



**Right of the child for protection from corporal punishment in
home setting: the law and the practice at the federal courts of
Ethiopia**

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**Right of the child for protection from corporal punishment in
home setting: the law and the practice at the federal courts of
Ethiopia**

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Declaration

I Betel hem mekonnen, hereby, declare that this research paper is original and result of my personal effort and has never been presented in any other academic institutions in my knowledge. Where other peoples work have been used and or referred to, acknowledgments have been duly made.

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Acronyms

ACRWC	African charter on the rights and welfare of the child
CP	Corporal Punishment
FDRE	Federal democratic republic of Ethiopia
FFIC	Federal first instance court
FHC	Federal high court
UDHR	Universal declaration of human rights
UN	United Nations
UNCRC	United Nations convention on the rights of the child
UPR	Universal periodic review

Abstract

This study had assessed the gap that exists in law and practice at federal courts. Empirical legal research method was employed while undertaking the research. Data was gathered from Federal first instance court and federal public prosecutors offices of selected branches using structured interviews, non -participant observation, court records as primary data and legal documents, academic literatures and reports were used as secondary source of data. It is discovered that there is actual gap in law but the practice is in-line with child corporal punishment international laws to some extent. However, the practice had ignored principle of legality issue for parents. From the findings, the researcher concluded that law reform shall be taken by criminalizing all forms of corporal punishment and had indicated future research areas that will enhance the law reform goal towards attainment of the human right children.

Key words: child corporal punishment at home setting, principle of legality, human right

Chapter one

1. Background of the research

Child as defined under convention on rights of child refers to every human being below the age of eighteen years old¹. As a result of their maturity level and the status children are in, they need to be given special protection available. One can understand from the available declarations and conventions that Child abuse and movements to children right to protection from the abuse is not recent phenomena.

Physical abuse could be physical, psychological, or the combination of both. Children are said to be physically abused when a child is physically injured or put at risk of harm by another person². For the purpose of this paper, the research will be on the corporal punishment of children at home setting the law and the practice at FFIC.

Children are accorded with the right to protection from corporal punishment and other cruel or degrading forms of punishment³. It's clear that care givers or parents are the first environment they encounter in life. From this we may conclude that family is the first to give this protection to children.

However, Ethiopian demographic and health survey shows that due to the socially accepted culture, physical punishment, one form of violence against children, is prevalent and normalized. Punishment will be undertaken as a response to wrong behaviour in the name of correcting or controlling behaviour of children⁴.

But what must be understood is beyond the correction of the unwanted behaviour, such act is not without consequences. It had short term physical impact by violation of children's human rights as well as long term consequence, psychological impact. Various researches show child

¹ 1. Convention on the right of the child (1989). Article1.

² Garner B, Black's Law Dictionary, (7thed, west group co.1999) 897.

³ General Comment No.8, On the Right of the Child to protection from corporal punishment and other cruel or degrading forms of punishment (2006). Art 37.

⁴ Woldeyesus, E.k., Domingo, p. and Bekele, Policy and legal analysis notes: a review of the strategic plan for a multi sectorial response to violence against women and children in Ethiopia (2018) 10.

delinquency behaviours emanate from the parenting styles they grow in. Child abuse has direct correlation with child delinquent behaviour. The more authoritarian parenting styles the parents or care givers follow the more delinquent behaviour the child will develop⁵.

With regard to the legal protections, the convention on the rights of the child demands members to take all appropriate measures to protect the child from all forms of violence in any setting including the care of parents⁶. It had established committee on the rights of the child for the purpose of examining the progress made by state parties towards the obligations undertaken as stated in the convention⁷.

In Ethiopia, One of the basic principles of criminal law, principle of legality states that for an act to be considered as criminal act it is a must for it to be stated under the law as criminal act. Hence, the fact that child corporal punishment at home setting is not promulgated as criminal act under the criminal code implicitly shows that it will not be punishable⁸. This in fact will be against the internationally guaranteed human right of children from torture or cruel, inhuman or degrading treatment or punishment and against the states obligation to taking all appropriate legislative, administrative, social and educational measure⁹.

Even if Children are accorded with right from corporal punishment in home setting under CRC at international level, ACRWC at regional level and the federal democratic republic of Ethiopian constitution of the 1995 at national level, the violation at home setting still exist. UPR reports and committee on the rights of the child had given various comments for the country to tackle this problem. Hence, it is crucial issue that needs to be given special attention.

Hence, the study will aim to evaluate the gap between the legal provisions and the actual practice regarding corporal punishment at home setting the law and the practice at FFIC and will conclude by providing recommendations that need to be worked on.

⁵ Betelhem mekonnen, Parenting style and juvenile delinquency: the case of Addis Ababa Remand Home Juvenile Delinquent Rehabilitation Center (2018) Addis Ababa university unpublished. 35.

⁶ Convention on the Right of the Child (1989). Article19.

⁷ Ibid. Article 43.

⁸ FDRE Criminal Code of Ethiopia (2005), Article 2.

⁹ Convention on the rights of the child,(1989) Article 19 &37.

2. Statement of the problem

Ethiopia is among one of the signatory state to CRC which clearly stipulate corporal punishment is against child human right. On the other hand, child corporal punishment is generally accepted culture and legally acceptable in Ethiopia as a means of shaping child behaviour.

The very fact that family law and criminal law allows it, raises the question whether the law really plays the role of respecting the human rights, best interest of the child or not. Inflicting corporal punishment is against children right to physical dignity as enshrined under CRC¹⁰. On the other hand principle of legality obliges for the judiciary to punish according to the law. Parents are legally allowed to punish their children. Punishing them for so doing creates question of human right issue for the parents too.

The research will intend to address this gap by assessing the law and international human rights law principles, explore what the practice is, then provide recommendations government may employ to address this gap.

The fact that ratification of CRC that obliges state parties to take action towards child right to be free from corporal punishment at home setting as a human right and existence of legally stipulated article legalizing corporal punishment at home setting in Ethiopia justifies the need for research.

3. Objectives of the study

3.1. General objectives

The general objective of the research will be to evaluate the gap between law and the practice with regard to child corporal punishment in home setting at FFIC of Ethiopia and international human right laws.

3.2. Specific objectives

The study will have the following specific objectives:-

- To assess the law on child corporal punishment
- Explore the practice in FFIC on child protection from corporal punishment in home setting

¹⁰ Ibid article 37.

- Explore the practice with regard to human rights law principles on corporal punishment of child at home.
- To provide recommendations towards attainment of protecting children from corporal punishment in home setting

4. Research questions

4.1. Central research questions

What is the legal framework governing corporal punishment in home setting in Ethiopia and how do the law and practice align with international human right standards?

4.2 specific research question

- What is the legal framework available to protect child from corporal punishment at home setting?
- How do these laws align with international human rights standards?
- What gaps does exist between legal provision and actual practice regarding corporal punishment in home setting?

5. Scope and delimitation of the research

As per federal courts proclamation number 1234/2013 federal courts have criminal jurisdiction over violations of international laws¹¹. In addition, the criminal procedure code under its table two dealing with jurisdiction of courts physical abuse, corporal punishment at home setting is jurisdiction of first instance court.

On the other hand, Ministry of justice is given the mandate to cause criminal investigation to be started on cases falling under the jurisdiction of federal courts¹².

Hence, study area will be cases presented to federal first instance court criminal benches on children corporal punishment.

6. Significance of the research

Significance of the research is basically to have clear understanding on the gap between the legal provision and the actual practice at FFIC, how international human rights standards are currently applied by FFIC in entertaining cases of corporal punishment at home settings on

¹¹ Proclamation 1234/2013, Federal courts establishment proclamation.

¹² Proclamation 943/2008, Ministry of justice establishment proclamation, article 6

children. By doing so, it will help as core point for future researches. In addition, policy recommendations will be given to enable for the promotion of the law and the practice in protecting child right from corporal punishment.

7. Limitations

As above discussed, there is legal gap towards corporal punishment of children in home setting. In addition corporal punishment is culturally accepted. The reporting made to police will be minimal. From the FFIC practice aspect, all criminal cases related to bodily injury are entertained in similar bench with adults. This will have influence on identifying child abuse cases. Hence, the possible expected limitation will be finding of court decisions.

