



ST. MARY'S UNIVERSITY COLLEGE

FACULTY OF LAW

LLB THESIS

**COMMUNITY-BASED CORRECTION OF
YOUNG OFFENDER, THE LAW & THE
PRACTICE IN ETHIOPIA**

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ID NO. ELD 008/97

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ACRONYMS

CBCC	Community-Based correction center
CPU	Child Protection Unit
FSCE	Forum on street Children Ethiopia
UNCRC	United Nations Convention on the Right of Children
ACRWC	African Charter on the Rights and Welfare of Children
CRC	Convention on the Rights of Children
CPP	Child Protection Program
CPC	Criminal Procedure Code

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ACRONYMS

CELU: Confederation of Ethiopian Labour Union.

CETU: Confederation of Ethiopian Trade Union.

ILO: International Labour Organization.

FDRE: Federal Democratic Republic of Ethiopia

PMAC: Provisional Military Administrative Council

MOLSA: Ministry of Labour and social Affairs

HPR: House of Peoples representatives

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**ST. MARY'S UNIVERSITY COLLEGE
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LL. B THESIS

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CHAPTER ONE

INTRODUCTION

1.1 Background

It is becoming a very vivid fact that children are engaging in the commission of acts outlawed by the criminal laws of the country. The fact that the children who committed such acts are not getting the proper care and protection necessary for their rehabilitation still remains to be an issue of concern, as it is pretty obvious that the existing juvenile justice system of the country not in a position to enforce the rights of these children.

This is so more because of the fact that though the criminal law of the country prescribes non-institutional rehabilitation care for children/ like sending them back home to be treated with supervision of guardians ordering them to engage in minor forced labor activities at home or school etc /, none of them could be successfully administrated to rehabilitate them, as such systems are not strongly established to effect the rehabilitation solely at school or family level. Thus, it becomes a matter of necessity for the juvenile judge to send such children to correctional institutions, if it so happened that such children committed serious offenses, the Commission of which, according to the criminal law of the country, results in the treatment of the offender in situational care.

Due to such problems in the juvenile justice administration in Ethiopia in general and the institutional correction in particular, the Addis Ababa police commission in collaboration with forum on street children Ethiopia / FSCE/ has launched the community based correction program in areas where the child protection program / CPP/ is operational. This correctional program is meant as an alternative for the prosecution of child offenders who committed minor offenses for the first time and is intended to correct them while they remain with the families instead of sending them to reformatory institutions. Hence, in this paper the overall operation of this correction program and its significance for the enforcement of the rights of children in conflict with the law is generally stated.

Along with this, the practice and the gap in the law are also articulated in order to show the legal lacuna in this regard.

1.2 Statement of the problem

- Problem of children in conflict with the law in Ethiopia and the emergence of the problem of juvenile delinquency in Ethiopia can not accurately be traced but in the early 50's the phenomenon became more stunning and caught the attention of the government.
- It was at this time that Reformatory school for Boys / Remand Home for Boys/ in Addis Ababa was established to address the problem of juvenile delinquents in the institutional setting
- An institutional correction has not been found to be very much conducive for juvenile correction. It regiment the life of the child .It detaches young offenders from family and the community. BESIES, Correctional institutional be will be more of an opportunity for juvenile to learn more about deviance from each other, rather than being reformed.

1.3 The object of the study

A/ Major Objective: - The major objective is to show the necessity of a legal basis in order to give support to the community based young offender's correction.

B/ specifics objectives:-

The specific objectives of this research is to show community based young offender programs / Centers/ are the best practice that has no legal basis. So study must show the legal lacuna and the necessity to provide alternative measure to young offender at community level.

1.4 The significance of the study

The study is significant in that it will be of useful information source for possible legal reform in the area of children in conflict with the law/the juvenile justice system. If

applied, the study predicts that it will reduce the law enforcement's financial cost and improve the efficiency and effectiveness of the juvenile justice system.

1.5 Scope and limitation of the study

1.5.1 Scope of the study

Even though the study is based on correction of the young offender, the law and practice in Ethiopia is the practice that is prevailing only in Addis Ababa. So the scope of the study will be limited to the experience in Addis Ababa.

1.5.2. Limitation of the research

Some the limitation of this study among others:-

- The practice is only found in Addis Ababa.
- Time and financial constraints.
- Lack of locally written materials on the subject matter.
- The low levels of awareness even by Authorities

1.6 Methodology of the study

Both primary and secondary sources are used for the explanation and analysis involved in this paper.

Primary sources

- Data was collected from Addis Ababa Police Commission child protection coordination office.
- Focus-group discussion with some selected community workers, child protection unit officers and volunteers that work within the community based correction centers.

Secondary sources

- Additionally various secondary sources such as books, law, research papers etc.

1.7 Literature Review

It is difficult to come across locally written materials in the case of community based young offender correction. Of course one is the general Diversion program manual

developed by forum on street children Ethiopia / FSCE/ and police referral manual on crime prevention. On the other hand as one of the direct participants in the field under the research, my personal experiences and exposures have been used as additional input to the study.

1.8 Potential solution to the problem.

There must be legal basis / legal stated articles/ that allows correction of young offender with the community itself.

1.9 Organization of the study.

This paper is presented in four chapters.

Chapter One Back ground of the study and definition of some basic terms.

Chapter two consists of conceptual analysis international and nation legal instruments.

Chapter three consists of the experience of Addis Ababa Police Commission and Forum on Street Children Ethiopia /FSCE\ and sample data from Addis Ababa police commission child protection coordinating office.

Chapter- four concluding remarks and recommendations.

The finally lists of reference materials in the form of bibliography.

1.1.2 Definitions

Diversion:- The term diversion,” as used in this research is an act which involves the decision by police or court or the community to divert cases of juvenile offenders who commit crimes from the traditional prosecution systems to community based correction system prior or post to charging.

Child: - The child “as used in this research, refers to any person under the age of18.

Victim: - refers to a person who through or by means of an offence committed by a child, suffers physical or emotional harm, or loss of or damage to property.

Child protection unit/CPU/: is a department under Addis Ababa police Commission entrusted with the task of administering juvenile justice.

Juvenile justice: - juvenile justice is the area of the criminal law applicable to persons under the age of 18. The main goal of the juvenile justice system is rehabilitation rather than punishment.

Community worker: - is an officer who is in charge of the case management which involves conducting assessment; deciding on referral to diversion program and counseling and guidance, monitoring and facilitating other forms of after-care intervention.

Social worker:- a person who is responsible for the case management, monitoring, counseling, advice on psychosocial intervention, provides technical support to the community worker; facilitates other activities which are essential to the day to day activities of the center.

Counselor:- a person responsible to provide counseling and social service as well as family therapy, child psychology to parents /parenting methodology/ and training to community workers.

Minor Offence /crime/: as defined by Article 89 of the criminal code of Ethiopia, are crimes, which are punishable with simple imprisonment not exceeding three months, or fine not more than one thousand Birr. Petty offences which entail a penalty of arrest from one day to three months at most or fine of one Birr at least to 300 Birr also fall under this classification.

Juvenile Restorative justice: - is a theory which is founded on the principle that the process of juvenile justice should be concerned with repairing the harm the crime causes against the individual victim and the community. In this process the victim, the community and the offender have a role to play, The young offender accepts responsibility for his or her action and agrees to repair the harm done against the victim and the community whereas the victim agrees to forgive the offender.

Volunteers: - are those individuals who are drawn from the community and working at the community based correction centers and carrying out the day to day activities of the centers. They act as child rights advocates in their respective localities.

Mekarishemaglie: - individuals drawn from the community based on their influence or contribution and experience in the community in relation to children and are responsible to provide mediation and advocacy on children issues.

Community Based Correction Centers/CBCC/:- refers to diversion centers.

Restorative justice: is a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies. It is a theory of justice that emphasizes repair of the harm caused by criminal behavior.

3Tony F Marshal; Restorative justice; An Overview, 1999:P.5: Accessed at www.homeoffice.gov.uk/rds

See Arts747 and 752 of the Criminal Code

CHAPTER TWO

Concepts, International and National Legal Instruments on Child in Conflict with the Law

2.1 Conceptual Analyses

It has been argued that the development of the system of diversion is closely linked with the rise of restorative criminal justice which involves a balancing of rights and responsibilities.

Restorative justice is a process where parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future. The theory of restorative justices holds that crime is a violation relationship and hence creates obligations to make things right to the victim and community. Therefore, the community is an important stake holder, responsible for working with offenders on understanding the consequences of their actions, discouraging them from reoffending, and providing them with an atmosphere of reconciliation and social acceptance as they reintegrate into the community.

The purpose of restorative justice is to identify responsibilities, meet needs and promote healing. Diversion, which refers to the various processes responsible by which child offenders are prevented from entering the formal justice system, is a typical component of restorative justices' approach, and accordingly, a child that is accused of committing a crime takes responsibilities for his/her conduct and makes good for his/her wrongful action.

In summary, restorative justices have the following major objectives,

- To attend fully to victim's needy: material, financial emotional and social needs.
- To prevent repetition of offense by reintegrating offenders in to the community.
- To enable offenders to assume active responsibility for their actions.
- To create a community that supports the rehabilitation of offenders and victims and is active in preventing crime.

Restorative justice system includes interventions that focus on repairing the harm caused by criminal behavior to concerned parties namely, victims, and communities. This is accomplished by actively involving all stake holders in the justice process for the purpose of devising a reconciliation plan.

The practices of community based correction center developed concurrently with the establishment of separate child justice systems. Different periods have resulted in various community based young offender correction interventions practices coming in and out of vogue initially. Diversion interventions were based on institutions and were designed to provide treatment and moral re-education. Later/there was a move to words community based intervention in response to the criticism that institutions were stigmatizing/dehumanizing, criminogenic and costly. New diversion intervention that focus on repairing the harm caused by crime were developed including processes such as family group conferences, sentencing circles and victim-offender mediation.

Though diversion may involve a restorative justice component, depending on the nature of the diversion, diversion mainly involves conditional and unconditional referral away from the criminal court. A conditional diversion may, for example, involve cautioning by magistrate or presiding officer. Conditional diversion may involve referral of the child away from formal court procedures on condition that he/she attends a program or undergoes a restorative justice's process.

The purpose of the juvenile diversion program is to provide youthful offenders with positive alternatives to the court system. Young offenders will participate in structured activities and group interactions which are intended to improve their understanding and perception of the legal system and law enforcement, increase their self-esteem, teach those better methods of communication and improve their decision-making skill. The goal of the program is to reduce recidivism among these participants.

As part of restorative justice diversion emphasizes restoration of the young offender's self-esteem within the community. Thus, restorative justice identifies three clients: victims, victimized communities and offenders.

Each key stake holder has a role in finding a solution to the conflict so that the balance of rights and responsibilities in the community is maintained.

2 .2 International and National legal instruments on

The Child in conflict with the law

2. 2.1 International legal instruments

The recognition of the rights of children who come in conflict with the law is a relatively new development in international law resulting from the continuous lobbying of child rights advocates. The first universal and legally binding treaty was the International Covenant on Civil and political Rights /ICCPR/ that recognized the special condition of children. ICCPR stipulates that children alleged to have committed a crime should be separated from adults and immediately made to appear before a court. It also ensures the rights of children in conflict with the law by imposing obligations on the state parties to enact a criminal procedure code with a separate procedure to apprehend children in conflict with the law that takes into account the age of the child.

