



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

**TOPIC: CHILD FRIENDLY BENCHES IN COURTS OF THE SNNPRS:
THE CASE OF HADIYA ZONE**

BY: DEMOCRACY PETROS

JUNE, 2014

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BY: DEMOCRACY PETROS

ADVISOR: PROFESSOR TILAHUN TESHOME

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
OF MASTER OF LAWS IN HUMAN RIGHTS LAW**

JUNE, 2014

ADDIS ABABA, ETHIOPIA

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SIGNED APPROVAL SHEET BY BOARD OF EXAMINERS

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1.....
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EXAMINER	SIGNATURE	Date

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EXAMINER	SIGNATURE	Date

DECLARATION

I, Democracy Petros, hereby declare that the thesis ‘Child Friendly Benches in Courts of the SNNPR Regional State: The Case of Hadiya Zone’ is my original work and that it has not been submitted for any degree or examination in any other institution. Whenever other sources are used or quoted, they have been duly acknowledged.

Signed.....

Date.....

Advisor: Professor Tilahun Teshome

Signature.....

Date.....

DEDICATION

I dedicate this work to God the almighty for making my ambition of getting of an LL.M. come to pass. I believe and love you, my Savior.

Acknowledgements

First, praise be to the almighty God who has done all these to me and giving me the patience to go through this thesis.

I am highly indebted to my advisor, Professor Tilahun Teshome, whose invaluable scholastic and insightful comments, and constructive suggestions on the outline and the first draft, have contributed so much to the outcome of this paper.

It is also my pleasure to express my deepest gratitude to my family, especially to my elder brother Ashenafi and younger sister Meseret. What presently I am is indeed an outcome of their deed. Simple thanks won't convey my appreciation. Thank you all.

Preface

...the child, due to the need of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security.

Preamble to the African Charter on the Rights and Welfare of the Child- paragraph 6

This quotation above shows clearly that children's rights deserve special attention in the human rights discourse like the rights of every other category of persons protected with especial care such as persons with disability, woman and the like.

Hence, it motivated this work on examining the status of child friendly benches in courts of SNNPR regional state with specific reference to the courts of Hadiya zone which is mandated to ensure the promotion and protection of the rights of children involved in criminal justice system together with other institutions working on the rights of children. The current state of affairs within and outside the work of the court has began to pose a threat to the rights enshrined in domestic, regional and international child rights instruments.

This study examines the situations in which children are involved in the criminal justice system when in conflict with the law or as victims and witnesses of crime. The study therefore provides information on law reform, case law and practices of courts on children involved in criminal justice, from a range of child friendly benches in courts of the Hadiya zone.

Furthermore, discussion of fundamental principles (such as the best interests of the child, dignity, non- discrimination, the right to be heard and express their views and the rule of law), and general elements of a child-friendly justice system consisting of information and advice, protection of privacy, special preventive measures, training of professionals, and so on, as envisaged under a variety of international and regional instruments that deal with children in the justice system is incorporated into this study to help as a benchmark to evaluate the situation in Ethiopia.

The standards for child friendly justice during criminal proceeding are also examined as provided for in different child rights instruments, to highlight core concerns in relation to child justice system in Ethiopia. Thus, by providing a contextual analysis of the child-friendliness of the criminal justice in courts by citing relevant instances from legal provisions, cases, and practical examples, this study provides substantive information which will be a useful tool for advocacy, research and practical implementation of the laws, policies and standards for dealing with children in the justice system.

Moreover, the purpose of this work is to appraise the status of the child friendly benches in courts, seek out the loopholes and loose ends and propose positive and proactive ways in ensuring the protection of child rights in criminal justice for an effective child rights promotion and protection in Ethiopia.

The African Charter on the Rights and Welfare of the Child, which complements the UN Convention on the Rights of the Child, would then be working in accordance with the CRC's Preamble. Reads:

The child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

Preamble to the UN Convention on the Rights of the Child - Paragraph 7

These and other international, regional and national legislations, guidelines, rules and principles which are relevant to children are the key guidance of this study.

ACRONOMYS

ACPF- African Child Policy Forum

ACRWC - African Charter on the Rights and Welfare of the Child

ANPPCAN - African Network for the Prevention and Protection of the Child against Abuse and Neglect

APAP - Action of Professionals' Association for the Poor

ART. – Article

CJPO – Child Justice Project Office

CPC - Criminal Procedure Code

CPU- Child Protection Units

CRC – Convention on the Rights of the Child

EHRC - Ethiopian Human Rights Commission

FDRE - Federal Democratic Republic of Ethiopia

FFIC - Federal First Instance Court

FSC - Federal Supreme Court

ICCPR - International Covenant on Civil and Political rights

ICESCR – International Covenant on Economic, Social and Cultural rights

MOFED - Ministry of Finance and Economic Development

MOJ - Ministry of Justice

MOLSA - Ministry of Labor and Social Affairs

MOCB - Ministry of Capacity Building

NGOs - Non-governmental Organizations

SNNPRS - Southern Nations, Nationalities and Peoples Regional States

UNICEF - United Nations Children's Fund

KEY TERMS

Criminal Justice System

Child Friendly Benches/Courts

Child Suspects/ Children in conflict with the criminal law

Child Victims of Crime

Child Witnesses of Crime

Child Justice

ABSTRACT

The purpose of this study is to assess the implementation of child justice in criminal justice system in child-friendly benches in courts of SNNPRS with special focus in Hadiya zone. To this end, a descriptive survey is employed. Quantitative and qualitative research methodologies were administered. Questionnaires, interviews, court cases and field visits were used as data gathering tools. The responses and cases were interpreted and analyzed. The primary sources of data were judges, public prosecutors and attorneys working in Hadiya zone and concerned government body. A total of 42 respondents were selected as key participants of the study. Secondary sources of data are reports of the Central Statistic Agency on the percent of children under 18 years of age of the total population and budget allocation to the justice sector by Ministry of Finance and Economic Development of Ethiopia.

Finally the quantitative data were analyzed using percentage while the qualitative ones were transcribed and analyzed. The core findings of the study are; 1st The study finds out that child friendly benches in courts of the SNNPRS and specifically in Hadiya zone are not effectively available and physically accessible for children involved in criminal justice system as a result a great majority of children in contact with the law are out of reach of child-friendly justice. 2nd The study disclose the fact that the only available court which is built in Hosanna city administration first instance court is not equipped with all relevant material, technical, professional and other aids pertaining the special needs of children in justice system. 3rd The study reveals that the court environment in most of the courts are not convenient and comfortable for child suspects, victims and witnesses of crime according to their involvement. 4th At last, the good thing is there is growing improvements though it is not in a speed that the current situations in the justice system needs for fully adopting child friendly justice in the future in Ethiopia.

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CHAPTER ONE

1. Introduction

1.1. Background to the Study

Justice for children is a comprehensive term for dealing with children who come in contact with the law. The situations in which children are involved in the justice system broadly categorized in four: the criminal justice system, the civil justice system, the administrative justice system and the informal justice system such as customary /traditional courts. Children's right in the justice system therefore looks at the applicable norms; laws, procedures, structures and institutions in place for these area. In order to ensure that children's rights and legal safeguards are fully respected and protected, children in contact with the law must be dealt with through a specialized justice system with measures specific to the needs and evolving capacities of children. And this study has been focused on situations of children involved in criminal justice system. It is said that those on the margins of society are also on the margins of justice which is perhaps true in the case of children.

A number of factors explain this: first, children are denied access to justice by virtue of their age or immaturity; second, children can be seriously disadvantaged in accessing justice because they lack the financial and discursive resources to navigate through the complicated judicial arrangements. So, the justice system should bring new and effective programmes aiming at the full protection of children's rights. One way of doing so is, by establishing child friendly benches in the court structure, child friendly protection units at police stations and prosecution offices.

In addition to this, there must be harmonization of national laws; practices and the set up of the justice system with international human and child rights principles. With regard to these measures, Ethiopia has been taking legislative and administrative measures with the view to protect and promote the rights of children. For instance, the harmonization of national laws such as the revised family law and criminal law with international human and child rights instruments could be cited as one of the initiatives undertaken so far. The justice reform system has also brought new programmes aiming at ensuring child friendly benches.

Despite these achievements, there is still more that needs to be done for children in Ethiopia. According to a study conducted by different child rights organizations and researchers,

violence against children is still prevalent and is on the increase. All types of violence including physical abuse, verbal abuse, rape, sexual harassment, exploitation, trafficking and the like are committed against children.¹ Therefore children are in need of protection.

Furthermore, Ethiopia does not have a comprehensive child law in the form of a Children's Act or Proclamation. In the absence of such law, the FDRE Constitution, the Revised Family Code, the Revised Criminal Code, the Criminal Procedure Code and the Labour Proclamation, remain the main instruments addressing issues pertaining to children's rights. These laws do not only cover a range of substantive child rights related issues, but they also address, albeit inadequately, some relevant institutional frameworks necessary for the full implementation and realization of children's rights.² The case is also true in the SNNPR except having enacted laws on regional matters.

As to the child friendly benches, the courts in SNNPR and Hadiya zone do not seem to have paid special concern to children's rights when it comes to protecting children in contact with the law. As a result, the basic rights of children in court are not respected by effective regional, legal, social welfare and court system. This means that children are subject to justice standards that are designed for adults which seldom cater to child's needs. In other words, their basic human rights of access to justice are footnoted in a predominately adult orientated justice system.

The study has focused on bringing evaluation of the child friendly benches in courts of SNNPR with specific focus on Hadiya zone and the effectiveness of the implementation of child friendly laws and procedures in court with regard to criminal justice system. So, it is this fact that led the researcher to embark upon this research work.

1.2. Statement of the Problem

The Federal Democratic Republic of Ethiopia (FDRE) has a population of around 83 million people half of which is believed to be children.³ So in a country where this portion of its

¹ . The African Child Policy Forum (2006) Violence Against Girls in Africa: A Retrospective Survey in Ethiopia, Kenya and Uganda.

² . ACPF (2012).Harmonization of Children's laws in Eastern and Southern Africa.

³ . Ibid.

population is children, the justice system clearly needs to be strengthened through, amongst other strategies, effective budgeting, appointment and retention of well trained personnel, and inter-sectoral collaboration between government departments and civil society organizations. Because, without ensuring protection of the basic rights of this vulnerable groups in the justice system and on specific policy, normative and institutional arrangements, practices and legislative means by enacting (for instance Children's act or law) that could have an effect on the fate of children in contact with the law. In other words, in the absence of the relevant measures on criminal justice system to the promotion and protection of child rights we cannot imagine the protection of their basic rights even the country may not have sustainable development or bright future with children who preserve and strengthen social and national solidarity and responsible towards his family and society, the state and other legally recognized communities and the international community as stated under article 31 of ACRWC.⁴ In addition the ratified international human and child rights instruments will not have meaningful value on the ground.

While it is apparent that there are significant number of children in contact with the law, their enjoyment of child friendly justice by well specialized actors or organs is insignificant. Although, there have already been important roadways, many remains to be done in ensuring effective specialization within the system in child justice in Ethiopia.

Due to the absence of child friendly procedures; children in contact with the law are dealt with largely in the same way as adults. Because adult justice system frequently uses deprivation of liberty as a primary sentencing option, which obviously fails to consider the needs, best interests of the child, to address the root causes which bring children to the justice system and, the rights of child suspects, victims and witnesses involved in criminal justice system. Indeed, whilst a country may operate specialized procedures and comprehensive children law, an effective child friendly justice system requires that the varying needs of children be assessed, that children in contact with the law referred to appropriate services, and that they are offered care and assistance with reintegration into the family and community. Moreover, such a system should operate in a child-friendly environment using appropriate and simplified language and with the minimum possible employment of physical restraints.

⁴ . African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49(1990), entered into Force Nov.29, 1999.

But the problem arises when children come in contact with a justice system that is unresponsive to their needs, which not only deprives them of their liberty, but also accentuates their vulnerability to abuse and violence. Such a system also isolates children from society, particularly where the child's welfare, education and reintegration needs are not integrated into the formal justice system.

In the absence of effective child friendly environment their rights further compounded by the very little understanding children have of the justice system and their rights which makes it unlikely for them to challenge any mistreatments and abuse perpetuated within the system. Further, most institutions dealing with children in contact with the law are child-unfriendly and their physical conditions are often in the grimmest of states in Ethiopia. Thus, there is an urgent need to develop new tools to help the country or regions to adapt their justice system to the situation of children, to the growing complex features of crimes and abuses which are deemed to be the result of development of different situations and urbanization, to bring their procedures up to speed with international standards, and to properly implement them. However, the criminal justice system still lacking effective child friendly environment. So, Ethiopia has to cope with her weak child justice structure, national legislation, procedures and limited resources.

All of the aforementioned situations, most importantly, the practical, technical, attitudinal, professional, legal and institutional barriers challenging the child friendly benches of the country are also challenging SNNPR and the specific zone. In addition, these facts show the non effectiveness of courts within the justice system in child justice and its negative effect on child rights.

So, the writer believes that there is a need to develop new tools to help the country to adapt its criminal justice system to the situation of children, to upgrade existing standards as well as adapt specific national law and procedures which is consistent to Ethiopia's demand with regard to child friendly benches.

1.3. Research Questions

The major questions of this paper are: are there effective child friendly benches, child friendly legal and practical spaces which take into account the needs and vulnerability of child to protect the rights of children involved in criminal justice system in SNNPR and Hadiya zone?

Is the specialization within the courts practically helping children to enjoy both legal and procedural rights designed to their special needs?

These major issues would be addressed with the other task of analyzing the situations and the extent to which the child friendly benches are guaranteed within the courts in light of the international, regional and national laws and guidelines, rules and principles of child justice and good practices.

In order to address the central question of the paper effectively, the following sub questions have been given due attention.

1. Do the existing legal frameworks of Ethiopia give full and effective guarantee to child friendly benches within the system in a manner which protects child rights?
2. What are the attitudinal impediments of courts/ judges that challenge the child friendly benches?
3. Does the criminal justice system clearly demarcate or indicate the difference between adult oriented justice and child justice?
4. Does the absence of comprehensive child law in the form of a Children's Act or Proclamation has any negative effect on the child friendly justice in courts?
5. Is there short or long term training in the child rights to the court judges? If so, are there any mechanisms of follow up of its effect? Are there any measures taken to inter-relate legal education/educational background, special interest, experience or performance of trainees specifically on child justice so as to enable them to see cases which involve children in child friendly manner?
6. Are there technical, professional, material and other facilities which guarantee the protection of children's needs in the benches?
7. Do the judges in child justice have deep rooted understanding on the values and importance of protecting child rights/needs at most care beyond considering their physical, emotional and mental immaturity? i.e., do they imagine to the extent that lost child as lost future?
8. Is there problem of confusing child specifically at adolescent age with adult in child friendly benches/courts?
9. Are there problem of mixing different levels of child vulnerability in courts?

10. Are there psychosocial support centre which facilitates the provision of psychosocial assistance such as counseling, temporary shelter, basic necessities and medical assistance to children involved in criminal justice?
11. What work has been done by the federal or SNNPR government in guarantying effective child friendly benches within the justice system?

1.4. Scope of the Study

To make the work manageable the scope of the research is limited to evaluating the status of the child friendly benches in courts, the study will try to see the overall regional status generally and specifically emphasize on the situations in Hadiya zone.

Although children are entitled to get special protection of substantive and procedural laws unlike adults when involved in criminal justice in a child friendly environment, they are not given such protection effectively rather their rights of access to justice are footnoted in a predominately adult-oriented justice system.

In this paper it is not possible to discuss each and every situation because of the obvious limitation of space, time and scope. So, the writer focuses on assessing the effectiveness of the child friendly benches in courts. That is, specifically concerning children involved in criminal justice system as suspects, victims and witnesses.

Therefore, assessing its effectiveness in courts of SNNPR with specific focus in Hadiya zone will make it easier at least to presume what the situation would be in different parts of the SNNPRS where critical specialization problems in relation to children involved in criminal justice exists.

1.5. Objective of the Study

The main objectives of this study are:

- To assess and indicate the status of the child friendly benches in courts of SNNPR, particularly in Hadiya zone.
- To assess the constraints of the courts to establish effective child friendly environment to protect children's rights.

- To look into the increment of children's involvement in criminal justice and to contribute to use this fact practically to take real commitment either political or legal and others specifically relating this to the improvement of the child friendly benches in courts rather than invoking the increment for its statistical values.
- To observe effectiveness of the measures taken by government on the child friendly benches technical, material, professional and other facilities relevant to child justice.
- To create a clear image on issues like what child friendly benches mean and its importance, establishment and also to create clear image of the commitment and understanding of judges to the child friendly benches with due attention to children's needs.

So, the paper tried to indicate the situations which force the urgent need to develop new tools to help the country to adapt their justice system to the situation of children, to bring their practices and procedures up to speed with international normative standards, and to properly implement them.

1.6. Significance of the Study

The study reveals what seems the situation of child friendly benches in courts and the practices of treating children involved in criminal justice system and the compatibility of such practices with national laws, international human and child rights instruments, rules, guidelines, principles and standards which designed to protect children's needs. Moreover, based on the revealed facts the study helps to suggest possible solutions on how to upgrade the status of child friendly benches in courts. The study will also serve as an input to measures in the improvement of the courts in child justice. It may also highlights the possible area of works for the government, NGOs and other concerned body to effectively realize the protection of the rights of children involved in criminal justice.

1.7. Research Methodology

In order to come up with somehow comprehensive understanding and to respond to the issues raised in the study, the research made recourse to both qualitative and quantitative research. Accordingly, the study shall mainly be based on primary sources. So, it employed some empirical analysis using court cases, interviews with relevant actors on child justice, and

questionnaires to assess relevant information on the status of child friendly benches in courts and how its challenges are being perceived and addressed. The study also used international, regional and national human and child rights instruments to the **extent of their value** in addressing the issue of child friendly justice. On the other hand, it also referred to the sources such as writings of authors, law journals, UN rules, guideline and principles and internet resources mainly in the literature part of the study.

In addition, the researcher was also conducted field visit to observe the situation of the child friendly benches' institutional facilities/ setup in relation to fulfilling special protection of the rights of children involved in criminal justice system.

1.8. Limitation of the Study

During the process of conducting this research, the researcher faces some challenges in data collection. As a result of this, the writer faced problem on accessing well organized data in courts because cases which involved children are not organized in disaggregated manner to identify from adults it simply merged with adults in unorganized record system. The other thing is with regard to the key respondents i.e., judges, prosecutors and attorneys that they are found in different woreda of the Hadiya zone that it took the researcher more time to contact them so it was impossible for the researcher to address all woreda in short day. However, the researcher's being the criminal justice system actor and the sensitivity of the research area helped to minimize the limitations specifically on seeking genuine cooperation from institutions which are main stakeholder of the justice system and participants.

1.9. Overview of the Chapters

The paper has five chapters. Chapter one introduces the study. Chapter two undertakes literature review of the general concept of child friendly benches/justice in courts. Chapter three discuss different international, regional and domestic instruments that deal with children involved in criminal justice system. The fourth chapter deals with the achievements and challenges of the child friendly benches in courts of Ethiopia with special focus on SNNPRS Hadiya zone. Chapter five presents conclusion and recommendations to the problems and gaps identified in the study.

CHAPTER TWO

REVIEW OF LITERATURE

2.1. General Concept of Child Friendly Benches

2.1.1. Introduction

With regard to implementing child rights starting from their early childhood the UN CRC in its general comment no.7 recognized that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for the realization of these rights. The committee also states all young children at birth and throughout infancy; during the preschool years; as well as during the transition to school as children who are at early childhood stage and urges States parties to strengthen understanding of the human rights of all young children and to draw States attention to their obligations towards young children.⁵

As indicated in the above paragraph:

*...the early life of the human person, which is generally referred to as childhood, is mainly characterized by their state of frailty and helplessness. This state of affairs calls for special care and protection. To ensure the full and balanced development of his/her personality, the child needs to be raised in an environment capable of providing love, affection and happiness.*⁶

So, these recognize young children as social actors from the beginning of life, with particular interests, capacities and vulnerabilities, and of requirements for protection, guidance and support in the exercise of their rights as committee of CRC recommended in its general comment no. 7 on the child rights in early childhood.

That this natural right to special care and protection primarily rests on the child's parents and members of his immediate family goes without saying. But child is also worthy of respect and assistance by society and the state during the

⁵ . United Nations Committee on the Rights of the Child, General Comment No. 7: Implementing Child Rights in Early Childhood (CRC/C/GC/7/Rev.1 20 September 2006).

⁶ . Tilahun Teshome, "The Child and the Law in Ethiopia: The Case of the United Nations Convention on the Rights of the Child", Journal of Ethiopian Law, Vol. XVIII., 1997. P, 37.

*many years through which his/her personal development takes place. Child inestimable value disposes the human heart towards them and, as such, our duty to them is the strongest but the sweetest of all our obligations.*⁷

The practical reality for many Ethiopians is that violation of their rights is not seen as a serious problem. These violations in most cases have severe consequences on children than adults even beyond their childhood, thus posing direct threats to peace, stability and development. There are a number of reasons/arguments which indicate how the violation threatens the welfare. For instance, there are utilitarian arguments in favor of prioritizing children's interests. Thus, it may be thought that giving greater weight to children's interests maximizes the welfare of the society as a whole. Barton and Douglas have even argued that children are important for the continuity of order in society.⁸ Putting children first is also considered as a way of building for the future. It is significant that countries reconstructing after nightmares of rightlessness have put children's interests in the foreground.⁹

One example of violation of their right is the failure of justice system to effectively implement the special protections which are guaranteed under different child rights instruments, specifically the rights of children involved in criminal justice system as victims, suspects or witnesses. Of note however, is that despite the fact that children are victims of human rights violations, they also have responsibilities to the family, society and the country, for example, as contained in the African Charter on the Rights and Welfare of the Child (referred hereafter as the ACRWC). So, questioning the importance of effective protection of child rights in the criminal justice process will be a big mistake.

Furthermore, the concept of human rights is a settled one, which must fulfill a standard set of criteria. As was expounded by the UN Commission on Human Rights, human right must meet the following criteria:

- a. Be consistent with the existing body of international human rights laws;

⁷ . Ibid.

⁸ . Law and Parenthood (London, Butterworths, 1996), p. 423.

⁹ . An example is Mozambique: see L.P. Sacramento and A.M. Pessoa, 'Implementation of the Rights of the Child in the Mozambican context' in (eds) M. Freeman, Children's Rights: A Comparative Perspective (Aldershot, Ashgate, 1996), p. 145.