To avoid such limitation, the researcher from the interview with registrars of federal courts had come to understand FFIC and public prosecutor offices had distinct file numbers for same cases¹³. Hence the researcher plans to find such cases by discussing with public prosecutors that are assigned to represent children cases. And find the court file number from the reference point of public prosecutors file number.

8. Organization of the research

Chapter one includes background of the study, statement of the problem, objective of the study, research questions, scope and delimitation of the study, significance and limitation of the study is discussed.

Chapter two is dealing with literature review. Philosophical and theoretical foundation of child and child right is discussed, corporal punishment, the existing debates, effect of corporal punishment, the legal framework are also discussed extensively. Overview of corporal punishment in Ethiopia and how international human rights law are being applied by the judicial system in Ethiopia is also addressed.

Chapter three is dealing with method and methodology, chapter four discusses on the findings and analysis and conclusion. Finally, under chapter five recommendations from the findings of the research and other similar researches on issues of corporal punishment at home setting will be forwarded with directions for areas that demand future research on this issue.

¹³ Interview with Ms Fetlewerk Andarge, Head registrar of FFIC, conducted on June 2024.

Chapter two

2.1. Theoretical framework

Under this sub chapter theoretical and philosophical framework of child and corporal punishment will be discussed so as to build understanding on the basics of the concepts.

2.1.1. Child and child right

Definition

Childhood is one of developmental stage of humans one cannot jump off¹⁴. Child is the future adult society. From this, one may conclude the future of society depends on its ability to foster the health and wellbeing of the next generation.

The existence of laws granting rights to children, the various acts governments undertake towards recognition and respect their human right is one of the confirmations one can make to the acceptance of child as a human, as citizen of one's country.

Child is generally accepted under various laws to be of age up to 18 years with their differences. As stated under convention on child right is defined as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier¹⁵. The convention clearly recognizes majority might be attained at earlier age under the laws applicable to the child. The upper age limit hence is age of childhood and not that of majority.

On the other hand the African charter on the rights and welfare of the child provides a different definition. It defines child as every human being below the age of 18 years¹⁶. This definition of child shows the end of childhood age is not subject to limitation.

Child right is guaranteed under the federal democratic republic of Ethiopian constitution but did not mention the age boundary¹⁷. It is under the substantive laws that the definition of the term is found. The term child in is used interchangeably with the minor, infant, young worker or young person under various laws. The only definition we can get is Minor, as a child, is

¹⁴ Gouri Manik Manas, 'A study on childhood development in early stage' (2020)7/59, JIS 13927. 29.

¹⁵ United Nations Convention on the rights of the Child (1989) article 2.

¹⁶ African Charter on the rights and welfare of the Child, article 2.

¹⁷ Federal Democratic Republic of Ethiopian Constitution, Article 36.

defined by the revised family code of Ethiopia 213/2000, as a person of either sex who has not attained the full age of eighteen years old¹⁸.

Debates on child right

It is clear that Children, by the reason of their physical and mental immaturity need special safeguard and protection. In order to ensure protection they are accorded with rights by different laws at international, regional and national levels. However, the existence of these legal instruments is not with-out the existence of various philosophical views, theoretical and cultural tensions starting from considering them as citizens to assigning rights.

Perception of children's right depends on how childhood is constructed in the said country, and how they are able to exercise. Children were considered to be dependent groups waiting to be adults. It raises question as to whether or not they are entitled to same type of rights as adults or children's rights differ because they are children. Because childhood is constructed differently in different times and places, there were debates on child right in the first place.

At one end children's right are perceived as detracting from adults', that is parents' rights and some advocates critical of children's right argue state diminishes the role of parents by granting child a voice in decisions that affect them¹⁹. In the meantime, the tension between needs and rights with alternative quality of life discourse emerged which basically concentrates on what makes life worthwhile and impliedly supporting children's right²⁰. Namely child right based approach. As derived from the concept of human rights based approach which focuses on realization of the rights of the excluded and who are at risk of being violated population²¹.

¹⁸ Revised Family Code, Article 215.

¹⁹ Sarah Te one, 'Defining rights: children's rights in theory and in practice' (2011) He Kupu vol2, 41.

²⁰ Ibid 43.

²¹ <http://www.ohchr.org.sit> <frequently asked questions on a human rights based approach to development cooperation> as accessed on august 8/2024.

2.1.2. Philosophical and Theoretical foundation of child right

a. Natural law theory

We find different views of natural law with their theoretical underpinning based on the existence of higher law that is derived from divine nature as a scale for measuring its validity. Cicero, the ancient writer of natural law, states that true law is right reason in agreement with nature, universal application, unchanging and everlasting²². Thomas Aquinas argues human laws derive their legal quality and find power to bind in conscience from natural law. On the other hand, Lisska states the positive law inheres from natural law because it is the guiding framework for promulgation and legitimacy of the positive law²³.

These debates and other theorists such as Hugo Grotius writings on natural law lead later in history natural law to be accepted and included in the natural rights concept²⁴. The debates appeared to play significant role in the development of the natural law theory. The concept of natural law leads to the idea that Humans have are accorded with inalienable rights by the mere fact that they are human.

One may conclude, even though the age long debate on the conception of human right exists and it made no conception of child right specifically, natural law theory emphasizes the basis for the protection of human rights as a propelling force to the growth of the contemporary child right regime.

²² Uchenna Emelonye, 'theoretical and normative foundation of child rights'(2018)15(Jan)UCLR.2.65.) <<http://www.researchgate>> accessed July 07 2024.

²³ Ibid3.

²⁴ Ibid3.

b. Positive law theory

Positive law as oppose to natural law is the way the law is and the way it ought to be and its validity as a norm is not necessarily linked to its moral value. They basically differ in the interpretation of concept of legality and authority²⁵. The 19th century philosophers such as John Austin, H.L.A. Hart are among the prominent of the positive law theory.

Positive law theory argues that law is the order of the sovereign backed by a threat of sanction in the event of non- compliance. It validates legal obligation irrespective of its moral content and contradiction with other value system. This serves as important tool in modern day effort in promoting and protecting child rights by creating flexibility in meeting the evolving rights²⁶.

c. Other foundations

Sociological jurisprudence states every rule of law owes its origin to some predicated motive and argues that the purpose of law is to secure the conditions of social life as determined by the social order of the time and place. It is deemed to be compatible with child right as an evolving trend in human rights²⁷.

Marxism, according to Karl Marx, did not treat children as distinct class of right holders but as a species- being. It recognizes the competence of the international community to establish transnational human rights including child right norms²⁸.

Legal realism is another foundation that conceptualize behavioural dimension of law and society. It underscores the just equilibrium of interest among competing moral sentiments and in the context of social process²⁹.

²⁵ Coleman,J.L & Leiter,B. (2010). Legal positivism in Dennis Patterson: A companion to philosophy of law and legal theory(2nd ed, oxford)456.) <[http:// www.acadamianet](http://www.acadamianet)>accessed July 08 2024.

²⁶ Uchenna Emelonye,' Theoretical and normative foundation of child rights' (2018)15(Jan)UCLR.2.34. <[http:// www.researchgate.net.org](http://www.researchgate.net.org)>accessed July 08 2024.

²⁷ Ibid36.

²⁸ Ibid54.

²⁹ Ibid45.

2.2. Corporal punishment

Definition

Physical abuse of children may take different forms: School, homes, work places and even in the justice system. Corporal punishment is one form of Physical abuse. Psychologist Elizabeth Thompson Gershoff, who had studied in a large scale meta - analysis of 88 studies by looking at both the positive and negative behaviours in children that were associated with corporal punishment, defines corporal punishment as physical punishment which uses physical for intending to cause bodily pain for the purpose of correcting or punishing a child for their behaviour³⁰.

According to Reece L. Peterson and Ann O'Connor, corporal punishment may be divided into three types; namely judicial corporal punishment; which is ordered by court, parental or domestic corporal punishment; which is undertaken by parents or guardians and school corporal punishment which occur when students are punished by teachers or administrators of the school³¹. For the purpose of this study corporal punishment in home setting will be dealt on in detail as the study is basically on at home setting.

The UN committee on the rights of the child defines corporal punishment in general comment 8, 2006 as follows;

“...any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement- a whip, stick, belt, shoe, and wooden spoon. etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions burning, scalding or forced ingestion(for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are cruel and degrading and thus incompatible with the convention”³²

³⁰ Elizabeth Gershoff, ‘Spanking and child outcomes: old controversies and new meta- analyses’(American psychological association 2016) <[http:// www.apa.org](http://www.apa.org)>accessed July 07 2024.