International legal instruments on the different aspects of children's rights such as the United Nations Convention on the Rights of the child (UN CRC, 1989), the African charter on the Rights and welfare of the child (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 Guidelines on the treatment of detained children 1990 were enacted.

The Convention on the Rights of the child provides for the right of the child in a holistic manner. In particular, Articles 37 and 40 relate to the treatment of children in conflict with the law. Article 37 prohibits the torture of juveniles and ensures protection from unlawful deprivation of their liberty in the treatment. Article 39 specifically relates to rehabilitation of children obliging state parties to

take all appropriate measures to promote the physical and the psychological recovery and social integration of the child. Article 40 provides for the respect of the dignity and worth of every child, accused of or recognized as having infringed the penal law, with detailed norms regarding the treatment of juveniles.

The Beijing Rules set minimum standards that are formulated to fit the different legal systems of states. It stresses the use of imprisonment as a last resort and recommends the use of diversion and the establishment of juvenile courts. The duties and the responsibilities of parents/ guardians, measures to ensure fair trial, means of providing assistance to and rehabilitation of juveniles, use of separate treatment for juveniles are provided by the Rules.

The 1990 Riyadh Guidelines put great emphasis on preventing children from coming into the conflict with the law and acknowledges that the prevention program has to be an integral part of crime prevention. It has set the relevant principles and guidelines related to the socializing and integration of children, prevention of the problem, legislation and juvenile administration, development of social policy and non punitive measures. It has also prohibited harsh treatment, and punishment, recommends discipline or correction in the home, school or any other child focused institutions.

These relevant international instruments have placed great importance on juvenile justice as is clearly evidenced by the scope and details of the instrument adopted on the subject. Nonetheless, irrespective of the issuance of all these international instruments, the number of children detained in prisons is still escalating.

The description of child rights in the CRC is general; it became apparent that the situation of the African child is different from other continents, since the norms and culture of a given society in which the juvenile lives is a determining factor in defining delinquency. Any act that may be deemed a delinquent act in Africa may well be an acceptable behavior in another part of the world.

In the course of socialization, the child learns rules and what to expect and accepts those rules as standard rules. It was on the basis of these rationales that the African Charter on the Rights and Welfare of children / ACRWC/ has been created to guarantee children's basic rights within context of African cultures and norms.

Article 17 of the ACRWC specifically addresses the administration of juvenile justice. To this effect, it contains a number of provisions related to the rights of children accused or found guilty of having infringed the law.

It puts great emphasis on the rights of every child accused or found guilty of a crime to be subject to special treatment consistent with the child's sense of dignity and to get appropriate legal assistance in the preparation of her/his defense. ACRWC prohibits torture, inhuman and degrading treatment or punishment of detained or imprisoned children, and the use of any forceful measure on the child to give testimony or confess. It has also underlined that the aim of treatment is reformation, reintegration with her/his family/ guardian and social rehabilitation during the trial and after he/she is found guilty.

The ACRWC serves as a regional legal instrument to guide African countries to counter attack the ill effects of deprivation of liberty by safeguarding the rights of children in conflict with the law.

Although it has a wide range of provisions, there are a few gaps in the treatment and handling of children in conflict with law. Detention of children during and after trial is a serious cause of concern to all countries irrespective of their stage of development. It's therefore very crucial that ACRWC should give due consideration to detention to be the last resort and for the short appropriate time.

While social rehabilitations is a wide concept embracing a number of programs depending on specific needs of the individual, there is no indication of the kind of

services included in the rehabilitation. Therefore, specifying the dispositions like foster care, probation counseling or other alternative treatment to institutions is of a paramount importance.

2.2.2 National legal instruments

The Federal Democratic Republic of Ethiopia has ratified the UN convention on the rights of the child (UNCRC) and other relevant international minimum standards there by making them integral parts of the law of the land.

Thus, the FDRE constitution states that in cases where relevant domestic laws are in contradiction with international legal instruments adopted by Ethiopia, the latter always prevail as they have equal status with the constitution. Most importantly, the constitution of the federal Democratic Republic of Ethiopia as the supreme law of the country, has enumerated the fundamental rights of children. Article 36 emphasizes the special protection accorded to children in enjoying all rights and freedoms recognized by the constitution.

Following the core principle that inter-relates all the rights provided in the CRC, Article 36(2) has also provided that the best interest of the children should be the principal concern in taking any measure concerning them. In view of enforcing this principle, the constitution requires that all rights and freedoms of children recognized by pertinent laws and policies should be interpreted with due consideration to their best interest.

The newly revised penal code / 2005/ and the criminal procedure code Ethiopia (1961) regulate the juvenile justice administration via separate section where most of the minimum international standards are reflected. In particular, the penal code treats the case of infants and juvenile delinquents under a separate section (section II). As can be grasped from the reading of Article 52 of the code, family, school or guardianship authorities may take appropriate steps where an infant/ who has not attained the age of nine years/ commits crime. This is due to the fact that the law totally exonerates these infants from criminal liability.

Article 53 of the penal code requires the applicability of special provisions, Article/157-168/ where young person between the ages of nine and fifteen commit a crime. It also stresses the fact that young persons are neither subjected to ordinary penalties applicable to adults nor shall be kept in custody with adult criminals. The special provisions of the penal code applicable to young offenders are also found under a separate chapter entitled measures and penalties applicable to a young person. In particular, Article 157 states the principle that the court has to give due regard to all necessary inquiries for its information and guidance in taking measures on young offenders. Some of these measures could be admitting the child to a curative institution where she /he is feebleminded or suffering from mental disease (Article 158) ordering for supervised education if the young criminal is, for instances morally abandoned or is in need of care and protection (Articles 159) reprimanding the young offender/ Article160/ which could be applied alone when the court deems it sufficient for the reform of the child. The court may order, in case of offenses having small gravity, for a school or home arrest during the child's free hours or holidays to perform specific tasks adapted to his or her age circumstances/161/. Article 161 Last, but not least, /Article 162/ envisages the circumstances where by the child may be admitted to a corrective institution for his/her correction and rehabilitation taking in to account the antecedents and gravity of the crime.

In such cases, the child has the chance to receive under an appropriate discipline, the general, moral and vocational education needed to adapt to social life and the exercise of an honest activity. In all cases, however, measures shall not extend beyond the coming of age of the young offender/eighteen years/.

As regard penalties, Article 166 of the Penal Code sets the principle that when the measures stated above have been applied and failed, the court may sentence a child to payment of a fine or imprisonment. As per Article 167, in cases where the young criminal is capable of paying a fine and of realizing the reason for its imposition, the court may sentence him to a fine. When a young offender has

committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more or with death, the court may order him/ her to be sent either to a corrective institution or to penitentiary detention/ Article 168/ of the Penal Code.

The 1961 Criminal Procedure Code of Ethiopia sets out the procedure to be followed in the administration of juvenile justice. There is a separate chapter (chapter 3) dealing with the procedure in cases concerning a young offender. Article 172 of the code requires the immediate appearance of a child suspect before the nearest court. The court may also give the police instruction as to the manner in which the investigation should be made. The court will have the power to direct the public prosecutor to frame a charge only where the accusation relates to an offence punishable with death or rigorous imprisonment exceeding ten years./Article 176 /requires that cases involving juvenile offenders should be tried in chambers/ closed sessions/. Nobody is allowed to be present at the hearing with the exception of witnesses, experts, the parent/ guidance/ representative of welfare organizations.

Arts172and172 The1961 Criminal Procedure Code
The 2005 Criminal Code

CHAPTER THREE

The Experience of Addis Ababa Police City Administration Commission and Forum on Street Children Ethiopia /FSCE/

The Addis Ababa police commission was newly reorganized and structured in 1992 after the change of government. It has many challenges concerning organizational, financial and human resources. Beside these limitations it was very difficult to protect and follow up the right of children in the police stations and on the street. Due to these factors the Police Commission was in need of support both from governmental and nongovernmental organizations.

In addition to Criminal law and Criminal Procedure laws, Ethiopia accepted and ratified the UN Convention on the Rights of Child in 1986. But their practical implementations were contrary to the above laws. For instance:-

- Children were detained in police custody for long periods of time with adult criminals; there were no separate rooms in the police stations for child offenders.
- The investigation was done just like adult criminals and adequate attention was not given to child offenders.

To curb these problems, a program was designed by Forum on Street Children Ethiopia together with other international actors. At the start of the program, five police officials were selected from Addis Ababa City Administration Police Commission and sent to South Africa to make a working visit to the South African police child protection units for 3 weeks. Upon their return, they prepared training manuals. After preparing the training manuals, continuous awareness raising workshops and seminars were organized, and were given to police officers, district commandants, community leaders, and religious masters, and youth and women associations.

At the end of the training five police stations were selected from 28 woredas / districts/ police stations. The selection of the woredas was based on the assessment made on the prevalence of child offenders based on statistical data and the density of the population of street children. In the mean time five police officers, two men and three female police staff were selected from five woreda stations, together with five para social workers who were assigned in each of the five selected police station child protection units and they trained for one month time. A coordinating office was established in the premise of Addis Ababa City Administration Police Commission.

So Addis Ababa City Administration Police Commission took the responsibility for coordinating the activities of the child protection programs in district police stations. At the end of one and a half year it showed an encouraging impact on the child and these protection units were expanded to cover other five woreda police stations. Out of the 28 woreda police stations in Addis Ababa there were ten child protection units.

Currently, Addis Ababa City Administration Police Commission has ten child protection units in each sub- city and one coordinating office in the premise of Addis Ababa City Administration Police Commission. All are well organized and structured.

3.1 The main objectives of a Child Protection Unit

- To insure the protection of children from different abuses.
- To improve the treatment of children by the members of police in the police station as well as on the street.
- To involve the police in alternative treatment of young offenders in the place of custodial treatment.

There is a community- based correction program for young offenders under these children protection units.

3.2 The main objectives of Community Based Correction Center /CBCC/

- To correct and rehabilitate petty and first time crime committed by young offenders while they are remaining with their families rather than detaining them in the custody of the police or correctional instructions.

- To increase the collaboration between concerned governmental organizations and the members of local communities in preventing the problem of young offenders.

3.3 Restructuring based on new Administrative structure of Addis Ababa City Administration Police Commission.

In the initial period of 1996 Addis Ababa City Administration Police Commission developed a new administrative structure, which necessitated the readjusting of the Child Protection Units /CPUs/ and its Sub-component the Community-Based Correction Center /CBCC/ accordingly.

