

THE CHILD AND THE LAW IN ETHIOPIA

The Case of the UN Convention on the Rights of the Child^{*}

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The child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth... mankind owes to the child the best it has to give.¹

1. Introduction

The early life of the human person, which we generally refer to as childhood, is mainly characterised by his state of frailty and helplessness. This state of affairs calls for special care and protection. To ensure the full and balanced development of his personality, the child needs to be raised in an environment capable of providing love, affection and happiness.

That this natural right to special care and protection primarily rests on the child's parents and members of his immediate family goes without saying. But he is also worthy of respect and assistance by society and the state during the many years through which his personal development takes place. His inestimable value disposes the human heart towards him and, as such, our duty to him is the strongest but the sweetest of all our obligations.

Since the dawn of the 20th century, international humanitarian law has made positive moves towards incorporating the various interests of the child into the general values and norms of international social behaviour. The norms recognised in the 1924 Geneva Declaration on the Rights of the Child, recognition of the entitlement of

^{*} A different version of this paper was first presented in a symposium organized by Redd Barna, Ethiopia on the occasion of the 25th anniversary of the commencement of its activities in Ethiopia held in Addis Ababa on October 18, 1994. It was then headed: "The Situation of Ethiopian Children in the Context of the United Nations Convention on the Rights of the Child." This version has, however, been further enriched by some other legal and policy matters that were developed since the presentation of the original one.

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¹ Preamble to the 1959 Declaration of the Rights of the Child, Proclaimed by General Assembly Resolution 1386 (XIV) of the United Nations Organization on November 20, 1959; published in Human Rights, A Compilation of International Instruments, Volume I, First Part, Center for Human Rights, Geneva, United Nations, New York, 1993.

childhood to special care and protection under Art. 25 of the 1948 the United Nations (UN) Universal Declaration of Human Rights, the ten cardinal principles specified in the 1959 UN Declaration of the Rights of the Child, the provisions dealing with child rights under the UN Covenant on Civil and Political Rights as well as the Covenant on Economic, Social and Cultural Rights, are but some of the main norms of international behaviour designed to provide a single and consistent set of values for the protection of child rights. In 1989, the various ideas embodied in these and similar international instruments culminated in the UN Convention on the Rights of the Child.²

The legislative body³ of the Transitional Government of Ethiopia ratified the Convention under Proclamation No. 10/1992, which, according to its Article 4, came into force on January 30, 1992. The ratification Proclamation contains four articles dealing with citation, ratification, delegation of power and date of enforcement. As the Council of Representatives was empowered to ratify international agreements by the Transitional Period Charter of Ethiopia⁴, it can be said that the Convention has now been incorporated in the domain of the municipal legal system.

Article 3 of the Proclamation empowers the Ministry of Labour and Social Affairs "to undertake all acts necessary for the implementation of the Convention." The full text of the Convention has been translated into Amharic⁵ and published in the form of a booklet by the Children, Youth and Family Welfare Organisation (CYFWO).⁶ A non-governmental Organisation known as the Ethiopia Chapter of the African Network for the Prevention of and Protection Against Child Abuse and Neglect (ANPPCAN) has also had the Convention published in some other languages of the country.

² Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November, 1989, published in the work cited at note 1 above. (hereinafter referred as "the Convention.")

³ This body was known as "The Council of Representatives." See Art. 9 of The Transitional Period Charter of Ethiopia, *Negarit Gazetta*, 50th year No. 1. At present, however, as the transitional period of governance is over, the functions of this organ have been taken over by the Federal Legislature which comprises of The Council of Peoples' Representatives and The Federal Council. See Arts. 53 to 68 of the Constitution of The Federal Democratic Republic of Ethiopia, (to be cited as the "Constitution" hereafter). Incidentally, the *Negarit Gazeta* is the official law gazette in Ethiopia; see the *Negarit Gazeta Establishment Proclamation No. 1/1942*; since 1995, the nomenclature of this gazette has been changed into the "Federal *Negarit Gazetta*"; see also the *Federal Negarit Gazetta Establishment Proclamation No. 3/1995*.

⁴ See Article 9(b) of the Charter. At present such power vests in the Council of Peoples' Representatives pursuant to Article 55(2) of the Constitution; for the modalities of ratification of international treaties in Ethiopia see also the *Treaty-Making Procedures Proclamation No. 25/1988*, *Negarit Gazeta* 48th Year No. 5.

⁵ Amharic is the working language of the Federal Government; see the Constitution, Art. 5 (2).

⁶ This is a semi-governmental agency under the auspices of the Ministry of Labour and Social Affairs but with its own independent status.

Undeniably, these efforts are positive moves in creating public awareness of the Convention as envisaged under Article 42 of the later.⁷ There may, however, arise problems when disputes concerning the interpretation and practical implementation of the Convention become issues in a court of law. This is due to the fact that the text of the Convention has not been officially translated into the working languages of neither the Federal nor the regional governments. The booklets in which the translated texts appeared are not official law gazettes either. In addition, controversies may surface if other organisations and individuals also publish translations of their own.

The purpose of this Article, however, is not to treat this particular issue of publication but rather to explore the laws that are relevant to the protection of child rights in Ethiopia in view of the standards laid down in the Convention. To this end the principal legislations, including pertinent provisions of the Constitution, will be examined. It will also touch upon major social, economic and institutional issues that need to be addressed for the realization of the principles enunciated in these laws and the Convention.

2. Compatibility of Ethiopian Laws with the Basic Principles of the Convention

2.1. Definition

In the parlance of the law, the word "child" may be understood in two different ways. The first implies a relationship with respect to parentage and consanguinity, the natural relationship that derives from the community of blood.⁸ In its second meaning, "child" denotes the status of a human being in its early years of life,⁹ and it is to this latter meaning that the Convention refers. The first article of the Convention defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." The proviso in the second part of this definition is an apparent reference to legal systems that have lower ages for the attainment of majority.