³¹ Reece L. Peterson and Ann O'Connor, ‘Corporal punishment a traditional discipline consequence’ (researchgate.net January 2014) <[http:// www.researchgate.net](http://www.researchgate.net)>accessed July 07 2024.

³² General comment No 8, 2006, on ‘the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’ article 11.

Debates on corporal punishment

There are different views on whether or not corporal punishment should be allowed. We can group them as those who argue for and those who are against corporal punishment.

Those who argue for corporal punishment stress that it is of immediate result. Physical punishment had deterrent effect. On the other hand those who agree against corporal punishment also named rights based advocacy for prohibition stress that corporal punishment is against the law. Children are accorded with rights to protection from violence in human right treaties. Laws that allow adults to inflict violence on children in the name of discipline imply the view of children as subordinate being to adults, as object³³.

In addition to the illegality, babies instinct is to trust, when parent punishes the child physically, it makes the child to feel not safe and causing them to become mistrustful. Studies were made also that support this argument conducted on children by psychologists. They concluded corporal punishments can lead to adverse effects on children in the long term like mental disorders. Studies also indicate the existence of direct correlation between parenting style parents employ in raising their children and children's behaviour at later stage. They conclude corporal punishment is one form of child right abuse leading to consequences one cannot divert. An argument from bible is often used to support this view. They say spare the rod and spoil the child (proverbs 13:24) did not exactly refer to physical punishment but refers to disciplining³⁴. The basic goal of disciplining should be teaching them to control themselves and causing harm to their body or mental wellbeing. Hence, instead of physically abusing child parents may use alternative means such as positive reinforcement if the intention is disciplining the child's behaviour.

Effects of corporal punishment

Human rights movements date back to centuries. Different international instruments had been ratified worldwide aimed at addressing issues of human rights in detail. However, the issue of

³³ The positive impact of prohibition of corporal punishment on children's lives: message from research (Sep 2021)<[http:// www.Endcorporalpunishment.org](http://www.Endcorporalpunishment.org)> as accessed 23/7/24.

³⁴ Gershoff and Bitensky, 'The case against corporal punishment of children, psychology, public policy and law' (the American psychological association) vol.13, No.4, 2007.

corporal punishment is not resolved and is still major problem in many countries³⁵. What makes it difficult is the status they are in. Children are incapable on their own due to the physical maturity level they are in. being dependent on their parents and care givers makes them to be vulnerable to punishments and accept it no matter what because they are voiceless. Corporal punishment on children had direct and indirect effects. Whenever they are victims, physical harm and impairment is the direct visible effect.

On the other hand, the long term effect of corporal punishment is on psychological well-being of the child. One can presume punishing behaviour may enable them to know what the desired behaviour is. However several researches on the correlation between punishment and child behaviour had been undertaken and concluded they had adverse effect. Children instead learn to avoid that unwanted behaviour and they will start to show the desirable behaviour only in the presence of adult.

Thus, creating direct impact on the relation between the adult and the child by undermining the quality relation they had. In other researches physical punishment of child sends a message to the child to act aggressively to cope up with the punishment undertaken. Sarwar studied on the influence of parenting style on children's behaviour using in depth study method from two mothers of juvenile delinquent children and concluded that children's of parents who follow authoritarian parenting style are more often rebellious and have problematic behaviour because the parents exercise unnecessary power on children³⁶.

Legal framework of corporal punishment

The discussion below will focus on the legal frame work of corporal punishment that exists at international level, regional level and in Ethiopia. It will briefly discuss on the convention on the rights of the child, general comment 8, practices the committee on the rights of the child employ by controlling the implementation in member states and African charter on the rights of the child. Finally it will discuss Federal democratic republic of Ethiopian constitution and other subsidiary laws in Ethiopia.

³⁵ Hem Sager Rima and Archana Pokharel , 'Corporal punishment and its effects in children'(2013) KAT MJ 2, 156.

³⁶ 'Corporal punishment of children: review of research on its impact and associations' [endcorporalpunishment.org,Sep2021](https://www.endcorporalpunishment.org/Sep2021)<<https://www.endcorporalpunishment.org/wpcontent/uploads/2021/09/research-effects-full-working-paper-2021.pdf>> accessed 24/7/2024.

International laws

The United Nations convention on the rights of the child was adopted by the United Nations general assembly on November 20, 1989 and came into force in the years that follow. It is known for either ratification or acceptance by all countries except United States and Somalia³⁷. It had set four principles with regard to child right namely the principles of non -discrimination, of best interest of the child, of right to life, rights to survival and development and principle of the views of the child³⁸. The principle of non-discrimination requires state parties to respect and ensure the rights enshrined in the convention to each child without discrimination of any kind, irrespective of the child's race, colour, sex, language, and religion, political or other ground. It is one of the cardinal principles that are identified as one of the fundamental pillars of the convention.

In addition we find categories of rights that the convention gave to children. Provision rights such as right to minimum standards of family life, access to parent care, health, education, social security, physical care, etc. , protection rights such as right to be free from discrimination, adults to act in a child's best interest, physical and sexual abuse etc. and participation rights such as civil and political rights. These rights are interdependent and inter-related; hence implementing CRC effectively requires balancing the three categories of right together with the principles that is set³⁹.

The convention clearly obliges state parties to respect and ensure the rights set forth in the convention to each child within the jurisdiction and to take measures to ensure the child is protected against all forms of discrimination or punishment on the basis of status or other ground, torture or other cruel inhuman or degrading treatment or punishment. It demands taking legislative, administrative, social and educational measure to protect the child from all forms of physical or mental violence, injury while in the care of the parents or legal guardian⁴⁰.

³⁷ <<http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> > accessed 25/7/24.

³⁸ Girmachew Alemu and Yonas Birmeta, 'Handbook on the rights of the child in Ethiopia', center for human rights, (2013)46.

³⁹ Sarah teone, 'Defining rights: children's rights in theory and in practice' (2011) He kupu vol2, 76.

⁴⁰ , UNCRC(1990) Article 2, 28 and 37.

The convention under article 43 had established committee on the rights of the child which is empowered to examine the progress made by state parties in achieving the realization of the obligation undertaken in the convention. State parties will undertake to submit their report to the committee through the secretary general of the United Nations and the committee will provide its suggestions and general recommendations together with comments if any to the state party.

In addition to report collecting and giving recommendation, as a treaty body publishes its interpretation of the provisions CRC in the form of general comments. So far it has established 26 comments. General comment 8 was issues on June 2/ 2006 on the issue of the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment on articles 19,28 paragraph 2 and 37⁴¹.

Regional laws

African charter on the rights and welfare of the child was adopted a year after CRC in 1990 and came into force in 1999. It is said to be the only regional child right instrument with unique rationale and features that benefits the children in the continent.

Under the preamble, child is recognized to grow up in atmosphere of happiness, love and understanding rather than abuse and violence. This intension is clear in the articles of the charter and basic principles implying corporal punishment to children in Africa as violation of their rights. Under article 14 the charter every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. State parties are required to take legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and specially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child. Similar to CRC it provides the issue of corporal punishment of child. Under article 20 parents are obliged by responsibility for the child upbringing and development. However, on the issue of domestic discipline, under its article 20/c it is allowed so long as it is administered only with humanity and in a manner consistent with the inherent dignity of the child⁴².

⁴¹ CRC/C/GC/8 'convention on the rights of the child (2006).

⁴² Convention on the rights of the child(1989) Article 20.

There are arguments on these issue, some argue article 11/5 is meant to be prevention of administration of corporal punishment on a child. On one study conducted by Ekundayo, it states prohibition of corporal punishment might look controversial issue in African traditional setting but from the articles of the charter it is clear that corporal punishment is a child right violation⁴³. This argument can be confirmed by the general comment the committee provided by stating the committee is concerned that there are some forms of corporal punishment not prohibited by the law... the committee encourages the state party to prohibit corporal punishment within the family, school and other alternative care institutions. The committee encourages the government that explicitly out- law corporal punishment in the criminal codes of the country⁴⁴.

The UPR system

Universal periodic review is a system that was created by the general assembly in 2006. It is a peer review mechanism whereby the human rights record of all states will be reviewed every four and half years on equal footing by fellow states during an intergovernmental human rights council working group session in Geneva.