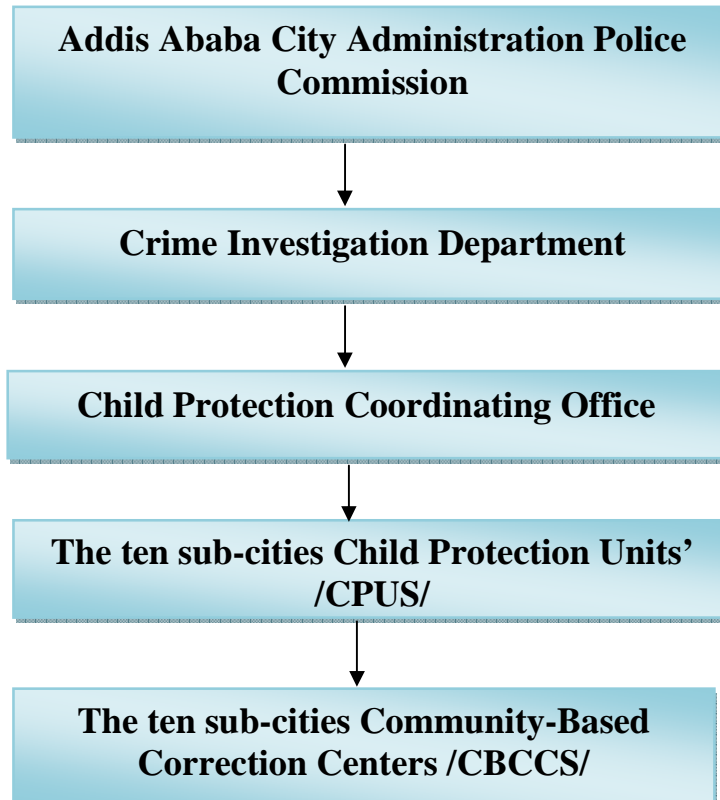
Thus, the already existing ten Woredas police stations child protection units /CPUs/ were made to be evenly distributed in all the ten sub- city police station and new CPUs have been opened in areas where it was necessary. Thus, five Child Protection Units /CPUS/ are opened at five sub-cities. (Bole, Yeka, Gulele, Kolfe-Keranio and Akaki -Kaliti) Sub cities. Likewise, the community-based Correction Centers /CBCCS/ have also expanded into the entire sub-cities of Addis Ababa. Thus, the five new CBCCs were established during the year/, two were opened at Kolfe-Keranio, two at Gulele and one at Nefas silk-Lafto Sub cities.

In this regard, therefore Addis Ababa City Administration Police Commission has been working closely with Forum on Street Children Ethiopia /FSCE/. The Police Commission provided child-friendly rooms for the proper functioning of CPUS in the merged as well as the newly opened police stations and assigned permanent full-time police officers in the units. Together with this process, training was provided for the newly assigned police staff on the management of the CPUS and CBCCS and the services provided for the sub-city administrators and the members of the community to become well aware of the CBCCS, and hence provide Kebele halls free of charge for undertaking the CBCCS.

With the expansion of the CPUS and CBCCS, baseline survey was conducted on the four sub-cities, where the newly established CPUs and CBCCS exist.

Currently Addis Ababa Police Commission has 12 independent offices which handle the cases of the children. There are 33 police staff that run the activities of Child Protection Units together with 20 volunteers at CBCC.

3.4 The Current Structure of Addis Ababa City Administration Police Commission CPUs and CBCC



3.5 Case Referral Process

This chapter deals with procedural issues, which are followed in the administration of diversion program by Addis Ababa police commission and Forum on street children Ethiopia /FSCE/.

3.5.1 Selection Criteria

One of the major challenges of the existing diversion program is lack of objective standards to divert children in conflict with the law to the CBCC. The following criteria are collected from the current practice of Addis Ababa police commission and FSCE.

- Male or female, 9 to 15 years of age.
- There is evidence to convict; there is be a prima facie case against the child.
- The victim of the offense provided a factual account of the offence.
- Admission of guilt's/he must admit involvement in the offence. The child who does not admit to the offence retains the right to have his or her innocence established in court proceedings (the right to be presumed innocent outweighs the desirability of diversion).
- The offender is prepared to acknowledge the act (s) charged and accept accountability for the consequences of his or her actions.
- The young offender should have parents or guardians who can take responsibility that the youth will attend the program.
- Parents must be supportive of the program and agree to offer transportation for the program.
- The young offender has not a prior criminal conviction.
- Youth may not have previously participated in a diversion program within that community.
- The youth shall have a permanent address.
- The victim has no objection to the case to be diverted (Restorative justice).

3.5.2 Referral Procedures (Steps)

- Complaint is lodged against the child or the child is brought to the police or the court.
- Child's parent(s) are contacted.
- Child and his parents are interviewed.

A) Apprehension

A child offender brought to the police may stay in a designated room or any vacant office while waiting for his/her parents/guardians. The role of parents/ guardians in diversion program is vital as they are the ones responsible to ensure the attendance of the child and to follow up his/her behavioral change. Therefore, the child and/or his or her parents or guardian must have consented to the diversion of the child's case. Parents may be interviewed separately to determine the cause of the problem and the behavior of the child.

B) Assessment

The preliminary inquiry is a compulsory procedure that should be done immediately after the child is brought to the police (CPU) and this can be done, depending on the nature of the case either by the court or the police with the social worker, the child and the child's parents. The central purpose of this inquiry is to assess the possibility and appropriateness of diversion. At this stage information is gathered about the child's personal and family background and the circumstances surrounding the offence. The child will be interviewed by the designated CPU officer and/or the social worker about the circumstance leading to the commission of the offence. It should be understood that these interviews are merely inquiries, and are not to be considered preliminary investigations in court.

C) Discretion of the police

Diversion may range from an informal police caution to formal correction programs. The police may release the child accused of committing minor offences after providing oral advice and warning.

D) Levels

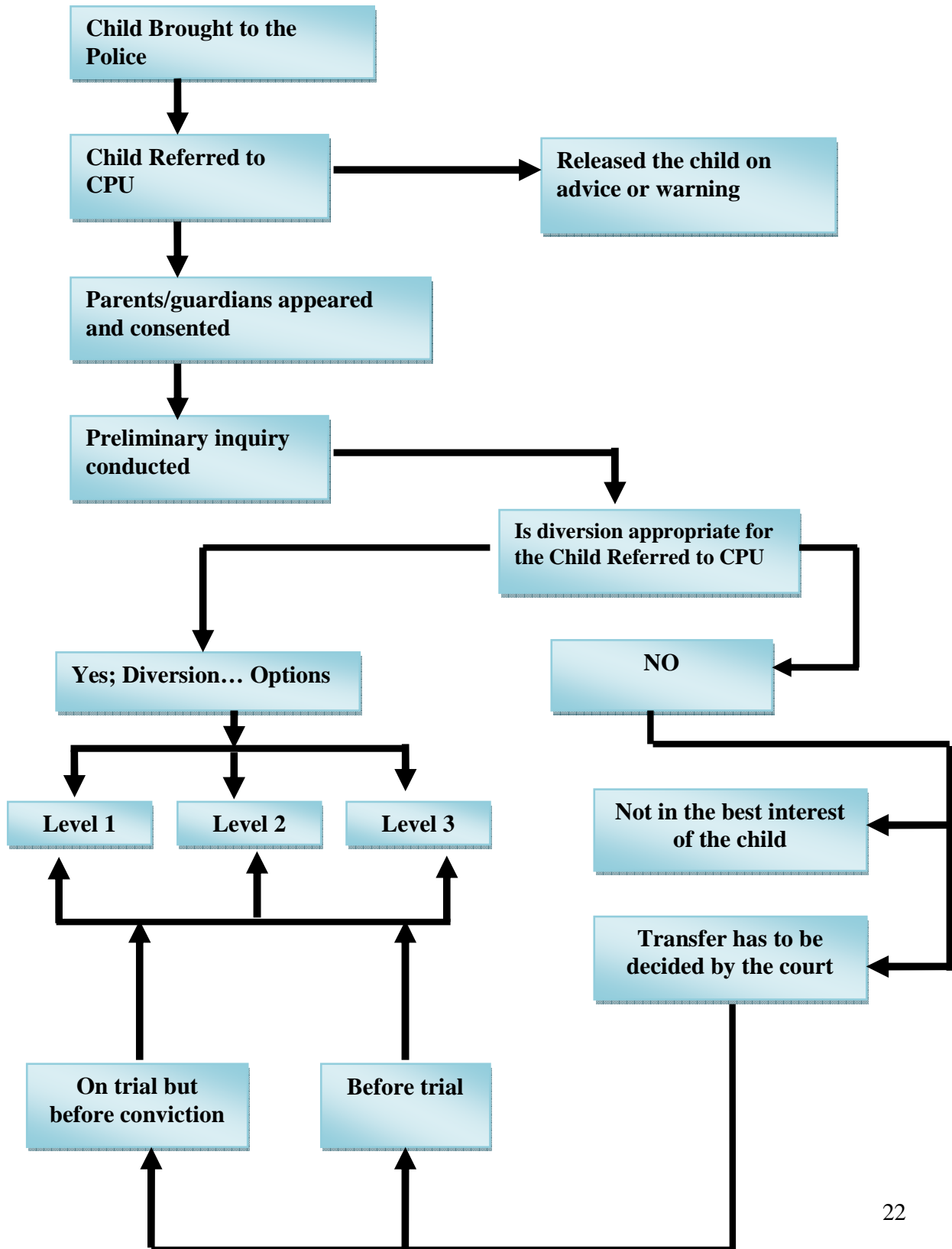
There are different levels of alternative measures. The different levels of measures are guided by the principle of “the best interest of the child”.

- Level-one options are the least onerous and include oral apologies, formal conversation and a variety of orders, which may not exceed a three month time period.
- Level-two orders include all the level one orders but they may be applied for a longer duration that is, between three to six months. Level two also includes a few additional restorative justice diversion options such as family group conference, victim-offender mediation and other restoratives justice process.
- Level-three orders are made only by the court for matters involving serious or repeated offending, and include orders of possible residential element or institutionalization. We should bear in mind that courts come in to the scene for cases that are referred to them by the police as they may involve serious offence or because of the character of the juvenile offender.

E) Discharge (Graduation)

Participants are awarded a certificate verifying their successful completion of the program. The diversion program director or assistant comes to the CBCC to hand out certificates to those participants who have successfully completed the program. The discharge of a child from the program should be made timely and should not be prolonged unreasonably for mere administrative reasons. Participants should be encouraged to discuss the program and benefits.

F) The following diagram shows the whole level of the process from apprehension to admission at the correction center and the discharge at a later stage.



3.5.3 Conduct an assessment on the appropriateness of attending diversion program

- Whether it is in the interest of the community and the child to prosecute the case in court or refer it to alternative measures.
- Determine the suitability of the offender for alternative measures.
- Whether the offender would be able to complete the specific terms and conditions that are being recommended.
- Consult with the young person's parents or guardians and may also consult with the victim.
- The young person is given the option of either participating in the program or having his case turned over to the prosecutor's office; whether the offender is willing to attend the diversion program. Any participation in alternative measures by the offender should be completely voluntary. However, the child must be advised the advantage of the program and the problem he may face if his/her case is referred to the court or any formal channel.
- Consult with the victim concerning the alternative measures and encourage his/her participation in the program. The victim should not be allowed to object to the referral of the offender as long as the latter's case is found appropriate for diversion.
- Young person and his parents sign a contract outlining their part in the diversion agreement
- Inform that non-compliance or partial compliance with the terms and conditions of the alternative measures may result in prosecution of the original offence.
- Inform that if s/he are to re-offend, his/her alternative measures record may be introduced as evidence or be referred to in a pre-sentence report for up to two years after completion of the current alternative measures plan.
- Inform that any 'admission, confession or statement accepting responsibility' for an offence is not admissible as evidence against the person making it in any civil or criminal proceeding.

- A pre-diversion conference will be held with the young offender and his/her parents by the police and the social worker to consider all the appropriate factors and decide for diversion.
- Conduct child and parent (s) group intake conference where they learn about the Diversion program and what is expected.
- Arrange child and parent (s) individual meeting with the Social Worker to assess individual needs of the child offender.

3.5.4 The Diversion Agreement

Upon the determination that the young offender is an acceptable candidate for entering the diversion program, a written diversion agreement is entered both by the guardian and the child. The social worker can review and explain the contract and provide copy of the same to parties of the agreement.