⁷ "States Parties undertake to make the Principles and Provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

⁸ See for example Arts. 550, 739 to 741, 745 (1) and 746 of The Civil Code of Ethiopia. Proclamation No. 165 of 1960, Negarit Gazeta, Extraordinary Issue, 19th Year No. 2. (Hereafter cited as "(Civ.C)").

⁹ See again Civ. C. Arts. 2 to 4, as well as the relevant provisions under Book One, Title II, Chapter 2 of the same Code.

Under the Ethiopian legal framework, the law provides that a child is "a person of either sex who has not attained the full age of eighteen years."¹⁰ Exceptions to this rule lay down different lower ages to serve different purposes. In civil law, this is known as emancipation. For example, a girl of fifteen may be emancipated by operation of law the moment she concludes a marriage. Other than marriage, both male and female children may, upon attainment of fifteen years of age, be emancipated by a decision of the family council when such a move is deemed to best serve their interests.¹¹ Once emancipated, the child is treated as an adult for all intents and purposes. Among other things, such a child cannot, as of right, demand maintenance from his parents, nor can he benefit from legal provisions that would otherwise entitle him to invalidate juridical acts by invoking his incapacity.¹²

Under Ethiopian criminal law, children above the age of fifteen are fully responsible for crimes they commit in much the same way as adults. This is the age group which the Penal Code refers as to the intermediary age group extending from the end of criminal majority to legal majority.¹³

2.2. Equality of Children

Art. 2 of the Convention lays down the obligation of States Parties to "respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind."

In this respect a survey of the laws in force in Ethiopia before and after the adoption of the Convention and the International Bill of Human Rights¹⁴ discloses that

¹⁰ Civ.C. Art. 198. Note also that the law employs the word "minor" for a child.

¹¹ The family council is, as a rule, an organ consisting of the ascendants and the brothers and sisters of the minor who are of age. It is one of the organs the law provides for the protection of the interests of the child. See Arts. 241 et. seq. of the Civ.C. On emancipation, see also Arts. 329 to 34, Civ. C.

¹² Arts. 807, 808 and 812 Civ. C. (on maintenance) and Arts. 313, 314 and 1808 (on invalidation of juridical acts).

¹³ Philippe Graven, An Introduction To Ethiopian Penal Law, Faculty of Law, Haile Selassie I University, Addis Ababa (1965) P. 151; see also Art. 56 of The Penal Code of Ethiopia, Proclamation No. 158 of 1957, Negarit Gazeta Extra. ordinary Issue. 16th Year No. 2. (Hereafter cited as P.C.)

¹⁴ The International Bill of Human Rights are: (a) The United Nations Universal Declaration of Human Rights; (b) The International Covenant on Economic, Social and Cultural Rights; (c) The International Covenant on Civil and Political Rights; (d) The Optional Protocol to the International Covenant on Civil and Political Rights; and (e) The Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty. The first three of these instruments have been adopted and ratified by the Ethiopia. For a full text of these instruments see the work cited at note 1 above, pp. 1 to 50.

there is no discrimination between children on the basis of race, colour, sex, language, political or other opinion, national, ethnic or social origin¹⁵, indicators mentioned under Article 2 of the Convention. As a matter of state policy, too, we cannot say that we have witnessed manifestly unacceptable practice of this nature. Of course, in some traditional societies, it may not be uncommon to come across forms of discrimination which have religion, ethnicity or social status as their basis. But they are neither so serious in nature nor do they have the legal backing to adversely affect the exercise of the rights recognised in the Convention. In this regard, the provision of the Civil Code, Art. 3347(1), which provides for the repeal of "all rules whether written or customary previously in force concerning matters provided in the Code" may serve as an example.

2.3. Civil and Political Rights

Just as in many other countries, children in Ethiopia have many civil and political rights. A number of the laws of the country that were enacted over three decades ago incorporate such basic principles of human rights laws as the right to life, liberty and the security of person; freedom from slavery and servitude; freedom from torture, degrading and inhuman punishment; the right to the equal protection of the law; the right to be presumed innocent until proven otherwise; and freedom from arbitrary interference with privacy. Again, many of these rights have been recognised by the 1994 Constitution,¹⁶

The Convention addresses itself to these basic rights under Arts. 6, 12 to 16, 35, 37 and 40. Arts. 12 to 16 not only guarantee the civil rights of the child but also provide for the child's views and expressions to be given due weight in accordance with his age and maturity. This is to be realised within the family, in judicial and administrative proceedings, as well as in the curricula and methods employed in public education. Subject to the exercise of parental responsibility, this right may well apply to any other aspect of the child's daily life and includes, *inter alia*, the right to seek and receive information of any kind, the freedom to impart the same, and the right to choice of association and participation in a peaceful assembly.

Art. 14 of the Convention speaks of the child's right to freedom of thought, conscience and religion. Here thought and conscience are equated with religion for the purpose of protecting children coming from families that "do not believe in any religion, or believe in a secular philosophy or school of thought such as humanism, scientific materialism, pacifism and atheism,"¹⁷ By so doing, the Convention:

¹⁵ See Art. 25 of the Constitution.

¹⁶ See, for example, the chapter dealing with Fundamental Rights and Freedoms of The Peoples, Chapter Three, Arts. 13 to 44. See also Arts. 1-5 and 8-31 of the Civil Code.

¹⁷ Daniel O'Donnell, Guidelines for NGOs on Monitoring the Implementation of the Convention on The Rights of The Child; unpublished, First Draft, Prepared for Defence for Children International, June, 1992.