- b. Be of fundamental character and derive from the inherent dignity and worth of the human person;
- c. Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
- d. Provide, where appropriate, realistic and effective implementation machinery...;
- e. Attract broad international support. ¹⁰

Flowing from the above standards, children's rights meet international standards with due emphasis more than adults because of child's physical and mental immaturity. The Universal Declaration of Human Rights is also clear on what the content of human rights should be. It provides that:

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood...Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind...or other status.*¹¹

Based on this understanding of the concept of human rights as well as children rights to benefit from the pool of human rights available, this study shall assess the instruments, created for the protection of children at international, regional and domestic levels and look at practices of child friendly benches in courts of SNNPR specifically observe the case of Hadiya zone.

2.1.2. Definition of the Child

In the parlance of the law, the word "child" may be understood in two different ways. The first implies a relationship with respect to parentage and consanguinity, the natural relationship that derives from the community of blood. In its second meaning, "child" denotes the status of a human being in its early years of life, and it is to this latter meaning that the UN CRC and ACRWC refer.¹²

¹⁰ . Resolution no. 41/120 of 1986 in Sepulveda M et al, Human Rights Reference Handbook, 2004 (CD).

¹¹ . Articles 1 and 2 of Universal Declaration of Human Rights, 1948.

¹² . Tilahun Teshome, "The Child and the Law in Ethiopia: The Case of the United Nations Convention on the Rights of the Child", Journal of Ethiopian Law, Vol. XVIII., 1997. P, 39.

In many cases the child defined considering the child as an ‘autonomous being’ is widely contested,¹³ as children’s rights are usually associated to that of their family or adults and are not classified as self-standing rights until they attain the age of majority.¹⁴

Traditionally, most of the times in many cultures children are relegated to the world of the muted-along with groups such as women, the disabled and indigenous and minority peoples. However, basically the change came with the negotiation and adoption of the CRC, ACRWC and other child rights instruments because of their comprehensiveness with regard to child rights.¹⁵ With regard to the definition of the child Ethiopia is still awaiting review and amendment; the legal codes either define the child in differing ways or leave the definition open-ended. For instance, the Revised Family Code simply defines the child as “a member of either sex under the age 18.”¹⁶ Also the Civil Code defines as “a person of either sex who has not attained the full age of eighteen years.”¹⁷

The FDRE Constitution and the Criminal Code do not state the age issues in unequivocal manner. On the other hand, the percentage of children under 18 years of age in Ethiopia is estimated to be 53%.¹⁸ A situation in which more than half of the population has little, if any, say in decisions directly affecting their lives could lead to a serious disenfranchisement. However, as stipulated under article 36 of FDRE Constitution the Ethiopian view on human rights of children manifests itself in recognition that children are the future of the society and hence must be protected and nurtured.¹⁹

¹³ . Lowly, C ‘Autonomy and the appropriate projects of children: A comment on Freeman’ (1992) 6 IJLF 72.

¹⁴ . Lowly, C (n 13 above).

¹⁵ . A Twum-Danso : ‘Africa: A hostile environment for child participation?’ Http://
www.ecpat.net/eng/A4A02-03_online/ENG_A4A/Thematic_Africa.pdf(accessed 19 August 2013).

¹⁶ . See Art. 215 of the Revised Family Code of FDRE. Federal Negarit Gazetta Extraordinary Issue No. 1/2000 (The Revised Family Code Proclamation No. 213/2000). Addis Ababa 4th Day of July, 2000.

¹⁷ . See Art. 198 of the Civil Code of Ethiopia. Proclamation No. 165 of 1960, Negarit Gazetta, Extraordinary Issue, 19th Year No.2. Note also that the law employs the word “minor” for a child.

¹⁸ . Central Statistical Agency, Ethiopian National Population and Housing Census Report 2008.

¹⁹ . The Federal Democratic Republic of Ethiopian Constitution Proclamation, No. 1/1995(“ the constitution”), entered into force on 21 August, 1995.

Different international instruments now protect children's rights,²⁰ but their protection is limited to some specific aspects of children's rights, which are inadequate as they concern other areas of human rights. For instance, concerning the comprehensiveness the instruments such as CRC and ACRWC with regard to the effective protection of the rights of children involved in juvenile justice, they are said to be inadequate. As a result, the UN enacted different guidelines, rules and principles in order to uphold the rights and safety of children and to promote the physical and mental well-being of juveniles in the justice system.

Although the term may be employed in different forms, the CRC defines a child as every human being below the age of 18 years 'unless under the law applicable to the child, majority is attained earlier.'²¹ The provision in the second part of this definition is an apparent reference to legal systems that have lower age for the attainment of majority. So, the law referred to in the CRC includes international treaties and domestic legislations specific to children.

The ACRWC defines a child more concisely as 'every human being below the age of 18 years.'²² There are no exceptions or caveats included in the definition. This definition is the generally accepted one in some African constitutions and domestic laws on children as the consensus age for children.²³ Though the limit set in the ACRWC is pertinent, the ideal situation remains ensuring that the human rights of children are adequately catered for irrespective of the age limits since the age of majority differs under different circumstances.

With regard to the age, the FDRE Constitution does not indicate the age limits of children, and it simply enumerates their rights under article 36. Rather, the Criminal Code of Ethiopia classifies children into three age groups. The Code sets the age of criminal responsibility at 9 years. Then children between the ages of 9 and 15 named 'young persons'. Finally, children above fifteen years of age are for the most part treated as adults though some of the

²⁰ . Examples are in articles 25/26 of the Universal Declaration, articles 14,18,22,23 and 24 of the ICCPR and articles 10,12 and 13 of the ICESCR.

²¹ . Article 1 of the UNCRC.

²² . Article 2 of the ACRWC.

²³ . Section 28(3) South African Constitution, Section 28(5) Ghana Constitution, the Nigerian Child Rights Act 2003, the Kenyan Children's Act 2001.

protections available to ‘young persons’ may be extended to them by law or judicial discretion.

Everything hinges on the definitions of juvenile and child and the relationship between them. Although the Human Rights Committee has observed that under the ICCPR the limits of ‘juvenile age’ are to be determined by ‘each State Party in the light of relevant social, cultural and other conditions’, the committee itself ‘is of the opinion that all individuals under the age of 18 should be treated as juveniles’ at least in matters relating to criminal justice.²⁴

The CRC Committee has taken the approach that the duties on States Parties enshrined in Article 40 of the CRC apply to all children up to majority, regardless of whether the national criminal law treats them as if they were adult. So far, this is an approach which has not met with any resistance by the States Parties.²⁵

The CRC Committee therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17 years old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The committee also notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.²⁶

According to many international and regional conventions to which Ethiopia is a party, a child means any person under the age of eighteen. Accordingly, 53 percent of the general

²⁴ . Human Rights Committee, General Comment No. 9: Humane treatment of persons deprived of their liberty (Art.10) (UN Doc. A147/40, 1982).

²⁵ . G. Van Bueren, “Article 40: Child Criminal Justice”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2006), P. 7.

²⁶ . UNCRC Committee, General comment no. 10. (CRC/C/GC/10 25 April 2007), Para. 38.

population of the country based on the National Population and Housing Census of 2008 are children.²⁷

2.1.3. Definition of Child Friendly Justice

‘Justice for children’ refers to all situations where children are involved in both criminal and civil justice systems, including administrative or informal justice mechanisms. Child-friendly justice describes justice systems that are designed or adjusted to be sensitive to the particular issues that children face when they come into contact with the law and courts (or legal proceedings) for any reason.²⁸ Furthermore, in keeping with the systems approach to justice for children, there have been progressive changes on the meaning of ‘child friendly justice’.

Notably, the committee of ministers of the Council of Europe has developed guidelines on child friendly justice.²⁹

The document provides the following useful definition:

‘Child-friendly-justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level bearing in mind the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights of due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.

2.1.4. Aims of Juvenile Justice

With regard to the aims of juvenile justice rule 5 of the Beijing rules reads:

*The juvenile justice system shall emphasize on the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.*³⁰

²⁷ . CSA, Ethiopian National Population and Housing Census Report 2008.

²⁸ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa.

²⁹ . Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies. Available at [https:// Wcd.coe.int/wcd/viewDoc.jsp?Ref+Cm/Del/Dec\(2010\)1098/10.2abc&language](https://Wcd.coe.int/wcd/viewDoc.jsp?Ref+Cm/Del/Dec(2010)1098/10.2abc&language) accessed on 19 August 2013.

³⁰ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“ the Beijing Rules”),

This rule above refers to two of the most important objectives of juvenile justice;³¹ the first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions.

The second objective is “the principle of proportionality”. This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts or something deserved in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions for example by having regard to the offender’s endeavor to indemnify the victim or to her or his willingness to turn to wholesome and useful life.

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of defense of the other party/ individual. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, Beijing rules 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards; new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.³²

Adopted by General Assembly resolution 40/33 of November 1985, Rule. 5.

³¹ . Ibid, see commentary to rule 5.

³² . Ibid.

2.1.5. Identifying Situations in which Children may be Involved in

Criminal Justice System

a. Children in Conflict with the Law

Children may be involved in the criminal justice system as children who are accused of or are recognized as having infringed the penal law. They are often referred to as child offenders (although some may be innocent) or ‘children in conflict with the law’. The system is broad, procedurally covering: prevention; arrest and alternatives to arrest; pre-trial alternatives such as diversion; detention during pre-trial and post trial; the trial (courts in camera, identity protection); pre- sentencing procedures; sentencing; and reintegration. Important substantive issues include the minimum age of criminal capacity, criminal records, and the treatment of children in detention. In this regard, an important guiding principle is detention as a measure of last resort and for the shortest possible period of time.³³

b. Child Victims and Witnesses

The expression “child victims and witnesses” denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.³⁴

For both of these groups of children, procedures need to be put in place relating to: interviewing children; the possible use of video recording; preparation for court; special protective measures for giving evidence in court; and laws relating to the evaluation of children’s evidence by the court. In addition to these general measures, child victims will require a full range of services, including mechanisms for reporting the offence; access to information; psychosocial support; appropriate medical examinations; and sensitive management by trained officials. Privacy and confidentiality are important, including through closed courts and non-disclosure of identifying information.³⁵ Children involve in criminal justice either as victims or/and witnesses have the right to access to legal aid without

³³ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, P.2.

³⁴ . Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, UN Economic and Social Council resolution 2005/20 of 22 July 2005.

³⁵ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p. 2.

prejudice to or inconsistency with the rights of the accused.³⁶

With regard to this, there are no hard laws which clearly indicate child victims and witnesses right to access to legal aid and other special protections. Because, when we see the case of Ethiopia article 36 of the FDRE Constitution which state the rights of children³⁷, special provisions of the Criminal Code which is applicable to young persons³⁸, and the Criminal Procedure Code of Ethiopia in its section which provide procedure in cases concerning young persons³⁹, do not provide protections for victims and witnesses of crime as the UN guidelines on justice in matters involving child victims and witnesses of crime provided rather they provide some special protections for young persons who are accused of or are recognized as having infringed the penal law.

2.1.6. Access to Justice for all Children

The abovementioned groups of children such as suspects, victims and witnesses are those most commonly found caught up in criminal law system, but the list of relevant children who need to have access to justice is open ended, because children can be involved in a wide range of cases relating to any of their rights to bring a case (as complainant) to the attention of courts, and with appropriate assistance, can even approach courts themselves. So, children involved in justice system in any situation have the right to access to justice.

In this regard, special measures should be taken by states to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system.⁴⁰

³⁶ . United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Economic and Social Council, 25 April, 2012.

³⁷ . The Federal Democratic Republic of Ethiopian Constitution Proclamation, No. 1/1995(“ the constitution”), entered into force on 21 August, 1995.

³⁸ . See articles 52,53,54,55 and 56 of the Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation, No. 414/2004(“the Criminal Code of FDRE 2004”).

³⁹ . Articles 171 to 180 of the Criminal Procedure Code of Ethiopia, proclamation No. 185 of 1961.

⁴⁰ . Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, UN Economic and Social Council resolution 2005/20 of 22 July 2005.

2.1.7. Justifications for Child Friendly Benches in Courts

In this regard justice system designed for adult often fails to take into account the needs of child offenders, victims and witnesses of crime and further let them to face unfriendly treatment in the justice process. So, these and other reasons which stated in this section indicate the need to strengthen mechanisms for accountability to ensure more consistent and comprehensive progress on child friendly benches in courts for the children involved in criminal justice. Because;⁴¹

- ❖ Children face persistent barriers to the fulfillment of their rights in the justice system, such as non-existing or partial access to justice, diversity in and complexity of procedures, possible discrimination on various grounds, and lack of access to services which fit their needs.⁴²
- ❖ The realization of child friendly benches in courts is the key mechanism to avoid the risk of secondary victimization of children by the justice system in procedures and in practices that involve or affect them.⁴³
- ❖ It is necessary to set directions by which different stakeholders are guided in their interventions for the realization of the rights of children in the system.⁴⁴
- ❖ It is necessary to set directions whereby the best interest and welfare of children are considered while decisions on children are taken by courts and other relevant bodies who give multidisciplinary support to courts in a manner of accountability, coordination and cooperation.⁴⁵

In addition, as a means of fulfilling the aims of child criminal justice enshrined in international law, Article 40(3) of the CRC provides that States Parties should seek,

‘to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children [...]’

⁴¹ . Guidelines on Action for Children in the Justice System in Africa, 2011, p.3.

⁴² . Ibid, p.4.

⁴³ . Ibid.

⁴⁴ . See Guideline for Action on Children in the Criminal Justice System, Recommended by United Nations Economic and Social Council resolution 1997/30 of 21 July 1997.

⁴⁵ . Ibid, p.1-2.

This is an important addition to the protection of the rights of the children who are accused of being in conflict with the law as Article 14(4) of the ICCPR is far more limited and only provides that procedures concerning juveniles should ‘take into account their age and the desirability of promoting rehabilitation’.⁴⁶

The duty is wide ranging, arising from the earliest moment of allegation, and focuses not only on the establishment of the necessary legal framework, but also on the need for specific child criminal justice authorities, procedures and institutions. This includes specially trained law enforcement officials who can closely cooperate with the child’s maturity and level of understandings.⁴⁷

With regard to this, the duty under CRC, however, is only ‘to seek to promote’ it is regrettably weaker because it does not incorporate a stricter and more direct duty to bring accused children before specialized tribunals, and the ACRWC which enshrined specific child criminal justice provisions in Articles 17 and 30, does not incorporate an express provision obliging States to establish specialized child criminal justice institutions and personnel.⁴⁸

Based on these for the realization of child-friendly benches in courts, this study shall indicate the need for urgent response in criminal justice system in order to incorporate the special care and protection due to children in contact with the law.

2.1.8. Fundamental Principles of a Child-Friendly Justice System

These principles relate to all actions in child friendly justice systems, whether they are criminal, civil or administrative and regardless of whether they are formal or informal processes. Where they do not currently apply, for example in customary law processes, commitment should be made to making them progressively applicable.⁴⁹ Among other principles this study will try to examine the fundamental principles on which children’s rights

⁴⁶ . G. Van Bueren, “Article 40: Child Criminal Justice”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) A Commentary on the United Nations Convention on the Rights of the Child (Martinus Nijhoff Publishers, Leiden, 2006), P. 8.

⁴⁷ . Ibid.

⁴⁸ . Ibid.

⁴⁹ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p.16.

under the UN CRC and ACRWC are founded. These are:-

- i) Participation
- ii) The Best interests of the child
- iii) Dignity
- iv) Protection from discrimination
- v) Rule of law

i) Participation

Children have the right to be informed about their rights, to be given access to justice and to be consulted and heard in proceedings involving or affecting them. This includes giving due weight to their views, bearing in mind their age and maturity, and providing assistance to them in the communication of their views, including for children with communication difficulties.⁵⁰

Children should also be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views as well as the circumstances of the case.⁵¹

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.⁵² Furthermore, the child's views and wishes must be obtained prior to making a decision that causes a significant change in the child's life, child's views must be given due consideration.⁵³ As a result, the duty to ensure the child's participation in the justice system is not the duty which can be accomplished only by justice system actors. There is a need to follow a multi-disciplinary approach which facilitates the effective implementation of this right by employing professionals who know how to talk and listen children in a situation they are in justice system.

⁵⁰ . Ibid, p.16.

⁵¹ . Ibid.

⁵² . Section 10 of South African Children's Act.

⁵³ . Ibid, Sections 6 and 31.

Many African countries have recognized the right of a child to participate, and have made legislative provision for this. There is variation from country to country regarding when a child should be considered of sufficient age and maturity to participate. Some countries make participation subject to age and maturity or understanding, while others allow for any child capable of forming his or her views to participate in decisions that affect him or her.⁵⁴

For instance, section 8 of the Children's Act 8 of 2009 of Botswana not only ensures the child's right to participation but includes guidelines on how to facilitate this right. For the purpose of ensuring that the child is able to participate in the decision-making process, the child shall be given adequate information; in a manner and language that the child understands, about the decision to be made, the reasons for the involvement of persons or institutions other than his or her parents, other relatives or guardian, the ways in which the child can participate in the decision making process, and any relevant compliant review procedures; in addition the children shall also be given the opportunity to express their views freely, according to the child's age, maturity and level of understanding; any assistance that is necessary for the child to express those wishes and views; adequate information about the decision made and a full explanation of the reasons for the decision; and an opportunity to respond to the decision made.⁵⁵

With regard to participation, article 4(2) of the ACRWC and article 12 of the UN CRC states children's right to participate in matters affecting their interests as an innovative way of recognizing that children are individual bearers of human rights and not mere objects of concern or recipients of welfare.⁵⁶ These provisions have obvious relevance to child justice in that, insofar as judicial proceedings are concerned, children must be given the chance to participate in all decisions and, when in court, should preferably enjoy competent legal representation.⁵⁷

⁵⁴ . ACPF and DCI (2012). *Achieving Child-Friendly Justice in Africa*, p.16.

⁵⁵ . *Ibid*, Pp, 16-17.

⁵⁶ . *Child Justice in Africa, A Guide to best Practice*. This publication was made possible through support

Provided by USAID/ South African Mission, under the terms of Award No. 674-0322-C-00-7091-00., P. 18.

⁵⁷ . *Ibid*.

Regarding respect for the views of the child/ participation article 29 of the FDRE Constitution enshrined the right of every citizen to freedom of expression and access to information and also the Revised Family Code has recognized the principle of child participation in relation to some key family issues and processes, such as, on issue of adoption (under 194(3) (a), on the appointment and removal of guardians and tutors of the child (under 294(4) and on disputes between spouses on the matter of child custody (under 191(3) to help the child to express his/her views.⁵⁸ However, these laws do not adequately cover a range of substantive child rights regarding the administration of child justice in criminal justice system.

ii) **The Best Interests of the Child**

Children's right to have their best interests be the primary consideration in all matters concerning them and should be guaranteed through effective implementation. In assessing the best interests of the child, his or her views must be given due weight, and the child's other rights should be respected at all times. If more than one child is involved in a matter, the best interests of each child should be separately assessed and balanced with a view to reconciling possible conflicting interests of children.⁵⁹

With regard to this, the ACRWC recognizes that the best interests of the child shall be the primary consideration to be respected at all times including by taking into account the need for child-sensitive procedures at all times.

The ACRWC, which complements the UN convention on the rights of the child, gives much more emphasis to the principle of best interests of the child under article 4 of the ACRWC. This reads:

*In all actions concerning the child undertaking by any person or authority the best interests of the child shall be the primary consideration.*⁶⁰

The Convention on the Rights of the child is also clear on what the best interests of the child should be. It provides that:

⁵⁸ . ACPF (2012). Harmonization of Children's Laws in Eastern and Southern Africa, p.56.

⁵⁹ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p.18.

⁶⁰ . Article 4 of the ACRWC.

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*⁶¹

And it is significant that the UN Committee on the Rights of the Child maintain that the obligation to consider children's best interests requires a child impact assessment and evaluation with respect to all legislation and other forms of policy development to determine the impact of any proposed law or policy or budgetary allocation on children's rights.⁶²

The Committee also expects every legislative, administrative and judicial body or institution to **interpret or apply** the best interests' principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions- by for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.⁶³

Whilst judicial authorities make the final decisions about best interests, multi- disciplinary approaches should be used in assessment of best interests. The standard of the best interests of the child appears to have been incorporated in the legislation of most, if not all, African states. There are differences in the wording and weight attached to the best interests of the child; however, what is encouraging is that at least in writing there appears to be uniformity in recognizing that in every matter concerning the child, the consideration of the best interests of that child is a determining factor.⁶⁴

As result of its importance many countries includes the best interests of the child as the paramount consideration in their domestic legislation, whilst adding non-exhaustive lists of factors that must be taken into account when making a determination regarding best interests.⁶⁵

⁶¹ . Article 3 of the UN CRC.

⁶² . Committee on the Rights of the Child, General Comment No. 5 – General Measures of Implementation for the Convention on the Rights of the Child CRC/GC/2003/5, Para. 12.

⁶³ . Ibid.

⁶⁴ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p.17-18.

⁶⁵ . Ibid, p.19.

Ethiopia does not have a comprehensive child law in the form of Children's Act. However, in the absence of such law, FDRE Constitution, the Revised Family Code (RFC), the Criminal Code of Ethiopia and the Labor Proclamation, remain the main instruments addressing issues pertaining to children's rights in Ethiopia. For instance, article 36 (2) of the FDRE Constitution provides that the best interests of the child shall be the primary consideration in all actions concerning children by public institutions, courts of law, administrative authorities or legislative bodies. On civil aspects article 249 (2) of the Revised Family Code require the court to hear the opinion of the minor to establish the best interest before reaching a decision on the appointment or removal of a person as guardian or tutor of a minor. Moreover, the Revised Family Code states that decisions by competent authorities shall be "appropriate to the proper care and well being of the children "(article 2(8) and provides for consultation of a minor in all important matters concerning him/her unless the latter is below 14 years of age (Article 291(1). Article 113 of the Code directs the court to take into account the age and interests of the children in determining the custody and maintenance of children upon the dissolution of marriage, i.e. with regard to any civil justice system which involve children as part of the proceeding directly or indirectly.⁶⁶

To strengthen this there are several cases in different African countries which have relied on the best interests' principle both in criminal and civil justice system as enshrined in international law and/or in domestic law to improve the situation of children.

Due to the nature of the constitutional provision on children's best interests as the paramount consideration, the Cassation bench of Federal Supreme Court of Ethiopia has passed a landmark judgment examining the ambit and limits of the best interests of the child principle, i.e., in the case of Tselade Demmissie v Kiffle Demmissie. The cassation bench acknowledged the principle of the best interest of the child and set a precedent in matters concerning children in Ethiopia. The court did this despite the debates as to whether the provisions of the CRC, which Ethiopia has ratified, are binding or not (since there is a view that it should first be published in the Negarit Gazzete before it becomes binding). The court found that the principle of the best interests of the child the main standard to be considered when deciding the issue of child custody and **other relevant issues** that affect the wellbeing of children.⁶⁷

⁶⁶ . ACPF (2012). Harmonization of Children's Laws in Eastern and Southern Africa. Addis Ababa: The African Child Policy Forum, p.55.

