         |
| 42           | S/People    | Dilla         | 1          | 1         | -          | -                 | 7              | 7          | 1              | -          | 1         | -          | 11         |
| 43           | S/People    | Morsito       | -          | -         | -          | -                 | -              | -          | -              | 6          | -         | -          | 6          |
| 44           | S/People    | Wolayita Sodo | -          | -         | 2          | 1                 | 2              | 5          | -              | 7          | -         | -          | 12         |
| 45           | S/People    | Chencha       | -          | -         | -          | 2                 | 1              | 3          | -              | 8          | -         | -          | 11         |
| 46           | S/People    | Sawla         | -          | -         | 5          | -                 | 4              | 9          | -              | 7          | -         | -          | 16         |
| 47           | Dire Dawa   | Dire Dawa     | 3          | 1         | 5          | -                 | -              | 5          | 1              | 4          | -         | -          | 14         |
| 48           | Somali      | Jijiga        | 2          | 2         | -          | 4                 | -              | 4          | 1              | -          | 2         | -          | 11         |
| 49           | Harari      | Harar         | 2          | 1         | 3          | -                 | -              | 3          | 1              | 6          | 2         | -          | 15         |
| 50           | Addis Ababa | Addis Ababa   | 30         | -         | 30         | -                 | -              | 30         | -              | -          | -         | -          | 78         |
| <b>TOTAL</b> |             |               | <b>108</b> | <b>49</b> | <b>124</b> | <b>80</b>         | <b>31</b>      | <b>235</b> | <b>28</b>      | <b>133</b> | <b>49</b> | <b>18</b>  | <b>610</b> |

## **APPENDIX II**

### **MEMBERS OF THE RESEARCH TEAM**

#### **COORDINATOR**

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