All states will be giving recommendations on the implementation of the human rights commitments and obligations as set out in the UN charter, the universal declaration of human rights and human rights treaties ratified by the concerned state. The recommendation will be made based on three points. First it depend on the report the state had given, second based on the compilation prepared by the OHCHR, compiled from the UN entities , thirdly from the information from other stakeholders such as national human rights institutions, NGO's and regional bodies⁴⁵. So far there are four cycles of UPR. The first started on 2008 to 2011, the second 2012-2016, the third 2017-2022, and the fourth 2022-2027.

⁴³ Osifunke Ekundayo, 'Does the African charter on the rights and welfare of the child only underlines and repeats the convention on the rights of the child's provisions? Examining the similarities and the differences between the ACRWC and the CRC ': international journal of humanities and social science (2015) Vol 5. No7.

⁴⁴ Progress towards prohibiting all corporal punishment of children in east and southern Africa <<http://www.endcorporalpunishment.org>> as accessed on 25/7/24.

⁴⁵ Maximizing the use of the universal periodic review at country level: practical guidance<<http://www.ohcr.org>>accessed 25/7/24.

UPR system helps member states to assess the realities they are in, engage in dialogue with member states, and more. This is one of the non-binding controlling mechanisms towards implementation of the convention.

Brief overview of corporal punishment of child laws in Ethiopia

Ethiopia legal system is known for having mixed legal system: common law and civil law legal system. As a civil law legal system Ethiopia had codified laws including procedural dealing with the procedure and substantive laws dealing with substantive laws other than procedural matters.

As a common law legal system, it is practiced in Ethiopia to take note of federal cassation decision as equal footing as a law. Proclamation 454/2005 had introduced a system where by Federal court cassation decision rendered by five judges will be considered as law unless it is repealed by cassation decision by seven judges or decision by house of federation. The FDRE constitution under article 62 states that the house of federation has power to interpret issues that demand constitutional interpretation. It means the decision that is rendered by the house of federation that will have higher acceptance level as compared to the cassation bench decision rendered on same issue.

We find various substantive laws codified. However, there is no codified child right law in Ethiopia. We cannot find specific law that exclusively addresses the rights, welfare and other issues of children. They are found scattered in different codes.

In this section we will have a look on few proclamations either in codified form or not that are either directly or indirectly related to the issue of human right and child corporal punishment in home setting and the country's child policy.

The constitution of federal democratic republic of Ethiopia

FDRE constitution, proclamation number 1/1995, as it is stated under the constitution it is the supreme law of Ethiopia where by any customary practices or any decision made by organs of the state or public officials shall be of no effect. It also recognized international agreements that are ratified by Ethiopia are parts of the law of the land. With regard to the scope of application it demands all federal and state legislative, executive and judicial organs at all levels to respect and enforce the fundamental rights and freedoms specified in the constitution in conformity to the principles of UDHR, ICCPR and other international

instruments adopted by Ethiopia. Ethiopia had ratified CRC and ACRWCR by proclamation 10/1992 and 283/2002 respectively.

Under article 36 recognized children right by stating every child has the right to be free from corporal punishment or cruel or inhuman treatment in schools and other institution for the care of children. In all actions undertaken it demand the primary consideration to be best interest of the child.

However, the constitution is silent. It does not address the issue of corporal punishment in home setting.

The revised family code of proclamation number 213/2000

The preamble of the revised family code states the reason that necessitates the amendment of the family law is basically to make it compatible to latest international legal instruments which Ethiopia had ratified.

However, with regard to corporal punishment in home setting, under article 258, it clearly states the guardian may take the necessary disciplinary measure for the purpose of ensuring the child's upbringing.

The criminal code of proclamation 414/2005

One of the basic principles of Ethiopian criminal law is the principle of legality. It states Court may not treat as a crime and punish any act or omission which is not prohibited by law. With the same talking the Court may not impose penalties or measures other than those prescribed by law.

Under article 576 of the criminal code, it is a prohibited various types of deeds that are understood to be the maltreatment of children. It states who so ever, having the custody or charge of a minor, ill-treats, neglects, over tasks or beats him for any reason or in any reason or in any manner is punishable with simple imprisonment not exceeding three months. The term whosoever includes anyone having custody or charge of a child under their protection. However under sub 3 the criminal code permits corporal punishment of children so long as undertaken for disciplinary purpose and to proper upbringing.

Civil code of proclamation 165/1960

The civil code on extra contractual liability section under article 2039(2) c provides that no offence shall be deemed to have been committed where the act consists in reasonable corporal punishment inflicted by the defendant on his child, ward, pupil or servant.

When an extent of wrong doing is put as a bench mark to consider an act as an offense or not is not only very subjective but inappropriate, when the need arises later, to deal with such cases. It seems the civil code attribution of legitimacy to the subjectivity of an act is a good as allowing the conduct of the act with no limit.

Proclamation number 1234/2013

The federal courts proclamation number 1234/2013 was proclaimed in 2013 by repealing the previous proclamation introducing basic changes with regard to human rights applicability in courts. Three basic principles are proclaimed for the federal courts to be said to have jurisdiction over cases. If the cases are on issues arising from international treaties accepted and ratified by Ethiopia, then it is of federal courts jurisdiction⁴⁶. In entertaining cases federal courts shall settle cases or disputes, submitted to them with in their jurisdiction on the basis of in addition to constitution, federal laws or regional laws depending on the case, federal courts are duty bound to settle cases on the basis of international treaties to which Ethiopia is a party. And it is clearly stated for such cases to be under the civil jurisdiction of federal high court⁴⁷.

Policy framework of Ethiopia

FDRE minsters of council had issued Ethiopia Child policy in May 2009. The policy had vision of incorporating child right into practice. It had set different agendas it aims to undertake in doing so. It is a well condensed document incorporating rights that are guaranteed under CRC. The basic principles are child right to life and right to live in a comfortable environment; best interest of child principle; right to be free from discrimination on the basis of race, ethnic group or any grounds; right to participate in decisions concerning

⁴⁶ Federal courts establishment proclamation, number 1234/2013 Article 3.

⁴⁷ Ibid article 11/3 and 4.

their life⁴⁸. One of mechanism through which child policy is planned to be implemented is by including matters concerning child in every laws, policies, programs and projects.

Criminal policy of child of 2003 states that the best interest of the child shall be given primary consideration. It further states criminal law and criminal procedure law will be proclaimed with the intention of respecting the rights of victims in general and specifically children right⁴⁹.

From the national human rights action plan from 2016 to 2020, as a country it is planned to undertake continuous awareness raising activity to prevent application of corporal punishment with the view to eliminate the practice and providing alternative disciplining skill.

2.3. International Human rights application in the judicial system of Ethiopia

Human rights are human rights. Whether child or adult, they have the same general human rights. Courts are given power to interpret laws and put in life rights that are guaranteed under various international and domestic laws. In so doing they employ variety of standards to reach to conclusions to render judgment.

Legal interpretation is not easy task. It involves intellectual activity by giving meaning to a legal text. What the text is and whether it is valid are questions related to interpretation. It is a task of identifying what the normative meaning of the text is. One must be aware that interpretation is dependent on system or method of interpretation⁵⁰.

In addition to interpretation of laws, in putting limitation to human rights courts are required to follow certain rules. Siracusa principle specifically deals on restriction of human rights. It provides guidance on the limitation and derogation of rights outlined in the international covenant on civil and political rights. Even if not legally binding, it reflects on the current

⁴⁸ FDRE child policy (2002).

⁴⁹ FDRE criminal policy (2003).

⁵⁰ *ibid*

state of international law and need for effective implementation of rule of law by allowing for permissible restrictions on rights in certain known conditions only⁵¹.

The principle states that rights shall only be limited only when there is clear statement in the law prescribing to this effect at time when the limitation is applied. It also states that a state party may take measures derogating from ICCPR only when in public emergency situations⁵².

In criminal justice system, there are various criminal law principles and standards set by national and international laws aimed at safeguarding defendants' human right. The notion of principle of legality is one of the principles by which justice or fairness of a states' law can be assessed by safeguarding the freedoms and liberties of individuals in the administration of criminal justice.