⁶⁷ . File No. 23632. Judgment of 7 November 2007 of Cassation bench of Federal Supreme Court of Ethiopia.

This decision shows clearly the possibility of the application of CRC and other relevant instruments, which Ethiopia has ratified by courts when deciding any relevant issues that affect the well-being of children involved in criminal justice system.

iii) Dignity

The other cardinal principle of child friendly justice embodies the idea that children should be treated with care, sensitivity and throughout any procedure or case, with special attention for their wellbeing and particular needs, with full respect for their physical and psychological integrity. This treatment should be guaranteed, no matter the reason for their coming into contact with the judicial or non-judicial proceedings, and regardless of their legal status or capacity. Children shall not be subjected to torture or inhuman or degrading treatment or punishment throughout the justice process.⁶⁸

The respect for dignity of children is captured and emphasized in the children's legislation of most African countries, and some countries have provided for the respect of children's dignity in specific instances, while for other this is a constitutional principle that applies to children's rights.⁶⁹

The right of a child to have his or her dignity respected is not eloquently set out in the Ethiopian laws. However, the FDRE Constitution under article 18 provides protection to everyone to enjoy the right to protection against cruel, inhuman or degrading treatment or punishment. Similarly, Article 36 (1) (e) of FDRE Constitution also provides that:

Every child has the right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

iv) Protection from Discrimination

The rights of children shall be secured without discrimination on any grounds. And specific protection and assistance may need to be given to more vulnerable children,⁷⁰ and those who are involved in criminal justice system either as suspects, victims or witnesses of crime

⁶⁸ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, pp.23-24.

⁶⁹ . Ibid, p.24.

⁷⁰ . Ibid, p.26.

because they all need some kind of support without discrimination. For one thing, in order to give fair justice for the other to secure the children's reintegration into the society.

For that matter legislative provisions that ensure that children are not discriminated against when they come into contact with the child justice system are important in order to avoid children being denied their rights on grounds such as that of disability, being children (age) or child's involvement in criminal justice or child's recidivism.⁷¹

Article 2 of the UN CRC and article 3 of the ACRWC states the principle of non-discrimination as being central. Children should not be discriminated against on a wide variety of grounds, including gender, ethnic or social origin, race, disability or any other status. Again this principle underpins approaches to all the other rights enshrined in both instruments, and so applies in the child justice field as well.

Both the preambular and operative parts of the FDRE Constitution prohibit discrimination. The FDRE government affirms "the equality of all citizens' concerning rights and duties without discrimination with regard to sex, origin, race, religion, creed ideological conviction".⁷² The FDRE Constitution recognizes, under article 25, the principle of non-discrimination and equality before the law as one of the fundamental rights and freedoms. Moreover, article 36(4) of the constitution also provides that children born out of wedlock have the status with those born in wedlock. The Revised Family Code contains similar provisions. Similarly, the Labor Proclamation prohibits the employer from discriminating among workers, including young workers aged 14 and above.⁷³

v) The Rule of Law

The other general principle is that the rule of law principle should apply as fully to children as it does to adults. Elements of due process, such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to

⁷¹ . Ibid.

⁷² . The Federal Democratic Republic of Ethiopian Constitution Proclamation No.1/1995("the constitution"), entered into force on 21 August, 1995, article 25.

⁷³ . ACPF (2012). Harmonization of Children's Laws in Eastern and Southern Africa. Addis Ababa: The African Child Policy Forum, P.55.

access to courts and the right to appeal, should be guaranteed for children as they are for adults, and should not be denied or minimized on the basis of the child's best interests. In addition, Children should have the right to access appropriate, independent and effective complaints mechanisms.⁷⁴

The rule of law principle links to numerous aspects that relate to access to justice,⁷⁵ some of which are dealt with in the FDRE Constitution and other domestic legislations. Ethiopia has recognized the need to have the rule of law and provide for instance, that it is the responsibility of the governments to ensure that the rule of law prevails for children.

2.1.9. Child Friendly Justice during Criminal Proceeding

2. 1. 9. 1. Legal Representation

The basic concepts as to legal representation are that children facing court proceedings as offenders, in criminal proceedings should have access to free legal aid. In addition to this, children should be considered to be fully-fledged clients, and lawyers representing their interests must ascertain the views and wishes of the child, provide the child with appropriate legal advice regarding the possible impact of those views and wishes, and thereafter make the views and wishes known to the court.⁷⁶

In this regard, the Beijing rules (1985) rule 15(1) provides that:⁷⁷

Throughout the proceedings the juvenile shall have the rights to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

And with regard to children in the care and protection system, guideline 56 of the guidelines for children in alternative care provides as follows:⁷⁸

⁷⁴ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, p.28.

⁷⁵ . Ibid, p.29.

⁷⁶ . Ibid, p.79.

⁷⁷ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"),

Adopted by General Assembly Resolution 40/33 of November 1985, rule 15(1).

⁷⁸ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, p.79.

Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including where appropriate, legal representation on behalf of children in any legal proceeding.

Legal representation is a very important protection for children as child offenders, and ideally also for other children who are or may be deprived of their liberty, such as children in need of care and protection, or unaccompanied foreign children. Such assistance should be provided by the legal aid system. There is a growing awareness of the need for children to be legally represented in criminal justice system where there may be a conflict of interest between child offenders and the offence, i.e. because of the need to achieve the main objectives of juvenile justice and to protect the right of the defender.⁷⁹

The discussion of access to justice earlier in this study indicates the importance of children being able to access legal representation to be able to bring cases to advance or protect their rights. Civil society organizations and lawyers acting pro bono will often provide this kind of service and this should be organized by the legal aid system.⁸⁰

Moreover, all legal representation or legal aid decisions affecting children should consider the best interests of the child as the primary consideration and legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.⁸¹

Regarding the legal assistance the FDRE Constitution under article 20(5) provides that:

*Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state.*⁸²

⁷⁹ . Ibid.

⁸⁰ . Ibid.

⁸¹ . United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Economic and Social Council, 25 April, 2012.

⁸² . The Federal Democratic Republic of Ethiopian Constitution Proclamation No.1/1995(“the constitution”), entered into force on 21 August, 1995, article 20(5).

And article 174 of the Criminal Procedure Code of 1961 state the situations where the young person may be assisted by counsel and provides as follows:⁸³

The court shall appoint an advocate to assist the young person where:

(a) no parent, guardian or other person in loco parentis appears to represent the young person, or

(b) the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death.

2.1.9.2. The Right to be heard and Express Views

Proper upbringing of a child is determined through the participation of family, the community and governmental and non-governmental organizations. However, the participation of children in their own affairs is inimitable because of being unique to their level of maturity and so on.

And so as to achieve this, courts and other forums should respect the right of children to be heard and the means used for this purpose should be adapted to the child's level of understanding and ability to communicate, and should take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.⁸⁴

Due weight should be given to the child's views and wishes, in accordance with his or her age and maturity. This is because the right to be heard is a right of the child, not a duty of the child. And a child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the court or forum should not, **unless it is in the child's best interests**, refuse to hear the child, and the court should listen to his or her views and wishes on matters concerning him or her in the case. Further, children should be provided with all necessary information on how to use the right to be heard effectively. However, it should be explained to them that their right to be heard and to have their views taken into consideration will not necessarily determine the final decision of the court. Judgments and court rulings affecting children should be explained to them in language that they can understand.⁸⁵

⁸³ . The Criminal Procedure Code of Ethiopia, Proclamation No. 185 of 1961.

⁸⁴ . ACPF and DCI (2012), *Achieving Child Friendly Justice in Africa*, p. 83.

⁸⁵ . *Ibid.*

Different international laws have recognized the child's right to participate in judicial proceedings. For instance, article 12(2) of the CRC explicitly provides for the child to be given the opportunity to be heard **in any** judicial or administrative proceedings that affect them, either directly or through a legal representative or an appropriate body.⁸⁶ Article 4(2) of the ACRWC contains similar wording, but adds that the child may be heard as a party to the proceedings.⁸⁷

The guideline on justice for child victims and witnesses sets out, in chapter VIII, a heading relating to 'the right to be heard and to express views and concerns'. Guideline 21 states that professionals must ensure that child victims are consulted on relevant issues, and that child victims and witnesses are enabled to express freely their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to testify, and their feelings about the outcome of the process.⁸⁸

Participating in judicial proceedings is one of the most important opportunities for children. As their capacities evolve, they should be invited to play an increasing role in such processes, and their views and wishes should be given more weight. There is no specific age in international law at which a child is considered of sufficient age and maturity to participate in proceedings: this is a flexible standard, should be decided on a case-by-case basis, and as a general rule a child who is willing to participate should be permitted to do so. The court can decide after hearing the views and wishes of a child how much weight to place on them (and should have received training in this regard). Children sometimes do not want to participate, where they feel torn by conflicting interests and are afraid. In such cases they should not be forced to testify against their will, unless their testimony is vital to the conviction of a perpetrator, or vital to their own defence, and even then they may participate only when professionals have weighed their best interests.⁸⁹

There are many ways in which children can participate. While criminal trials offer few alternatives to giving testimony in a courtroom, the atmosphere can be made child-friendly,

⁸⁶ . Article 12 of the UNCRC.

⁸⁷ . Article 4 of the ACRWC.

⁸⁸ . ACPF and DCI (2012), *Achieving Child Friendly Justice in Africa*, p. 84.

⁸⁹ . *Ibid.*

and procedures can be modified to protect child witnesses, victims and suspects of crime.

Specifically, the right to be heard in criminal judicial proceedings has been discussed by UN CRC Committee in its general comment 12.⁹⁰

In criminal proceedings, the right of child to express her or his views freely in all matters affecting the child has to be fully respected and implemented throughout every stage of the process of juvenile justice.⁹¹

Regarding child offender Article 12, paragraph 2, of the UN CRC requires that a child alleged to have, accused of, or recognized as having, infringed the penal law, has the right to be heard. This right has to be fully observed during all stages of the judicial process, starting from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures.⁹²

The CRC committee also required that the court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited, clearly outlined in national legislation and guided by the best interests of the child.⁹³

And as to the child victim and witness the CRC committee in its general comment no. 12 urges concerned organs to take every effort to ensure that a child victim or/and witness is consulted on the relevant matters with regard to their involvement in the case under scrutiny, and enabled to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process in order to effectively use their participation in the justice system and protect their well-beings as well.⁹⁴

⁹⁰ . UNCRC Committee, General Comment No.12, on the right of the child to be heard (CRC/C/GC/12 20 July 2009), Para. 58-64.

⁹¹ . See the UNCRC Committee's General Comment No. 10, on children's rights in juvenile justice (CRC/C/GC/10 25 April 2007).

⁹² . UNCRC Committee, General Comment No. 12, on the right of the child to be heard (CRC/C/GC/12 20 July 2009), Para. 58.

⁹³ . Ibid, Para. 61.

⁹⁴ . Ibid, Para, 63.

2.1.9.3. Avoiding Undue Delay

In all criminal proceedings involving children, the urgency principle should be applied to provide a speedy response and to protect the best interests of the child, while also respecting the rule of law. When necessary, judicial authorities should consider the possibility of taking provisional decisions, to be monitored for a certain period of time, for later review in any case of non-compliance. Judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.⁹⁵

The UN CRC provides in article 37 that a child deprived of liberty shall have prompt access to legal assistance, and in article 40(b) the child's right 'to have the matter determined without delay by a competent and impartial authority or judicial body'.⁹⁶ The ACRWC, article 17, states that children will be informed promptly of charges against them, and 'shall have the matter determined as speedily as possible'.⁹⁷

The Beijing rules also under rule 10(2) emphasizes that when a child has been apprehended, the issue of release will be considered without delay.⁹⁸

Furthermore, the guideline on justice in matters involving child victims and witnesses, in guideline 30(c), directs that professionals should:-⁹⁹

*...ensure that the trial take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving **child victims and witnesses to be expedited.***

Due to their maturity level time passes slower for children than it does for adults, and a child caught up in judicial proceedings for a long time will feel the burden of that acutely. Children

⁹⁵ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, p. 89.

⁹⁶ . Article 37 and 40 of the UNCRC.

⁹⁷ . Article 17 of the ACRWC.

⁹⁸ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Adopted by General Assembly Resolution 40/33 of November 1985, rule 10(2).

⁹⁹ . UN Guidelines on Justice for Child Victims and Witnesses, Guideline, 30(c).

want to get on with their lives and return to normality.¹⁰⁰ It is self evident that delay of proceedings involving children deprived of their liberty is particularly egregious, and these cases must be prioritized on a court's roll.¹⁰¹

Child victims and witnesses will have their anxiety prolonged if there is a long delay between the incident and the trial, particularly as therapy may be delayed. Furthermore, the child may forget the details of the incident, and may have difficulty in testimony due to delay,¹⁰² which in other way minimize their participation in the justice process particularly when their involvement is vital to their own defense and the interest of justice.

2.1.9.4. Organization and Conduct of the Proceedings

With regard to child friendly justice system these concepts are basic to have effective justice system, so in all proceedings children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child- sensitive settings.¹⁰³

Before proceedings begin, children should be familiarized with the layout of the court or other facilities and the roles and identities of the officials involved and language appropriate to children's age and level of understanding should be used in the process.¹⁰⁴

When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity and also children should be allowed to be accompanied by their parents or, where

¹⁰⁰ . Turkovic K 'Elements for European Guidelines on Child-Friendly Justice with Particular focus on Children's access and place in Criminal Justice System', in Council of Europe, Compilation of texts related to Child Friendly Justice (2009), Directorate General of Human Rights and Legal Affairs: Strasbourg. Page 36: '[W]e are well aware of the negative effects of delays have on children. They cause anxiety, children cannot 'move on' with their lives, therapy may be delayed, there is an effect on the child's memory'.

¹⁰¹ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, p. 90.

¹⁰² . Ibid.

¹⁰³ . Ibid, p. 93.

¹⁰⁴ . Ibid.

appropriate, an adult of their choice, unless a reasoned decision has been made contrary in respect of that person.¹⁰⁵

Child friendly interview methods such as video or audio recording or pre-trial hearings in camera should be used and laws should be reviewed to allow this to be considered admissible evidence to the extent it served the best interest of the child and safeguards the interest of justice.¹⁰⁶

Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure to the child of images or information that could possibly be harmful to them, the judge should seek advice from other professionals, such as psychologists and social workers.¹⁰⁷

Court sessions involving children should be adapted to the child's pace and attention span; regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to **a minimum**. And as far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child- friendly environment.¹⁰⁸

Further, specialist courts, procedures and institutions should be established for children in conflict with the law, for care and protection proceedings, and for cases involving child victims and witnesses. Special measures and necessary adaptations should also be made for children with disabilities.¹⁰⁹

With regard to this the UN CRC provides that, as a general rule, the parents of the child offenders must be permitted to be present at their court appearances.¹¹⁰ And the Beijing rules state that:

¹⁰⁵ . Ibid.

¹⁰⁶ . Ibid.

¹⁰⁷ . ACPF and DCI (2012), *Achieving Child Friendly Justice in Africa*, p. 93.

¹⁰⁸ . Ibid.

¹⁰⁹ . Ibid.

¹¹⁰ . Article 40(2) (b) (iii) of the UNCRC.

*...the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express him or herself freely.*¹¹¹

Moreover, the guidelines on justice on matters involving child victims and witnesses provide detailed procedures for how children can be protected from hardship during the justice process, including court preparation and continuity planning, avoidance of delay, using **child-sensitive procedures** such as modified court rooms, and recesses (suspension of proceedings to take a break) during testimony.¹¹² Where possible within the domestic law, children should testify out of sight of the perpetrator, and should be protected during cross-examination.¹¹³

It is said that court proceedings can be daunting and confusing for adults and, much more so for children. At a workshop on child-friendly justice system: protecting children during civil or criminal proceedings that were held in Toledo, USA in March 2009, various principles and actions were identified in order to adapt legal systems to children, with a particular emphasis on the role of the courts. It was noted that the improvements which uses child sensitive procedures as indicated in the above paragraphs of this section should apply to all children, whether victims, witnesses or perpetrators.¹¹⁴

While physical arrangement of the court, waiting rooms and other rooms where children meet with professionals can be made more child-friendly through furnishing and color and the discarding of official court robes, the ‘atmosphere of understanding’ is most likely to be created by well-trained professionals who know how to talk and listen to children.¹¹⁵

Article 175 of the Criminal Procedure Code of Ethiopia states that where any evidence or comments are to be given or made which it is undesirable that the young person should hear, he or she shall be removed from the chambers while such comments or evidence are being given or made. Article 176(2) of the same code requires that the proceedings shall be conducted in an **informal manner**.¹¹⁶

¹¹¹ . Beijing rules, rule 14(2).

¹¹² . UN Guidelines on Justice for Child Victims and Witnesses, Guideline 30.

¹¹³ . Ibid, Guideline 31.

¹¹⁴ . Jaffe P ‘Feedback on Workshop No. 3 on “A Child-Friendly Justice System: Protecting Children during Civil/Criminal Proceedings” in Council of Europe compilation of texts related to Child Friendly Justice (2009) Directorate General of Human Rights and Legal Affairs: Strasbourg, at page 92.

¹¹⁵ . ACPF and DCI (2012), Achieving Child Friendly Justice in Africa, p. 94.

¹¹⁶ . The Criminal Procedure Code of Ethiopia, Proclamation No. 185 of 1961.

2.1.9.5. Evidence/Statements by Children

Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals and, as far as possible, in an environment where the child feels comfortable. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child. The number of interviews should be as limited as possible, and their length should be adapted to the child's age and attention span.¹¹⁷

Every effort should be made for children to give evidence in the most favorable settings and under the most suitable conditions, with regard to their age, maturity and level of understanding and any communication difficulties they may have.¹¹⁸

Audio-visual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements. Direct contact, confrontation or interaction between a child victim or witness and alleged perpetrators should, as a general rule, be avoided unless it is requested by the child victim or witness. Children should have the opportunity to give evidence in criminal cases not in the presence of the alleged perpetrator.¹¹⁹

Rules on children giving evidence should also be made less strict, such as through removing the requirement for oath or other similar declarations, or instituting other child-friendly procedural measures. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.¹²⁰

Interview and evidence protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability. And with regard to the best interests and wellbeing of children, it should be possible for a judge to allow a child not to testify.¹²¹

¹¹⁷ . ACPF and DCI (2012), *Achieving Child Friendly Justice in Africa*, p. 99.

¹¹⁸ . Ibid.

¹¹⁹ . Ibid.

¹²⁰ . Ibid.

¹²¹ . Ibid.

The CRC, in article 2(b) (iv), declares that a child alleged as or accused of having infringed the penal law shall not be compelled to give testimony or to confess guilty, and shall have the right to examine or have examined adverse witnesses, and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.¹²²

The guideline on justice in matters involving child victims and witnesses includes a number of provisions aimed at protecting children from hardship during the justice process. Guideline 31(a) aims to limit the number of interviews, statements and hearings through special procedures in the collection of evidence, such as the use of video recording. Guideline 31(b) directs professionals to ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect to the rights of the defense, from being cross-examined by the alleged perpetrator. It goes on to state that child victims and witnesses should be interviewed, and examination in court should be out of sight of the alleged perpetrators. Separate waiting rooms and private interview rooms should be provided at court.¹²³

With regard to child offenders, there is surprisingly little guidance in international law about special measures for their protection during the taking of statements and testifying in court. The UNODC draft model law on juvenile justice,¹²⁴ provides detailed protection in relation to the presence of a parent or a responsible adult during a police interview, the conditions for the interview (such as only during daytime), access to toilet and washing facilities, provision of food and water, and a rule that there should be no coercive interrogation. The protections required for the physical searching of a child, as well as the taking of intimate and non intimate samples for evidence are also included.

There appears to be a growing trend internationally towards creating mechanisms for the collecting evidence and the leading of testimony with regard to child victims and witnesses. The European court of human rights has noted that confronting the accused person can be a very difficult ordeal for a child victim, and has agreed that measures should be taken to protect victims, provided they are compatible with the appropriate and effective exercise of

¹²² . Article 2 (b) (iv), of the UNCRC.

¹²³ . United Nations Economic and Social Council Resolution 2005/20, adopted in 2005.

¹²⁴ . A Draft Model Law on Juvenile Justice was drafted for the UNODC, by Carolyn Hamilton, and was subjected to comment at an expert group meeting held in Vienna, 28-30 March 2011.

the rights of the defense.¹²⁵ However, in subsequent cases, the court has found fault with processes where child victims were interviewed by police but the defendant's lawyers were not permitted to see the video or to put questions to the child.¹²⁶

¹²⁵ . S.N. v Sweden no 34209/96, ECHR 2002-V.

¹²⁶ . Bocos-Cuesta v the Netherlands no 54789/00, 10 Nov 2005; W.S. v Poland no 21508/02, 19 June 2007.

CHAPTER THREE

INTERNATIONAL, REGIONAL AND NATIONAL INSTRUMENTS THAT DEAL WITH CHILDREN INVOLVED IN CRIMINAL JUSTICE SYSTEM

3.1. International and Regional Instruments that deal with Children involved in Criminal Justice System

3.1.1. Introduction

International law incorporates a number of basic principles upon which a child criminal justice system should be based. The first purpose is the encouragement of the well-being of children.¹²⁷ For instance, both the CRC and Beijing Rules emphasize the well-being of the child in the administration of child criminal justice.

The study under this chapter gives an overview of the relevant international, regional and national instruments and other documents that provide a firm basis for child-friendly justice. This study indicates that there is a wealth of guidance on the essential elements of child-friendly justice systems, and demonstrate that many of the underpinning principles are already recognized under this study.

Children's needs in the justice system have been recognized in international law most notably with regard to children accused of crimes. More recently, a set of guide lines has been written on children as child victims and witnesses, which means that law reform dealing specifically with child victims and witnesses is less common. The UN Convention on the Rights of the Child and the regional African Charter on the Rights and Welfare of the Child are more general, but less detailed, on issues pertaining to justice matters.¹²⁸ However, other relevant instruments like UN guidelines, rules and principles will be discussed in this study, focusing on their aspects that are relevant to criminal justice for children.

¹²⁷ . Article 40(4) of the UNCRC; the Beijing Rules, rule 5.

¹²⁸ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p. 4.