The said diversion agreement shall contain, but is not limited to the following;

- The child's full legal name and permanent address, gender, race, date of birth, telephone number.
- A specified term (period) of diversion, not to exceed _____ month.
- The defendant shall agree not violate any laws of the country and the defendant shall conduct himself/herself as a law abiding citizen at all times.
- The defendant shall report to the police or the CBCC at any time he/she may be ordered to do so.
- The crime with which the defendant is charged.
- Full restitution payment to the victim, if applicable.
- Mandatory school attendance and maintenance of average grades, if applicable.
- Willingness to participate in any recommended programs, counseling.
- That the undersigned parents or guardians of the child agree to supervise the attendance of the program by the child and covering transportation.
- That the undersigned parents or guardians of the child agreed to attend some of the programs as requested.
- The case will be closed only upon successful completion of the diversion program.

- If the court or police finds the defendant has failed to fulfill the terms and conditions of the agreement at a hearing thereon, this agreement shall be terminated and the original criminal proceedings shall be resumed.
- For non-court diversions, the agreement may be terminated by the police and the CBCC and criminal charge will be filed against the child.
- For court diversions; if it has been determined that the defendant failed to fulfill the terms and conditions of said agreement, the CBCC or its social worker shall make notice to the Court of police of such failure.
- The Diversion Agreement must be signed by the juvenile defendant, at least one of the defendant's parents or legal guardians, police officer and the social worker.

3.5.5 Major services at the Community Based correction Centers.

School Support

The majority of the target children in the CBCC are children who after dropping out from school ultimately ended up in delinquency. By realizing this problem, the correctional services provided to the children have incorporated provision of school support so that those children who are unable to continue their education because of economic problems and other factors could continue without shortage of educational material and school. Hence there is no doubt such supports are highly supplementary in bringing about behavioral change of the offender.

Tutorial support: - A service given to young offenders referred to the centers/CBCC/

Addis Ababa City Administration Police Commission CPU Coordinating Office.

Recreational services

The centers provide different recreational services such as in door and outdoor games; drama, music classes etc. Music and sport training is also given for the young offenders in CBCC.

Guidance and counseling support

Counseling being the core service to re-direct the behavior and out look to a healthier and acceptable way, the center renders counseling services by professionals to benefit children in conflict with law.

3.5.6 Role and responsibilities of actors in the Diversion Program

The operation of the Diversion Program and the success of the diversion strategy rely on a clear definition and demarcation of the roles and responsibilities of each member of the core team and other key stakeholders.

Volunteers

They are mainly responsible to monitor the status of the diverted children, ensure availability of facilities, and supervise the attendance of the diverted children and mobilize the community and local authorities for the effective implementation of the diversion program. As the monitoring arm of the program, the community volunteers provide regular updates and feedback on the diverted children to the social workers or the police. Community volunteers shall make written reports on the activities and behavior of diverted child offenders.

Community volunteers play an important role in monitoring diverted children, particularly in following upon both child and parent compliance with the terms of agreement reached during referral and as stated in the treatment plan/contract. It should be noted that Addis Ababa Police commission and FSCE are working with the community as the over-arching strategy in implementing the diversion program, and mobilize the support and participation of the communities. Therefore, the volunteers are expected to meet certain minimum requirements such as respect in the community, knowledge about their community, ability to write reports, ability to undergo certain basic training in paralegal work, organizing community, diversion and restorative justice,

gender and child sensitivity, the psychodynamics of children in conflict with the law, mediation and reconciliation, psychological intervention and counseling.

CPU officer

The Police have a critical role in the administration of diversion programs in Ethiopia. Involving the police in diversion programs definitely hastens the turnover of apprehended children to the community based correction centers and does away with the filing of charges against the children in court or their detention. Accordingly, the CPUs officers shall be in charge of leading the interview process with the child and his parents for diversion options, releasing the child with informal caution, ensuring the compliance of the child and his parents with the terms and conditions in the treatment plan, decide on revocation of entitlement to diversion programs and consider to take the case to the formal channel in case the child fails to comply with the diversion program.

Courts

Courts also play an important role in the administration of the diversion program. The experience of different countries shows that in addition to the police diversion of juvenile suspects can also be made by the court. There is a recent commendable effort by the Federal Courts of Ethiopia wherein judges are referring cases to the Community Based Correction Centers. Accordingly, courts should have direct communication with the Centers as well as the police to follow the implementation of their order and changes on the behavior of the child.

Social worker

The social worker is in charge of conducting inquiry on the appropriateness of a diversion program for a given child offender as well as the case management which involves counseling, psychosocial intervention, monitoring and facilitating other after-care interventions. S/he is also responsible to facilitate the coordination between the police and the CBCC.

Parents

Any interview or investigation of the child offender cannot be conducted without parents or guardians. Parents should give their consent to the diversion program and should be made responsible for the proper attendance of the child in the program as well as reporting his/her behavioral changes to the CBCC. Prior to a youth being admitted into the program, parental support of such involvement needs to be obtained. A parent must accompany the youth to the pre-screening interview and required program meetings. Parental attendance at the various program activities for the program is optional yet encouraged. Transportation arrangements of the various group activities are the responsibility of the parent.

Depending on the nature of the case, parents may also be required to attend certain programs or meetings which are essential to the needs of the erring child-an important factor, as child offending is often theorized as a product of parental neglect.¹ Programs for parents include experiences that enhance the self-esteem of the adults themselves; develop communication, negotiation, and decision-making skills; identify styles of parenting; and establish positive discipline. Hostile attitudes by parents to an educational program because of their child's behavior will soon be overcome by the quality and relevance of the material to the family situations.

Parents also play a significant role in settling the dispute with the victim, which is very crucial to decide on diversionary options.

The child offender

The most crucial part of any diversion program is the participation of the child offender. The child has active and effective participation in the process. For a diversion program to be operational the child has to admit his fault, s/he should be willing to attend the program and promise not to commit an offence again.

Victims

Restorative justice identifies three clients: victims, victimized communities and offenders. Restorative justice emphasizes the restoration of the offender's self-respect, of

the relationship between offender and victims, and of both offender and victim within the community.² Therefore, victims should be encouraged to forgive the child, drop or settle the case through mediation and agree to the diversion program.

Community

Community participation is essential for the successful implementation of diversion. Many community based rehabilitation programs for children in conflict with the law have failed as a result of the negative perceptions of communities about these children. It is important therefore that the community is sensitized and involved from the early stages in the development of diversion strategies. Community based structures can support the diversion process in a number of ways, especially, through supporting government and NGO efforts for the repatriation and reintegration of children into families. In addition, communities can also be source of resources and other support for families and children who need assistance during the reintegration process.

The community can have a two-fold role: community members report crime incidents and help in the arrest of the accused; they also participate in the promotion of peace and order through crime prevention and the rehabilitation and reintegration of convicts in society. Within the restorative justice framework, the community is an important stakeholder, responsible for working with offenders on understanding the consequences of their actions, discouraging them from reoffending, and providing them with an atmosphere of reconciliation and social acceptance as they reintegrate into the community.

Schools

The schools should be notified of the child's involvement in the diversion program and, if possible, make contract with the schools. It is important for CBCCs to have working relationships with schools and inform the child's situation to the teachers and request them to observe the character of the child or provide extra attention. The teachers can play an important role in ensuring children attending diversion program do not become victims of hassling by classmates. School teachers particularly those who are working on

guidance and counseling in the schools can be good resource persons for the CBCCs in handling counseling sessions.

3.6 Diversion in Practice: The trend of referral

Analysis of sample data collected from Addis Ababa city administration child protection coordinating office showing the trend of referral to the community based correction centers for the year 2000 and 2001 is presented below.

No.	Year	Sex	Educational Background of young offenders		Total
			School Drop out	Students	
1	2000	Female 37	30	3	217
		Male 180	176	8	
2	2001	Female 44	39	1	250
		Male 186	186	4	
			Total		467

In the year of 2000 from 1054 total cases of young offenders reported to the ten sub city police stations 217 cases of young offenders were referred to CBCC in order to be corrected from offensive behavior. The remaining 862 (male 761 and female 101) were referred to the Federal First Instance Court.

In the year of 2001 total number of cases young offender reported to ten sub-city police stations were 869 cases/ male 742 Female 127/. Of these 250 cases were referred to the CBCC by following referral criteria and procedure that stated in chapter three of this paper.

As observed in the records of the CPU a large number of the cases referred to CBCC were young offenders who are school drop outs. It is observed that the young offenders take the correctional services as a recreation program. The trend signifies that CBCC is important not only to the young offenders but also to their families.

3.7 When Prosecution (referral to the court) becomes necessary

From the above discussion, we should bear in mind that diversion may not be the best option for all types of offences and to all children. Its relevance is determined on a case-by-case basis and depending on the result of the assessment. Therefore, there are situations where diversions may not be appropriate, and the following highlight these circumstances.

- ❖ If the offence is of a serious nature, and would result in a significant sentence if a conviction is made;
- ❖ Causing considerable physical and/or psychological harm to a victim;
- ❖ Involving the use of a weapon, or its threatened use;
- ❖ The offence is against a vulnerable person or a person to whom the offender was in a position of authority or trust;
- ❖ The offence is demonstrably premeditated;
- ❖ If the offender is likely to re-offend; the offence was committed while the offender was under an order of the court.

CHAPTER FOUR

Conclusion & Recommendation

Lack of distinct Juvenile court, coupled with the delay in the administration of justice for children, has resulted in the infringement of the rights of the children in conflict with the law. Once the cases of the children in conflict with the law are brought before the juvenile benches, not so many plausible options were available for the judges to enforce the remedial measures to be administered on such children.

The problem becomes more acute when resorting to sending the child to correctional institutions as there is only one correctional institution in the country, capable of accommodating 150 children only at time. Furthermore, it has been over half a century since this institution has been established, and hence it is suffering from problems of efficiency of staffs, and monotonous nature of the advices given for the children. What is worse, children awaiting trial/ without legal guardians/ are put together with convicted offenders. In other words, attempt has never been done to segregate such children according to the gravity of the offenses they committed, or their age, or considerations of determination of guilt.

Cognizant of the need for reformation on the existing administration of juvenile justice, a local NGO together with international actors and the Police Commission, a diversion program has been introduced in Addis Ababa. The diversion program has a larger component on community based correction center along with the various components on the reform of the current practice based on the UN Convention on the rights of the Child and other pertinent international legal instruments.

In this paper, the review of this practice against the law has proved that there is a gap in the law to fully change the current practice into a full range of diversion program. However, the present research has identified that the practice has a far reaching benefit in view of the rights of children and the weakness of the juvenile justice administration. Hence, the writer recommends that legal reform should be undertaken while the criminal procedure code is revised in order to include elements of diversion and correction of young offenders within the community.

CHAPTER ONE

General Background of Labour Law

1.1. Definition and Concepts of Labor Law

Even though it is not an easy task to define labor law, it can generally be defined as a law that regulates employment relationships that mainly exist in business and industrial activities. This law is also known as industrial law or employment relations' law. It is part of the laws that regulate the relationship between an employee and an employer as well as between an employer and a number of employees.¹

Employment relations embrace a complex of relationships between workers, employers, and government. It is basically concerned with the determination of the terms of employment and conditions of labour workers.

From the above definition, one can easily understand that there are two major aspects of labor law one is individual aspect and the other is collective. An employment relationship is normally initiated by contract of employment the contract that first establishes the relationship between an employer and worker.