In the years following world war two the principle of legality was recognized as human rights and over the years became rule of customary international law⁵³. Evolution of this principle is characterized by the recognition of nullum crimen principle as human right and the development of international criminal law through the progressive codification of international courts⁵⁴.

The general idea behind is of four element first the law should be written so that the people should be noticed and fair warning should be given, court cannot punish individual by analogy or by presumption of similar criminal provision, law should be certain and precise enough .

⁵¹ www.icj.org/resource/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant as accessed on July 23,2024.

⁵²<www.icj.org/wp-content/uploads/1984/07/siracusa-principles-ICCPR-legal-submission-1985-eng.pdf> accessed on 8/5/2024.

⁵³ Mindahun mitiku,' principle of legality under the Ethiopian criminal code: the law and the practice' (2020)<<http://www.academia.edu/70720794/title-principle-oflegality-under-the-Ethiopia-criminal-code-the-law-and-practice>> as accessed on 8/2/24.

⁵⁴ Alejandro lereina Garcia, The principle of legality in international law, A study towards the reconciliation of justice and legality (www.academia.edu,2023)<[Http://www.academia.edu/104083404](http://www.academia.edu/104083404)> accessed on 30/7/24.

Among many human right instruments UDHR guaranteed the right to fair criminal process. Under article 11 of UDHR framework for the treatment of the legality principle in the future international instruments is set. It guarantee everyone charged with penal offence has the right to be presumed innocent until proven guilty according to law in a public trial and no one shall be held guilty of any penal offense on account of an act which did not constitute penal offense under the law at time when it was committed. The principle of legality is also enshrined under the ACHPR under article 7 stating no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed.

Likewise Ethiopia had also recognized this principle under FDRE constitution as well as criminal code of 2004. FDRE constitution under the fundamental rights and freedom section recognized no one shall be held of guilty of criminal offence on account of act or omission which did not constitute criminal offence at time when it is committed⁵⁵. Criminal code states for a certain act to constitute crime and the person be punished by court, it is a must for it to satisfy the three elements. It needs to be stated clearly on the law to constitute criminal act, material element and moral ingredients need to be fulfilled all together⁵⁶.

The principle of reasonable doubt is also accepted standard even if not mentioned clearly. It is standard which is developed from the realization that human affairs can best achieve at best what is perceived to be moral certainty. It is a must for the public prosecutor as a plaintiff to present the fact as firm and settle with evidence and testimony with the highest threshold as compared to the defendant⁵⁷. Courts in deciding cases will also consider whether or not the defendant act was what reasonable man would do in normal course of action.

Hence in the criminal justice system the judiciary, in interpreting criminal law shall not interpret the law by going beyond what the text says so. No interpretation by analogy is allowed.

On the other hand the best interest of the child principle is one of the key concepts in the movements towards child right protection. However despite a universal recognition of the

⁵⁵ FDRE constitution, article 22.

⁵⁶ Criminal code article 23.

⁵⁷ Hana Arayaselassie; 'the standard of proof in criminal proceedings: the threshold to prove guilt under Ethiopian law' sep.2014 mizzen law review volume 8 no.1.29.

principle, defining the concept is still a problem just as values and social norms are not same everywhere so is the understanding of the notion of the best interest of the child principle⁵⁸.

As it is stated under the preamble, the convention on Child right is proclaimed with primary goal and understanding that child by reason of his physical and mental immaturity, needs special safeguard and care, including appropriate legal protection, before as well as after birth⁵⁹. It is a threefold concept that includes a substantive right, fundamental and interpretive legal principle. It aims to ensure the full and effective enjoyment of all rights recognized in CRC with the primary consideration to ensure holistic development of the child⁶⁰. However the fact that there is no clear cut definition to the concept of the best interest of the child right gives the space for the judge to interpret laws depending on the case at hand.

Most international laws including CRC oblige State parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination. They shall take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention⁶¹.

It is clearly seen that human rights are one of the fundamental right and freedom that are accorded with constitutional guaranty under FDRE constitution. In addition to the constitution, other subordinate laws are also proclaimed to this effect.

The power to interpret laws is given for the judiciary as one part of government. The judiciary need to adhere to different principles and rules of interpretation in civil and criminal justice system. So long as it is aimed at guarantying rule of law and guarantees the validity and acceptance of the law by the society at large courts in interpreting laws need to respect the constitutionally guaranteed rights to the fullest.

⁵⁸ Aron degol and shimeles dinku: ' note on the principle of best interest of child: meaning, history and its palce under Ethiopia.(2011)mlru5 no2.7.

⁵⁹ Ibid.

⁶⁰ [https:// www.humanium.org/en/the-best-interest-of-the-child-as-put-into-practice-worldwide/](https://www.humanium.org/en/the-best-interest-of-the-child-as-put-into-practice-worldwide/) as accessed august 10/2024.

⁶¹ Convention on the rights of the child, Article 4.

Chapter three

Method and Methodology

3.1. Research method

As indicated under chapter one, the basic objective of the research is to evaluate the gap between legal provision and actual practice regarding corporal punishment in home setting at federal first instance court of Ethiopia.

Empirical legal research method is a legal research that examines applicable legal provisions and what happens in the actual conditions that occur in society. It helps in measuring the gap between formal law and practical reality⁶². This includes gathering data based on observation or experience rather than theory or pure logic. Hence, based on the research objective the study wants to achieve the research method selected is empirical and doctrinal legal research hence mixed method will be employed.

3.2. Research design

This research employs empirical and doctrinal research design in obtaining the required data. Since it assess the practice it, provides more complete understanding of the issue. It also helps to understand phenomena deeply and in detail. It provides rich understanding of social phenomenon by giving the researcher better opportunity to explore patterns and themes, describe experience and interpret a phenomenon. In addition, to gain its excellence in the data both qualitative and quantitative method of data collection method was used.

Empirical research design is appropriate for this study because data collected through this method provides an in-depth overview of the real experience what the gap is and how federal courts in Ethiopia handle child corporal punishment in home setting cases and analysis the legal aspect with the internationally set standards. Doctrinal method will be employed so as to assess the laws and the gap that exists.

3.3. Tools used and data collection process

To come up with the desired outcome under the objective of the study; combination of both primary and secondary data were used. It will enhance the richness of analysis afterwards. Primary sources of data in empirical legal research are original data collected first hand by

⁶² Felicity Bell, 'empirical research in law' (Oct 2016)<<http://www.researchgate.net/publication/308865009-empirical-research-in-law>> as accessed on 8/8/24.

the researcher. Hence, in this research primary sources of data including semi- structured interviews, questionnaire, court records and observations were made.

With regard to secondary data sources, empirical legal research involves the analysis or interpretation of primary data that are collected by others. Hence, legal journal and articles; and reports that are made by Ethiopian government in different times were used.

3.3.1. Primary data sources

Interviews

Semi-structured interview with federal first instance court criminal bench judges, federal high court judges assigned on human right issues 1234/2013 as per proclamation, federal public prosecutors and federal Supreme Court child justice project office officers were made based on the sampling technique stated below.

Court records

Judgments rendered by Federal First Instance Court regarding issues of corporal punishment in home setting were analysed to gain insights into the judicial reasoning given on the judgements.

Non-participant observation

The researcher tried to look how courts handle cases when children are involved by attending federal first instance court criminal bench room. The observation was conducted by preparing check list. This had enabled the researcher to have understanding how children are treated and how their cases will be handled.

3.3.2. Secondary source of data

Legal document

Review of laws at international, regional and in Ethiopia related to children's right protection law to corporal punishment in home setting and children's right were made.

Academic literatures

Various scholarly articles, thesis that discuss on child rights were analysed.

Reports

Reports made by Ethiopian government to UPR and UNCRC committee and responses to this effect were utilized.

3.4. Sampling technique

One of researcher goal in conducting research is obtaining the correct data from the reliable and valid source. Sampling technique that will be employed plays great role in obtaining data that represent the population. Due to time and budget constraint, sampling technique is employed in order to select sources from which data will be obtained from the general populations⁶³.

From the interview from federal first instance court head registrar I came to understand criminal benches exist in branches of FFIC found in 10 sub city of Addis Ababa with the exception of Menagesha branch. In addition from interview with public prosecutors and registrars at different benches of FFIC, such cases are entertained on criminal benches together with other criminal cases. There is no special bench. Hence, the general population cases concerning child corporal punishment that are presented to criminal branches of FFIC found in the 10 sub cities of Addis Ababa.