3.1.2. The United Nations Convention on the Rights of the Child (UN CRC)

The United Nations Convention on the Rights of the Child (1989),¹²⁹ is a wide ranging instrument that covers many issues. For instance, the UN Committee on the Rights of the Child in its general comment no. 10 mentioned the leading principles of a comprehensive policy for juvenile justice and recommend States parties to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40 in the administration of juvenile justice.¹³⁰

In addition to this, article 9 requires that children shall not be separated from their parents against their will except when competent authorities, subject to judicial review, determine in accordance with applicable law and procedures that the separation is necessary for the best interests of the child. It is one aspect of helping a child to achieve his/her sense of well-being. For instance, as indicated in the Beijing Rules children should not be treated in isolation from his family,¹³¹ because, the broad fundamental perspectives of juvenile justice refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. So, such constructive social policy for children will play an important role to child justice.¹³²

The importance of maintaining family relationships is also emphasized by the Guideline for the Action on the Children in the Criminal Justice System which refer to the importance of ensuring easy access by relatives and persons who have a legitimate interest in the child where children are deprived of their liberty, unless the best interest of the child suggest otherwise.¹³³

Article 12 provides that a child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly or through a representative or appropriate body. Article 37 focuses on child's freedom from cruel, inhuman or degrading

¹²⁹ . United Nations General Assembly Resolution 44/25 adopted on November 1989.

¹³⁰ . Ibid.

¹³¹ . The Beijing Rules rule 1.1.

¹³² . See Commentary to the Beijing Rules, rule 1.1.

¹³³ . Guidelines for Action 20.

treatment, and article 40 on the administration of juvenile justice. These articles include strong and detailed provisions for issues of justice for children. That is, it basically refers to all scenarios where children might be involved in both criminal and civil justice systems, including administrative or informal justice mechanisms in broader manner.

3.1.3. The United Nations Rules, Guidelines and Principles on Child Justice

3.1.3.1. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)

It is the first international instrument to pay dedicated attention to the issue of children’s justice. That is, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) referred to generally as ‘the Beijing Rules’.¹³⁴ These rules provide a framework of essential elements of a good system to deal with child offenders and contain the following tenets:¹³⁵

- ❖ Countries need to set a minimum age of criminal capacity at an age that is not too low considering the emotional and mental capacity of children.
- ❖ The aim of juvenile justice is to emphasize the well being of the child and ensure that any reaction in law will be proportionate to the offender and the offence.
- ❖ The granting of a high degree of discretion to officials at all stages is encouraged to allow for alternative measures, but discretion is to be used in an accountable and judicious manner.
- ❖ Specialization within the criminal justice system is encouraged.
- ❖ Sentencing must be proportionate and must ensure that detention is a measure of last resort.
- ❖ Corporal punishment as a sentence is prohibited.

¹³⁴ . United Nations General Assembly Resolution 40/33 adopted on 29 November 1985.

¹³⁵ . ACPF and DCI (2012). Achieving Child-Friendly Justice in Africa, p. 4.

3.1.3.2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”)

While other instruments stress avoidance or limitation of detention, this instrument (also known as ‘the JDLs’) focuses on conditions of detention.¹³⁶ It covers pre-trial detention, detention during trial, and detention as a sentence. It is sufficiently broad to cover not only prisons and police detention, but also any facility that children cannot leave at will. The Rules are founded on the understanding that detention should be avoided where possible, but that where it occurs each child must be treated as an individual, having his or her needs met as far as possible. There is an emphasis on preparing the child for return to society from the moment of entry into a criminal justice system and any other facility which involve children.¹³⁷

So, the overall court system should be in compliance with the children’s mental and physical maturity and should contribute to the protection of juveniles deprived of their liberty while the court orders detention during trial.

3.1.3.3. United Nations Guidelines for Action on Children in the Criminal Justice System

The purpose of this guideline is to promote the effective use of existing international instruments through practical guidelines for action. This UN document covered child offenders, child victims and child witnesses within its ambit. Its aims are to provide a framework to achieve the objectives set out in international child rights instruments, and to ensure that this is facilitated through assistance to States Parties in effective implementation (for example, through the provision of technical and other relevant assistance).¹³⁸

In order to ensure effective use of this guidelines, improved cooperation between governments, relevant entities of the United Nations system, non- governmental organizations, professional groups, the media, academic institutions, children and other members of civil society is deemed essential. The Guidelines are enacted based on the principle stated under article of 4

¹³⁶ . United Nations General Assembly Resolution 45/113 adopted on 14 December 1990, often referred to as ‘the JDLs’.

¹³⁷ . ACPF and DCI (2012), *Achieving Child-Friendly Justice in Africa*, p. 5.

¹³⁸ . See *Guideline for Action on Children in the Criminal Justice System, Recommended by United Nations Economic and Social Council resolution 1997/30 of 21 July 1997*.

of the CRC that the responsibility to implement the Convention rests clearly with the States Parties there to.¹³⁹

3.1.3.4. The United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime

The guidelines on justice in matters involving child victims and witnesses of crime¹⁴⁰ are intended to be a useful framework to assist countries in enhancing the protection of child victims and witnesses in the criminal justice system. As a result of this, the guidelines provide a practical framework to achieve the following objectives:¹⁴¹

- ❖ To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime, and contribute to the implementation of the UN CRC by parties to that **Convention**
- ❖ To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime
- ❖ To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice processes at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- ❖ To assist and support those caring for children in dealing sensitively with child victims and witnesses.

So, it can be concluded that these guidelines were created to help make sure that children who have been harmed by crime and children who have seen others harmed are protected and treated fairly when they tell their stories in a court of law. The document will also help protect children when they talk to the police, lawyers, social workers and anyone else they meet before and after they go to court.¹⁴²

¹³⁹ . ACPF and DCI (2012), *Achieving Child-Friendly Justice in Africa*, p. 6.

¹⁴⁰ . United Nations Economic and Social Council Resolution 2005/20, adopted in 2005.

¹⁴¹ . ACPF and DCI (2012), *Achieving Child-Friendly Justice in Africa*, p. 6.

¹⁴² . Child-Friendly Version of UN Guidelines, Economic and Social Council resolution 2005/20 of 22 July

The guidelines state that they can also be applied to processes in informal and customary systems of justice such as restorative justice, and in other criminal fields of law.

3.1.4. The African Regional Instruments on Child Rights

With regard to the African regional instruments this section discusses two of them. Firstly, the African Charter on the Rights and Welfare of the Child (referred as the ACRWC).¹⁴³ Like UNCRC, ACRWC is a comprehensive instrument that covers a wide range of children's rights. The articles that are particularly relevant to justice for children are Article 4 (on the best interests of the child and considering the views and wishes of children); Article 17 (administration of juvenile justice); Article 16 (protection against child abuse and torture); Article 18 (protection of the family and the protection of children in the dissolution of marriage); Article 19 (parent care and protection); Article 23 (refugee children); Article 24 (adoption); Article 25 (separation from parents); Article 29 (sale, trafficking and abduction); and Article 30 (children of imprisoned mothers).

The ACRWC (Article 1(1)) enjoins States to adopt such legislative and other measures as are necessary to give effect to the provisions of the Charter.

Although the ACRWC does not provide a lot of detail that is helpful in defining measures specific to justice for children, Articles 4, 17 and 30 do provide stronger wording than the CRC on best interests of the child and on privacy in juvenile justice, whilst the situation of children in prison with their mothers is not dealt with at all in the CRC.¹⁴⁴

In addition, there are writings which indicate the stronger expressions included in the ACRWC regarding child rights protection. For instance, it said by Lloyd¹⁴⁵ to be the 'most

2005, which has been produced by UNICEF and UNODC with the support of the Innocenti Research Centre and IBCR, which used as guidance for children and child professionals and is not an official UN document, p. 3.

¹⁴³ . African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49(1990), entered into force Nov. 29, 1999.

¹⁴⁴ . ACPF and DCI (2012), *Achieving Child Friendly Justice in Africa*, P. 8.

¹⁴⁵ . A. Lloyd, 'Evolution of the African Charter on the Rights of the Child and the African Committee of Experts: Raising the Gauntlet' (2002) 10 *International Journal of Children's Rights*, p. 179.

forward thinking of all the regional systems'. It is Africa sensitive'.¹⁴⁶ Van Bueren describes it as 'the most progressive of the treaties on the rights of the child'.¹⁴⁷ Benyam D Mezmur states that 'the ACRWC is a potentially powerful tool in enhancing the lives of millions of African children, concluding that the ACRWC offers a greater number of progressive provisions tailored to address African realities, and this makes the comparative analysis between the ACRWC and UNCRC a non-zero-sum game in favor of the ACRWC because it takes the normative upper hand over the UNCRC'.¹⁴⁸ The most significant innovation empowers the monitoring Committee to receive 'communications from any person, group or NGO's recognized by the organization of African Unity...'.¹⁴⁹ So, children can petition the Committee on alleged violation of their rights. Furthermore, unlike the UNCRC; their well-being is the primary consideration. Article 4(1) stated:-

'In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration'

It should also be noted that article 4(1) extends to all actions by 'any person', so that parents are included. This is wider than article 3(1) of the UNCRC. In other ways also the ACRWC is wider than the UNCRC, for example, by including a specific article condemning apartheid (under art. 26(1) and child marriage (under art. 21(2)). And special reference is made to the extended family and the non discrimination provision extends to 'fortune' but in UNCRC article 2(1) it is 'property' that is referred to.¹⁵⁰

¹⁴⁶ . Ibid, p. 182.

¹⁴⁷ . See G. Van Bueren, *The International Law on the Rights of the Child* (Dordrecht: Martinus Nijhoff, 1995), p. 402.

¹⁴⁸ . Benyam D Mezmur, 'The African Children's Charter versus the UN Convention on the Rights of the Child: A Zero-sum game?', 2008, pp. 28-29.

¹⁴⁹ . See article 44(1) of the ACRWC.

¹⁵⁰ . M. Freeman, "Article 3. The Best Interests of the Child", in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007).

Secondly, the study considers the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.¹⁵¹ Most of the document enunciates general principles and procedures for all persons in the criminal justice system. Of particular importance to this study is section O, which deals with ‘Children and the right to a fair trial’, covering both child offenders and, to a lesser extent, child victims and witnesses.¹⁵²

With regard to child suspects, the document sets out detailed guidelines that cover many issues included in the international instruments. It is notable that these guidelines cover many of the gaps in the ACRWC; in fact, there are aspects on which this document is more progressive than the CRC, for example, it contains a provision requiring legal assistance for the child from the moment of arrest, and protection during questioning by police. Notably, it also sets a recommended minimum age of criminal capacity of 15 years,¹⁵³ which is considerably higher than the now generally accepted international norm of 12 years.¹⁵⁴ The UN Committee on the Rights of the Child in its General Comment No. 10 urges States parties not to lower their minimum age of criminal responsibility to the age of 12.¹⁵⁵

3.2. National Laws, Policies and Programs that deal with Children Involved Criminal Justice System

3.2.1. The National Laws

Under this section the study basically focuses on three legislations indicating their scope and applicability to the rights of children. Under, the FDRE Constitution there is a number of general provisions on human rights that are applicable to all persons, including children. The

¹⁵¹ . The African Commission on Human and Peoples’ Rights; Proclaimed these Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; Website: [http:// www.achpr.org](http://www.achpr.org) (accessed 22 March 2014).

¹⁵² . Ibid.

¹⁵³ . Ibid, Section (O) (d).

¹⁵⁴ . United Nations Resolution on human rights in the administration of justice, in particular juvenile justice, Adopted by the Human Rights Council at its Eighteenth session, A/HRC/18/L.9, on 23 September 2011.

¹⁵⁵ . See the UNCRC Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice (CRC/C/GC/10), Para. 33.

Constitution also provides specifically for the rights of children under article 36, namely the rights of the child to life, name and nationality, to know and be cared for by parents or legal guardians, to be protected from exploitative labor and not to be forced to undertake work that may harm his or her education, health and well-being, to be free from cruel and inhuman treatment in schools or child care institutions. Article 36(2) of the Constitution goes beyond recognition of specific child rights and incorporates the principle of the best interests of the child. That reads:-

*In all actions concerning children undertaken by public and private welfare institutions, Courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.*¹⁵⁶

And article 36(3) further provide protection to juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the state or who are placed in public or private orphanages to be kept separately from adults, i.e. it basically recognize the physical and mental immaturities of the children so as to protect them from the negative influences of adults during their contact.

The Criminal Code of Ethiopia classifies children into three age groups using ages 9 and 15 as thresholds for criminal responsibility.¹⁵⁷ Age nine is the minimum age of criminal responsibility, i.e. children younger than nine are considered ‘infants’ whose actions cannot constitute an offence/crime. Children aged nine to fifteen, on the other hand, are designated as ‘young persons’ and benefit from special protections within the juvenile justice.

Finally, children above fifteen years of age are for the most part treated as adults though some of the protections available to ‘young persons’ may be extended to them by law or judicial discretion. Which means the Criminal Code sets the age of criminal responsibility at 9 implying that contraventions of the code by ‘children’ below this age will not be considered as a crime. i.e., in such cases as stated under Article 52 of the Code appropriate measures may be taken by the family, school or guardian. And with regard to children above 15 the Code states the possibility of extension of the protection granted to ‘young persons’ either by law

¹⁵⁶ . The Federal Democratic Republic of Ethiopian Constitution Proclamation No.1/1995(“the constitution”), entered into force on 21 August, 1995, article 36(2).

¹⁵⁷ . Article 52, 53 and 56 of the Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation, No. 414/2004(“the Criminal Code of FDRE 2004”).

or judicial discretion to them which means the mere being above 15 years of age does not necessarily imply the application of ordinary provisions of the Criminal Code.

So, the substantive law provisions pertaining to the rights of children coming in contact with the criminal justice are to be found in the Revised Criminal Code and the Criminal Procedure Code of Ethiopia (1961), albeit limited in its scope, to some extent it cover the rights of children involved in the criminal justice as suspects/accused of crime. The protections within the code are typically available to ‘young offenders’ although those above 15 years of age also benefit from protection measures (usually at the discretion of the court). Under normal circumstances, the ‘young person’ is to be released for the duration of the investigation to the custody of the parents, guardian or relatives or to a person who will be responsible for the appearance of the ‘young person’ in court.¹⁵⁸ If the person responsible for the child is not present, he/she will be summoned by the court immediately.¹⁵⁹ Failing this, the court will appoint legal counsel and release the ‘young person’ to the custody of ‘reliable person’.¹⁶⁰

3.2.2. Measures taken to harmonize Child Friendly Justice under National Legislations, Policies and Programs

3.2.2.1. Domestic Legislations, Policies and Programs

With regard to harmonizing the domestic set ups Ethiopia has taken some efforts. For instance, the measures taken to implement the 2006 concluding observations of the Committee on the Rights of the Child CRC/C/129/Add.8 which is given on the third periodic report of Ethiopia to the committee can be mentioned as good start, as well as other important additional measures not referred to in the observations.¹⁶¹

Since the adoption of its Constitution in 1995, with a number of provisions relevant for children’s rights (particularly Article 36), the FDRE has taken significant administrative, policy and law reform measures aimed at ensuring compatibility of national laws with provisions of international human rights instruments that are relevant to the protection of the

¹⁵⁸ . Article 172/4/ of the Criminal Procedure Code of Ethiopia.

¹⁵⁹ . Article 173 of the Criminal Procedure Code of Ethiopia.

¹⁶⁰ . Article 174 & 172/4/ of the Criminal Procedure Code of Ethiopia.

¹⁶¹ . Combined 4th and 5th periodic reports of the Federal Democratic Republic of Ethiopia to the United

Nations Committee on the Rights of the Child (2006-2011). April, 2012, p.2.

rights and welfare of children. As a result, a number of legislative and policy measures have been undertaken since Ethiopia's third periodic report to the UN Committee on the Rights of the Child in 2005.¹⁶²

For example, with regard to ratification of international instruments Ethiopia has undertaken some important steps towards ratification of international instruments relevant to children. For instance, in an effort to protect and promote the rights of children with disabilities, Ethiopia ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 7 July 2010.¹⁶³ This means in addition to the measures taken before 2005. For example, the ratification of the new Criminal Code in July 2004, Revised Family Code of 2000 and two other important enactments establishing the institution of Ombudsman and Human Rights Commission in July 2000.

Currently these two independent Human Rights institutions play an important role regarding the promotion and protection of human rights in general. For instance, Article 5 of EHRC stated the objective of the commission mentioning its role to educate the public be aware of human rights see to it that human rights are protected, respected and fully enforced as well as have necessary measure taken where they are found to have been violated.¹⁶⁴ Under Article 8 it also establish special department for the children and women affairs to achieve its objective to all human beings effectively.

In addition, both the institution of Ombudsman and Human Rights Commission conduct periodic follow ups on the implementation of human rights instruments and submit observations and proposals to the competent authorities and also have desks dedicated to handling the affairs of children, taking activities like CRC Committee training, distribution of child-friendly booklets, celebration of international and regional human rights and child rights events (with panel discussions, TV programs, and discussions with children in orphanages) are used as some of the means used to promote and protect child rights.¹⁶⁵

¹⁶² . Third periodic report of Ethiopia submitted to the UNCRC; see CRC/C/129/Add.8, 28 October 2005.

¹⁶³ . Ibid.

¹⁶⁴ . The Ethiopian Human Rights Commission Establishment Proclamation, No.210/2000.

¹⁶⁵ . Combined 4th and 5th periodic reports of the Federal Democratic Republic of Ethiopia to the United

Nations Committee on the Rights of the Child (2006-2011). April, 2012, pp. 5-8.

Ethiopia has also developed a draft Comprehensive National Child Policy with due consideration of the principles and provisions of the CRC and ACRWC to guide the work of various actors dealing with children and also promote the rights of children. The policy emphasizes on three central strategies, 1) development and growth, 2) prevention and protection, and 3) rehabilitation, care and support for children.¹⁶⁶

On the other hand, the National Criminal Justice Policy issued in 2011 has incorporated various changes to address a number of gaps observed in the criminal justice systems and tried to ensure compatibility with the provisions of the CRC and ACRWC. The policy devoted a separate section for care and special handling of victims of crimes and children in conflict with the law. For instance, section 6 of the policy focuses on the circumstances of vulnerable children, the rights of victims to participate in criminal investigation and procedures for charging and trial, legal protection and handling of children in conflict with the law, alternative remedial measures and establishment of special units for children. Most of these provisions provide protection to children who are victims of crime, early marriage, child labor, neglect and abuse, to name few.¹⁶⁷

In addition to the adoption of the National Criminal Justice Policy, the Criminal Procedure Code of 1961 was revised and presented to the Federal Parliament for deliberation and enactment. The revised CPC incorporated significant measures to ensure children's access to protective and child friendly justice system. These include measures such as application of diversionary methods and setting up child friendly structures at various levels in the judicial process in line with international principles and standards,¹⁶⁸ the CPC has not yet enacted.

Despite these attempts of harmonizing national legislations with the provisions of the CRC and ACRWC, there still exist significant gaps in protecting the rights of the child. The most fundamental of these gaps appears to be lack of an effective juvenile justice system in the country, the failure of ratification of those policies and legislations by federal parliament, the absence of comprehensive children's act, financial constraints, attitudinal impediments,

¹⁶⁶ . Comprehensive National Child Policy of Ethiopia, final draft. Prepared by Ministry of woman, Children and Youth Affairs. April, 2011, p.2.

¹⁶⁷ . Combined 4th and 5th Periodic Reports of the Federal Democratic Republic of Ethiopia to the United Nations Committee on the Rights of the Child (2006-2011). April, 2012, p.3.

¹⁶⁸ . Ibid.

limited expertise of law enforcement agencies in dealing with child in contact with the law, and the absence of effective promulgations incorporating additional provisions pertaining to children. As a result, in many regions children are tried and convicted in adult courts. Likewise, as indicated in the third periodic report of Ethiopia several bottlenecks are still slowing down the initiative to strengthen the juvenile justice system in the country.¹⁶⁹

3.2.2.2. The Child Justice Project Office at Federal Supreme Court and SNNPRS Supreme Court and NGO's

The juvenile justice system is not yet developed in Ethiopia. Lack of enforcement of existing laws including the CRC, lack of community based correction centers, limited training of the police and the judiciary on child rights, lack of comprehensive children's law and correction institutions and financial constraints are some of the major indicators that show clearly the negligible development of the juvenile system.¹⁷⁰

Cognizant of the problems facing the emergence of a juvenile justice system in Ethiopia, the Federal Supreme Court in collaboration with various NGOs, has established the "Juvenile Justice Project Office (JJPO) in June 1999. Since then a Steering Committee has been established and some efforts continue to be made to improve the legal protection of children who are in conflict with the law, and to reform the juvenile justice of the country. Training of a few judges and police staff has been taking place, compilation of international instruments (on rights) has taken place and the problems of existing Ethiopian law in relation to the CRC have been studied. The office is working with MOLSA, UNICEF, Italian Cooperation, and Forum on Street Children –Ethiopia and the African Network for the Prevention of and Protection against Child abuse and Neglect (ANPPCAN Ethiopia),¹⁷¹ planning to achieve the following objectives of the project office:-¹⁷²

a) Long-term objectives

¹⁶⁹ . Third periodic report of Ethiopia submitted to the UNCRC; see CRC/C/129/Add.8, 28 October 2005.

¹⁷⁰ . Report on Progress in implementing the World Fit for Children Plan of Action in Ethiopia. Addis Ababa, 2007, P. 56.

¹⁷¹ . Ibid.

¹⁷² . Third periodic report of Ethiopia submitted to the UNCRC; see CRC/C/129/Add.8, 28 October 2005. p, 58. Paragraph 214.

- i) To propose ideas towards reforming the juvenile justice system of the country to protect adequately the rights of children in line with the international child rights standards;
 - ii) To enable the juvenile justice system of the country to develop the necessary infrastructure and specialized capacity for the realization of the provisions of CRC, the FDRE constitution and the working laws of the country pertaining to children.
- b) Short-term objectives
- i) To improve the existing mode of operation of the judiciary, the police and reformatory organizations in dealing with cases of children;
 - ii) To improve the institutional linkage among the judiciary, the police, reformatory organizations and other concerned bodies for the effective realization of the provisions prescribed in the working laws of the country pertaining to children;
 - iii) To enable the judiciary, the police and staff members of reformatory organizations to acquire adequate professional knowledge and skills on child protection and influence their attitude and practices towards children.