Labour law also regulates collective aspects of relations. The collective aspect is related to relations between mass workers. For instance, an Undertaking and their employer on issues of employment. Workers have the right to collectively bargain, through their association called trade union, with their employer.²

A labor relation implies the relationship between a private employer and his employees. It is concerned with labour or work which is done in a position of subordination: i.e., control when an employee works under the command and authority of an employer.

Such is the idea of labour relations given by articles 2512 of the Ethiopian civil code of 1960; to which most labour legislation including Proclamation 42/93 refer to define this field of application.

Article 2512 of the civil code-defines contract of employment as follows

*A contract of employment is a contract where by one party, the employee ,undertakes to render service to the other party ,the employer, under the latter's direction for a determined or un determined time, services of a physical or intellectual nature ,in consideration of wages which the employer undertakes to pay him.*³

It is difficult to define the labour law as any subject directly, it will be changing the legal, political and economic conditions with change of time As such, there is no single definition accepted by different writers on labour law as they have their own views towards the economic, social and political aspects of the relations among employers, workers and the state.⁴

However, we can still define labour law in relation to the ideological differences prevalent in the world at different times. The very essence of labour law in socialist world is under stood as development in a socialist self management environment. In other words the introduction of social ownership (public ownership of property) essentially changed the labour relationships.

That is, the labour relation is viewed as a relationship of mutual dependency, reciprocity and solidarity between workers working with resources in social ownership.

The rights and duties stem from work under the law. Hence the employment relationship is not established by employment contract except in few cases where there is private ownership.⁵

1.2. Objective of Labour Law

It is clear that the emergence and development of labour law occurred as a result of industrial development can be traced to the 18th century industrial revolutions which took place in Europe. This gives us an insight

and a clue to know the objectives of a labour law. Having this in mind, let us try to identify the main objective of a labour law.

The main objective of a labor law is to regulate relationships between the employer and the worker. In the early phases of development, the scope of labor law was often limited to the most developed and important industries, undertakings above a certain size, and to wage earners. As a general rule, these limitations are gradually eliminated and the scope of the law extended to include handicrafts, rural industries and agriculture, small undertakings and office workers. Thus, a body of law originally intended for the protection of manual workers in industrial enterprises is gradually transformed in a broader body of legal principles and standards.⁶

Every law has objectives and labour law legislations which have been in place in Ethiopia at different periods have declared their objectives in their preambles, The current Labour Law Proclamation, for example, in its preamble declares a couple of objectives. One of these objectives is to govern worker–employer relations by the basic principles of rights and obligations.

It states, it is essential to ensure that worker employer relations are governed by the basic principle of rights and obligations with a view to enabling workers and employers to maintain industrial peace and work in the spirit of harmony and cooperation towards the all- round development of a country. It has been found necessary to guarantee the rights of workers and employers to form their respective associations and to engage, through their lawful elected representative, in collective bargaining, as well as to lay down the procedure for the expeditious settlement of Labour disputes ,which arise between workers and employers.⁷

This objective can be realized by devising effective mechanism. The Proclamation, in its preamble puts different means towards the successful accomplishments of the objectives stated above. Accordingly, it has committed itself to the establishment of workers ‘and employers’

organizations to be run by representatives of the respective parties. Moreover, when disputes arise between workers and employers, the proclamation devises mechanisms for speedy and efficient settlement thereof.⁸

Therefore, having a labour law is extremely important to ascertain industrial peace which is crucial for the all rounded development of the country.

Generally, labour law now a days regulates the employment relationships of a large portion of population in the world .It has various elements, which can be considered as its subject matter. Matters such as individual and collective employment relations, wages, conditions of work, health and safety, social security and administration of the law are the major elements of labour law. Labour law provides rules that set the minimum labour standard; rules that regulate the establishment and activities of labor institutions, rules that devise mechanisms for state interventions and compensation.⁹

1.3. Emergence and Historical Development of Labour Law

The origin of labour law can be traced back to the remote past and the most varied parts of the world. The European writers often attach importance to the guilds and apprenticeship system of the medieval world. Some Asian scholars have identified labour standards as far back as the laws of **Hammurabi** and rules for labour- management relations in the laws of Manu. Latin- American authors point to the laws of the Indies promulgated by Spain in the 17th century for its new world territories. Yet, non of these can be regarded as more than anticipation with only limited influence on subsequent development .Labour law, as it is known today is essentially the child of successive industrial revolutions since 18th century. The emergence and development of labour law is the reflection of industrial development.¹⁰

When we are talking about the emergence and development of labour law, In effect we are talking about its history. Particularly the history of labour law has much to do with industrial revolution of 19th centuries.¹¹

From the above concepts one can understand that industrial revolution has played a great role in development of labour law in general. Thus, it is very crucial to be familiar with the very concepts of industrial revolution.

Industrial revolution: is a revolution that brought about development in industry in Europe during the 2nd half of 18th century and 1st half of 19th century it became necessary when customary restraints and the intimacy of employment relationships in small communities ceased to provide adequate protection against the abuses incidental to new forms of mining and manufacture on rapidly increasing scale. This had happened precisely the time when the 18th century enlightens, the French Revolution, and the political forces that set in motion that created the elements of the modern social conscience. Labour law has attained its present importance, relative maturity and worldwide acceptance only during the 20th century.¹²

In the early phases of development, the scope of labour law is often limited to the most developed and important industries, undertakings above a certain size, and to wage earners. As a general rule, these limitations are gradually eliminated and the scope of the law extended to include handicrafts, rural industries and agriculture, small undertakings and office workers. Thus, a body of law originally intended for the protection of manual workers in industrial enterprises is gradually transformed in a broader body of legal principles and standards. The change that was introduced by industrial revolution during this time varies in nature and type. The major changes were:

- Changes from feudal system to system of capitalism
- Change in class system in the society and
- Transformation of production system from out-working to factory.¹³

Prior to late 18th century the society was mainly agrarian and feudal system was the dominant one. The production system was out – working in which a person processed the production of a given goods by himself and with his own means of production. He himself also took the produced goods to the market for sale. This is called out-working system in which the person enjoyed independence. But with the emergence of capitalism due to the industrial revolution, this system of production was changed in to factory system. In factory system, there emerged relations between two persons – the one who owns the means of production and the other, who just, using his labour and the materials provided, produce certain production. As a result, two classes emerged – the bourgeoisie (the capitalist who owned the means of production) and the working classes.¹⁴

What did the emergence of modern labor law look like in various countries? The first land mark of modern labor law was the British Health and Morals of apprentices Act of 1802, sponsored by the elder Sir Robert peel. Similar legislation for the protection of young workers was adopted in Zurich in 1815 and in France in 1841. By 1848 the first legal limitation of the working hours of adults was adopted by the Landsgemeinde (citizens' assembly of the Swiss canton of Glarus. Sickness insurance and workmens' compensation were pioneered by Germany in 1883 and 1884, and compulsory arbitration in industrial disputes was introduced in New Zealand in the 1890s. The progress of labor legislation out side western Europe, Australia, and New Zealand was slow until after World War I. The more industrialized states of the United States began to enact such legislation toward the end of 19th century, but the bulk of the present labour legislation of the United States was not adopted until after the depression of the 1930s. Depression is a period of economic stress normally accompanied by poor business conditions and high un employment .¹⁵

There were virtually no labor legislation in Russia prior to the October Revolution of 1917. In India, children between the ages of seven and 12 were limited to nine hours of work. But, the first major advance in India

was the amendment to the Factory Act in 1922 to give effect to conventions adopted at the first session of the International Labor Conference at Washington, D.C. in 1919 .In Japan, rudimentary regulations on work in mines were introduced in 1819, by a proposed Factory Act was controversial for 30 years before it was adopted in 1911. The decisive step in Japan was the revision of this Act in 1923 to give effect to the Washington convention on hours of work in industry.¹⁶

Labour legislation in Latin America began in Argentina in the early years of the century and received a powerful impetus from the Mexican Revolution, which ended in 1971. But, as in North American, the trend became general only with the impact of the Great Depression. In Africa the progress of labor legislation became significant only from the 1940s on ward .After the independence of most African countries; it has got a significant position.¹⁷

Different social, economical and political circumstances shaped the history of labour administration in various forms in different countries. What is common to all countries is that, there was no time in history where there were no labour relations. It is inconceivable to have a human society with out labour and labour relations.

The modern notion of labour relations comes in to existence at much latter stage in the development of society. This is so because the notion began to be a subject of interest only when human labour gradually ceased to be an activity carried out in isolation, or in small groups limited to the members of a family or fellow handicraft workers and become an element in a more or less complex organized system of production under the spur of industrialization. The working people were drawn together as great population centers and standards regulating the new terms of work progressively established.¹⁸

As workers awareness grew and understanding that the changing condition in industrialized society and ideas of political and economic

democracy got ground, labour relations established and gradually became a recognized area of conflict and bargaining topic of general interest and fit subject of study and regulation.¹⁹

In history the first recognizable labour legislation, the ordinance of laborers, was passed in 1349 and was concerned with maintaining wages at rates to be fixed from the time by justice of the peace in England later on statute of Artificers 1562 was promulgated to prohibit conspiracies to raise wages, and prosecutions were for criminal conspiracy at common law also become more frequent as the first workers associations were formed.

These normally grew out of workmate meetings. Their main activity was the provision of friendly society benefits such as sick and funeral money and a trapping grant unemployed workers willing to move.²⁰

Following this Combination Act 1799 and 1800 were enacted to ban strike, calling or attending a meeting for the purpose of improving conditions of employment and any attempt to persuade another person not to work or to refuse to work with another worker.²¹

To enforce this status, jurisdiction was given to justice of peace who could order up to three months imprisonment. The Masters and Servants Act 1823 was another powerful weapon in the hands of the employer. Since, there by an employee who was absent from service before his contract expired was punishable by up to three months hard work. There were some 10,000 persecutions per year between 1858 and 1857. Under this provision. However, these Acts were revised from time to time as the numbers of workers and workers unions increased and strengthened .For example, Workers Act of 1859 was rendered lawful to attempt with the aim of securing changes in wages of hours, peaceably and in reasonable manner, and with out threat or immoderation to persuade others to cease or abstain from work .²²

The rise of the labour movement and workers struggle, increasing levels of industrial disputes and the growing recognition of the need to protect

workers started a change in the thinking of legislators who at the dawn of the Twentieth Century began to modify the substantive provisions of regulation in this area.

So, today most countries have enacted legislation on the justification of dismissal, notice before dismissal, and the payment of severance allowances. Also minimum working conditions such as shorter working hours, leave, holiday leaves and pay, etc are recognized by most countries.²³

CHAPTER TWO

Labor law in Ethiopia

2.1. Sources of labour law in Ethiopia

Even though there is no universally accepted meaning or definition of sources of law, Labour law has its own sources that are the reflection of its rules and principles. There are two basic sources of labour law. These are:

- Primary sources or formal sources which are known as power conferring sources and
- Secondary sources or material sources.

Now let us have a bird's eye review relating to the nature of each source of labour law one by one.

Formal source: is a source from which a legal rule derives its force and validity. A legal rule derives its force and validity from the will or desire of the state. It is the state which enacts laws and enforces them. If legal rules were not enforced by the state; they couldn't have acquired any binding force.