The research participants are judges and public prosecutor who are assigned on cases of children right from corporal punishment. Hence, the method of sampling technique employed is non-probability sampling technique because the aim of the research is not to test hypothesis but to have broad understanding about the small population. The intention of the research is to evaluate the gap between legal provisions and actual practice regarding corporal punishment at home setting at FFIC.

From 10 sub- city branches of FFIC, depending on geographical location they are found, initially random sampling technique is employed to select branch. In this method of sampling number close to minimum can be chosen if researcher only need for rough estimate and most people will give similar answer. The researcher from the legal analysis have come to understand there is legal gap hence the practice will be same. In addition, taking note of time limitation for data collection, 4 branches of FFIC are selected randomly namely Lideta, Nefas

⁶³ Lisa Webley, *Qualitative Approaches to Empirical Legal Research* (oxford 2010) 234.

selk lafto , Yeka and kolfe FFIC branches as well as 4 branches of ministry of justice public prosecutor offices at the said branches above.

From the selected branches of FFIC, the method of selection used from the population is purposive sampling method in selecting among the judges based on criminal bench assigned by the presidents of FFIC.

3.5. Background information of the research participants

The research participants that are selected are judges and public prosecutors that are assigned on criminal benches using purposive sampling technique. There are two criminal benches in each four branches of FFIC and from public prosecutors department of women and children, the officers and public prosecutors assigned are the research participants.

In addition to this, interview with FFIC vice president, head registrar and branch registrars had been undertaken in collecting data to have understanding on the practice of FFIC on the administrative part.

3.6. Method of data collection and analysis

As stated above under tools used and data collection procedure section, data is collected using primary and secondary sources using empirical legal research techniques.

When we come to the analysis part, the analysis is made using qualitative analysis method.

3.7. Ethical considerations

In collecting data initially letter of from Addis Ababa university school of law associate dean for graduate programs office secretary was taken for the FFIC and public prosecutors of four branches so as to get their cooperation in obtaining all the required data and resources they have.

Then from the head office of FFIC, letters for the four branches was provided so as to get their co-operations in obtaining court decisions and to make interviews with judges that are assigned by the president on criminal benches. With regard to public prosecutor office, in each branches, after I gave the letter from AAU, the branch office manager directed me to the department of women and children affairs.

In conducting interview, the interviewees were informed as to the confidentiality of the interview, and the questions are presented to them in a structured interview format. This had enabled the researcher to obtain data that are directly related to the objective of the research

that is initially targeted. In collecting the questionnaires that is prepared by the researcher, all the participants are informed the fact that they need not write their names.

In addition, they were informed the goal of the research for research purpose to gain insights on the practice and aimed for future recommendations for the country legal system development to be in line with the internationally set human rights.

Hence, the issue of ethics is effectively considered.

Chapter four

Finding, analysis and discussion

Findings

Ethiopia is one of signatory state to United Nations convention on the rights of the child. Under article 19, 28 and 37 it ensured the right to not corporally punished for children. It is also guaranteed under article 36 of FDRE constitution of Ethiopia which is supreme law of the land. By stating child has the right to be free from corporal punishment or cruel or inhuman treatment in schools and other institutions for the care of children. However it is silent with regard to corporal punishment at home settings. As we look in to direct wording of this constitutional article it creates question whether or not this silence means allowing at home setting or not.

Subordinate laws on the other hand, revised family code of 213/2000 and criminal code of 2005 clearly accept corporal punishment at home setting as a legal act so long as undertaken with the view of disciplinary action by parents of the child. This clearly shows Ethiopia under the legal provisions allows CP in home setting so long as taken with behavioural management goal by parents, which is different from the international law principle. There is a wide difference in the legal aspect.

In practice as it is found by data collection methods stated above from FFIC, the researcher found that there are instances where reports be made for police with regard to issue of corporal punishment made by parents. According to interview made with women and child department head at public prosecutor's office of lideta and yeka bench, there are gaps at reporting. She said it is in the first place due to cultural acceptance of inflicting corporal punishment on one's own child. It is widely accepted to do so. She said for one's amusement

the parents also want to justify their act whether physically the child was abused or not, by stating they are the parents of the child and they have right to do so. In instance where reports are made, then it is most probably by neighbours who see the gravity of damage the parents made to the children. There are instances when school teachers also reported when they encounter the physical bodily harm on the child after they came to school to learn. Most reports however are not of parents to their children but when such physical harm is made to children they bring from country side of Addis Ababa with the name of raising them for adoption or with aim to use them as a house maid for raising their own children.

From the questionnaires from public prosecutors, they say there is a gap in the law. Article 576/3 clearly accepts CP can be undertaken by parents. But when they think it is beyond what a normal parent will inflict to their own children, then pleading will be initiated for FFIC. Since there is legal gap for the sake for human rights issue they will plead based on FDRE criminal code article 555 when the harm is grave or 556 when the harm is not grave. In stage of data collection at time when police accepted the report, given the fact that the public prosecutor decides case shall be initiated, the victim child will be taken away from the parents and will get them to NGO's that are established with this aim. From the interview the researcher came to know there are around four NGO's who work closely with the police office. የ ተቀና ጁ ሴቶች ሚራሪያ is among them. These offices help the children starting from giving them shelter to the last stage of the judgement. When they are their own children they will give psychological advices then finally return back and when they are adopted children the NGO officers will return the victim children to their own family by helping them for their financial deficit.

After case is being initiated according to interview from public prosecutors and judges at FFIC, the basic defence the mostly raise is issue of parenthood right to inflict what so ever pain so long as it is aimed at behavioural change. They said parents mostly accept they have conducted acceptable act that is also culturally acceptable.

This gap in Ethiopia law towards corporal punishment creates the question of balancing among the principle of legality versus the human right of the child to be free from corporal punishment at home setting as a child and as human being as it is clearly stated under international laws for the judiciary in entertaining cases.

According to the interview made with FFIC judge at bench, he stated that the court made demarcation for these instances. He states the law had clear gap, but so long as the article on

the pleading is article 555 or 556 the prosecutor as plaintiff by proving with reasonable doubt with regard to the graveness of the punishment inflicted on the child or if injury exist, even if the law clearly allows parents to conduct CP at home setting, the court mostly demarcate using the reasonable man standard so as to respect the human right of the child. Courts will, depending on the gravity of damage inflicted on the child on case by cases basis will also request for doctor's advice on the level of infliction of physical damage on the child in cases where defendant raised issue of principle of legality.

From the observation I have made criminal benches are entertained in open room, in cases where it involves children, there is television at the court room then the child, victim or not will not attend the court room but will stay with social workers in another television room so as not to be frightened by the formality of the court environment, the defendant and for assistance. The questions that the court wants the child to answer will first the social worker will hear then translate to the child in a language the child can understand. The court then can hear the answer the child gave. In addition I came to realize such cases are entertained with other criminal cases. Specialized bench for women and children is only when they are victims of rape.

Proclamation number 1234/2013 article 11/3 and 4 states the federal courts have civil jurisdiction over human right matters specified under chapter 3 of the constitution in order to protect the justiciable matters. It also states anyone who has vested interest or sufficient reason may institute suit to protect the rights of his own or others. From the interview with federal high court judge assigned at the federal high court civil bench on fundamental rights bench, I come to know there is no suit with regard to child corporal punishment so far.

In case between plaintiff public prosecutor and defendant, the charge shows, defendant is sued for scratching baby girl aged 6 in various parts of her body, the child is in addition child is autistic who demands special attention, and defendant is charged for violation of criminal code article 576/2 and 3. The court gave judgement stating the fact that defendant is the mother and existence of other children as well had impact hence imprisonment is substituted with suspension for two years⁶⁴.

⁶⁴ Yared Tadesse, 'comparative study on the right of the children to be free from corporal punishment: the law and the practice <http://hdl.handle.net/123456789/1589> accessed on august 21/2024.

In another case between plaintiff public prosecutor and defendant, the charge shows, the defendant is sued for burning the child hand with fork, the victim child is 8 years old boy defendant is the father of the child, charged for violation of article 556 for causing wilful injury. The court decides, the act is in violation of the provision. The defence that was raised was article 576/3 stating he punished his child wrong behaviour as a parent⁶⁵.