Until very recently, there was no special arrangement within the court system to deal with cases where children involved in the criminal justice system. However, as of September 2004, a child friendly system where a child victim need not personally appear before the formal setting of a court room is put in place with the assistance of a JJPO at the Federal Supreme Court. Hence, there is now an increase of the establishment of separate benches in Addis Ababa and regions that are connected to a special room through a ‘Close Circuit Television’. The child victim who will be sitting in the special room is assisted by an intermediary to answer all the questions forwarded from the court room. Thus they can testify freely without being further traumatized. At the initial stage of the program, training was given to the persons that were to be involved in the operation of the system. The judges have been oriented on the subjects through workshops and seminars.¹⁷³

In addition, the Justice Organs Professionals Training Center has started to provide a course on human rights. Components such as child rights and women’s rights are planned to be part of such a course. According to the project office at the Federal Supreme Court, there is a plan

¹⁷³ . Report on Progress in implementing the World Fit for Children Plan of Action in Ethiopia. Addis Ababa, 2007, P. 56.

to set up a special system of the kind mentioned above in all regions of the country. Separate benches have been instituted in different regions including SNNP region. These institutions are mandated to handle children involved in the criminal justice in a child-friendly atmosphere.¹⁷⁴

3.2.2.3. The Justice System Reform Program

The FDRE Constitution, enacted in 1995, provided for a federal system of government in which sovereignty was to reside in “the Nations, Nationalities and Peoples of Ethiopia”.¹⁷⁵ The government then embarked on a series of reforms designed to encourage the economic and social development of the country and reduce poverty. It was assumed that progress in these fields required a complete overhaul (revision) of the justice system, allowing citizens to seek and obtain affirmation on their rights as embodied in and guaranteed by the Constitution. It was also felt that the country urgently needed to adapt its judicial system to the demands of the changing world economy.¹⁷⁶

In 2002, under the aegis of the Ministry of Capacity Building (MOCB), the Justice System Reform Program was charged with designing a comprehensive reform plan to attain these objectives and to assess the performance of the various institutions of justice and to propose appropriate reforms.¹⁷⁷ So, the need for the establishment of JSRP is to identify the problems hindering the machinery of justice which obviously include justice for children even though the reform program failed to mention detailed reform mechanisms with regard to the juvenile justice system.

And when we see the recent reform efforts, the JSRP addressed what it regarded as the most serious deficiencies in the justice system, i.e. the insufficient number of qualified judges and public prosecutors, the inappropriate and inefficient administration of courts at both federal and state levels, and the lack of clarity and coherence in respect of existing laws and codes. In

¹⁷⁴ . Ibid.

¹⁷⁵ . Article 8 of the FDRE Constitution.

¹⁷⁶ . FDRE, Comprehensive Justice System Reform Program, Baseline Study Report, Ministry of Capacity Building, Addis Ababa, February, 2005, p. 13.

¹⁷⁷ . Justice Reform Program, Ministry of Capacity Building, Addis Ababa, April 2002.

these three major sectors, reforms were initiated and implemented through training to justice system actors and other stakeholders and through conducting research.¹⁷⁸

In Ethiopia, as in any other country, the justice system is not limited to the provisions of the Constitution defining the structure and powers of the courts (Chapter 9) or by Proclamation No. 25 of 1996 establishing the Federal Courts. It necessarily extends to other institutions that enact legislation, facilitate the functioning of the courts, are charged with law enforcement or teach law. All these components of the justice system are functionally linked to one another. As a result, any assessment and any reform proposal must take account of the whole system as well as its different parts.¹⁷⁹

¹⁷⁸ . FDRE, Comprehensive Justice System Reform Program, Baseline Study Report, Ministry of Capacity Building, Addis Ababa, February, 2005, p. 49.

¹⁷⁹ . Ibid, 47.

CHAPTER FOUR

ACHIEVEMENTS AND CHALLENGES OF THE CHILD-FRIENDLY BENCHES IN COURTS OF ETHIOPIA WITH SPECIAL FOCUS ON THE SNNPRS HADIYA ZONE

4.1. Introduction

Despite the growing attention being paid to juvenile justice internationally, the issue does not appear to figure as a priority concern on national policy agenda of many countries. However, few governments have set about deinstitutionalizing as many children as possible in keeping with their human rights obligations.¹⁸⁰ This has been attributed to the low level of importance accorded by many societies to children involved in the criminal justice system. Having this in mind, the main task of this chapter will be examining the major achievements in juvenile justice system and systematic factors that contribute to violation of child rights within the juvenile justice system in Ethiopia with special emphasis in SNNPRS Hadiya zone. The chapter also assesses the situation of the child-friendly benches in courts of Hadiya zone **based on data** gathered from key respondents and court cases.

4.2. The Status of the Child-Friendly Benches to Date: Achievements and Challenges

4.2.1. Achievements

i) Establishment of a Separate System for the Administration of Juvenile Justice

Ethiopia has reformed its laws, took organizational measures to facilitate the effective implementation of the laws and procedures that deal with the special needs, and respect the rights of children in conflict with the law.¹⁸¹ The laws of Ethiopia, albeit limited, in providing appropriate treatment for child suspects in line with the provisions of the UN CRC, rules, principles, standards and other relevant instruments some relevant considerations have been taken in this respect which include the following:

- ❖ Article 9 of the FDRE Constitution incorporates all ratified international instruments, including the CRC into the law of the land. This article indicates the possibility of the application of CRC, ACRWC and other relevant instruments, which Ethiopia has

¹⁸⁰ . United Nations Secretary-General, World Report on Violence against Children (2006).

¹⁸¹ . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012, p. 45.

ratified by courts when deciding any relevant issues that affect the well-being of children. In addition, article 36(3) of the Constitution states that juvenile offenders admitted to corrective or rehabilitative institutions shall be kept separately from adults (further article 53 of the Criminal Code gives applicability to this protection by indicating measures intended to achieve the special purpose of juvenile justice).¹⁸² The Constitution also prohibits corporal punishment, and cruel and inhumane treatment in institutions responsible for the care of children.¹⁸³

- ❖ The criminal policy of Ethiopia, developed on the basis of the four principles of the CRC, aims to promote recovery and reintegration of children in conflict with the law. It also recognizes the importance of taking steps leading to prevention of reoffending and the use of detention only as a measure of last resort and calls for the establishment of special institutions at federal and regional levels which will oversee the appropriateness of the measures taking into consideration; special needs and circumstances of the child, the principle of proportionality, and special investigators, prosecutors and courts created at different.¹⁸⁴

The Criminal Code grants discretionary power to the court to decide, on a case by case basis, and impose alternative measures, for children 9-15 years of age. Article 53(2) specifically states that alternative measures shall not be applied unless the child is convicted. Types of alternative measures include reprimand or censure (article 160), school or home arrest (article 161), supervised education (article 159), admission to a curative institution (158), admission to a corrective institution (article 162), fines (article 167) and conditional release/probation (article 168).¹⁸⁵ Under Article 56 (2), with regard to young person over fifteen but under eighteen years of age the Code gives discretionary power to court to take into account the

¹⁸². The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation, No. 414/2004(“the Criminal Code of FDRE 2004”).

¹⁸³. The Federal Democratic Republic of Ethiopian Constitution Proclamation No. 1/1995 (“the constitution”), entered into force on 21 August, 1995, article 36 (1) (e).

¹⁸⁴. Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012, p. 45.

¹⁸⁵. The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation, No. 414/2004(“the Criminal Code of FDRE 2004”).

circumstances of the case in assessing sentence, in particular the age of the criminal, etc by applying one of the special penalties specified for young persons.¹⁸⁶

The administration of justice, in which the state has sought to provide differential treatment for matters related to legislation and other measures applicable to children in contact with the law, albeit limited, guarantees implementation of standards for child justice in accordance with articles 30, 37 and 40 of the UNCRC.

ii) Administration of Juvenile Justice at Federal Supreme Court

A number of government institutions and NGO's working on child rights and justice issues have provided capacity building training and support to specialize child protection structures in Addis Ababa and regional towns. Considering the seriousness of the problem of juvenile justice, government and NGO's have made various efforts toward the prevention and effective administration of child justice. Accordingly, over the past few years, many initiatives have sought to address child justice at different levels and within different sectors. Such interventions include the following activities:-¹⁸⁷

- ❖ The Ministry of Justice and the Federal Supreme Court have been undertaking the 'Child Rights Protection Training Development' project aimed at establishing a child friendly and protective justice system in collaboration with UNICEF as well as a range of actors including the Ethiopian Police College, Federal First Instance Court, Federal Training Centre for Judges and Prosecutors, and ACPF;
- ❖ Federal Supreme Court also established the Child Justice Project Office in order to protect and promote the child justice and to achieve this objective Child Justice Project Office organizes training on child development, child rights, child abuses and its impact, child friendly services, and juvenile justice issues targeting child protection units staff, judges and staff of child friendly benches as well as personnel of detention facilities, and the juvenile rehabilitation centre. These trainings are organized at federal and regional levels;

To strengthen the administration of child justice Federal Supreme Court of Ethiopia has also extended its training on social work, child case investigation, child psychology, child rights

¹⁸⁶ . Ibid.

¹⁸⁷ . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012.

and child protection, guidance and counseling, and developmental psychology for child protection unit staff, volunteers working in CPUs and community based correction centres.¹⁸⁸

The capacity building initiatives targeting the personnel of specialized justice system structures have contributed to an increase in the capacity and skills relevant to their activities.

The existing specialized justice system structures provide legal aid and related services and linkages to psychosocial service providers for children suspected or accused of criminal offences as well. The specific services provided include:¹⁸⁹

- Legal and psychosocial support in CPU's: these services include guidance and counseling for children, material, tutorial and other re-integration support.
- Legal and social support in the child-friendly juvenile benches: these are provided by psychologists and social workers during judicial proceedings.

Federal First Instance Court and CJPO have assigned social workers within the child friendly bench. Legal aid services are made available to children in conflict with the justice system through programs implemented by NGO's and professional associations within and outside the justice system. NGO's such as ACPF, ANPPCAN-Ethiopia, APAP, provide legal advice and counseling in Addis Ababa and other big cities. In addition, as indicated in the long term objectives of these institutions the initiatives which begun in bigger towns, also have the potential to be replicated to other parts of the country.¹⁹⁰

Many of the protection measures identified for 'young offenders' under the Criminal Code and Criminal Procedure Code cannot be meaningfully applied in the absence of the required institutions within the justice system, including separate facilities for children deprived of their liberty, institutional care facilities, etc. However, the Ethiopian justice system has taken some important measures as a result of government and NGO collaboration in relation to the establishment and operation of specialized law enforcement and judicial units. These include:¹⁹¹

¹⁸⁸ . Ibid.

¹⁸⁹ . Ibid, p. 46.

¹⁹⁰ . Ibid, p, 47.

¹⁹¹ . Ibid.

- Child Justice Project Office which is established and operates under the Federal Supreme Court is the key institution in promoting and supporting the justice system. Now child friendly benches are functional in the federal first instance court (FFIC) in Addis Ababa and Dire Dawa as well as in other regional towns including Adama in Oromia regional state, Hawassa in the SNNPR, Mekelle and in Bahir Dar. The Child Justice Project Office plans to replicate the child friendly juvenile benches in the regional judicial structure including regional first instance courts; the Federal Child Justice Project Office also provide technical support to the regional Child Justice Project Offices' through training and working in collaboration on issues which needs their coordination.
- Establishment of the juvenile remand home in Addis Ababa to cater for the rehabilitation needs of children aged 9 to 15 years are also among the measures taken to administer child justice in a child friendly manner.
- The Federal First Instance Court has also established a victim-friendly bench that handles cases involving victims of violence against children using a closed-circuit TV to protect child victims from facing the perpetrator and public while testifying in court.

In order to further strengthen the measures taken so far a manual on investigative interview is developed by the Child Justice Project Office of the Federal Supreme Court. Additionally, a child justice guideline for dealing with witness and surviving children in the justice system is also developed to administer juvenile justice in a friendly manner.¹⁹²

iii) Administration of Juvenile Justice at Courts of the SNNPRS Specifically in Hadiya zone

Efforts are being made to ensure that the child-friendly justice system is one of the key mechanisms to protect and promote the rights of children involved in juvenile justice. As FDRE Constitution protects the SNNP regional state constitution, the family law and administrative guidelines also on various issues provide for the legal basis to ensure the determination of the best interest's principle and other relevant rights of children through its

¹⁹². Ibid, p.50.

laws, executive and other measures by using the power granted to the states on matters falling under state jurisdiction under article 50 of the FDRE Constitution.¹⁹³

And as indicated in the aforementioned section a number of government institutions and NGO's working on child rights and justice issues have also provided capacity building training and support to specialized child protection structures in SNNPRS major regional towns. Considering the seriousness of the problem of juvenile justice for children, they have made various efforts toward the prevention and effective administration of child justice. Accordingly, Child friendly courts which were previously limited to Addis Ababa are now established in some regional towns. The establishment of these specialized structures has reportedly contributed towards improved treatment of children coming in contact with the justice system as victims, suspects, accused and convicted yet with poor implementation.

The number of child-friendly benches dealing with cases of child victims as well as children alleged with violating the law is increasing.¹⁹⁴ Though the trainings are short term and not fully in compliance with the international standards on professionalism and training rules the judges and prosecutors involved in such special benches are trained on child justice issues and techniques of handling children in the system. The child friendly benches are assisted by social workers to facilitate the communication between the child and the court as well as to provide emotional and psychological support to the children. Furthermore, children who require further psychosocial support are linked with service providing government and non-government organizations. Currently three centers are under way in Addis Ababa, Amahara, South Nations Nationalities and Peoples Region for children who are victims of abuse and violence could get comprehensive services.¹⁹⁵

Few centers were underway in Southern Nations, Nationalities and Peoples Region (SNNPR) for children who are victims of abuse and violence could get comprehensive services such as the children's legal protection center which was established in 2008 by African Child Policy Forum in Hawassa to provide legal services to children from this town and surrounding areas.

¹⁹³ . The Federal Democratic Republic of Ethiopian Constitution Proclamation No. 1/1995 ("the constitution"), entered into force on 21 August, 1995, article 50.

¹⁹⁴ . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012, P. 11.

¹⁹⁵ . Ibid.

This legal aid center has managed to bring the service closer to victim children who would have otherwise found it difficult to get adequate legal and psychosocial services.¹⁹⁶ However, the centre has been closed by the government due to the restriction measure taken upon civil societies based on the proclamation No. 621/2009 enacted to provide for the registration and regulation of charities and societies.

So, for the purpose of examining the establishment of child friendly benches in the SNNP regional state and Hadiya zone, the writer has done interviews with W/rt Yodit Zenebe coordinator of the regional Child Justice Project Office and Ato Girma Abebe president of the Hadiya zone High Court. The interview was meant to consider the overall regional situation with regard to child friendly benches in general and Hadiya zone in particular.

Until very recently, there was no special arrangement within many court system of the SNNP regional state to deal with cases where children were victims of violence, suspects or witnesses of crimes. However, currently there is an attempt to establish a child-friendly system in major towns of the region where a child victim need not personally appear before the formal setting of a court room has been put in place with the assistance of a Juvenile Justice Project Office of the region which is established by the supreme court of the region, by governmental and NGO's.¹⁹⁷

As the Coordinator stated, there are now 13 benches in the region that are connected to a special room through a 'Close Circuit Television' (CCTV). However, among them only 5 benches which are located in five major towns of the SNNP region are relatively equipped with their own building and two social workers for each namely, Hawassa (capital city of the region), Hosanna in Hadiya zone, Sodo in Wolayita zone, Arbaminch in Gamo Gofa zone , Dilla in Gedeo zone.¹⁹⁸ And she mentioned the plan of the office is to open three other benches in Bonga, Jinka and Yirgalem in the near future.¹⁹⁹

¹⁹⁶ . ACPF (2011). Accessing justice: The Experience of African Child Policy Forum's Children's Legal Protection Centre. Addis Ababa.

¹⁹⁷ . Interview with W/rt Yodit Zenebe Coordinator of Child Justice Project Office at SNNP Regional State Supreme Court, On 10/04/2006 E.C.

¹⁹⁸ . Ibid.

¹⁹⁹ . Ibid.

a) The State of Child Friendly Benches in Hadiya Zone

When we see the case of Hadiya zone which is established by ten woreda and one city administration there was no special arrangement within the court system of the zone to deal with cases of children involved in the criminal justice system until very recently. However, as of September 2013, a child-friendly system where a child victim need not personally appear before the formal setting of a court has been put in place with the assistance of a Juvenile Justice Project Office at the SNNPRS Supreme Court and with financial support from UNICEF.²⁰⁰ As a result, now there is one separate bench in Hadiya zone Hosanna city administration that is connected to a special room through a ‘close circuit television’, with two social workers.²⁰¹ So far the issues related with implementation have not been examined because of the systems’ recent application in 2013.²⁰² In addition to this limitation, the role of CCTV seems to be limited to the protection of child victims so as to make that child victims can testify/participate freely without being further traumatized. Apparently, the situation of children involved in the criminal justice as suspects and witnesses of crime has not unequivocally covered within the ambit of the special arrangement of the court system which is established to child victims through a ‘close circuit television’.

With regard to the practices of Hadiya zone High Court and Woreda Courts the President of the high court indicated the absence of child-friendly benches in all of them except Hosanna city administration first instance court and when asked how the child cases entertained in the absence of such bench the interviewee stated as the cases entertained in the ordinary adult court. However, as he stated in the normal course of any court proceedings courts/judges are oriented to pay special attention to children in contact with the law.²⁰³ And, as to the achievements of the courts he indicated the long journey to walk by mentioning things that should be considered like awareness problem, budget constraints, lack of skilled manpower, absence of comprehensive children’s law and ineffective inter-sectoral coordination, etc.

Though the justice system required to deliver justice service in systematically planned manner and collects and analyzes relevant data or information for appropriate assessment and

²⁰⁰ . Ibid.

²⁰¹ . Ibid.

²⁰² . Ibid.

²⁰³ . Interview with Ato Girma Abebe, President of Hadiya Zone High Court, on December 7, 2006 E.C.

reform of the juvenile justice administration. The courts of Hadiya zone lack even basic and disaggregated data on; inter alia, the number and nature of offences committed by children, child witnesses and victims, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other judicial proceedings, number of judges, supporting staff, cases and children involved in the justice system rather their cases are mixed with adult in unorganized manner to identify.²⁰⁴

There are also other circumstances which clearly show the absence of effective data organization which serve as a basis for an informed institution. For instance, with regard to the recent activities in Hadiya zone there is only one separate court which is established in September 2006 E.C. And in this bench judges who are working in the ordinary court will also randomly assigned to entertain child cases with some support from social workers though it is not yet effective due to the distance between the ordinary court and the bench built for children and other awareness problems.²⁰⁵ As indicated by the president all woreda courts including the High court entertain cases in the ordinary court setting and there is no systematically collected data which indicate how the system administered the child justice.

So, in the absence of systematically collected data and organized justice administration specifically on court structure necessary for the development, implementation and adjustment of work system aiming at the improving and effective responses to children involved in the criminal justice by arranging separate data recording system, appointing trained justice professionals, etc to record all children who come in contact with the law it is difficult to identify the existing working system in courts.

Finally, both interviewees when asked about the future of the child friendly benches on the options of merger with adult court and separate juvenile court both preferred the latter one indicating it as the best mechanism to promote and protect child rights specifically in child justice process.

4.2.2. Challenges

Despite the commendable efforts of the government to improve the juvenile justice system, it still faces numerous challenges in effectively fulfilling the rights of children involved in the

²⁰⁴ . Ibid.

²⁰⁵ . Ibid.

justice system. Study and different reports in this regard show that there is indeed a lot that still needs to be done in respect of the work of courts in establishing child-friendly benches. These challenges, if not systematically addressed, may in the future defeat the aims and objectives of setting up child-friendly bench in courts.

i) Ineffectiveness of Professionals Working on Juvenile Justice

The quality of individuals selected and appointed to perform judicial functions is crucial for the capacity of the judiciary to deliver high quality services because the organizational systems can only do so much to improve the skill and capacity of the individuals initially chosen and promoted. The importance of the quality of judges for the overall strength of the judiciary requires that applicable criteria and procedural rules be crafted and applied in a manner that ensures clear, rational and objective selection so as to prevent cronyism or other unmerited preferences in admission to the profession or in subsequent promotion. In this regard, the main problem begins from the selection and appointment of staff members because this system is unplanned in Ethiopia that is it fails to take rigorous background checks of personnel working in the justice system.²⁰⁶ For instance, when we see the need for professionalism and training the Beijing rules provides several references to the need for special training of professionals, for example, rule 6 requires the use of discretion by officials and the commentary of rule 6 emphasizes on professional qualifications and expert training as a way of ensuring that discretion is used judiciously.²⁰⁷ Furthermore, rule 22 encapsulates the need for professionalism and training in the entire system, stating that:

...professional education, in-service training, refresher courses and other appropriate models of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile justice.

According to the Guidelines for Action on Children in the Criminal Justice System, with regard to child offenders, all persons who have contact with children in criminal justice should receive education and training in human rights, the principles and provisions of the

²⁰⁶ . FDRE, Comprehensive Justice System Reform Program, Baseline Study Report, Ministry of Capacity Building, Addis Ababa, February, 2005, pp. 161-162.

²⁰⁷ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Adopted by General Assembly Resolution 40/33 of 29 November 1985.

CRC and other UN standards and norms pertaining to juvenile justice. With regard to child victims, the Guidelines state that police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims.²⁰⁸ Furthermore, the Guidelines on Justice in matters involving Child Victims and Witnesses provide that:²⁰⁹

...adequate training, education and information should be made available to professionals working with child victims and witnesses, with improving and sustaining specialized methods, approaches and attitudes, in order to protect and deal effectively and sensitively with child victims and witnesses.

Training for officials who work with children is a key component of an effective child-friendly system. So, it is fair to observe that even countries that have poor resources in terms of special courtrooms or facilities could nevertheless provide good services for children if the personnel who come into contact with those children are well trained. This relates not only to the original professional training, but also to continuing, so that new knowledge, insights, methods and techniques can be shared.²¹⁰

As indicated in combined 4th and 5th periodic reports of FDRE to the United Nations Committee on the Rights of the Child (2006-2011), Ministry of Woman, Children and Youth Affairs, in collaboration with the regional bureaus, conducted various trainings on the CRC. The Ministry gave the trainings to various strata/level of the government and public representatives including school principals, health professionals, social workers, prosecutors, staff of the judiciary, police officers, religious leaders and elders, leaders of community based organizations and representatives of NGOs. However, most of the measures of the government simply focused in conducting trainings with regard to informing the rights in CRC in general and in treating symptoms of violation of some rights incorporated in CRC, i.e. the government failed to pay dedicated attention to children in the criminal justice and to equip professionals in line with the above standard of professionalism and training rules in

²⁰⁸ . United Nations Guidelines for Action on Children in the Criminal Justice System, recommended by,

Economic and Social Council resolution 1997/30 of 21 July.