1. protects children from persecution and discrimination based on their religion and convictions or on those of their parents and guardians;
2. recognises the rights of children to study and profess their religions or beliefs and not to be obliged to study other religions;
3. ensures the rights of children to participate in the services and celebrations of their religions or beliefs; and
4. guarantees the rights of children to comply with the rules of their religions or beliefs as regards speech, diet or days of worship.¹⁸

Certainly, these rights do not seem to have any serious incompatibility with the laws that are in force and the official state policy in the country. But for reasons so obvious to many of us in Ethiopia, this article cannot do justice to the consideration of the next-to-impossible task of reconciling the principles of the Convention with the hard reality we all are witnessing in our day-to-day interactions.

2.4. The Best Interests of the Child

Art. 2 of the 1959 UN Declaration of the Rights of the Child provides that the best interests of the child must be of paramount consideration in the formulation of policies and in the enactment of laws affecting the rights of the child “to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.” Art. 3 of The Convention goes even further and refers to the best interests of the child as a criterion to be taken into account when it says:

...[I]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies the best interests of the child shall be of primary consideration.

This same notion is also expressed in several other provisions of the Convention. Art. 9 refers to it in light of the child’s separation from his parents. Art. 18 looks at it from the perspective of parental responsibility. Art. 20 speaks of the best interests of the child in the context of the care and special protection to be accorded to the child who is deprived of his family environment. Under Art. 21, it is of primary consideration when

¹⁸

Ibid.

adoption is to take place. Likewise, Art. 37(3) provides for the separation of a child prisoner from adults unless it is considered in his best interests not to be so separated.

The problem, however, is with the meaning of the term "the best interests of the child." Just as values and social norms are not the same everywhere, so are the understandings of this notion. The approach towards interpretation of this phrase is basically to be considered not in the context of abstract ideas, but in the light of providing solutions to practical problems concerning child welfare and development. Attention needs to be paid to the compatibility or otherwise of any administrative, legislative or judicial measure in its response to the postulate:

Where there is a conflict between the interests of a child and an adult which can only be resolved to the disadvantage of one of them, the interest of the child must prevail.¹⁹

In one survey, judges, prosecutors, social workers, teachers and executive committee members of *kebele* associations²⁰ in five different towns of Showa Region were asked to state their views as to whether or not they agree with this postulate. Some answered 'yes' and others said 'no.' A third group said they do not have anything to say. Those who answered 'yes' argued that the interests of the adult should be sacrificed where we fail to reach a form of solution acceptable to both the adult and the child. Some of the judges and social workers who said 'no' argued otherwise. Here, for example, is the response, of a Supreme court judge.

I think the interest must be resolved in a balanced manner. Therefore, I don't accept the postulate that 'the child's interest must prevail'.²¹

But our codified laws, many of which were enacted well over thirty years before the ratification of the Convention by this country, incorporate a wide cross-section of views and values that may make up the idea of "the best interests of the child." The first article of the Civil Code, for example, prescribes that the human person is the subject of rights from birth to death. The second goes even further and considers a merely conceived child as born whenever his interests so demand. This implies that when protection of the interests of a conceived child is at stake, his right as a human person goes back to his date of conception. In the law of successions, too, if a father of a conceived child dies, the succession may not be opened between the living heirs until

¹⁹ *Ibid.*

²⁰ The "*kebele*" is the lowest political and administrative unit in Ethiopia.

²¹ Tilahun Teshome, Desta Afaw and Tadele Mengesha, Report on the Situation of Child Rights in Ethiopia, Prepared for ANPPCAN - Ethiopia Chapter, Unpublished, Addis Ababa, January 1994, Part three, Section 1.5.

such time that the conceived child is born. Another article provides that if a person has made a will and a child is born to him or to her afterwards, the will is considered as a lapsed testament.²²

On the proper care of the person of the child, the law states that he be placed under the authority of a guardian. Matters concerning his pecuniary interests are to be taken care of by his tutor.²³ As a rule, the child's parents jointly exercise the function unless his best interests demand otherwise. In the event of death or disability of one of them, the other one shoulders full responsibility. In practice, too, courts tend to favour this position. In a case presented before the Supreme Court, the family council awarded tutorship of three children to a man who could not even clearly show his consanguinial relationship to them. The manifest business inexperience of the mother was the alleged reason given by the family council to deprive her of this power. When the Supreme Court reversed this decision upon the contention of the mother, it stated:

[T]he law, in the appointment of tutors, prefers the surviving parent to all other persons. This is not without grounds. It is believed that he or she is closer to the child and cares for him more than any other person. Extreme caution must be taken when removing a parent from this responsibility. Removal should only be ordered when the best interests of the child could not be served otherwise.²⁴

Where both parents are deceased and they have not appointed a guardian-tutor for their child, or where, for a host of reasons, the living parents of a child are not in a position to carry out the functions of guardian-tutorship, the law authorises other relatives to discharge such functions. The order of preference is based on the proximity of blood relationship. But, once again, if the best interests of the child are to be served otherwise, any relative may apply for a possible modification of the order so that he can be entrusted with such a responsibility notwithstanding that there are closer relatives to the child than himself.

A relative who is so appointed may be removed by a court where it is found that the child is not receiving:

²² Civ.C. Arts. 1063 (2) (3) and 904;

²³ See Civ.C. Arts. 204 to 240; see also Art. 36 (1)(c) and (2) of the Constitution.

²⁴ Civil Appeal Case No. 649/82, Supreme Court of Ethiopia, unpublished.

[T]he care which his condition requires, a morally sound education, or an instruction which accords with his disposition...or where he has committed a criminal offence and it appears that his behaviour is due to bad education or lack of education on the part of the guardian.²⁵

A guardian-tutor may also be removed where there arises a conflict of interest between himself and the child, when he is declared unworthy or insolvent, or when he fails to comply with the instructions of the family council to the detriment of the interests of the child.