The state, therefore, is the formal source of law. Indeed the will of the state is the source of every law. No rule can have authority as law unless it has received the expressed or tacit acceptance of the state.¹

On the other hand, material source is the source which supplies the matter or content of the law. The material sources of law could be divided into national sources of law and international sources of law.²

The National Sources of Law

The national sources are municipal or domestic laws such as the constitution, proclamations, regulations, directives, decrees and the like. It is essential to say a few things about the constitution since it is the supreme law of the land with which other laws are supposed to comply.

Supremacy of the constitution: The constitution together with the international treaties, to which Ethiopia is a party, is the supreme law of the land.

The constitution is the supreme law of the land any law customary practice or a decision of an organ of the state or a public official which contravenes constitution this shall be of no effect. There fore, all legislations, decrees, orders, judgments, decisions should be in harmony with the constitution other wise; they will be null and void. ³

Though it is clear that the constitution is made in general way however, it has provisions which are relevant to labour relations. And the Ethiopian constitution is unique in that it addresses labour issues.

The following provisions are some of the provisions that have special significance relating to labor matters. ⁴

The FDRE constitution under Economic, social and cultural rights offer the following:

1. *Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice and any where with in the national territory.*
2. *Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.*
3. *Every Ethiopian national has the right to equal access to publicly funded social services*
4. *The state has the obligation to allocate ever increasing resources o provide to the public health, education and other social services.*
5. *The state shall pursue polices which aim o expand job opportunities for the unemployed and the poor and shall accordingly undertake programmars and public work projects.*
6. *the state shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.⁵*

Further under right to labour

1(a) Factory and service workers farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility ,have the right to form associations to improve their conditions of employment and economic well – being .This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests.

(b) Categories of persons referred to in paragraph (a) of this sub –Article have the right to express grievances ,including the right to strike .

(c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-article shall be determined by law.

(d) Women workers have the right to equal pay for equal work.

2 workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays, as well as healthy and safe work environment.

3. with out prejudice to the rights recognized under sub-Article 1 of this Article, Laws enacted for the implementation of such rights shall establish procedures for the formation of trade unions and for the regulation of the collective bargaining process.⁶

Thus we can conclude that the constitution can be taken as a source of labour law on some matters.

International laws or international public acts

There are certain international conventions related to labour relations. These are mainly those conventions adopted and ratified by member states of international labour organization (ILO).Ethiopia is ILO's member state and has ratified most of ILO'S conventions .⁷

The main standards that the ILO issues every year could either be conventions or recommendations.

Conventions are international rules or treaties which have the force of law once they have been ratified by each member country, they will be binding as any other law of the land.

The Federal constitution of Ethiopia provides:

*All international agreements ratified by Ethiopia are an integral part of the law of the land.*⁸ Accordingly a convention adopted by ILO, if ratified by Ethiopia will be considered as an integral part of the law of Ethiopia.⁸

Conventions adopted by the ILO conference are not binding up on the member states until they are fully ratified. Member states have the obligation to take all the necessary steps to make the convention effective in its internal legal system.⁹

The other international labour standards that are issued by the ILO are recommendations.

Recommendations: are international rules which are not binding but merely give advice on policies. Many recommendations are usually supplementary to conventions on same matters. They are worded in less legal language and are more elaborate.

Recommendations are adopted by International Labour Conference. The conference is a kind of international parliament on labour questions. Each year in Geneva (Switzerland) labour ministers (from the governments), trade unions (from the workers) and employer's organizations convene to discuss labour matters¹⁰.

Proposal for the elaboration of the international labour standards derive from the ILO's governing Body. This is the policy making institution of the ILO. It is composed by the Tripartite constitutes. All the directives by the conference and Governing Body is executed by the international labour office.¹¹.

So far we have been trying to see legislations which are of public nature but it is also crucial to be familiar with legislations that are of private nature which can also be classified as a source of labour law.

Contract of Employment

Contract of employment is a contract in which a person (a worker) agrees to give service to another person (an employer) under the latter's direction in consideration of certain remuneration. It is in a contract that a worker and his employer conclude to establish their employment relationships.

Once the parties agreed upon the terms without violating the limitations provided by law, it plays a great role in regulating their relationships on daily basis. Therefore, contract of employment is one of the major sources of labour law. Contract of employment initiates the employment relationships between a worker and an employer and considered the first and foremost source of a labour law.¹²

Collective Agreement

Collective agreement is an agreement between workers collectively through their trade union and their employers. It is the end result of collective bargaining process. Collective bargaining is a process of negotiation between trade union and employer on matters related to the employment relationships. When this process ends with agreement, it is called collective agreement. Once the collective agreement is concluded, it is binding up on both parties, and hence become the major sources of labour law.¹³

The Minimum Labour Standards Set by Laws

The minimum labour standards are related to issues such as working hours, leaves, wages, safety and health, etc These standards could be provided by various laws and regulations, and are mainly the limitation to the freedom of the parties to determine the terms of their agreements. The minimum labour standards are normally provided in proclamations, regulations, directives and or even in constitutional law of the country.¹⁴

International Labour Standards

International labour standards are legal instruments drawn up by the ILO's constituents (government, employers and workers) setting out basic principles and rights at work. They are either **conventions**, which are legally binding international treaties that may be ratified by member states, or **recommendations**, which are serving as non binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.¹⁵

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO constitution to **submit** them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration of **ratification**. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and to reporting on its application at regular intervals. Technical assistance is provided by the ILO if necessary. In addition, representation and compliant procedures can be initiated against countries for violations of a convention they have ratified.¹⁶

2.2. Development of Labour Law in Ethiopia

The gradual inseminations of capitalist relations of production into the Ethiopian society can be properly dated back to the turn of the century with Menlik's reign. The word capitalist has gone a long way by the time it started to imprint its marks on Ethiopia. Generally speaking, the turn of the century found the pre dominance of feudal relations of production in Ethiopia.¹⁷

Emperor Menilik understood that the first enemy of workers in Ethiopia was the society itself with its cultural, religious and economic prejudices.

Emperor Menilik, in his first historic legislations on labour matters said;

“Let those who insult the worker on account of his labour cease to do so. You, by your insults and insinuations, are about to leave my country without artisans who can even make the plough. Here after, any one of you who insult these people is insulting me personally.” (Emperor Menilik’s proclamation of 1908).¹⁸

Regarding early period of Ethiopian history Dr Punkhurst had wrote the following.

In spite of the coins which were designed and used by Axumite civilization and in spite of the Lalibela rock-hewn churches which are clear of the existence of skilled manpower, we find no labour or any institution that could be compared to present labour organizations.¹⁹

The Christian highland society which dominated the economic, political and cultural life of the empire for long period of time showed certain biases against some category of workers. The tanners, blacksmiths and pottery makers who constituted the core of workers organization movement in other countries were associated with evil magical power and despised. In fact, at one time it is reported that Emperor Zara Yacob killed all Goldsmiths and blacksmiths believing they constituted evil and danger to society.²⁰

On the other hand, high land Ethiopia was historically characterized by an agrarian economy, in which many tenants used to work for few land lords i.e. Individuals, the church and the crown. Since the income of the tenants was fixed and non negotiable there was no way for the creation of employer and employees disputes. Still another category of workforce in Ethiopia was slaves .The slaves were officially accepted as the property of their masters. The owners or the masters of the slaves can dispose them as they wish.²¹

Therefore there were no labour disputes between the slave owners and the slaves in those days in Ethiopia. However this does not mean of course

there were no conflict between the exploited and the exploiters, which in turn would have led to industrial relations system. In the history of Ethiopia, it was during the reign of Emperor Menilik the II that positive attitude towards the dignity of laborers started to develop.²²

Thus one can understand that the decree of the Emperor i.e. Menilik the I is the land mark for the recognition of human labour and the paved way to the modern industrial relations.

In Ethiopia, prior to 1944 there was no significant development in industry. Hence, one can hardly talk about labour law during this period. But it seems the government was aware of some issues related to employment. For instance, when ministries were crystallized by law in 1943, one of the powers given to the ministry of Interior was the development of schemes for reduction of unemployment and maintenance of the poor. This can not be regarded as more than anticipation, with only limited influence on subsequent development of labour law in the country.²³

However, the first striking legislation on labour relations known as the Factories proclamation was issued in 1944. This proclamation gave to the Ministry of commerce and Industry the power to make rules governing the health, safety, and conditions of work in the country. These are the early issues of government concern to the labour relations in Ethiopia. Therefore, during this period, there was no significant development of labour law.²⁴

A tremendous development of labour law in Ethiopia came only after the 1955 revised constitution. This constitution had recognized and guaranteed various rights and freedoms of citizens. For the first time in Ethiopia, the constitution guaranteed freedom of association and hence recognized the right to form association. ²⁵

*The law says that Every Ethiopian subject has the right to engage in any occupation and to that end form an association.*²⁶

This provision of the constitution gave an opportunity for workers in the country to form their trade unions. But there was no any enabling law or procedure as to how to form, legalize and register if workers wanted to form their association.²⁷

When the government issued the 1960 Civil Code, it partially answered these questions, which could be as a blessing to the labour law in Ethiopia. The 1960's Ethiopian Civil Code provides for:

- The formation, legalization, and registration of associations.²⁸ The minimum working conditions and standards of Employment.²⁹ However, the code has left unanswered some uncertainties in the employment relationships; For instance, the code does not say any thing as to how employees collectively bargain with their employer. In other words, the code does not provide the procedure of collective bargaining process. The Civil code though provides the minimum working conditions, kept silent on matters related to collective (industrial) employment relations. In other words, the issues of collective bargaining, collective disputes and industrial actions are not addressed by the civil code. ³⁰

Because of the uncertainties that are left by the civil code, in the 1960's there were strikes in industries throughout the country. Under this emergency situation, the Emperor issued in 1962 a Decree on labour relations, which later become a proclamation provided the following.

- The legalization and registration of trade union and employers association,
- The definition of the rights and obligations of workers and employers,
- The setting up of conflict resolution mechanism, and
- The power of Ministry of National Community development to be established by regulation.
- The minimum standards of labour conditions.

The Ministry came up with a regulation in 1964 that dealt with the minimum standards and as a result modified the provisions under the Civil Code. The 1963 Labour Proclamation favors more to the employers. With the change in ideology in 1974, the 1963 Labour proclamation was repealed and replaced by a new proclamation issued in 1975. This labour proclamation granted many rights to the workers.

Again with the change in regime in 1991, The 1975 Labour Proclamation was repealed and replaced by the 1993 Labour Proclamation. This proclamation was repealed and replaced by Proclamation No 377/2003. Both the 1993 and the present one, have tried to strike the balance between both i.e. the interests of the workers and that of the employers. Since then, it has been regulating the employment relations in economic activities.

Generally the major laws currently regulating employment relations in Ethiopia are”

- The 2002 Federal Civil servants Proclamation
- The 2003 Labour proclamation, and
- The 2003 public servants’ pension proclamation. ³¹in addition to these, though they are not active like those mentioned above, The FDRE constitution and the 1960 Ethiopian civil code are in force relating to employment relations.

Other reasons for the development of some elements of industrial relations in Ethiopia were the advent of colonialism into Eritrea. During the Italian Administration in Eritrea, the Code Lavoro published in Milan in 1935 was applied by the colonial Labour office. The British subsequently introduced special Labour laws for Eritrea, the most important of which was Proclamation 126 of 1952. This proclamation had introduced 48 hours work per week, overtime rates and other provisions governing working conditions³²

The gradual industrial growth in the country and Ethiopian claim back Eritrea forced Emperor Haile Selassie I to issue some form of labour

standards ,which are similar to that of Eritrea in order to avoid double standards and to appear modern rule.