There are also reports made to UPR and UNCRC committee by Ethiopia as well as women and children condition annual report by Ethiopian human rights commission in September 2016 E.C. UPR had four cycles so far. The first cycle take from 2008 to 2011, the second cycle 2012 to 2016, the third cycle from 2017 to 2022 and fourth cycle from 2022 to 2027. From the comment received under UPR, one of the country's response was criminal procedure code is under revision and it is expected to improve it⁶⁶.

Researches undertaken in Ethiopia concerning child corporal punishment shows that there is legal gap in home settings⁶⁷.

Analysis and discussion

Human right is inalienable and inviolable right attached to all humans. Children are accorded with this right because they are human beings. There had been various debates in recognizing children right. As developing country, where by many drawbacks exists, recognition of human rights as rights is a start. Ethiopia had taken the basic step in ratifying CRC. Including international treaties as part of the law of the land under FDRE constitution is another success.

However besides recognition of these rights, there needs to be mechanisms for effectively implementing the right that is recognized on papers. Proper enforcement agencies also need to be established. All the three levels of government shall work in cooperation. There need to be law, executive body shall work its role as plaintiff and the judiciary shall be effective in handling cases. It is when clear law exist and courts undertake their effective law interpretation roles that rule of law be respected hence human rights will come in place.

⁶⁵ Interview with public prosecutor office, Ms. Lydia conducted on august 2/2016.

⁶⁶ Ethiopia report to the UNcommittee.

⁶⁷ Michael Emiru,' corporal punishment against children in the home setting in Ethiopia' (2019)<http://researchgate.net/publication/338083298/as> accessed on august 21/2024.

On the other hand, the executive body, public prosecutor office has mandate as plaintiff on corporal punishment issues specifically and other criminal cases in general. When a certain act is not considered as criminal act it makes the implementation difficult because of the principle of legality that demand there need to be legal provision to this effect.

In addition to this, culture had its own impact to allow corporal punishment or not. Ethiopia nation wise accept corporal punishment in home setting by considering it as behavioural control mechanism for children. According to the 2016 EDHS report, violence against children in the form of physical punishment is prevalent and normalized⁶⁸.

As discussed above, there is wide gap between Ethiopian law and international law with regard to corporal punishment at home setting. At international level inflicting corporal punishment on children is considered as criminal act. But in Ethiopia it is even accepted under criminal and family codes. This is a gap that needs to be addressed if issue of human right of children shall be respected.

Despite this legal gap, the practice however seems to go in line with international human right standards to some extent. Public prosecutors bringing suits to FFIC regarding corporal punishment at home setting when found grave is a start. But issue of principle of legality is not considered. The right of parents not to be considered guilty when there is no clear law that criminalize such act is not considered. It is also their human rights. In addition it will not be a solution to cover the legal gap that exists.

Being a party to a treaty and considering international laws as part of Ethiopian laws is not is not enough alone. Culture must be worked on extensively. There need to be action plans that can be implemented in different phases. Action plan to change society attitude, to implement international law standards, finally deal with the law.

⁶⁸ Ethiopia demographic and health survey (2016) 10.

Chapter five

Recommendation

From the findings, discussion and conclusions made under chapter four, the researcher provides the following recommendations based on three basic core points namely practical point of view, legal point of view and cultural point of view.

From the practical point of view, there are different benches that are established by the president office. Namely criminal bench, RTD bench, tax related bench, child victim bench and juvenile benches. However, corporal punishment cases of children are entertained in similar bench with adults. This creates issue of case load to the judge. Children are dependent on their care givers. And this crime will be made by their care givers. Entertaining the case in short notice is important.

From the legal perspective, country wise Ethiopia law with regard to corporal punishment of children at home setting is not in line with international standard. The substantive criminal law is that demand law reform on this issue criminal procedure with-out the substantive law will not have impact. In doing so, there are other related factors that need to be considered. The criminal law together with policy reform shall take place. The government need to allocate budget. Allocate sufficient resources to employ human resource that is well aware of the legal gap, the cultural difficulty that need to be addressed.

From the international law point of view, ratifying a treaty alone will not bring change. State parties should ensure civil society organizations and international organizations that work directly to adopt child safeguarding policies⁶⁹. This improved human right situation require the need for establishment of permanent organ that is responsible for reporting and follow up in the UPR system, and from other internationally established committee with these tasks⁷⁰.

⁶⁹ UNCRC, General comment 5.

⁷⁰ Mizanie A. Tadesse, ‘ Ethiopia and the universal periodic review mechanism: a critical reflection’ 28 J. Ethiopian L.23(2016-2017)34.

From the cultural point of view, tackling child corporal punishment will not be easy task. One needs to address the root cause. One of the basic reason the parents raise as a defence issue of behavioural management is not because it is stated under the law but because it is culturally widely acceptable matter. Parents report they are punishing bad behaviours, disobedience and else. Hence there is need to raise awareness of parents, teachers and the society at large aiming at changing the deep rooted socio-cultural attitude. Although long term process, awareness rising is important step to undertake. There is also a need for conducting research studies that deal with non-violent positive child disciplining method and socio cultural attitude⁷¹.

In general Ethiopia, shall undertake law reforms by criminalizing all forms of corporal punishment. It is also the obligation of the country to ensure that children have equal legal protection from assault as adults do. Ethiopian government shall build democratic system of governance, clearly specify the hierarchy between international and national laws, create mechanisms for effective reporting of corporal punishment of child in home settings, strengthen the child protection system and strengthen the social protection system⁷².

From the limitation of research area and research methodology employed during the research there are future research areas that the researcher advice to be undertaken for best data to gather on the effective gap identification and as to why and how to tackle these gap that exist between the law and the practice on corporal punishment at home settings. Comparative study need to be undertaken so as to identify which method can be employed in filling the gap. In order to achieve prohibiting of all corporal punishment of children, it is important to look the experience of other country like Ethiopia that culture had influenced the acceptance as a just act. In addition study needs to be conducted by assessing parental attitude towards corporal punishment so as to identify what behaviour needs to be improved using quantitative method study.

⁷¹ Corporal punishment of children in Ethiopia desk review save the children (December 2011) <<http://savethechildren.org>>as accessed august 16/2024.

⁷² Michael Emru, ' Corporal punishment against children in the home setting in Ethiopia' (2019) <<http://www.researchgate.net>> as accessed august 18/2024.

Annex

1/ questionnaire for public prosecutors:

- The research to be conducted is on the right of the child for protection from corporal punishment in home setting the law and the practice at federal courts.
- Dear honourable public prosecutors, the data to be collected is fully confidential and is conducted for academic research purpose. Hence you need not write your name.
- But with regard to data credibility, the thesis after being accepted by the senate of Addis Ababa university law school, it may be used by academicians, law making bodies and federal courts. Hence since most probably it will add value to our country legal system in guarantying child rights as a signatory state to universal human rights conventions therefore; please give the valid data.
- Thank you for your cooperation, time and willingness in filling the questionnaire.

Professional back ground

1/ How long have you worked on your institution especially on department concerning women and child right.....

Questions related to research

1/ united nation convention on the rights of the child article 19 states that ‘state parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence..... while in the care of parents, legal guardian or any other person who has the care of the child.....’

What is your reflection on corporal punishment of child at home setting? Do you think it shall be allowed given CRC declaration and Ethiopia being party to the treaty?

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2/ FDRE constitution article 36 states that children have right to be free of corporal punishment or cruel and inhuman treatment in schools and other institutions responsible for the care of children.....

On the other hand Article 576/3 of FDRE criminal code states that the taking by parentsof a disciplinary measure that does not contravene the law, for purpose of proper upbringing is not subject to punishment.....

How do you see this right as enshrined under international human right for the child with constitutional guarantee and the criminal code provision?

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3/What is your reflection on corporal punishment in home setting as enshrined under CRC visa vie the principle of legality for parents at practice?

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4/ Have you come across such cases raising issue of principle of legality as a defence by the parents in court proceedings? Please give reflection how it shall be handled.....

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5/What changes would you recommend in order improve child right to corporal punishment at home setting to ensure the constitutional and international law guarantee?

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Thank you!!!