Upon the divorce of parents, the law specifies that the custody of children born of the dissolved marriage is to be regulated solely with regard to the interests of children. Neither of the parents is, as a rule, entitled to claim custody of children.²⁶ The prevailing practice in the urban areas, where the law is usually adhered to, shows that family arbitrators²⁷ often consider such factors as the preference of the child, conduct and suitability of parents, responsibility for divorce, opportunities such as financial position, residence, availability of educational facilities and other surrounding conditions prior to deciding to which parent to award the care and custody of children.

The institution of adoption is another area where “the best interests of the child” is given due consideration. The law provides that “adoption may not take place unless there are good reasons for it and unless it offers advantages for the adopted child.”²⁸ This is quite close to the idea conveyed by Art. 21 of the Convention, in which any system of adoption is expected to ensure the welfare of the child. The idea was well stated by a decision of the Addis Ababa High Court when it reasoned.

[T]he Civil Code of Ethiopia makes no limitation as regards nationality of the adoptive parents ... the major consideration to be taken into account is whether the adoption offers advantages for the adopted child...²⁹

²⁵ Civ. C. Arts. 230, 231

²⁶ Civ. C. Arts. 681, 682.

²⁷ Family arbitrators are empowered to adjudicate litigation pertaining to divorce proceedings. Civ.C. Arts. 666 to 696.

²⁸ Civ.C. Art 805

²⁹ Civil Appeal Case No. 270/58, reported in the Journal of Ethiopian Law, Volume 3 No. 2, pp. 422 - 424. Note that this court opinion was given well over twenty five years before the ratification of the Convention in Ethiopia.

The decision was made on appeal from a ruling of a lower court that dismissed a petition for approval of a contract of adoption³⁰ on the grounds that no satisfactory results would be obtained by allowing foreigners to adopt Ethiopian children.

2.5. The Child's Right to Identity

Right from his birth, the place of a human person in his relation to other members of society needs to be ascertained. It is in this context that a person's unity and persistence of personality as member of a given social, cultural, ethnic or national group is measured. This association is, in general, referred to as one's identity.

In view of this fact, Art. 7 of the Convention provides that:

[T]he child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire a nationality.

States Parties to the convention are required to ensure the implementation of these rights in line with their international obligations and municipal laws, especially "where a child would otherwise be stateless." Art. 8 further recognises "the right of the child to preserve his identity including nationality, name and family relations..."

Likewise, the 1960 Civil Code of Ethiopia is replete with provisions dealing with names and registration of civil status. It specifies that every individual should have a family name, one or more first names and a patronymic. The officer of civil status of the commune in which the child is born is responsible for registration of the child's birth. Parents are also bound to declare the birth of a child within ninety days following his birth. The right to registration includes a child whose parents are unknown and who is to be given two first names and a family name by the officer of civil status upon registration.³¹ The Penal Code of 1957 also recognises registration and makes failure to register the birth of a new-born infant an offence punishable with a fine or with simple imprisonment.³²

The implementation of these provisions is, however, totally paralysed by the absence of institutions for registration of birth and by a transitory provision of the Civil

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Civ.C.Art 804:

1. A contract of adoption shall be of no effect unless it is approved by a court
2. Before making its decision, the court shall hear the adopted child himself, if he is over ten years of age, and the person to whose custody the adopted child is entrusted, if such a person has not given before hand his consent to the adoption"

31

Civ. C. Arts. 32 to 46.

32

P.C. Art. 623.

Code which prescribes that rules pertaining to registers of civil status are not to come into force until a day to be notified by Order published in the Negarit Gazeta.³³ Over three and a half decades after the promulgation of this Code, this provision still remains transitory as no attempt has been made by the successive governments to set up institutions responsible for registration of civil status. Given the present state of affairs, the rule is rather non-registration. With the exception of some section of the population in metropolitan areas, it is common knowledge that a substantial proportion of the populace do not even know the exact date of their births.

As regards nationality, the present law in force is the Nationality Law of 1930.³⁴ It adopts the *jus sanguinis* rule in which the nationality of parents or of one of them is conferred on their children. Hence, any person whether born in or out of Ethiopia whose father or mother is an Ethiopian is an Ethiopian citizen. But all other children living in Ethiopia, whether or not they are born here, have problems in acquiring Ethiopian nationality. Of course, foreigners who fulfil the stringent conditions laid down by the law for acquiring citizenship by naturalization have the right to apply for Ethiopian nationality. To file such an application, one has to be of full age and, as we have seen above, full age in the civil law is eighteen years. This automatically excludes children from the category of persons entitled to apply for citizenship by naturalization. Furthermore, one must also show that he has been a resident in the country for a minimum of five years, he has the means to earn his livelihood, he can read and write the Amharic language and that he has not been convicted of any crime.

The Nationality Law of 1930 gives the Government the power to grant dispensation from these conditions, but in doing so it must be convinced that the applicant is a person of high importance or must have other special reasons, whatever this may mean. These grounds are also highly unlikely to benefit stateless children, foundlings of foreign origin or children born in Ethiopia of foreign parents who, for one reason or another, are not in a position to acquire the nationality of their parents. They are always exposed to statelessness, a problem clearly envisaged under Art. 7 (2) of the Convention. Due to the absence of an effective system of case reporting in Ethiopia, it is hardly possible for any writer to research on how problems of this nature are being entertained in practice.

³³ Civ. C. Art. 3361 (1).

³⁴ Consolidated Laws of Ethiopia, Volume 1, p. 235. Art. 6.1 of the Constitution also provides that "any woman or man either of whose parents is an Ethiopian citizen shall be an Ethiopian citizen."