On the other hand, Ethiopia's membership in the International Labour organization (ILO) the United Nations Agency committed to a tripartite (government, Employers and workers) approach to industrial relations as early as 1923 obliged the country to have labour law.

Late, after the Italian aggression, measures like reorganization of the imperial government executive organ, creation of harmonious diplomatic relations and entering into signatory commitment awards obligatory international agreements etc have brought for going capital and investment notably in the manufacturing, aviation, transport and communication, health, education, finance and economic sectors. ³³

Thus, the country's transformation from a traditionally feudal or agrarian type economy to capitalist-mode of economy have witnessed not only the need to design a law governing employer –workers relationship, but also showed the need to establish an organ in charge of administering labour relations, working conditions, employment and labour inspection services.³⁴

In response to these factors, the government introduced the Factory Proclamation of 1944. The proclamation empowered the Ministry of Commerce and Industry to regulate minimum working conditions such as care for health and safety for employees at work places and regulate hours of work. By virtue of the power entrusted to him by the proclamation, the Minister of Commerce & Industry used to intervene to settle disputes between workers and employers.

Consequently, during the early 1960's, a number of legislative provisions have been proclaimed by the Imperial regime among which, Labour Relation Decree No. 26/1962, the Labour Relation Proclamation No. 210/1963, the Minimum Labour Conditions reg. No. 302/1964, the Labour

Inspection Service Order No. 37/1964 and the Labour standards Proclamation No.232/1966 can be cited.

Despite the issuance of the aforementioned laws, protection of worker's rights and securing employment benefits have been hardly possible or even denied. Thus, the general industrial relations profiles have failed to maintain industrial peace, harmony and economic progress which are common yardstick for measuring effective labour administration machinery.³⁵

Hence, the most representative workers organization of the time, Confederation of the Ethiopian Trade Union (CETU) filed its dissatisfaction to the Imperial regime in 1962 and seriously demanded better employment and working conditions for all unionized workers. Linked with this economic demand and the corresponding call for strike, a number of CELU members and activators were detained, imprisoned or exiled. More inline with these crises, the Imperial government officially suspended CELU activities to freeze and combat legitimate strikes particularly organized by Akaki Textile, Ethio -Djibouti Railway, Diredawa Textile and Anbassa Public Transport Enterprise unions.³⁶

Following the fall of Imperial regime in 1974 the emerging "socialist" personality of the provisional Military Administrative Council (PMAC) paved the way to nationalize private companies, foreign investment ventures, rural land and other real estate properties which were supposed to be engines for viable development of private sector.³⁷

2.3. The Impact of ILO Conventions Over Labour Legislations In Ethiopia

Before we directly go to talk about impacts of the ILO conventions It has been found to be crucial to give a clear picture about the International Labour Organization i.e. ILO

The international Labour organization/ILO/ was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 178 member states. The ILO has a unique ‘tripartite’ structure which brings together representatives of governments, employers, and workers on an equal footing to address issues related to labour and social policy. The ILO’s broad policies are set by the **international labour conference**, which meets once a year and brings together its constituents. The conference also adopts new international labour standards and the ILO’s work plan and budget.³⁸

Between the sessions of the conference, the ILO is guided by the **governing body**, which is composed of 28 government members as well as 14 employers members and 14 worker members. **The ILO’s secretariat, the international labour office** has its head quarters in Geneva, Switzerland, and maintains field offices in more than 40 countries. On its 50th anniversary in 1969, the ILO was awarded the noble peace prize.³⁹

Significance of the International Labour Legislations

The international Labour law organization’s conventions and recommendations establish the international legal framework for insuring social justice in today’s global economy. Adopted by representatives of governments, employers and workers international labour standards cover a wide range of subjects including freedom of association and collective bargaining, forced labour, child labour, equality of opportunity and treatment, tripartite consultation, labour administration and inspection, employment policy and promotion vocational guidance and training, employment security, social policy, wages, working time, occupational safety and health, social security, maternity protection, migrant workers, seafarers, fishers, dock workers, indigenous and tribal peoples and other specific categories of workers. The ILO disposes of a number of unique supervisory and compliant mechanisms which ensure that international labour standards are applied.⁴⁰

Therefore, all signatory states of ILO conventions or parties to ILO conventions are duty bound to strictly comply with the ILO standards so that it would help them create industrial peace and social justice in their own country. Thus, one can say that the ILO conventions and recommendations have strongly influenced the development of Ethiopia's Labour legislation to incorporate those international standards that are aimed to bring about harmonious relationships among Employers, workers and governments as well.

CHAPTER THREE

The Problems Pertaining to the Implementation of Some Labour Law Provisions Under Proclamation No 377/2003

3.1. Problems Pertaining to Article 9 and 10

The law puts two kinds of contract of employment that are contract of employment for an indefinite period and contract of employment for definite period or piece of work.¹ So let us try to see them one by one and try to identify problems that follow when they are interpreted and actually applied.

When we see contract of employment for a piece of work, under such kind of contract of employment the contract ceases to exist when the work stops. Thus, the relationship between the employer and the employee remains active until the work stops. For instance, if a certain teacher is hired in a certain college to teach for one semester the contract of employment ceases the moment the work stops. Whereas, if the teacher is hired only as a teacher without limiting the time or the type of specific work, the teacher can argue that he is employed for indefinite period of time so long as the college continues to conduct teaching.

The other kind of contract of employment is “contract of employment for definite period.” Under such contract of employment the parties i.e. the employer and employee may conclude their contract for a period of 6 months, 1 year or 2 years and such terms might be expressed in the contract so when we interpret the agreement literally, we understand that the contract will be terminated when the time specified in the contract lapses.

This issue is one of the controversial issues that exist in the labour proclamation. Because the law, on the one hand, says contract of employment can be made for definite period of time and shall be terminated when the period lapses and on the other hand conditions that

contract of employment for a definite period of time are enumerated and those which are not enumerated are considered to be contract of employment for indefinite period of time. Therefore, if the contract of employment of a worker is not included under specified conditions, the worker can argue that his contract of employment is for indefinite period of time though he concluded contract of employment for a definite period of time.

The other problem is that rules stated under Article 10 (1) benefit workers who work in state owned enterprises, offices and factory workers where as construction workers are not considered under this Article, As a result of this, workers whose work is directly related to the construction works i.e. carpenters ,builders and daily laborers can claim their right by invoking this Article and ask compensation for unlawful termination and as a result of this, the contractor even though his work by its very nature slows down or reduces its volume due to different factors such as scarcity of raw materials and other similar reasons is obliged to pay compensation. Thus, such vagueness and the non consideration of the nature of construction works under Article 9 and 10 of the same proclamation would adversely affects the interest of both Ethiopian and foreign contractors who invest in the construction sector.

Thus, in the writer's opinion the employer i.e. the contractor can terminate the contract of employment with out giving notice to the worker and the worker whose contract is terminated in such a way is not entitled to claim any benefit such as compensation or payment for the failure of notice. Unless the legislative body includes such statement in the aforementioned Articles it would be challenging for the contractors to promote their business and be competitive in the sector. And this significantly weakens the country's economy which is obtained from the construction sector.

3.2. Problems Pertaining to Article 3/3 (b)

The law states that the council of ministers may, by regulations, determine the inapplicability of this proclamation on employment relations established by religious or charitable organizations.²

Even though the law gives authority to the council of ministers to issue regulation relating to the exclusion of employment relations established by religious or charitable organization not to be governed by labour proclamation that is currently enforce. So far, there is no regulation issued by the council of ministers which excludes those institutions mentioned above. As a result of this, unless such regulation is issued, the law is not clear as to whether cases arising from these religious institutions are to be governed by the same proclamation or not. Thus, still it is not clear whether this proclamation is applicable up on a church and its priests.³

It has been very controversial whether to apply the current labour law provisions by different courts that entertain cases arising from labour disputes. However, very recently the Federal Supreme Court cassation bench under the file No 18419 has given decision pertaining to the matter. And this decision is binding upon other lower courts so that they should follow the decision for future cases which are similar to the decision.⁴

The decision divided church workers in to two. On the one hand, workers who render secular services such as secretaries, cashers, drivers guards and the like. On the other hand, peoples who give spiritual services i.e. priests, pastors', deacons and the like.

Those who render secular services are considered to be governed under the labour law proclamation so long as the council of ministers does not issue regulation as to exclusion. Where as, those who render spiritual services are excluded. By so doing, the decision of the Federal Supreme Court cassation bench left the discretion for the churches themselves. It is to mean that the decision gave permission to solve their disputes either by contractual agreements or by their own rules and regulations.⁵

The intention behind this decision is to protect the government bodies even the court itself not to interfere over the matters of the church. In accordance of the law.⁶

However, in the writer's opinion the problem still exists because no one can make sure as to how far efficient they are to prepare rules and regulations that regulate relationship among them since preparing such kind of rules and regulations pre supposes legal expertise. In addition to this, the law does not put any expressed alternative mechanisms as to how they settle problems. They are also denied the right of justice or the right to take their case to a court of law under such circumstance where there is no agreement between the disputants. Thus, even if the constitution protects the government not to involve over such matters, in the writer's opinion, entertaining cases in order to bring justice should never be considered as interference. Therefore the law maker should setup a better mechanism in order to alleviate such confusions from their grass root level.

3.3. Problems Pertaining to Art 24/1

According to Article 24/1 "contract of employment shall terminate on the expiry of the period or on the completion of the work where the contract of employment is for a definite period or piece of work.

This Article states about lawful termination of contract of employment. It states that contract of employment terminates when the time for a given work lapses or where the work is completed.

Despite the fact that this Article seems free of problem relating to works that specify definite period for the termination of a given work, when we see it in light of construction works the phrase "when the time for the specific work lapses." is problematic. It is because the work of construction by its very nature slows down gradually due to the scarcity of supply of raw materials and other reasons. Thus unlike other kinds of works, it doesn't cease its operation at once. In addition to this, usually

the construction cites for a given contractor are many and thus one can not say that the work is completed unless other wise delivery of the work of construction is completely made.

Therefore, the Article doesn't consider such complex nature of the work of construction and it doesn't allow or leave any room for the contractor to terminate contracts when the work slows down and thus, the contractor is obliged to pay compensation to the worker who alleges the existence of unlawful termination of contract of employment on the ground stated above i.e. unlawful termination of contract of employment. Thus Procl 377/2003 Art24/1 ought to be amended in such a way that it considers the work of construction. And protects the interest of contractors.

3.4. Problems Pertaining to Art 30/1

Even though this Article shows what the nature of the work of construction is, Pursuant to Article 29 the employer can reduce workers when the work slows down with out the need to follow provisions stated under it. The way that such statements are put affects the interest of the independent contractor In addition to this, the replacement of the term 'termination by "reduction" merely shows that the employer doesn't have to follow the rules that are stated under Article 29. However, the rules stated under Article 39 i.e. severance pay and payment for the non observance of notice still remain in force. Thus, the term reduction under the same Article should be amended in such a way that the employer can terminate the contract due to the reduction or slow down of the construction work. Because the state of termination by the employer can be considered as a lawful termination that is to be included in Article 10 and Article 24/1 of this proclamation.

3.5. Problems Pertaining to Art, 39

To begin with, the purpose of severance payment is to alleviate the consequent need for economic readjustment and to recompense the employee for certain losses attributable to the dismissal.