²⁰⁹ . Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, UN Economic and Social

Council resolution 2005/20 of 22 July 2005.

²¹⁰ . ACPF and DCI (2012). Achieving Child Friendly Justice in Africa, p. 43.

order to minimize unqualified and poorly trained staff because these are widely recognized as key factor linked to violence within institutions working directly with children.²¹¹

In this regard, the UN Committee on the Rights of the Child in its concluding observations recommended that Ethiopia should strengthen its efforts to ensure that the provisions of the convention are widely known and understood by relevant professional categories, parents and children themselves, especially in rural areas. It further recommends the reinforcement of adequate and systematic training of all professional categories working for and with children, in particular targeting law enforcement officials.²¹²

Furthermore, it's possible to see the major activities of Ethiopia regarding upgrading the capacity of professionals working with children, for instance the major activities of Juvenile Justice Project Office focused on a review of existing Ethiopian laws pertaining to child rights; an assessment of the structural framework of the judiciary and the police with regard to the protection of children; and on conducting workshop and trainings for judiciary and other stakeholders as indicated in its short-term objectives when the office was established in 1999.

In addition to this, the latest (the April 2012) combined 4th and 5th periodic reports of the FDRE to the UN Committee on the Rights of the Child which indicates the major activities undertaken during the years (2006- 2011) by government in its report section which cover the general measures of implementation with regard to dissemination, training and awareness raising of concerned bodies indicated the figure of disseminated child rights instruments, conducted trainings with regard to CRC and awareness raising in general. However, the Ethiopian government focused on treating the symptoms of violations/ informing rather than effectively addressing the root causes of the ineffectiveness of professionals working in juvenile justice. Because overworked and staff with a very large amount of work burden may resort to violent measures to maintain discipline, especially when there is a lack of supervision and skill on how to handle children. Many of the personnel working with children in institutions lack knowledge of child and youth care practice, and there is little reward or prospect for advancement for those who do a good job by government.

²¹¹ . United Nations Secretary-General, World Report on Violence against Children (2006), p. 32.

²¹² . UNCRC Committee's General Comment No. 10, CRC/C/GC/10, 2 February 2007, Paragraph 21.

When we examine the activities of the government in establishing a child-friendly juvenile justice throughout the country with equipped professionals in line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice it's not fully implemented, in particular, regarding the availability and quality of specialized juvenile courts and judges, police officers and prosecutors through systematic training of professionals; the provision of adequate financial, human and technical resources to the juvenile courts at sub-country level; and the improvement of training programmes on relevant international standards for all professionals involved within the system of juvenile justice.²¹³

So, as the Beijing rule 22 and the commentary to its rules which is part of the rules and a detailed guide to interpretation indicate that professional qualifications are essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfill their functions. As a result, a minimum training in law, sociology, child psychology, criminology and behavioral sciences relevant to children should be conducted because it is vital to the organizational specialization and independence of the competent authority.²¹⁴

ii) Financial Constraints

Budget is a crucial component for advancing the protection and promotion of the human rights in general and it's specifically crucial to advance juvenile justice. In this regard, the government continues to dedicate increased amount of resources for the development of the people and children as can be observed from its allocation of the budget over the past years. For instance, the annual budget of the government is increased from birr 28,031,758,089 in 2005/6 to Birr 71,281,521,463 in 2009/10. And when we examine the annual expenditure of budget for justice sector it increased from Birr 511,914,079 in 2005/6 to Birr 1,177,350,678 in

²¹³ . Third periodic report of Ethiopia submitted to the UN CRC; see CRC/C/129/Add.8, 28 October 2005. p, 58. Paragraph 227-228.

²¹⁴ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”), Adopted by General Assembly resolution 40/33 of 29 November 1985.

2009/10.²¹⁵ According to the government this shows the government's commitment to improve the promotion and protection of children's rights.²¹⁶

However, as indicated in the above budget allocation the allocated budget consumed for the whole justice sector so the resources for children would be insufficient in order to effectively improve the promotion and protection of children's rights in general and at the same it is difficult to establish separate child-friendly court system since this system require sufficient resources. For instance, when we see the recent activities of the federal government regarding the allocation of the annual expenditure of budget for Ministry of Justice, Federal Supreme Court and Federal High Courts in 2012/13 it is 372,552,788 birr which clearly indicate the existing financial constraints because of the above needs in the justice system.²¹⁷

With regard to this the same is true to Hadiya zone courts because the total figure of the annual expenditure of budget for high court and all woreda courts in 2013/14 is 9445279.32 birr which is basically allocated for salary and the annual expenditure of work. And regarding the capital expenditure of the same year only 300,000 birr was allocated for one woreda court (Gibe woreda first instance court).²¹⁸ For additional information refer to Table 1: Background information of courts.

Furthermore, there is no doubt whatsoever that all justice institutions in Ethiopia lack budget and finance to be able to remedy their shortcomings. This can be concluded after visits of courts, prosecution offices, police stations and prisons. The lack of budget is a huge shortcoming not only in terms of infrastructure, facilities and furniture. But most problematic is that justice has been prevented from taking initiatives in the field of systematic training and education. Besides, lack of budget has disadvantaged the juvenile justice system's establishment by qualified manpower.²¹⁹

²¹⁵ . Ministry of Finance and Economic Development of Federal Democratic Republic of Ethiopia, ("MOFED").

²¹⁶ . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012.P, 8.

²¹⁷ . Ministry of Finance and Economic Development of Federal Democratic Republic of Ethiopia, ("MOFED").

²¹⁸ . Development Data Collection and Distribution Sub process of High Court of Hadiya Zone.

²¹⁹ . FDRE, Comprehensive Justice System Reform Program, Baseline Study Report, Ministry of Capacity Building, Addis Ababa, February, 2005.

iii) Domestication of Ratified Instruments and other Legislative and Policy Measures

As discussed in the aforementioned parts which indicates the achievements of the government and chapter three of this study some progress has been made by the government also in the effort to bring domestic laws into compliance with the convention and relevant regional instruments on children. However, the government failed to make a systematic legislative review and adopt the comprehensive children's code in order to make it feasible in organized manner rather than its scatter placement in different laws of the country. With regard to the ratification of international instruments Ethiopia has ratified so many instruments including CRC and ACRWC which is specific to children but regrettably the government has not yet published these laws in the official Negart Gazette in a manner which is accessible to the lower level of the justice system in the working language of the country.²²⁰

When we see the concluding observations of the UN CRC in considering the third periodic report of Ethiopia the committee recommended Ethiopia to strengthen its efforts to bring domestic laws into full compliance with the convention. In this regard, Ethiopia had not yet undertaken effective measures to enact a comprehensive legislative review and adopt comprehensive children's code which incorporates the provisions of the CRC and the ACRWC. Furthermore, the committee reiterated its recommendation to publish in the Official Gazette as it would facilitates awareness and access among professionals working with the administration of justice.²²¹

To add in aforementioned setbacks, it is better to see the legislative and policy measures which have been taken since Ethiopia's third periodic report to the UN committee on the rights of the child in 2005. For instance, Ethiopia has developed a draft Comprehensive National Child Policy with consideration of the principles and provisions of the CRC and ACRWC to guide the work of various actors dealing with children and also promote the rights of children. The policy emphasizes on three central strategies, 1) development and

²²⁰ . Concluding Observations of the UN Committee on the Rights of the Child on Third Periodic Report of

Ethiopia(CRC/C/129/Add.8) at its 1162nd and 1164th meetings(see CRC/C/SR. 1162 and 1164), held on 12 September 2006, and adopted, at its 1194th meeting (CRC/C/SR.1195), held on September 2006.

("CRC/C/ETH/CO/3, 1 November 2006"). Pp.2-3, Paragraph 8-9.

²²¹ . Ibid.

growth, 2) prevention and protection, and 3) rehabilitation, care and support. But the Policy is not presented to the practical work. In addition, the revised Criminal Procedure Code which incorporated various changes to address a number of gaps observed in Criminal Procedure Code of 1961 is simply presented to the federal parliament for deliberation and enactment. But, not yet enacted.²²²

The implication of this lesser commitment of the government can be interpreted as one of the challenges to establish child-friendly juvenile justice because the mere attempts to have laws, policies and other measures will never bring effective change to the justice system without adding real political commitment to domesticate the ratified instruments effectively up to the lower level and without taking timely policy, legislative and other relevant measures.

iv) The Absence of Multidispilnary Support, Coordination and Collaboration

As indicated in UN rules, principles and guidelines dealt with under chapter three of this study close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal psychological, social, emotional, physical and cognitive situation. A common assessment framework should also be established for professionals working with or for children such as lawyers, psychologists, physicians, police, social workers and mediators in proceedings or interventions that involve or affect children, to provide any necessary support to those taking decisions, enabling them to serve children's interests as best they can in any given case. While implementing this approach professionals rules on confidentiality should be respected.

There is broad recognition of the value of interdisciplinary approaches when working with children in the justice systems. A child might be dealt with by officials from several different government departments and professional disciplines. For example, a child victim may encounter police officials, medical practitioners, prosecutors, social workers, court preparations staff, an intermediary, a judge. Inter-sectorial co-operation is therefore very important in order to make sure that the children are assisted safely and smoothly through the system; that officials from different departments do not take different approaches; that children are not asked to tell their story many times over; and they are otherwise protected.

²²² . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012, p. 3.

Over and above that, it is well understood that issues facing children are multi-faceted, and that professionals working together will make better decisions.²²³

In this regard, there are a lot of challenges as to coordination for the implementation of children's rights in Ethiopia. For instance, the Ministry of Woman, Children and Youth Affairs which currently designated as the supreme authority to nationally coordinate activities on the rights of the child (as mentioned in proclamation no. 691/2010) lacks sufficient resources and ability to establish coordination at the federal, regional, zone and woreda levels.²²⁴

As stated in the National Child Policy of Ethiopia collaboration among different stakeholders contributes a lot to the realization of the rights of children since the task of protecting the rights of children requires the concerted effort of stakeholders. However, the policy also mentioned that the desired result is not achieved because of lack of collaboration among different stakeholders at different levels. Lack of accountability, responsibility as well as coordination among actors who don't consider children's affairs in their policies and programs have prevented children's multifarious problems from being addressed.²²⁵

To strengthen this it is important to observe activities of the government which stated in the combined 4th and 5th periodic report of the FDRE to the UN CRC undertaken to establish coordination among different sectors. This section of the report indicated the measures taken to build the capacity of federal, regional, zonal and woreda level woman, children and youth affairs institutions to respond to their duties and mandates with regard to the protection of the rights of children; and the Ministry follow the strategy of collecting annual plans and performance reports of federal ministries and regional bureaus, organizing common platforms for stakeholders to evaluate the overall performance and identify challenges and solutions on a mid-term and annual basis. However, the various established coordinating structures have

²²³. ACPF and DCI (2012). *Achieving Child Friendly Justice in Africa*, p. 46.

²²⁴. Concluding Observations of the UN Committee on the Rights of the Child on Third Periodic Report of Ethiopia(CRC/C/129/Add.8) at its 1162nd and 1164th meetings(see CRC/C/SR. 1162 and 1164), held on 12 September 2006, and adopted, at its 1194th meeting (CRC/C/SR.1195), held on September 2006. ("CRC/C/ETH/CO/3, 1 November 2006"). P, 3. Paragraph, 10-11.

²²⁵. Federal Democratic Republic of Ethiopia, National Child Policy of Ethiopia, Final Draft. Ministry of Woman, Children and Youth, April, 2011, p. 7.

not directly achieved effective multidisciplinary system in juvenile justice because its performance focus was politically oriented than upholding the justice system.

Furthermore, some of the committees that intended to work collaboratively to protect and promote the rights of the child such as the National CRC Committee and National Orphan and Vulnerable Children Task Force which formed at various levels of government, are neither effectively institutionalized nor systematized.²²⁶ As a result, children involved in criminal justice as suspects, victims and witnesses of crime are simply treated only by law enforcement officials in many courts of Ethiopia that is why courts fail to provide a sufficient array of facilities to accommodate and adequately protect children with differing needs.²²⁷ Moreover, there is a growing problem of inadequate assessment of risk and vulnerability within courts and this problem of mixing different levels of vulnerability can be stated as one of the systematic factor that contribute to violence against children in courts.

Finally, the absence of a specific comprehensive children's law has further undermined the process of establishing juvenile justice system which encompasses the value of interdisciplinary approach when working with children in the justice system. Because, the existing legislations of Ethiopia such as the Criminal Code, Criminal Procedure Code, etc does not state comprehensive and detailed information in a manner which clearly indicate the way juvenile justice should be conducted as to the child's involvement in criminal justice and regarding the establishment of child friendly justice environment.

v) Absence of a Regular Evaluative Research Mechanism

With regard to research Beijing rule 30 and its commentary clearly indicate the importance of a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration. It also requires the delivery of services in juvenile justice shall be systematically planned and implemented as an integral part of national development efforts.²²⁸

²²⁶ . Third periodic CRC report submitted by Ethiopia, see CRC/C/129/Add.8, 28 October 2005. P, 63. Para.229.

²²⁷ . Ibid, p. 63.

²²⁸ . United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”),

Adopted by General Assembly resolution 40/33 of 29 November 1985.

Moreover, the general comment no.10 of the UN CRC,²²⁹ recommends that States Parties conduct regular evaluation of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. It also mentions that the privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the committee refers the States Parties to the existing international guidelines on the involvement of children in research.

In this regard, Ethiopia lacks even basic and disaggregated data on; inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings and children involved in the justice system. There are circumstances which clearly show the absence of effective evaluative research which serve as a basis for an informed juvenile justice policy. For example, as indicated in Ethiopia's 4th and 5th periodic reports to the UN CRC the government focused more in addressing gaps related to data on children for instance collecting disaggregated data by age, sex and family status of children during the national 2007 national census in collaboration with Central Statistical Agency (CSA).²³⁰

With regard to the recent activities of the government the report indicates the registration of children who come in contact with the law enforcement agencies in a database designed by Ethiopian Federal Police Commission, Federal Court and Ministry of Justice thus in this way crimes committed against children are being recorded but the issue of child suspects and witnesses of crime are not included and the coverage for regional, zonal and woreda levels

²²⁹ . United Nations Committee on the Rights of the Child, General Comment No. 10(2007) on Children's rights in juvenile justice. CRC/C/GC/10, 25 April 2007.

²³⁰ . Combined 4th and 5th Periodic Report of the FDRE to the United Nations Committee on the Rights of the Child (2006-2011), April 2012, pp. 8-9.

are yet not effective. At the same time, the Ministry of Woman, Children and Youth Affairs is planning to design a database for recording information on orphan and vulnerable children.²³¹

So, in the absence of systematically collected disaggregated data and regularly conducted evaluation and research specifically on juvenile justice relevant to the administration of child justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC, ACRWC and other relevant instruments to children it is difficult to believe the existence of effective child friendly justice in courts.

4.3. Data Representation, Analysis and Interpretation

4.3.1. Background Information of Participants/Respondents

Some basic information about the participation is provided here.

Table 1: Background Information of Courts

Name of Courts	Location /Town
Hadiya zone high court	Hosanna
Hosanna city administration first instance court	Hosanna
Lemo woreda first instance court	Hosanna (but dispense cases of area kebele)
Anlemo woreda first instance court	Fonko
Soro woreda first instance court	Gimbichu
Duna woreda first instance court	Ansho
Gombora woreda first instance court	Habicho
Gibe woreda first instance court	Homacho
Shashogo woreda first instance court	Bonosha
East-Badwacho woreda first instance court	Shone
West-Badwacho woreda first instance court	Danama
Misha woreda first instance court	Morisito

²³¹ . Ibid.

Table 2: Background Information of Respondents

Work position	Quantity	Education level		
		Diploma	Degree	Masters
Judges	20		15	5
Public Prosecutors and Attorneys	20	1	18	1

The researcher purposely selected the respondent judges among the courts listed under table 1 and the SNNP regional state Supreme Court Hosanna division in order to have balanced information about the regional working in this regard and the study also included public prosecutors and attorneys who are working in different woreda of the zone and the Hadiya zone High Court since the court is currently serving cases which fall under the jurisdiction of high court including children's case.

With regard to the respondents, they constitute a various ranges of representation in terms of work experiences, academic background and interaction with children involved in criminal justice system. Taking such representative of respondents at the end, will enable the research enrich with different data from various angles and perspectives.

In addition, such diversification will add a value to the proposed solution at the last chapter of the study in helping children involved in criminal justice either as victims, suspects or witnesses of crime and enjoy their human rights of accessing child friendly justice and special protection in criminal justice.

4.3.2. Responses of Judges

The analysis of responses of judges towards child-friendly benches in courts of Hadiya zone with regard to the special protections provided for children involved in criminal justice either as suspects, victims and/or witnesses are presented as follows:

Responses of the judges for the open-ended questions:

For the question whether there is effective child-friendly benches or not in the criminal justice system in the court,80% of the respondents indicated that there are no benches built to accommodate children's physical and mental maturity in courts because of problems such as, the less commitment of the government, lack of skilled professionals, financial constraints,

inadequate materials for operating, the lack of clear awareness on the importance of protecting children in contact with the law, etc. this is not compatible with the obligation of states parties in achieving full compliance with CRC, ACWRC and other relevant UN principles, guidelines, rules and national laws of Ethiopia, e.g. in the areas of procedural and substantive rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort, rights of child witnesses and victims to have special protection to minimize further trauma and re-victimization in the justice system. In this regard, the committee on the rights of the child has drafted general comment No. 5 to outline states parties' obligations to develop what it has termed, "General measures of implementation". And mentioned implementation as the process whereby states parties take actions to ensure the realization of all rights in the convention for all children in their jurisdiction. Furthermore, the committee in its general comment No. 10 which specifically focused on children's rights in juvenile justice urges states parties to establish an administration of juvenile justice in compliance with CRC and to develop and implement a comprehensive juvenile justice policy which intends to implement the specific provisions in juvenile justice and all other relevant articles of CRC.

On the other hand 20% of the respondents indicated that there is a child-friendly bench in Hosanna city administration first instance court even if it is opened in 2006 E.C. because, the bench has its own material and professional facilities. For instance, it has two social workers, separate building and different child-friendly court room furnishings. But the respondents states some gaps regarding the effectiveness stating problems like the bench's new establishment, coordination gaps, distance between the ordinary court and where the bench located and the non fulfillment of all the necessary facilities in all inclusive manner.

For the question whether or not children in conflict with the law get the maximum protection from the court system as expected by the law 85% of the respondents indicated that these children are not beneficiaries from the court system because of problems such as, lack of skilled man power, inadequate materials, financial constraints to make such supports accessible or available to children, etc. This is also not in line with the protections provided for young person involved in criminal justice because it is the right of the child to enjoy all the rights provided under international child rights instruments and domestic legislations to access legal counseling, judicial representation, and psychosocial supports in order to protect the rights of children from being undermined during the justice process.

And 15% of the respondents indicated that these children are getting protection from the court as much as possible by the available social workers. Though they indicated the support provided by social workers all reserved some points with regard to accessing effective support to them because of the absence of skilled supporters in other courts except Hosanna city; most children in conflict with the law need support starting from the time of arrest and of the bias towards child suspects than victims and witnesses.

When asked whether there is practical protection to all child suspects, witnesses and victims of crime or not, 80% of the respondents indicated that there is not effective protection to all these groups according to their involvement in the system and the most missing protection is; courts failure to treat suspects, witnesses and victims in different manner since the way they contact with the law is different and each needs some specific protections relevant to their well-beings and best interests accordingly.

For instance, in case of witnesses children should be protected from self-incrimination and unnecessary confrontation with perpetrators and with regard to victims there must be psychosocial support and need not be re-traumatized as much as possible during the justice process.

And child suspects to enjoy protections provided for young person's such as, using child-friendly languages fit with their mental and emotional maturity, informal procedures, legal representation, being under custody of parents or any other responsible persons.

This finally will lead us to the position that all children involved in criminal justice will have equal access to child-friendly justice fitting their special needs as enshrined in various child rights instruments.

On the other hand, 20% of the respondents indicate that they have protection even if it is not free from some defects such as the failure of courts to identify the different situations those children face and take measures accordingly.

When asked whether there is training on child-friendly justice or not, 70% of the respondents answered in the negative. Contrary to this, 30% of the respondents indicated that there are trainings and when specifying the nature of the training they mentioned it as short-term trainings which focus more on civil matters like maintenance, custody and family issues. Further, they stated that these trainings did not pay dedicated attention to the rule of professionalism/ specialization on criminal justice system.

To the question which intends to evaluate the effectiveness of judges' and prosecutors' training on child justice issues and techniques of handling children in the system, 85% of the respondents answered in the negative, contrary to this, 15% of the respondents indicated the training as effective.

For the question whether training alone can bring effective progress on child-friendly benches or not, 85% of the respondents indicated that training alone cannot bring the desired progress because as mentioned by most respondents in the absence of relevant facilities such as professional, material, technical and dedicated attention from government and other concerned bodies, etc. it is difficult to expect such progress. Furthermore, some stated training as it plays supportive role and recommends the need of curriculum revision in order to include child justice issues in law education and programs of the justice professionals training centers in detail to make training effective.

Contrary to this, 15% of the respondents indicated training as a key mechanism to bring effective progress.

When asked whether views of children, best interests, the right to development and non-discrimination effectively respected or not, 40% of the respondents, however, vary on their expression indicated the protection provided by courts such as, prioritizing the cases of children, taken an appropriate measures to respect the best interests of the child and considering the age of young offenders when courts render final judgment. On the other hand, 60% of the respondents indicated that these general principles are not effectively respected in child-friendly manner because of problems such as, insufficient number of trained judge who work with children, absence of other professionals who can support children in courts, the financial constraints to equip courts to be effective, courts failure to consider these rights while the justice process, etc.

For the question asked to examine the manner how courts entertained cases which involve adolescents up to 18 years age, 95% of the respondents indicated that adolescents cases particular those above 16 years of age entertained in predominantly in adult oriented court in a manner which do not consider their development stage because this group of children considered as adult due to their physical development which is not in line with most international child rights instruments that Ethiopia ratified because in most cases they consider persons under 18 as a child and have all the rights provided for them though the revised Criminal Code of Ethiopia gives discretionary power to courts with regard to children

over 15 but under 18 years of age to take into account their age in assessing sentence. Contrary to this, 5% of the respondents indicated that their cases also entertained in child-friendly manner.

When asked whether there is bench which stands alone to entertain cases of children or not, 85% of the respondents indicated that there is no such bench in their court and cases are entertained in the same court built for adults. Contrary to this, 15% of the respondent judges mentioned that there is one bench which stands alone in Hosanna city administration. However, the respondents indicated that the bench opened in this year. i.e., 2006 E.C. and because of this the effectiveness is not yet examined.