3. Protection of Child Rights

3.1. The Child and his family

As the natural and fundamental group unit of society, the family deserves protection by the state. This is recognised under Art. 16 of the UN Universal Declaration of Human Rights. Similarly Art. 10 of the UN International Covenant on Economic, Social and Cultural Rights adds:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society particularly for its establishment and while it is responsible for the care and education of dependant children. (emphasis supplied)

That the child should be cared for by a supportive family, that he shall not be separated from his parents against their will unless it is necessary to serve his best interests, and that applications to enter or leave the territory of a State Party for purposes of family reunification by a child or his parents must be dealt with in a positive, humane and expeditious manner have also been provided for under Arts. 7, 9, and 10 of the Convention. In this regard, it has been prescribed under Art. 5 that the responsibilities of parents or, where appropriate, members of the extended family or the community, in providing the necessary "direction or guidance in the exercise of child rights" are to be respected by States Parties.

Under the 1960 Civil Code of Ethiopia, just as under Art. 27 (2) of the Convention, parents are primarily responsible for securing the conditions of living necessary for their child within the bounds of their abilities and financial capacities. Apart from this immediate duty, parents are responsible under the Civil Code for a wide number of functions in their capacity as guardian-tutors of the child. They have the right to choose a name for the child. They fix his residence, watch over his health, direct his activities, supervise his social contacts and ensure that he is receiving a general education which accords with his disposition,³⁵ monitor his earnings and look after his other pecuniary interests.

Be that as it may, however, the high sounding rules of these international instruments and those of the Civil Code are, more often than not, at odds with the hard reality prevailing in this country. The vicious circle of poverty exacerbated by recurrent drought and ethnic strife makes it difficult and, at times, impossible to maintain traditional family organisation, let alone implementation of these principles. The ever-increasing population of street children in the major cities is a manifestation of this fact,

³⁵ Civ.C. Arts. 34, 265 to 312.

not to mention the relatively more difficult situation of children in many of the rural areas of the country.

Obviously, the multiplier effect of this state of affairs is reflected by the inability of successive governments of Ethiopia to tackle those problems, even if we assume that they have the will to do so. No serious and meaningful effort towards creating public awareness of child rights has been heard of. To date, we have not been fortunate to witness the existence of parenting skills programmes. The provision of Art.10(2) of the Convention, which speaks of the duties of States Parties to render assistance to parents in the performance of their child rearing responsibilities, has not so far borne any fruit and, as things stand now, seems unlikely to bear fruit in the foreseeable future.

3.2. Child Abuse and Neglect

In many societies violence against children, child neglect and child exploitation within and outside the home are common phenomena that are usually overlooked. Children in these situations are not only defenceless but also incapable of raising their voice against the various forms of ill-treatment to which they may be subjected unless a mechanism is devised by which they are to be protected.

A child whose civil rights are violated, who is maltreated, who is beaten or who is exposed to cruel punishment or a child whose interests are not properly protected by his parents, by other members of his family or by responsible social organisations or government institutions, may well be called an abused or a neglected child. The commission of an undesirable act against a child or the omission of an act which ought to have been performed for him adversely affects his physical and/or emotional well being. Hence, when an adult commits a harmful act or when he fails to discharge his duties towards a child and when this act or forbearance operates to the detriment of the rights and interests of the child, it is generally agreed that the adult is responsible for child abuse or child neglect.

The Convention, under Art. 19, obliges States Parties to take all appropriate measures to protect the child from all forms of physical or mental violence including, but not confined to, sexual abuse.

In the domain of the Ethiopian criminal law too, acts committed against the child's inherent right to life and the security of person such as homicide, infanticide, rape, child assault, child abduction and child prostitution are considered as serious offences that may entail severe penalties. Depending on the gravity of the crime, the punishment ranges from fine and simple imprisonment to life imprisonment and capital punishment. In its civil aspect, persons responsible for child abuse or child neglect may be held liable to make good whatever damage their actions or inactions have produced against the interest of the child.

Just as they do for all other members of the society, provisions of the Penal Code dealing with homicide protect the child's inherent right to life³⁶ and this is, of course, compatible with Art. 6 of the Convention.

The typical form of child abuse is the one envisaged by Art. 548 of the Penal Code. It states:

Whosoever, having the custody or charge of an infant or a young person under fifteen years of age, deliberately neglects, ill-treats, over tasks or beats him in such a way as to affect or endanger gravely his physical or mental development or his health is punishable with simple imprisonment for not less than one month.

In more serious cases, the law empowers the court to take an additional measure of depriving the abuser of his family rights such as guardianship or tutorship. But the same provision of the law exempts actions described as "the right to administer lawful and reasonable chastisement" from the province of criminal acts. Art. 64(2) of the Code also places "acts reasonably done in exercising the right of correction and discipline" in the category of acts required or authorised by the law that do not constitute an offence. Under the Civil Code too, the guardian has the right to inflict light bodily punishment on a misbehaving child to ensure his correction and education. Likewise, a school teacher or a ward attendant is deemed not to have committed an offence of physical assault if he administers light corporal punishment on his pupil or child placed in his ward.³⁷ These provisions of the law are, of course, contradictory with Art. 19 of the Convention which prohibits the commission of all forms of physical or mental violence against children.

Combating child abduction is one of the obligations of States Parties to the Convention. Art. 35 obliges them to take all appropriate measures "to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." In the Penal Code of Ethiopia, too, the seriousness of child abduction did not go unnoticed.³⁸ The perpetrator is liable to punishment with rigorous imprisonment not exceeding five years. The penalty may be aggravated upto twenty years where the act of abduction is committed with the intent to take unfair advantage of the child, to use the child for debauchery or prostitution, to exploit him or to hold him for ransom, or where the child is

³⁶ The Provisions dealing with homicide in the Penal Code are Art. 522 (first degree homicide), Art. 523 (homicide in the second degree), Art. 524 (extenuated homicide) and Art. 526 (homicide by negligence). Under Art. 527 infanticide is taken as a slightly different form of crime from homicide. The mother and all other persons involved in the crime of infanticide are punishable under the law.

³⁷ Civ. C. Arts. 267 (2), 2039 (3).