It is also very important to analyze the issue whether severance pay is paid in all cases of termination of the contract of employment or not. Article 39/1 of 2003 states that.

A worker who has completed his probation

- Where his contract of employment is terminated because the undertaking ceases operation permanently due to bankruptcy or for any other reason.
- Where his contract of employment is terminated by the initiation of the employer against the provision of law.
- Where he is reduced as per the condition described under this proclamation.
- Where he terminate his contract because his employer did things which hurts the workers human honor and moral or the thing done by the employer is deemed as an offence under the penal code.
- Where he terminate his contract because the employer being informed of the danger that threatens the security and health of the worker did not take measures. or
- Where his contract of employment is terminated because of reason of partial or total disability and is certified by medical board shall have severance pay from the employer.⁷

This enumeration is an exhaustive list of grounds on which the severance payment is paid to worker in case of termination of contract of employment. According to this Article, a worker can not claim for severance payments when he or she terminates the contract on his or her own fault or on his or her own will or up on his /her retirement and other cases. In addition to this, the following amended new provisions i.e. (g), (h) and (I) of proclamation No 494/2006 are added to sub Article 1 of Article 39.

g.) where he has no entitlement to a provident fund or pension right and his contract of employment terminated up on attainment of retirement age stipulated in the pension law;

h). where he has given service to the employer for a minimum of five years and his contract of employment is terminated because of his sickness or death or his contract of employment is terminated on his own initiative provided that he has no contractual obligation, relating to training, to serve more with the employer.

i). where is contract of employment is terminated on his own initiative because of HIV/AIDS

Out of this, the writer's focus will be on the part that says where he has given service to the employer for a minimum of five years and his contract of employment is terminated because of his sickness or death or his contract of employment is terminated on his own initiative provided that he has no contractual obligation, relating to training, to serve more with the employer.⁸

The Ethiopian workers confederation strongly opposed this provision during the draft step and after its promulgation.⁹ For example, an authority states that the right of severance payment for a worker who terminates the contract on his own will ¹⁰ but the current labour proclamation prohibits this. Such provision violates the right of workers.¹¹ They are opposed to such provisions before the enactment but the legislator enacts it on his own way. With out considering the interest of workers. Thus, in the writer's opinion the ground for severance payment in accordance with Article 39(1) of 2003 Labour Proclamation is not fair. Out of which only the three amended sub Articles i.e. (g), (h) and (I) especially h and I are fair and correct because they tend to consider the worker's interest to obtain severance payment. However, the remaining Articles that are enumerated under Article 39(1) did not put employers and workers in equal footing thus the appropriate organ should take proper consideration so as to amend such provisions in such a way that they also protect the interest of workers equally with the interest of the employers.

3.6. Problems Pertaining to Article 40

Even though conditions of severance payment are enumerated under Article 39 of proclamation no 377/2003, this Article doesn't say any thing about the way or mechanism of payment and as a result of this Article 40 is put to show how payment should be paid when severance payment is effected.

In the case of a worker who has served for more than one year, payment shall be increased by one-third of the said sum referred to in sub –Article one of this Article for every additional year of service, provided that the total amount shall not exceed twelve month's wage of the worker.¹²

Under the above Article though the law doesn't seem to be smooth, there is a problem when it is interpreted or when the payment is effected. For instance, some say that if a worker's salary is 900 birr and if he works in an organization for a period of three years. For the first year he will be paid 900 birr and for the second year birr 900 plus 300 and for the third year birr 900+300 and the total sum will be $900+1200 +1200= 3300$ birr and it is when calculation of payment is effected according to sub 2 of Article 40.

Where as others interpret it in such a way that for the first year the worker will be paid 900 birr and 300 birr is added for the remaining two years each and the sum will be $900+300+300=1500$ birr Thus. When we see the actual practice it is very problematic since there is no uniform and similar interpretation as to the calculation of payment. The law making body would have put it in figures or in a way that any person can understand and interpret it in a similar way.

3.7. Problems Pertaining to Art 43

In spite of the fact that the construction work has its own uniqueness relating to other works, this nature of uniqueness is not considered and supported under Art 10 as a result of this there is no explicit provision as to the time and the phrase **when the work completes**. Doesn't show and address the gradual reduction of the work.

Even though the law shows the nature of slowdown of this specific work it still doesn't clearly indicate about the termination of the worker and the term reduction is not made in such a way that it replaces termination. Such things force labour courts to give different decisions when they adjudicate cases relating to the aforementioned issue. And this makes the court's decision unpredictable. Thus, the worker is entitled to obtain benefit which is a sum equal to his wages which the worker would have obtained if the contract of employment has lasted up to its date of expiry or completion provided. However, that such compensation shall not exceed one hundred eighty times the average daily wage in the case of unlawful termination. What we can understand from this statement is that though the worker works for a period not exceeding 2 or 3 months he is entitled to obtain a benefit that is mentioned above. This significantly affects the financial capacity of the contractor and weakened its financial strength.

Thus, If the worker is entitled to get compensation he must work for a period of 5 years and his contract must be terminated un lawfully under such and only such conditions the person can get compensation.¹³ If this Article contains such kind of statement both Ethiopian and other Foreign Investors who are engaged in the construction sector will be encouraged and there will also be industrial peace and harmonious Employer-worker relationship. Especially, in the area of construction. Which is currently blooming in Ethiopia at an increasing rate.

3.8. Problems Pertaining to Art 138 and 139

The law clearly puts that the labour division of the regional first instance court shall have jurisdiction to settle and determine individual and other similar labour disputes.¹⁴and similarly Art 139 of the same proclamation the labour division of the regional court which hears appeals from the regional first instance court have the jurisdiction to hear and decide among other matters on appeal submitted from the labour division of the regional first instance courts. In accordance with Article 138 of the

proclamation and the decision of the court on appeal submitted as per sub Article 1 of Article 139 shall be binding and final.

In addition to this, the law states that the labour division for the Federal high court shall have jurisdiction to hear and decide on appeals against the decision of the board on question of law in accordance with art 154 of this proclamation and the decision of the court under sub Article 1 of this Article shall be final.¹⁵

Although Ethiopian labour law provides for the establishment of a separate labour court the actual establishment of such courts is limited to Addis Ababa and Amhara region.¹⁶

Individual labour disputes which are large in number are under the jurisdiction of the regional first instance court. However, in Addis Ababa and Dire Dawa individual labour disputes are heard by Federal first instance courts. Federal high court is also serving as appellate court. In the labour law, no jurisdiction is given to federal first instance court and appellate jurisdiction for Federal high court except to reviewing the decision of Labour Relation Boards which is limited to the issue of question of law.

Basically the most final objects that are needed to be achieved by the establishment of labour courts were:

- To provide adequate machinery for speedy settlement of industrial disputes,
- To be inexpensive,
- To be free of technicalities which require long procedures that are very difficult for workers who can not afford payments for lawyers.¹⁷

When we relate this objective with the Ethiopian labour law one can raise the following questions. The first question which comes to the picture is the question of jurisdiction of Federal First Instance courts to entertain labour cases because as we have tried to review the aforementioned Articles they do not have even a single statement as to the power of

Federal First Instance courts to entertain cases arising from labour disputes. Thus, the law and the application seem to be different and the writer is of the opinion that Federal Courts which entertain labour disputes are exercising their power either by way of a mere custom or tradition or beyond their power.

The second question is that whether the machinery is adequate or not. The answer is the machinery has certain deficiencies and can not be considered adequate. This is because separate labour courts are not established in most Administration Regions.¹⁸ court proceedings are devoid of technicalities.

The third question is whether the cases are concluded speedily. Here also the answer is a definite 'No'. It is common knowledge that the delay in disposal of cases is alarming. For example there are 2524 pending cases as of the end of the year 1999 Ethiopian calendar in Addis Ababa First Instance Labour Division .i.e. Menagesha, Kera, Yeka and Old Air port. ¹⁹

There are cases which remain pending from two months to six years in the Federal First instance Courts of Addis Ababa. ²⁰ while sixty days are the time set to give decision for labour division of Regional First Instance Courts.²¹ The reasons for the non observance of the dead line set by labour legislation for the courts are complexity of the cases, lack of efficiency in the courts, shortage of labour division courts and absence of labour division courts in most regional administration. Absence of formal conciliation and mediation or arbitration bodies have also contributed to increase case load of the courts which in turn resulted with inability to render decisions within the time set by law.²² From these problems, one can safely conclude that there are many tasks expected from the appropriate government bodies i.e. Ministry of Labour and Social Affairs (including Regional Bureaus), Ministry of Justice, Regional Bureau of Justice and others to make policy considerations. And above all, the law maker should take proper consideration to amend the aforementioned provisions so as to make them more clear and free of legal gaps.

Conclusions and Recommendations

Conclusions

These days the importance of labour legislations to bring effective settlement of industrial disputes and create harmonious relationship between the employers and workers become indispensable.

To achieve this end, it would be essential to look for proper means and mechanisms. Even though, there are various ways that help solve the prevalent problems, the major one falls up on different labour legislations that are clear ad free of confusion.

In this paper, The writer tried to identify problematic provisions such as, provisions dealing with employment contracts for definite and indefinite time, provisions with regard to religious organizations, provisions that deal with construction works, severance payment provisions and provisions relating to the Jurisdiction of Labour Courts and other problematic provisions are discussed and their consequence up on the parties i.e. the employer and the employee are also shown.

Thus, all workers and employers, and their representatives that fall under the jurisdiction of labour law need to be aware of its content and related regulations. This extends beyond knowing what the law actually says but it includes an understanding of the fundamental purpose and intent of its main Articles. In addition to workers and employers, other parties also should know about the content of labour legislation and this includes primarily Judges, Lawyers, contractors who are engaged in the construction sector and other areas, potential investors, law students and the public at large. Information on labour legislation must also be made available to all interested parties concerning judicial decisions and Arbitral awards.

Even though, rules, principles, and minimum standards for both working conditions and the working environment are established by laws and regulations. Such regulations have to be made clear to any ordinary person and be free of confusion.

Recommendations

In order to prevent or reduce labour disputes and correct some problems observed in labour law and its implementation, the writer recommends the following.

1. The law making body before promulgating laws should consult with concerned executive bodies such as Ministry of Labour and Social Affairs/MOLSA/and other organs so as to identify problematic areas and come up with proper, clear and attainable legislations.
2. The area of the labour law that regulates the power of Federal and Regional Court's jurisdiction should be revised in order to match up the law and the practice.
3. To comply with the Labour law and facilitate speedy labour dispute disposal, it is necessary to establish labour division of first instance courts at least in Woredas where Industries are relatively concentrated. And also special training should be given to Judges on the activity of labour courts and on the futures of industrial disputes before their appointment as Judges of labour court and for those who are already assigned.
4. Ministry of Labour and Social Affairs /MOLSA/in cooperation and consultation with employers, organizations and trade unions and other interested parties should play a role in encouraging improved workplace cooperation, not only by legal intervention, but also through information, advice, encouragement and the demonstration of successful cases.
5. The role of workers participation in labour dispute prevention should get due consideration of MOLSA and the legislator.
6. The Ministry of Labour and Social Affairs should discharge its responsibility of collecting and compiling National Labour

statistics through developing the information system with the cooperation of Regional Bureaus. and finally

7. Since we are living in the fast changing world the House of Peoples Representative/HPR/ has to put mechanisms with which labor laws are amended as the situation may be.

Appendices

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DECLARATION

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

Name _____

Signature _____

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