2/ questionnaire for judges:

- The research to be conducted is on the right of the child for protection from corporal punishment in home setting the law and the practice at federal courts.
- Dear honourable judge the data to be collected is fully confidential and is conducted for academic research purpose. Hence you need not write your name.
- But with regard to data credibility, the thesis after being accepted by the senate of Addis Ababa university law school, it may be used by academicians, law making bodies and federal courts. Hence since most probably it will add value to our country legal system in guarantying child rights as a signatory state to universal human rights conventions therefore; please give the valid data.
- Thank you for your cooperation, time and willingness in filling the questionnaire.

Professional back ground

1/How long have worked on criminal bench of FFIC.....

Questions related to research

1/ united nation convention on the rights of the child article 19 states that ‘state parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence..... while in the care of parents, legal guardian or any other person who has the care of the child.....’

What is your reflection on corporal punishment of child at home setting? Do you think it shall be allowed given CRC declaration and Ethiopia being party to the treaty?

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2/ FDRE constitution article 36 states that children have right to be free of corporal punishment or cruel and inhuman treatment in schools and other institutions responsible for the care of children.....

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5/What changes would you recommend in order improve child right to corporal punishment at home setting to ensure the constitutional and international law guarantee?

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Thank you!!!

3/ structured Interview questions for FFIC judges and public prosecutor department of women and child affairs office managers

1/please introduce yourself, your background and time in which you started working on case of child and woman affairs?

2/Criminal code of Ethiopia under article 576/3 clearly allows child corporal punishment at home setting. Have you come across such cases child being physically abused by parents with the name of controlling behaviour?

3/ what was the defence raised by the parents and what measure was employed to consider the act as criminal act?

4/What does the practice looks like? Please give me your comments?

5/ what do you recommend for the country in general and FFIC shall undertake to minimize the existing gap between the international law and article 576/3 of FDRE criminal code?

4/observation checklist

It is prepared by the researcher to check for the court procedure in order to identify how children are handled at court rooms.

1/What does the setup of criminal bench looks like?

2/How is children's case entertained?

3/ who is empowered to give assistance for the victim children?

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ትእዛዝ

1. ፖሊስ ተከላኋን በማፈላለግ አስሮ ለአዲስ አበባ ማረሚያ ቤት እንዲያስረክብ ታዟል። ይጻፍ። ማረሚያ ቤት ተከላኋ ተይዞ ሲቀርብለት የተወሰነው የእስራት ቅጣት ተከታትሎ እንዲያስፈጽም ታዟል። ይጻፍ።
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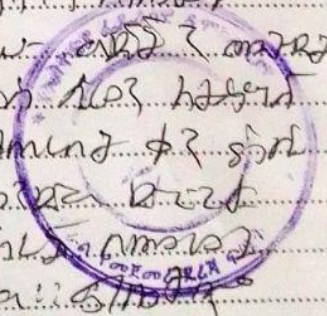
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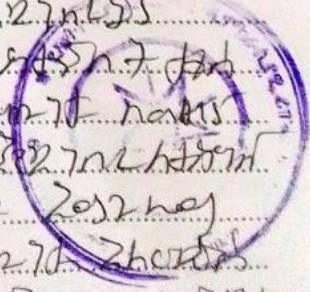
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24. ስር ይሁን ስር ይሁን ስር ይሁን ስር ይሁን ስር ይሁን
25. ስር ይሁን ስር ይሁን ስር ይሁን ስር ይሁን ስር ይሁን



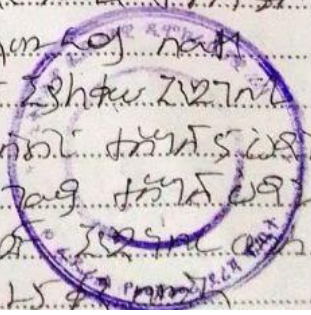
Amma P...m



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የ ቁ. 119/93
የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ቀን ገደብ ሆኖ

የ _____ ምድብ _____ ችሎት

1. ስህተት ለክፍል የቀረበውን የሆኑትን የታዘገጠውን ማስታወሻ ማስታወሻ
2. የታዘገጠውን ስህተት ለማስተካከል የሚያስፈልገውን የታዘገጠውን
3. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
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6. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
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8. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
9. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
10. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
11. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
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14. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
15. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
16. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
17. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
18. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
19. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
20. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
21. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
22. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል
23. ስህተት ለማስተካከል የሚያስፈልገውን ስህተት ለማስተካከል



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የ _____ ምድብ የ _____ ዓ/ቀ 11/9/93
ቸሎት ቀን 26/02/14 ገጽ 46

1. _____ ለጋ ጊዜ ለሚገኝ
2. _____ ደግሞ የኮሌግ ስራ ላይ ተገኝቶ
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5, sample pleading statements initiated by federal public prosecutor



በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ፍትሕ ሚኒስቴር
 The Federal Democratic Republic of Ethiopia Ministry of Justice
 የኮሎ ተራንዮ ምድብ ጽ/ቤት
 Kofle Keranjo DISTRICT OFFICE

ቁጥር... 0005/17
 ቀን 30/11/16

በፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ለኮሎ
 ተራንዮ ምድብ የሴቶች እና ህፃናት መንጃል ችሎት
 አዲስ አበባ

የኮ/ተ/ወ/ሕግ/መ/ቁ: 0005/17
 የኮ/ተ/ፖ/ወ/መ/ቁ: 054/16/17

ከግሽ የፌ/ወ/ሕግ መቅ
 ተከግሽ መቅ ለም እድሜ 25 አመት
 አድራሻ ኮ/ተ/ሕ/ክ ወረዳ 01 የቤቱ ተከራይ
 ወንጀሉ

አረጋግጥኝ
 ግዴታዎን ገደብ ገደብ

በ1996 ዓ.ም የመጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ሕግ አንቀጽ 576/1/ የተመለከተውን በመተላለፍ :-
 የወንጀሉ ዝርዝር

ተከግሽ ለአካል መጠን ያልደረሰ ልጅን በሀላፊነት ለመጠበቅ ከተቀበለች በኋላ በቀን 15/11/2016 ዓ.ም
 በግምት ከጠዋቱ 4:30 ሰዓት ሲሆን በኮ/ተ/ሕ/ክ ወረዳ 01 ልዩ ቦታው ዘውዴ ሚዳ ተብሎ ከሚጠራው
 አካባቢ የግል ተባይ ህጽን በረከት ይሁንን ሁለት እጅን የከሰሰ ማንደጃ ላይ በሚገኘው አሳት ውስጥ ከታ
 የግራ እጅ መዳፍ ጀርባ 5x6 ሰዓት ለሚሆን የቆዳ መታጠል እና የተኝ እጅ 2x3 ሰዓት እንዲሁም
 የመዳፍ ጀርባ 4ሰዓት የሚሆን ታጠሎ እንዲደርስበት ያደረገች በመሆኑ በፈጸመችው ለአካል መጠን
 ያልደረሰ ልጅን መጉዳት መንጃል ተከሳለች።

ቤቱ ልረምው ድማ
 የፌ/ወ/ሕግ

የማስረጃ ዝርዝር

ሀ/የሰው

- 1/ ህግ... የሰው /ተባይ/ አድራሻ:- ኮ/ተ/ሕ/ክ ወረዳ 01 የቤቱ ተከራይ
- 2/ ስ... /አካባቢ/ አድራሻ:- ኮ/ተ/ሕ/ክ-ማ ወረዳ 02 የቤቱ ተከራይ
- 3/ ያ... /አካባቢ/ አድራሻ ኮ/ተ/ሕ/ክ ወረዳ 01 የቤቱ 1523
- 4/ አ... /አካባቢ/ አድራሻ ኮ/ተ/ሕ/ክ ወረዳ 01 የቤቱ ተከራይ
- 5/ መ... /አካባቢ/ አድራሻ ኮ/ተ/ሕ/ክ-ማ ወረዳ 01 የቤቱ አዲስ
- ሰ/ የሰነድ

1) በቀን 17/11/16 ከቆራ መካከለኛ ክልሊክ የተላከ የተባይን ጉዳት መጠን የሚገልጽ ማስረጃ 01
 ገጽ

መግለጫ:- ተከሳሽ ከቀን 15/11/2016 ጀምሮ በእስር ላይ ትገኛለች።
 መዝገቡ በመደበኛ ችሎት የሚታይ ነው።

ለሕግ ለፍትህ ለርትዕ
 For Law Justice Equity



ከ 0118-59-13-12/13
 Tel.

ፖ.ሣ.ቁ. 1370
 P.O.Box

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