³⁸ P.C.Art. 560.

held under conditions which are especially cruel. A child abductor is also answerable under the Civil Code for restraint of liberty in which event he may be condemned to compensate the moral and material damages sustained by the victim.³⁹

Sexual abuse is yet another problem area considered by the Convention. As applied to the Child, sexual abuse may be an act involving a child in sexual intercourse or other sex related activities without his or her consent or without the full appreciation of the ensuing consequences. The child is either forced to participate in sexual acts or his consent is obtained by an illicit means. In this context, Art. 34 of the Convention underlines the duty of States Parties "to protect the child from all forms of sexual exploitation and sexual abuse." Explicitly stated are the duties of all States Parties to take measures to prevent:

1. the inducement or coercion of a child to engage in any unlawful sexual activity;
2. the exploitative use of children in prostitution or other unlawful sexual practices;
3. the exploitative use of children in pornographic performances and materials.

When we examine the provisions of the Penal Code in light of these indicators, we find crimes such as rape, sexual outrage and child prostitution which are all punishable with rigorous imprisonment.⁴⁰ As a child below the legal age of marriage⁴¹ is not in a position to give her consent to the sexual act, the argument of the abuser that the child has consented does not absolve him of his criminal responsibility.

The Penal Code also provides for the punishment of a person who refuses to provide the allowances necessary for the maintenance of his children. Also a person exercising parental authority who "grossly neglects the children under his charge and abandons them without due care and attention to mortal or physical danger" is criminally liable.⁴² The offender may in addition be deprived of his family rights and condemned to pay damages to the child.⁴³

³⁹ Civ.C.Arts. 2042 to 2044.

⁴⁰ P.C. Arts. 589, 594, 605, 606, 613 (2).

⁴¹ Civ. C. Art. 581. The legal age of marriage is 15 for girls and 18 for boys.

⁴² P.C. Art. 626 (1) (a).

⁴³ Civ. C. Art. 2052.

This, in brief, is how the law treats child abusers. Nevertheless, quite a great many communities in the country are not immune from any and all forms of child abuse and neglect. Within the home and outside, children are beaten, are ill-treated and sometimes become victims of other serious crimes. They are also abandoned by their parents for a host of economic and social reasons. Young girls are sexually harassed and raped in the rural areas and urban centers while going to and coming from schools, while running on errands, gathering firewood and fetching water. As there are no effective institutions established to implement programmes designed to monitor violations of child rights, the majority of child abuse and neglect cases go unreported and, at times, unaccounted for. This is specially so when the abusive act or the neglect is committed by parental authority.

In a report on the situation of child rights prepared for ANPPCAN - Ethiopia Chapter, the Police Central Bureau is quoted to have reported 2040 child abuse cases in the ten months between September 1992 to June 1993. Among the major ones, it is stated that 122 children were murdered, 651 beaten, 49 sexually abused and 84 became victims of attempted murder. The same report further discloses that 34 infants, out of which 2 were found dead, were abandoned.⁴⁴ In another report compiled by the Addis Ababa Regional Police Headquarters for the period covering the six months from April to September 1993, 2002 physical, sexual and emotional child abuse victims were reported.⁴⁵

The following case, which may help to demonstrate the gravity and seriousness of the problem, is reproduced as stated by the narrators of the above mentioned report prepared for ANPPCAN, Ethiopia Chapter.

According to the story gathered from the President and Prosecutor of the Western Showa High Court, the accused had earlier been convicted of murder. Upon serving his ten years imprisonment, he was released from prison and went to a local fortune teller *Kalicha* to consult him on his future. He said he was told by the witch-doctor that his fortune would greatly improve if he deflowers a virgin girl by the bank of an all-year flowing river and slays her thereafter. He went to a woman of his acquaintance, invited her to drink *tella* (a home made beer) and when he realised that the woman was losing ground owing to the effect of the beer, he took her eleven-year old daughter, saying he would send her on errands. He led the girl to a river and did exactly what he was told by the *Kalicha*. He left the dead body of the girl by the side of the river. It was later eaten by hyenas. The case was pending in the High Court when the report was prepared.⁴⁶

⁴⁴ Tilahun Teshome et al, work cited at note 21 above, part 2, Section 2.2.

⁴⁵ Ibid, see the appendix to the report.

⁴⁶ Ibid, Part 2, Section 2.3. The report was prepared in January 1994.

3.3. Child Labour

To dismiss in a cavalier way, as some do, the potential role of child labour protective laws, or to make the pretext of poverty and underdevelopment for the continued transgression of universally accepted values, is to accept the perpetuation of universally condemned abuses.⁴⁷

“Child” labour is defined to include both the economic practice of engaging children in work and the social evils ensuing therefrom. A child engaged in any form of economic activity is first a child with all the needs of other children and then a worker. He needs the opportunities that are conducive to his physical growth and personality development. As such, a constructive approach to the problem of child labour must have the nature of the child and his future needs as its premise.

When the participation of a child in the industrial, agricultural or informal sectors of the economy conflicts with his physical growth and personality development, the result is child labour. The nature of the actual job in which the child is engaged, the danger to which he is exposed, and the opportunities of which he is deprived by reason of his involvement in an economic activity may well serve as indicators of the social evils of child labour.

In recognition of the seriousness of this problem, the international Labour Organisation (ILO) has adopted several conventions and recommendations to this end. The conventions mainly regulate the minimum age for child employment and the conditions under which children are to work. The most important convention, which incorporates many of the ideas embodied in the earlier conventions, is Convention No. 138 of 1973.⁴⁸

Pursuant to Art. 2 of this Convention, the minimum age for admission to employment within the territory of a State Party or on a means of transport registered by a State Party shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than fifteen years. By way of an exception, a State Party whose economy and educational facilities are insufficiently developed is authorised to reduce the minimum age to fourteen after consultation with organisations of employers and workers where such organisations exist. For the types of employment that may jeopardise the health, safety or morals of young persons, Art. 3 of the same Convention raises the minimum age to eighteen. Here again, national legislatures may reduce the age

⁴⁷ Opening address of the former Secretary General of the United Nations at the International Labour Conference in 1983; quoted in Assefa Bekele, Child Labour: Questions and Answers, published in Child Labour: A Briefing Manual, ILO, 1987.