For the question which provided two options with regard to the future of child-friendly benches on the following options. i.e., to stand alone or to be merged with adult oriented court 100% of the respondents choose the option indicated to stand alone and stated their reasons for the option and provides the possible consequences on the option.

For instance, among other things it ensures effective protection and promotion of child rights during justice process, it helps to identify all the setbacks and avoid it timely, also helps to respect those special protection otherwise undermined by the merger with adult oriented court, etc. as a result, it brings effective administration of child justice in friendly environment and it contribute a lot to achieve the aims of juvenile justice effectively.

When asked about the selection and appointment of personnel working with or for children involved in criminal justice, 80% of the respondents answered in the negative by stating the absence of such detailed background checks of potential employees and staff members saying that they are simply selected to work with children considering their being judges, their educational background and some other visible behavioral conditions.

Contrary to this, 20% of the respondents indicated that according to their observation it is possible to say that the existing recruitment is good.

With regard to the question asked to identify whether there is multidisciplinary support in courts by suitable persons who can liaise with child maturity or not, 75% of the respondents indicated the absence of such support because all criminal cases entertained in the presence of judges and prosecutors only. As a result, they do not have access to suitable persons who can cooperate closely with child maturity, like psychologists, social workers, and physicians, etc in order to enable them to freely participate in courts. On the other hand 25% of the

respondents indicated that there is support by social workers. Specifically, the respondent judges from Hosanna city administration first instance court mentioned the existence of social workers in their court to provide such support.

With regard to the trend of courts regarding taking recesses during child testimony, the majority of respondents 80% answered in the negative while 20% of them indicated that the courts follow this trend in order to adapt the proceedings to the child's age.

Although the administration of criminal justice which involve children is expected to be child-friendly and suitable to the child to express his/her views freely, in this case the courts are not adaptable for children because of their physical and mental capacity to stay long time without losing their attention to the proceedings. So, there is a need to adapt the proceedings to the children's attention span.

Most of the respondents 85% mentioned that there is a problem of mixing different levels of child vulnerability in courts when entertaining cases indicating courts failure to ascertain at least some behavioral problems, family background, societal orientations, etc when children come in contact with the law in order to identify their different levels of vulnerability to respond accordingly. However, as indicated by the respondents' courts simply continue with their jobs without paying dedicated and professional background checks of children involved in criminal justice. And several respondent judges indicated they have no information (knowledge) about the courts practice in this regard.

Respondent judges unanimously agreed that child-friendly bench has a positive effect in protection of the rights of children in justice process such as, effective protection and promotion of their rights, in avoiding secondary victimization, further trauma, unnecessary delay, will help to protect their well-being and best interests, reintegration into family/society, to build comprehensive justice system, etc. By the same token, most of the respondents mentioned that child-friendly bench equipped with the relevant facilities can serve as the best mechanism to effectively implement the substantive and procedural rights of children in contact with the law than merged approach with ordinary court.

In addition it can be used as check point to identify the setbacks in juvenile justice, its working and achievements to plan for the future in order to advance the administration of juvenile justice.

When questioned about the overall achievements of courts with regard to child-friendly benches in Hadiya Zone, 60% of the respondents stated the level of courts achievement is low indicating that there are no child-friendly benches in Hadiya Zone. On the other hand, 40% of the respondents, however, vary on their expression as to the level of its achievement indicated the promising beginning at Hosanna city administration first instance court as the only achievement with regard to establishing child-friendly bench in Hadiya Zone.

The respondents were questioned to indicate things that delay progress to the work of the child-friendly benches and indicated that there are lots of challenges including the following:

- Financial constraints
- Lack of NGO support for juvenile justice
- Absence of real commitment from government
- The absence of skilled professionals
- Awareness problem
- Attitudinal problem towards children involved in criminal justice
- The absence of comprehensive children law
- Problem with regard to arranging effective inter-sectoral collaboration
- Other material, technical and professional facilities which are relevant to child justice in criminal justice system

Finally, when all the respondents were asked to give their own solution to curb all the aforementioned and other problems and to improve the quality of child-friendly benches in courts to children involved in criminal justice they recommend the following:-

- Government should give greater emphasis on the issue
- NGOs, civic organizations and other relevant stakeholders should be allowed to actively participate in child justice issues
- Competitiveness of personnel working with or for children should be improved
- There should be effective training which focused on child justice and techniques of handling children involved in criminal justice
- Equip the system with professionals from different relevant disciplines
- Work on changing attitudes of professionals, judges, society, etc towards children in contact with law
- Government should seriously consider the financial constraints in the justice system

- Selection and appointment should be at basis of competence, experience, and integrity of the judges who work with children
- Government should create awareness on child rights in detail
- Law schools and justice professionals training centers needs to be strengthened with the values of child rights
- Organize all the concerned bodies to effectively follow right-based approaches in all child justice issues
- Take the legislative measures, i.e. by enacting comprehensive children law so as to make it clear to application and domesticate those ratified international child rights instruments

All of the solutions proposed by the respondents are constructive and if changed into practice, the administration of child justice will be fully and effectively realized.

4.3.3. Responses of Public Prosecutors and Attorneys

The analysis of responses of public prosecutors and attorneys towards child-friendly benches in courts of Hadiya zone with regard to the special protections provided for children involved in criminal justice either as suspects, victims and/or witnesses are presented as follows:

Responses of Public Prosecutors and Attorneys to the open-ended questions:

Most of the respondents 75% answered that there are no effective child friendly benches built to accommodate children's physical and mental maturity in courts of Hadiya Zone because of the problems such as, lack of sufficient attention to protection of child justice, awareness problems, financial constraints, absence of skilled manpower, building, furniture specific to child, etc.

This is not compatible with the obligation of establishing child friendly juvenile justice administration under UNCRC and ACRWC. Since, the UN committee on the rights of the child in its general comment No. 10 (2007) on children's rights in juvenile justice stated that it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. Also as stated in article 40(3) of CRC, states parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law. It further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who

provide legal or other appropriate assistance to the child. And also art, 1 of ACRWC and art. 4 of CRC impose obligation on states parties to take all the necessary measures in order to implement the rights recognized in these instruments.

On the other hand, 25% of the respondents indicated that there is one separate bench at Hosanna city administration first instance court even if the bench established recently in September 2006 E.C. and the respondents mentioned its organizational setup as a good attempt to the administration of juvenile justice. However, the respondents reserved its effectiveness because of the absence of trained manpower, adequate technical and material facilities and lack of awareness in the justice system and the society at large.

When asked whether judges and prosecutors are effectively trained on child justice issues and techniques of handling children in justice process 80% of the respondents indicated they do not think that judges and prosecutors are trained on such issues. Some of the respondents stated not only the absence of effective training but also the absence of separate benches or effective juvenile courts established as part of existing ordinary courts. On the other hand, 20% of the respondents indicate that judges and prosecutors are trained and reserved their doubt as to the effectiveness and fitting the rule of professionalism and training rule. Furthermore, they mentioned that such training is limited to the judges and prosecutors working in Hosanna city court with random selection of trainee among them.

When asked whether views of children, best interests, right to development and non-discrimination are effectively respected in justice process or not, 75% of the respondents answered in the negative because of the problems such as absence of professionals who support courts in this regard, lack of professional skills for the judges or personnel working with children, attitudinal impediment towards children involved in criminal justice.

Contrary to this, 25% of the respondents indicated the courts' attempt to respect these general principles in child friendly manner. For instance, by prioritizing cases which involve children, encouraging them to speak using the possible mechanism at hand like relaxing, kidding, by using puppets. But one respondent by stating the difficulty to put exact answer to the issue raised indicated the good attempt of few courts in respecting views of children, best interests and other rights. However, the respondent also said that in most cases little attention are given to children's' matter.

The respondents were questioned about the protection provided for all children involved in criminal justice either as suspects, victims or witnesses of crime whether it is as respected by law or not, most of them 90% indicated that there are problems as to the effective protection to all because of the problems including the following:-

- The negative attitude towards child suspects, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. Which results regularly in a call for a tougher approach (e.g. zero-tolerance, pre-trial detention, trial in adult courts and other primarily punitive measures).
- Awareness problem to follow right-based approach when entertaining cases of children either of the three ways, i.e., as suspects, witnesses and/or victims.
- The absence of professionals, material and technical facilities.
- The work load on judges which hinders them to provide effective protection using the available resource at hand because they are assigned to see cases either civil or criminal cases of all groups.

And on the other hand, 10% of the respondents indicated the existence of encouraging attempts made in this regard mentioning the judges' role to encourage victims to speak out what they faced and providing security to children involved. But, one respondent said that in cases of child suspect and witness courts are not active to protect as expected by laws.

For the question asked to examine the access available to children in conflict with the criminal law such as access to legal counseling, judicial representation, psychosocial support, 80% of the respondents answered in the negative saying that there are no such kind of supports in courts, contrary to this, 20% of the respondents indicated that there are some supports like legal counseling, prioritizing child cases so as to take expeditious measures. But, the psychosocial and other effective professional supports are very low in courts as result children in conflict with the law are not getting full access in this regard.

With regard to the availability of child friendly benches which stand alone to entertain cases of children in courts of Hadiya zone, the majority of the respondents 85% answered in the negative and to the question asked how cases of children are being entertained the respondents indicated as it entertained in adult courts. The public prosecutor from Hadiya zone justice department accusation chief process mentioned that in courts of Hadiya zone the cases of children most of the time are entertained in the judges office i.e. as the courts not have separate bench where cases of children entertained while 15% of them indicated that

among the courts in Hadiya zone only Hosanna city administration first instance court has a separate child-friendly bench and also mentioned that they do not have full information as to the bench's effectiveness.

Except one respondent who prefer the merger of juvenile court with adult oriented court system arguing that children have tolerance and capacity to adapt the environment and in addition he said that if we prefer to stand alone it would be inevitable for the adult people to attend the bench and have their say. Contrary to this, all the rest respondents unanimously agreed on the future of child friendly benches on the option which favor the juvenile court as separate units of existing adult oriented court. By the same token, they indicated that children in contact with the law in any manner will get effective protection from both substantive and procedural rights of children, it is also necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. But, if the juvenile courts simply merged with adult oriented courts without taking some special measures such as ensuring the appointment of specialized judges, using things available at hand for dealing with cases of children the consequence will be the opposite of the positive results of the above option.

For the question whether or not cases which involve adolescents up to 18 years of age entertained in a manner which consider their development stage, 85% of the respondents indicated that these group of children are not beneficiaries from the court system because of the problems such as, confusion as to their childhood because of their physical development, courts trend of categorizing children over 15 but under 18 years of age as adult, etc. On the other hand, 15% of the respondents indicated that some children are getting the necessary advantage from the court as much as possible by considering their development stage even if the benches are not friendly.

With regard to the question asked about the selection and appointment of staff members working with or for children in criminal justice 95% of the respondents indicated that there is no as such organized selection or appointment which systematically checks their background, performance, competence, any special link with child justice issues and techniques of handling children in justice system, etc. to improve the recruitment of personnel/judges. Moreover, they stated the manner in which judges assigned among the other judges to entertain cases of children as a main challenge of improving the capacity of staff members.

On the other hand, 5% of the respondents indicate that judges have been assigned to work with children based on their educational level, age, attitude and trainings they have taken.

When asked whether there is multidisciplinary support in courts by suitable persons who can liaise with child maturity or not, almost all the respondents answered in the negative stating the absence of such approach and professionals like social workers, psychologists, physicians, etc in order to enable them to freely participate. But two respondents indicated the beginning of such supports by social workers in the Hosanna city administration first instance court.

With regard to courts' trend of taking recesses during testimony in order to adapt the proceedings to the child's age, most of the respondents 95% answered in the negative stating courts trend of continual/uninterrupted proceedings and one respondent indicated the practice of this trend in Hadiya zone high court and Hosanna city administration first instance court.

For the question asked whether child friendly bench has effect in protection of the rights of children involved in criminal justice or not, all of the respondents indicated that it has a positive effect on children and cited similar effects with that of respondent judges. Therefore, with the researcher's view if separate bench is established to children in justice process fulfilling the relevant facilities the rights of children will come up with effective realization.

When asked about the achievements of courts with regard to child-friendly benches in Hadiya zone all the respondents mentioned the level of courts achievements in the negative because of the absence of basic facilities, dedicated attention of government and supports in almost all courts of Hadiya zone.

The public prosecutors and attorneys were questioned about the things that delay progress to the work of the child friendly benches and most of the respondents indicated the following:

- The less attention or commitment of the concerned bodies
- Awareness problem of those professionals working with or for children in the child justice issues, techniques of handling them when they are in contact with the law
- Attitudinal impediments of judges, prosecutors towards those children involved in criminal justice
- Financial constraints to the justice system in general and to the issues of children in particular
- Absence of skilled man power on child justice issues
- Insufficient/unsystematic cooperation with NGO's and GO's, civil society, etc

- Absence of comprehensive children's law.

This shows how the problem to the progress is deep rooted to protect and promote child justice in a child-friendly environment. So, this alone calls for the need to pay dedicated attention and support for the advancement or establishment of child friendly benches in order to fulfill the administration of juvenile justice with all its elements.

Finally, when all the respondents were asked to give their own solution to curb all the above mentioned and other problems to improve the quality of child friendly benches they indicated similar solutions with that of judges.

4.3.4. Case Study and Interpretation

Practical cases which are considered by courts will be analyzed in this section and are annexed at the last part of this thesis.

Case No. One

This case which is related to a child involved in criminal justice as accused was brought before the Hosanna city administration first instance court on 15/08/2004 E.C., by Hosanna city administration prosecution office public prosecutor against Mandefro Teshome (Public Prosecutor v Mandefro Teshome).²³² In this case the age of the child stated as 18 in the charge by changing previously mentioned 15 years in the same prosecution charge brought by prosecutor. But when the court began hearing the case in 16/08/04 E.C., the age of the suspect was declared 14. However, the court simply mentioned the procedure stated under article 172 of the Criminal Procedure Code and gave order to the prosecutor to bring parents or guardian who will be responsible for the appearance of the 'young person' in court. Having said this, the court adjourned to 18/08/04 E.C., in order to dispense the case after submission of the previous court order which was given to public prosecutor on 16/08/04 E.C., while the accused was in police station and the court indicated the failure of prosecutor to bring parents or guardian on 18/08/04 E.C., and then released the accused from police station to be under the custody of his father because of the prosecutor's failure to execute the court order.

²³² . Public Prosecutor v. Mandefro Teshome, criminal file number 12631 Judgment of 18 April 2004 of the

Hosanna city administration first instance court.

When we critically see the decision of the court and the way it dispensed the case in most part it relied on activities of the prosecutor rather than facilitating the release and applying the special handling techniques provided for the accused child as per the special procedure listed under Art 172 to 174 of Criminal Procedure Code which prioritized the release of young person to the custody of the parents or to a person who will be responsible for the appearance of the 'young person' in court. Failing this, the court will appoint legal counsel and release the 'young person' to the custody of 'a reliable person'. In addition to this, the court's measures are not in line with other relevant instruments like UN rules for the protection of juvenile deprived of their liberty, guideline for action on children in the criminal justice system, the Beijing rules which require courts to uphold the rights and safety and promote the physical and mental well-being of juveniles and to use imprisonment as a disposition of last resort and for the minimum necessary period. But the court did not satisfactorily act to ensure it.

For instance, the court rely on Public Prosecutor's activities to bring parents or responsible persons for child suspect and the court's orders which rendered throughout the process was not in line with the best interest of the child and the special protection stated under Art, 172 of the Criminal Procedure Code of Ethiopia. Because, as observed in the given case the court activities conducted in adult oriented court and in a manner which may not use to counteract the detrimental effects of all types of detention and to fostering integration in society. Furthermore, the court failed to put the child under the custody of responsible persons or appoint legal counsel. As a result, the child detained for 4 days in police station and finally released due to the prosecutor failure to bring evidence against the child. This means had it not been for the failure of the prosecutor the child would be detained even more than 4 days in unfriendly situation.

The rational of child friendly bench is to avoid such kind of merger with adult oriented justice in order to balance the objective of reintegration and well-being of young offenders and the rights of the other party. Further, general comment 10 of UN committee on the rights of the child stated trial of child case in adult courts and using other tougher approaches as a primary punitive measure which results in a negative presentation or criminalization of children because in a such tougher approaches child suspects cannot defend their rights. Consequently, the court process in this case is not appropriate or child friendly since it failed to apply such protective measures in the justice process in order to have conducive environment to ensure the rights, care and protection.

Case No. Two

This case is also related to accused children involved in criminal justice. It was brought before the court on 23/09/2005 E.C., by public prosecutor against two young persons (Prosecutor V. Bereket Melese and Mesfin Mengistu).²³³ In this case their age was stated 17 and 15 respectively in the prosecution charge. However, on first hearing of the court which held on 30/9/05 E.C., the age of the second suspect was mentioned 13 by the suspect as a result the court gave order to the suspect to proof his age at his own cost and the age of the first suspect was not specified here. As a result, the judge who held this session simply mentioned Art, 172 of Criminal Procedure Code stating the procedural rights of the child. But, the situation changed after this session when the other judge held the case from 03/10/05 E.C., to 19/10/05 E.C., here because of this changes throughout the judicial proceeding the court did not raised the issue of the suspect's age rather continued the proceeding and declared both guilt of theft.

The court, before deciding on the merit, failed to consider whether the suspects have received the protection fit their age as indicated in article 53, 54, 55, and 56 of the revised Criminal Code and article 176 of the Criminal Procedure Code typically the protections to young offenders and in some points to children above 15 years of age at the court discretion because the court proceed in a formal and complex court system than following informal and friendly court procedures.

The court also failed to appoint legal counsel and help the young persons in order to defend themselves and express their views without any difficulties but because of court failure to do so the suspects rights to defense has been jeopardized and they left without defending themselves. In addition, the court bypassed the arrangement that should be made before entering to the main part of the criminal proceeding, i.e. creating child friendly court environment and further based on the objection of prosecutor the court ordered the second suspect to prove his age at his own cost which is very complicated order to young person to accomplish for one thing because of his economic capacity and for the other due to the complex nature of the order itself. As a result, it remain an unaccomplished order which

²³³ . Public Prosecutor v Bereket Melese & Mesfin Mengist, Criminal file no. 13982 Judgment of 19 June 2005 of the Hosanna City Administration First Instance Court.

result in denial of the suspect's right to be considered as a child and enjoy the rights, care and protection provided for him.

According to the general comment no. 10 of the UN committee on the rights of the child a child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice particularly within the juvenile justice system and in order to avoid the injustice in the case of no proof of age, the child is entitled to a reliable medical or social investigation that may establish the age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt. However, the case at hand was entertained in a manner which contravenes the special protections provided by the UN CRC committee.

The involvement of more than one judge and many adjournments was also not advisable. For instance, there were two judges and thirteen adjournments before the court decided on the merit of the case which is not in line with the principle of friendly and expeditious juvenile justice.

This court also stated the issue of release only after the final judgment when the court put optional punishment in fine or imprisonment. But, as per the principles of child friendly justice child suspects should be released at the earliest possible time or put in the custody of other persons who are responsible or put in a friendly corrective institution. Furthermore, the court's trend of considering the childhood only in the final judgment is against the spirit of child rights instruments because they favor protection from the point of arrest and throughout the justice process.

In the writer's view the justice process of the court is not child-friendly and it does not show the fact that children involved in criminal justice should be treated in a child friendly manner to secure their immediate reintegration into the society and protect their well-being and best interests considering the principle of proportionality with regard to balancing justice between parties involved in the judicial proceedings.

Case No. Three

This case was brought by public prosecutor against Abera Bekele (Prosecutor V. Abera Bekele).²³⁴ In this case the accused child's age was stated 16 and the fact of his detention in

²³⁴ . Public Prosecutor v Abera Bekele, Criminal file no. 13368 Judgment of 27 January 2005 of the Hosanna

police station was also mentioned by prosecutor. However, when the court began hearing the case on 14/05/05 E.C., the suspect told to the court that he was 15 years old at the time and after considering the difference between the two ages the court ordered that this should be proved and then the suspect be released to the custody of his family, if there is family, in absence of this to be put in police station.

In the next session held on 21/05/05 E.C., the prosecutor stated the non fulfillment of the previous order given by the court to prove the suspect's age and to facilitate the custody of the child with his family. Following from this, the court decided to follow the laws and procedures stated for young offenders. In this session the suspect's being orphan was disclosed by suspect and he also pleaded not guilty of the charge.

After several adjournments finally on 27/05/05 E.C., the court closed the file because of the prosecutor's failure to produce evidences against the suspect and, decided that the suspect should bring surety/guarantee for 2000 birr to be released from police station even though the prosecutor failed to prove against the suspect.

When we critically examine the court environment and the justice process in this case it seems child-unfriendly. Because:

- ✓ The child forced to stay for about 18 days in police station in a condition which is not friendly without any evidence from the prosecutor's side.
- ✓ The suspect also obliged to stay in mind prison though he was physical released by the order of the court which is given in 27/05/05 E.C., since the order obliged the suspect to sign guarantee for 2000 birr and appear to court whenever the child needed in the same case.
- ✓ In most cases the court favor the prosecutor's side in cover or role of balancing justice. For instance, all the adjournment was given while the child was in police station and due to the prosecutor failure to bring evidence timely.
- ✓ There was no legal representation, in addition the court did not consider the specific vulnerability or background of the child while the court was aware of the child's being orphan.
- ✓ The court system was adult-oriented.

- ✓ The number of persons involved in court proceeding, i.e. different judges and prosecutors at different court sessions has its own contribution to the complexity of the court system.
- ✓ The court not indicated any measure or order on the issue of timely release in order to achieve the basic aim of juvenile justice. For instance, protecting the well being of the child and helping his reintegration into the society.

Case No. Four

This case was brought against two young person's Yisak Abebe and Mubark Abrara by public prosecutor (Prosecutor V. Yisak Abebe and Mubark Abrara).²³⁵ In this case the prosecution charge stated the suspects age 19 and 18 respectively. However, as indicated in the above cases there were a conflict with regard to the suspects' age. For instance, the court in its second session held on 06/07/2005 E.C., when the court began hearing the case the child suspects' age was stated 14 and 13 respectively. Despite this fact the court continued the proceeding by hearing the prosecutor's witnesses/ evidence after this released the 2nd suspect because of the witnesses' failure to give their testimony sufficiently against him.

And regarding the case of the 1st suspect the court in its session which was held on 9/07/2005 E.C., indicated the absence of defense witnesses to the suspect as a result the court rendered its judgment on 11/07/2005 E.C., and only at this stage indicated the suspect's age and his rights to enjoy special protection in juvenile justice.