⁴⁸ ILO, International Labour Conventions and Recommendations, 1919-1981, International Labour Office, Geneva, 1985.

limit to sixteen for similar reasons and in a similar manner as they would for the basic minimum age.

Likewise, Art. 32 of the Convention recognises the rights of children:

[T]o be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

It also requires States Parties to set the minimum age for employment, to issue regulations for the hours and conditions of employment of children, and to provide appropriate penalties or other sanctions to ensure the effective enforcement of rules pertaining to child labour.

Under the Ethiopian legal framework, both Proclamation No. 64/1975, which was issued by the previous government, and the current law, Proclamation No. 42/1993, prohibit the employment of children under the age of fourteen.⁴⁹ In a seemingly direct adoption of the principles laid down in Convention No. 138 of the ILO,⁵⁰ the current legislation goes even further and provides for the prohibition of young workers from engaging in hazardous occupations which, *inter alia*, include:

1. work on transport of passengers and goods involving extremely tiresome activities;
2. work connected with electric power generation plants, transformers or transmission lines;
3. underground work such as mines and quarries;
4. work in sewers and digging tunnels.

Proclamation No. 42/1993 in addition prescribes the normal hours of work of young workers as not to exceed seven hours a day.⁵¹

⁴⁹ Labour Proclamation No. 64/1975, Arts. 30(1), 25(1), *Negarit Gazeta*, 35th Year No. 11; Labour Proclamation No. 42/1993, Arts. 89(2), 48, *Negarit Gazeta*, 52nd Year No. 27.

⁵⁰ See Arts. 3 (2) and 7(1) (a) of the Convention cited at note 48 above.

⁵¹ Proc. No. 42/1993, Arts. 89(3) (4), 90.

When, in view of these legal parameters, we resort to the hard reality prevailing in Ethiopia, the objectives seem to be too far away to be realised in the immediate future. Of course, given the rampant unemployment situation, the industrial sector does not face problems of manpower which may tempt it to indulge in child labour. In the informal sector of the economy, however, children constitute a substantial proportion of the work force.

It may safely be said that almost all children over five years of age in the rural areas are engaged in the business of farming and livestock herding. As the majority of them are involved in activities in which members of their own families are also engaged, they may not be placed in the category of children subjected to economic exploitation. But the work either consumes their school hours or leaves them too exhausted to attend school by claiming much of their time and energy which would otherwise be utilised to study and prepare their lessons.

In the urban centers, children are engaged in domestic work as maid servants, baby sitters or errand boys. They work as shoe-shine boys, as car-washers, as street vendors, with taxis and mini-buses and with quite a number of other small businesses. With the exception of those that join the street-children population, which is increasing at a very alarming rate,⁵² most of the parents of working children either benefit from their work, or, to say the very least, accede to what their children are doing. This is mainly due to the fact that many parents lack the means to feed, clothe and educate their children and is not due to ignorance of the fact that the short-term benefits of letting their children work are far outweighed by the long-term deprivation to which they may be exposed, as some would suggest.

The gravity of the problem of child labour is clearly stated in the 1992 Draft National Programme of Action for Children and Women in which the number of working children, including street children in the informal sector, is estimated to be 78% of the child population.⁵³

⁵² In a paper presented to a symposium organized on the occasion of the International Year of the Child in 1979, the number of Street Children in Addis Ababa was stated to be 3,000. In 1994, estimates show that this figure had reached 30,000 indicating a ten-fold increase. See the work cited at note 21 above, part three, Section 2.4. See also the National Plan of Action (Draft) for Children and Women 1993-2000, Addis Ababa, Nov. 1992.

⁵³ Ibid, Part three, Section 2.5.

3.4. Criminal Responsibility of the Child and the Disposition of Juvenile Delinquents

The machinery of justice in a modern society differentiates between children who are found to have committed acts considered to be anti-social and adult offenders. Treatment of the child is distinguished from that of the adult in at least three phases of the judicial process:

1. in the consideration of criminal responsibility;
2. in the procedure to be followed during trial; and
3. in the application of disposition measures.

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

Children under nine years of age are placed in the category of irresponsible persons and are fully exonerated from criminal prosecutions however grave the acts they have committed may be. Only the family, the school or the guardianship authority may take steps to ensure their correction.⁵⁴ This provision of the law is in accord with Art. 40(3) (a) of the Convention which reminds States Parties of their duty "to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

Young persons between the ages of nine and fifteen years are responsible for their criminal acts but they are not subject to the same penalties and measures applicable to adults. Nor are they expected to be kept in custody in prisons with adult offenders. These are persons who are usually referred to as juvenile delinquents, the special procedures for the trial of whom are considered below.⁵⁵

In the third category fall young offenders between the ages of fifteen and eighteen years. As a rule, they are considered fully responsible for purposes of criminal law. They are prosecuted and tried under the ordinary provisions of the Penal and the Criminal Procedure Codes but they may benefit from the rules on extenuation of penalties when sentences are assessed for the crimes they have been convicted of. The law also provides that in no case may capital punishment be pronounced on a person who has not attained

⁵⁴ P.C. Art. 48 Cum. Art. 52.

⁵⁵ P.C. Art. 53.

the full age of eighteen.⁵⁶ This provision, too, seems to be in harmony with Art. 37(1) of the Convention, which prohibits the imposition of capital punishment or life imprisonment without a possibility of release on persons below eighteen year of age.

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

In full appreciation of this problem, the General Assembly of the United Nations adopted the Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as "The Beijing Rules", on November 29, 1985.⁵⁷ These Rules lay down the fundamental principles of juvenile justice, the procedure for investigation and prosecution of juvenile delinquents, the adjudication process and the disposition measures to be followed, the form of institutional and non-institutional treatment to be accorded and the research, planning, policy formulation and evaluation measures to be undertaken to address the various facets of juvenile delinquency.

The Convention also incorporates such basic principles of juvenile justice as the right to special procedures in criminal proceedings, the right to be separated from adult prisoners, and the right of the child to maintain contact with his family. The generally accepted rules of criminal proceedings such as the rule of non-retroactivity, presumption of innocence, the right to confrontation, the right against self incrimination and the right to review, are also specified under Art. 40.

In Ethiopia, too, the machinery of criminal justice embodies many of these principles. The Criminal Procedure Code prescribes the special procedures by which trials of juvenile delinquents are to be conducted, and the Penal Code provides the special disposition measures to be applied.⁵⁸ Although the same substantive law applies to both adults and juveniles, the manner of committal for trial is different. Proceedings are to be conducted in an informal manner and the juvenile may also be removed from the court

⁵⁶ P.C. Arts. 56, 118.

⁵⁷ Recommended for adoption by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985 and adopted by General Assembly Resolution 40/33; work cited at note 1 above.

⁵⁸ P.C. Arts. 161 to 182.

chambers where it is deemed undesirable that he should hear certain evidence or comments.⁵⁹

If the juvenile is found guilty, the disposition measures provided for by the Penal Code may be considered by the court. These may, depending on the circumstances, be orders for admission to a curative institution, supervised education, reprimand, school or home arrest, or orders for admission to a corrective institution. Where these have been applied and have turned out to be unsuccessful, the court may sentence the delinquent to a fine which shall be proportionate to his means. Where the delinquent is contumacious, the court may order corporal punishment if it is convinced that the punishment is likely to secure his reform. The punishment, which is only to be inflicted on a male juvenile delinquent who is ascertained to be in good health, is to be administered with a cane. The maximum number of strikes is twelve. Under exceptional situations, where the juvenile is found to have committed an act normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment, he may be imprisoned in a corrective institution or in a penitentiary.⁶⁰

These provisions of the law demonstrate the general tendency to differentiate the status of the delinquent from the adult criminal and to define his position in terms of the scope and purposes of the special measures to be applied to him, rather than in terms of laws or social norms he is found to have violated. But the realisation of these objectives depends to a great extent on the availability of the institutional framework for their implementation. For a population which is widely believed to have passed the fifty million mark, there is only one juvenile court with very limited manpower and financial resources. Its legal status is also contentious as no mention of it is made in the Code of Criminal Procedure. A few years ago, a young man of thirteen was convicted of robbery by the Addis Ababa Juvenile Court and sentenced to two years of confinement in a corrective institution. When the accused lodged an appeal to the High and Supreme Courts against this decision, the Public Prosecutor argued that as the Juvenile Court is not recognised by the Code of Criminal Procedure, the whole proceeding was irregular and moved for a retrial of the case. But the Supreme Court rejected this argument and confirmed the decision of the Juvenile Court. In so doing, the Court reasoned out that although the Juvenile Court is not mentioned under the Criminal Procedure Code, in practice, it has been adjudicating disputes of this nature for a long time and it would not be appropriate to disregard its jurisdiction.⁶¹

⁵⁹ For a discussion on the disposition of young offenders see Stanley Z. Fisher, Criminal Procedure for Juvenile Offenders in Ethiopia, Journal of Ethiopian Law, VI, 7 No. 1, pp. 115-173.

⁶⁰ P.C. Art 173 (a) (b).

⁶¹ Criminal Appeal Case No. 1027/81, Supreme Court, unpublished.

In the ordinary court system, judges are required by the law to summon persons and institutions for the purpose of obtaining information on the antecedents of the delinquent so as to arrive at a decision which would best serve his interests. But, apart from the police, we do not have institutions or social groups which provide such information. The school system could be one such institution. But again, it is far from satisfactory since it also suffers from its own deficiencies and since a great many children in the country have little or no chance to attend schools in their lifetimes. The curative and corrective institutions envisaged by the Penal Code have never been heard of except the Remand Home in Addis Ababa which can accommodate only a few hundred inmates. To the knowledge of this writer, at the very least, the prisons that have been mushrooming unabated in the country do not have special cells for young offenders.⁶²

But juvenile delinquency is one of the most serious problems, if not the most serious, to be tackled if any meaningful child welfare programme is to be undertaken. The following information obtained from the National Police Headquarters serves as an indicator of the gravity and magnitude of the problem.

In the ten months between September, 1992 and June 1993, 5477 young offenders were reported... The reported crimes range from murder, 457 offenders (6.5%); beating and bodily injury, 1,153 offenders (21%); theft, 1,898 offenders (34.66%); robbery, 346 offenders, (6.32%); drug abuse, 24 offenders, (91.04%); to several other minor offences.⁶³

The police also state that these figures do not, in any way, represent the total number of juvenile offenders during the period under consideration as many offences go unreported.

4. Conclusion

Many of the laws in this country have numerous provisions on child rights, some of which have been considered in this paper. The Constitution has an article to treat the various facets of child rights⁶⁴ which is an incorporation of widely accepted values of international behaviour with respect to children.

That this is a positive move towards the right direction is undeniable. But if our commitment to the realisation of the lofty ideals embodied in the United Nations Convention on the Rights of the Child is to extend beyond an avowal of allegiance that goes no further than expression in words, much needs to be done.

⁶² Art. 36(3) of the Constitution States: "Juvenile offenders, juveniles admitted to corrective or rehabilitative institutions, juveniles who become wards of the State, or juveniles in public or private orphanages, shall be kept separately from adults."

⁶³ Work cited at note 21 above, part three, Section 1.8.

⁶⁴ The Constitution, Art 36.