Finally, after 27 days in police station the court rendered its judgment and said the child suspect guilt of the accused charge. However, the court released the child by warning, reprimand and the like.

As to the writer's view the court should have analyzed the merit of the case in a child friendly manner from the time it recognizes their age. The first thing that should have been considered is whether the conflict between the age indicated in the prosecution charge and before the court was true or not. And after verification the court was expected to take all the necessary measures to protect the best interests of the child and to achieve the aim of juvenile justice by protecting the well-being of the child in case when the court found the age in between legal

²³⁵ . Public Prosecutor v Yisak Abebe & Mubark Abrara, Criminal file no. 13629 Judgment of 11 March 2005 of the Hosanna City Administration First Instance Court.

framework. But in this case, the court after identified the age of the suspect failed to appoint legal counsel, treat in a friendly environment and took measures to release the ‘young person’ to the custody of his parents, guardian or a reliable person because of this he did not defend himself properly and stay almost one month in police station in unfriendly condition.

The trial was continued in an adult oriented justice process as observed from the orders and rulings of the court. For example, the court failed to gave expeditious judgment, to put the court robes and the like to the minimum in order to make the court environment child-friendly. In addition, the court proceeded hearing the prosecutor’s witness on the session held on 06/07/2005 E.C., knowing that the suspects’ are 14 and 13 years of age without at least trying to take the necessary substantive or procedural safeguards to protect their best interests.

Case No. Five

This case is related to the child involved the criminal justice as a victim it was brought before the Hosanna City Administration First Instance Court on 15/09/2005 E.C., by public prosecutor against Mulugeta Abicho (Prosecutor Vs. Mulugeta Abicho).²³⁶ The 13 years old child who involved in this case was victim of rape which is a serious crime and needs treatment and support by trained professionals. But the court without mentioning about the victims age and other situations of the victim proceed the case on the next session held on 16/09/2005 E.C., and finally after hearing evidences of both parties the court has passed its judgment on 22/09/2005 E.C., against the accused.

Here when we observe the court process in line with the rights and special protection provided for child victims in order to minimize further trauma and protecting the well-beings of the child. The case at hand faced many problems which are not child-friendly. For instance, the child put as a witness in her own case without any kind of professional support from suitable persons who can liaise with her maturity and provide psychosocial support in a child friendly manner.

And the court basically focused on entertaining the merit of the case without giving order on how the child victim stays in the court environment and how the justice process conducted. As clearly indicated in the UN guideline on justice in matters involving child victims and

²³⁶ . Public Prosecutor v Mulugeta Abicho, Criminal file no. 13950 Judgment of 22 May 2005 of the Hosanna

City Administration First Instance Court.

witnesses the court need to recognize their rights because they are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.

But, in the case at hand, the court not takes into account the serious physical, psychological and emotional consequences of the crime and victimization of the child in particular in this case which involve sexual exploitation and needs professional support.

The court did not follow victims-sensitive approach that balances the child's rights to protection in a manner which takes into account the needs and views of children since the child involved in this case both as a victim and witness in her own case.

Case No. Six

This case is related to two children involved in the criminal justice as a witness and accused person it was brought before the Hadiya Zone High Court on 10/07/2005 E.C. by public prosecutor against four accused persons.²³⁷ Among the accused persons listed in the prosecution charge Habtamu Abo was 15 years old as mentioned by the court when the court began hearing the case. In addition to this, the prosecutor's witness listed in the second place with the name Dilo Wondimu was the daughter of one of the accused Ato Wondimu Abo and the victim of the homicide W/ro Adanech Ertiro, was 4 or 5 years old as indicated in the case at hand.

As indicated by prosecutor the accused persons are charged with aggravated homicide against W/ro Adanech Ertiro who is the mother of the child witness of the crime. In this case two children are involved in different situations. i.e., Habtamu Abo (the accused) and witness Dilo Wondimu who are 15 and 4 or 5 years of age respectively.

When we examine the facts of the case it needs court's special protection measures both to the accused child and the witness in order to provide child friendly justice throughout the justice process so as to make it safe to their mental and physical maturity and achieve the aim of juvenile justice that is keeping the well-being of children and securing the reintegration into the society. As indicated, the situations that those children contact the law is complicated

²³⁷ . Public Prosecutor v Beyene Abo, Habtamu Abo, Abo Fuse and Wondimu Abo, Criminal file no. 10903,

Judgment of 07/10/2005 E.C. of the Hadiya Zone High Court.

one because the accused child was listed with adult co-accused and the child witness sadly in between family trouble. But the court after verifying their age and situations simply proceeded the case in the ordinary procedure without trying to handle in a friendly manner.

As a result, it is the writer's view that the Hadiya Zone High Court failed to consider the following child justice issues and techniques of handling children in the system as suspect and witness. Such as:-

- Measures to identify and protect the accused child from merger with the co-accused adults in order to create conducive environment to the child's mental, emotional and physical maturity.
- To take action on the issue of child custody in prison to separate from adults as indicated under Art. 36 of the FDRE constitution.
- With regard to the child witness also the court did not take measures to minimize the trauma that the child faced particularly in this case because as indicated in the fact the witness was the daughter of the deceased and the accused Ato Wondimu Abo and also called to testify against her father and uncles' which seriously trouble to any one and much more to children as the case at hand. This court's failure can be observed from the activities of the court sessions which held throughout the proceeding and particularly held on 30/09/2005 E.C. Because, the court started hearing the prosecutor's witnesses by the child witnesses, in adult oriented court, without having professional support from social workers, psychologists, etc.
- The court was also under duty to recognize justice for child witnesses of crime while safeguarding the rights of accused persons.
- The court let the child witness to gave testimony confronting all the court robes, like giving testimony before judges, accused persons, prosecutor, audience, court clerks including police officers with their uniform and defense attorney.

And because of her maturity level and other complex court systems the child became unable to finish the testimony and break up her testimony after she said few words about her deceased mother and accused persons stating that they are one family.

As a result, the court in its side indicated the age of the child in the case stating the witness's break up to continue testifying the detail against the accused persons because of the complex situations doubled in the justice system, her being too young and, family for both parties in the case. Despite this, the court continued hearing the second witness without taking

provisional measures regarding the child so as to protect her well-being from suffering additional hardship when assisting in the justice process.

It is also possible to observe the failure of the court to carefully consider the fact that the participation of the witness in this case is necessary for effective prosecution, particularly in this case where the child is listed as the key witness.

Furthermore, after three months in prison the accused persons released by the order given on 07/10/2005 E.C, because of the insufficient evidence brought by the prosecutor. So, it's possible to see the failure of the court to take separate measures regarding the child merged with co-accused adult in order to avoid this kind of untimely measures.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusions

The Ethiopian government has made some efforts to strengthen child rights promotion and protection in Ethiopia in general and in civil and criminal justice systems in particular.²³⁸ This study is limited in examining the achievements and challenges of the child-friendly benches in courts of SNNP regional state with special emphasis to Hadiya zone regarding the promotion and special protection of children involved in criminal justice system either as suspects, victims and/or witnesses of crime. The study provided information on law reforms at international, regional and national levels, court cases and practices of courts on children involved in criminal justice, from a range of child-friendly benches in courts of Hadiya zone.

The discussion of fundamental principles such as the best interests of the child, dignity, the right to freely participate, non-discrimination and the rule of law, and general elements of a child friendly justice system consisting of information and advice, protection of privacy, special preventive measures, training of professionals, and so on, as envisaged under a variety of international and regional instruments that deal with children in the justice system is incorporated into this study and served as a benchmark to evaluate the situation in Ethiopia and specifically in the research area.

By this study, in addition to understanding and analyzing the normative content of the rights of children in contact with the criminal law, the standards for child-friendly justice during criminal proceeding are also examined to highlight core concerns in relation to child justice system.

This research has also revealed that the courts have not achieved optimally their mandate to provide special protection to young persons who are involved in the criminal justice system as provided in the international, regional and national legislations albeit the domestic legislation is limited with regard to child justice. Central to this work is the evaluation of

²³⁸. Concluding observations of the UN CRC in considering the third periodic report of Ethiopia

(CRC/C/129/Add.8) at its 1162nd and 1164th meetings, held on 12 September 2006, and adopted, at its 1199th meeting, held on 29 September 2006, See CRC/C/ETH/CO/3, 1 November 2006.

child-friendly benches in courts of the SNNPRS and Hadiya zone indicating that the work of court is premised primarily on ensuring that children involved in criminal justice have equal rights with other human beings as exemplified in general and specific human rights documents dedicated to children's rights. However, several systematic factors have put negative influences against the achievement of the child-friendly justice in courts as either a contributory factor or a catalyst.

This research has shown that, though the government has taken important measures in ensuring the promotion and protection of children in Ethiopia, more needs to be done specially to improve the practice of justice system, awareness, and laws and enact comprehensive child law, the competitiveness of professionals, the financial constraints and so on. This will ensure that children in contact with the law are not neglected, re-victimized in the justice system and further traumatized. Unlike that, failure to ensure that the mandate of the court in juvenile justice is fulfilled, in whatever means important to the country, will continue to constitute a breach of children's rights to special protection within the criminal justice system.

So, any kind of arguments of the government of lack of resource due to the competing interests may not be sustainable as the government of Ethiopia is allocating considerable military expenditure in contrast to allocations to other sectors especially to justice sector and to effectively improve the promotion and protection of children's rights.²³⁹ In this regard, as per article 4 of the UN convention on the rights of the child the government is required to generate resources from all possible sources including its international partners, to prioritize and increase budgetary allocations for children at both national and local levels in order to improve the implementation of the rights of the child throughout the country.²⁴⁰ Furthermore, Ethiopia cannot afford to relegate issues on child rights to the background since 52.9% of its population are believed to be children or persons below the age of 18,²⁴¹ and as all other matters on the globe are attached to the compliance with human rights norms and is the core for the sustainable development of the country. This is the case in the UN system where the

²³⁹ . Ibid, p.4. Paragraph 16.

²⁴⁰ . Article 4 of the UNCRC.

²⁴¹ . Central Statistical Agency, National Census Report 2008.

OHCHR is mandated to ensure that all the arms and departments of the system are human rights compliant in all their activities.²⁴²

The measures taken within the justice system is a good move to ensure that all categories of rights and persons are covered. Notwithstanding the setbacks and criticisms of the work/situation of courts with regard to establishing child-friendly benches in the courts of SNNPRS Hadiya zone and other systematic or operational problems identified in this study, it is undeniable that the courts have potential to enhance the lives of millions if the government shows real commitment in every aspect concerning children's rights. Moreover, if the government is to stand out in the realization of its national plans, laws, policies and programs in this regard and to overcome the inherent deficiencies observed the justice system will be child friendly.

In this regard, recommendations are made in order to give an indication as to how best to address some of the problems and setbacks mentioned in this study to mitigate the courts failure. This ensures that the promotion and protection of children's rights are treated with the kind of attention it deserves in a well organized juvenile justice system.

²⁴² . The OHCHR, a department of the UN Secretariat, is mandated to promote and protect the enjoyment and full realization, by all people, of rights established in the charter of the United Nations and in international laws and treaties. The office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies. <http://www.ohchr.org/english/bodies/crc/mandate.htm> (accessed 11Nov. 2013).

5.2. Recommendations

In order to address the issues discussed in this study and for the effective upholding of the implementation of the rights of children's involved in criminal justice system in child-friendly benches, the following recommendations are made:

- ❖ The legislative gaps and lack of trained human resources with respect to the protection and upholding of the rights of the child should be alleviated as a matter of priority. In this regard, the government should enact its own domestic children's law and timely reproduce all international agreements ratified by Ethiopia in the Official Negart Gazette for easier application and to make all concerned organs take clearly judicial notice of laws in the working language.
- ❖ Although there have been attempts to acquaint the law enforcement community with the percepts and provisions of the child rights instruments, a greater proportion of the judges, prosecutors and police forces do not have sufficient awareness about the real aims of juvenile justice specially at the lower level of justice system, these noticeable gaps militated against the establishment of effective juvenile justice system to the grass root level, so the government should take real political, financial and other measures to curb it.
- ❖ Mechanisms of coordination, monitoring and evaluation of all activities of juvenile justice should be put in place.
- ❖ Structural institution should be established or stand alone from higher level to the lower to entertain cases of children in child-friendly bench than merging with adult oriented justice.
- ❖ Rigorous background checks of personnel working with or for children involved in criminal justice should be taken seriously in order to the current ineffective selection and appointment of staff members working with children special at zone and woreda levels.
- ❖ Mechanisms to record cases which involve children in a disaggregated data should be developed in order to avoid the problem of mixing with adult and to enact target-oriented laws, policies and other measures.
- ❖ Participation of the community in the process of solving the problems of criminal justice which involve children should be developed.

- ❖ The problem related with automatic categorizing of children at adolescent stage, i.e. from age 16-18 into the adult group should be seriously considered.
- ❖ The existing inadequate coordination/networking/collaboration among concerned bodies who can liaise effective multidisciplinary support should be systematically institutionalized.
- ❖ The child rights committees, governmental and non-governmental organizations formed at various levels should be systematized in order to underpin juvenile justice.
- ❖ Government should reconsider the measures taken on charities and societies which places excessive restrictions on the work, operations, and funding of independent human rights organizations in order to ensure their effective role on human rights protection.
- ❖ The problem related with birth registration should be curbed by effectively implementing the said proclamation in this issue to come to practical application in order to avoid the confusion between prosecution office and court, i.e. to avoid uncertainty as to the child's age specially to protect adolescents from being judged merely by their physical features. Furthermore, the registration play a vital role to control the adding of ages of children involved in criminal justice by law enforcement officials to escape from the burden of applying the special procedures and other measures of enforcing special protection provided for children.
- ❖ There should be right-based approach in all matters which involve children especially courts expected to apply this throughout the justice process than simply considering their rights in final judgment.
- ❖ There should be monitoring, oversight and compliant mechanisms in the process of criminal justice system which often regulated and open to outside scrutiny in order to check any violence. Because, this results in absence of impunity, and not allows violence against children to continue.
- ❖ The government should come up with reliable, detailed, evaluative and researched data, at nationwide level, about the child-friendly benches/justice in Ethiopia and their special needs. As a result, it is possible to provide the best services for children involved in criminal justice.
- ❖ The government should organize training in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. So, personnel working with or for children should have information on,

inter alia, social and other causes juvenile delinquency, dynamics of different activities, psychological and other aspects of the development of children.

- ❖ The government should work to develop child rights culture in schools, society, and justice system and should give wide curriculum coverage in law schools and justice professionals training centers and should also use media.
- ❖ The government should ensure that the rights and needs of children get the priority in national development efforts.
- ❖ Last but not least, the absence of a specific policy on child welfare has further undermined the implementation process of child-friendly justice in courts. Given the absence of such policy pronouncements, the needs and concerns of children are still dealt with on a par with adults in most instances especially at zonal and woreda courts. So, there should be specific policy which gives clear guidance.

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Ato Girma Abebe, President of Hadiya Zone High Court, Date 7/04/2006 E.C.

W/rt Yodit Zenebe, Coordinator of SNNP Regional State Supreme Court Juvenile Justice Project Office, Date 10/04/2006 E.C.

Annex –A- Questionnaire for Judges

Prepared by Democracy Petros

In Partial Fulfillment to an LLM Thesis to be submitted to the School of law, Addis Ababa University

TOPIC: Child Friendly Benches in Courts of the SNNP Regional State: The Case of Hadiya Zone

OBJECTIVE OF THE QUESTIONNAIRE: Is to assess the work of the child friendly benches in courts of SNNP Regional State with specific emphasis on Hadiya Zone in line with the fundamental principles of a child friendly justice in criminal justice system to children involved the criminal justice as suspects, witnesses and/or victims of crime as stipulated in the national laws and international instruments on the rights of the child. The questionnaire aims at looking into the workings, achievements and things that delay progress of the child friendly benches in this regard. Thus, your kindly answer to the following questions based on personal and/or practical experiences has a paramount importance for the quality of the study.

Confidentiality is guaranteed, so please answer questions openly and honestly.

Directions: Give your answers by writing in the blank spaces. Note that throughout the questionnaire, you are kindly requested to give your answers considering the above objective.

I thank you in advance for your cooperation

General profile of research respondent

Name:

Address:

Sex:

Age:

Educational level:

Court:

Date:

QUESTIONS:

1. Is there effective child friendly bench built to accommodate children's physical and mental maturity in your court? If yes, Please explain its establishment and if no, what do you think is the reason behind its absence?
2. Do you think that the court you are working is equipped with courtroom furnishings and relevant technical, material and professional facilities which are basic to the specific nature of child friendly bench? If yes, please explain it. If no, what do you think is the problem?
3. Do children in conflict with the law get full access to legal counseling and judicial representation, psychosocial support in court you are working as expected? If yes, please explain it and if no, why not?
4. Do you think that all children involved in criminal justice as victim, witness and suspect of crime are getting protection before child friendly bench in court you are working?
5. Are there trainings on child friendly justice? If yes, please specify its nature. If no, what do you suggest?
6. Are judge and prosecutors involved in such special benches effectively trained on child justice issues and techniques of handling children in the justice system?
7. Do you think that trainings on child justice alone can bring effective progress on child friendly benches? If yes, how? If no, why not?
8. Are Views of children, best interests of the child, right to development and non-discrimination effectively respected in child friendly manner in your court? If yes, how? If no, why not?
9. Are cases which involve adolescents up to 18 years age entertained at child friendly benches in a manner which consider their development stage?
10. Is there child friendly bench which stands alone to entertain cases of children in your court? If yes, please explain its effectiveness and if no, how is the cases be entertained?
11. What is your view on the future of child friendly benches on the following options?
 1. Is it good to stand alone or;
 2. Merge with adult oriented justice.

Please give reasons for your opinion and what the consequences will be on the options in 1 and 2.

12. How do you see the selection and appointment of staff members (personnel working with or for children involved in criminal justice)? Are there rigorous background checks of potential employees working with children? Please explain both of them.
13. Are there multidisciplinary approach/support in courts by suitable persons who can liaise with child maturity, like psychologists, social workers, physicians, etc in order to enable them to freely participate?
14. Do courts follow a trend of taking recesses during testimony in order to adapt the proceedings to the child's age? Please explain it.
15. Do you think that there is a problem of mixing different levels of child vulnerability in courts? Please give reason for your opinion.
16. What do you think are the effects of child friendly bench in protection of the rights of children involved in criminal justice? For instance, on children involved as suspect, victim and witness of crime.
17. How do you see the achievements of courts with regard to child friendly benches in Hadiya zone?
18. What are the things that delay progress to the work of the child friendly benches? Please explain it clearly.
19. What possible solutions would you suggest to improve the quality of child friendly benches in courts to children involved in criminal justice?

I thank you once again!

Annex-B- Questionnaire for Public Prosecutors and Attorneys

Prepared by Democracy Petros

In Partial Fulfillment to an LLM Thesis to be submitted to the School of law, Addis Ababa University

TOPIC: Child Friendly Benches in Courts of the SNNP the Regional State: The Case of Hadiya Zone

OBJECTIVE OF THE QUESTIONNAIRE: Is to assess the work of the child friendly benches in courts of SNNP Regional State with specific emphasis on Hadiya Zone in line with the fundamental principles of a child friendly justice in criminal justice system to children involved the criminal justice as suspects, witnesses and/or victims of crime as stipulated in the national laws and international instruments on the rights of the child. The questionnaire aims at looking into the workings, achievements and things that delay progress

of the child friendly benches in this regard. Thus, your kindly answer to the following questions based on personal and/or practical experiences has a paramount importance for the quality of the study.

Confidentiality is guaranteed, so please answer questions openly and honestly.

Directions: Give your answers by writing in the blank spaces. Note that throughout the questionnaire, you are kindly requested to give your answers considering the above objective.

I thank you in advance for your cooperation

General profile of research respondent

Name:

Address:

Sex:

Age:

Educational level:

Office:

Date:

Questions:

1. Are there effective child friendly benches built to accommodate children's physical and mental maturity in courts of Hadiya zone? If yes, how do you see their organizational setup and if no, what do you think is the reason behind its absence?
2. Are judge and prosecutors involved in such special benches effectively trained on child justice issues and techniques of handling children in the justice system?
3. Do you think that Views of children, best interests of the child, right to development and right to non-discrimination effectively respected in child-friendly manner in courts? If yes, how? If no, why not?
4. Do all children involved in criminal justice as suspects, victims and witnesses of crime get the maximum protection from child friendly benches in courts of Hadiya zone as expected by laws? If yes, please explain it and if no, why not?
5. Do you think that courts of Hadiya zone are equipped with courtroom furnishings and relevant technical, material and professional facilities which are basic to the specific nature of child friendly bench? If yes, please explain it. If no, what do you think is the problem?

6. Do you think that children in conflict with the law have full access to legal counseling and judicial representation, psychosocial support and other supports in courts? Please give reason for your opinion.
7. Are there child friendly benches which stand alone to entertain cases of children in Courts of Hadiya zone? If yes, please explain its effectiveness and if no, how is the cases be entertained?
8. What is your view on the future of child friendly benches on the following options?
 1. Is it good to stand alone or;
 2. Merge with adult oriented justice.

Please give reasons for your opinion and what the consequences will be on the options in 1 and 2.
9. Are cases which involve adolescents up to 18 years age entertained at child friendly benches in a manner which consider their development stage?
10. How do you see the selection and appointment of staff members (personnel working with or for children involved in criminal justice? Are there rigorous background checks of potential employees working with children? Please explain both of them.
11. Are there multidispilnary approach/support in courts by suitable persons who can liaise with child maturity, like psychologists, social workers, physicians, etc in order to enable them to freely participate?
12. Do courts follow a trend of taking recesses during testimony in order to adapt the proceedings to the child's age? Please explain it.
13. Do you think that there is a problem of mixing different levels of child vulnerability in courts? Please give reason for your opinion.
14. What do you think are the effects of child friendly bench in protection of the basic rights of children involved in criminal justice? For instance, on children involved as suspect, victim and witness of crime.
15. How do you see the achievements of courts with regard to child friendly benches in Hadiya zone?
16. What are the things that delay progress to the work of the child friendly benches? Please explain it clearly.
17. What possible solutions would you suggest to improve the quality of child friendly benches in courts to children involved in criminal justice?

I thank you once again!

Annex-C- Guideline for interview with President of the Hadiya Zone High Court

Prepared by Democracy Petros

In Partial Fulfillment to an LLM Thesis to be submitted to the School of law, Addis Ababa University

TOPIC: Child Friendly Benches in Courts of the SNNP Regional State: The Case of Hadiya Zone

OBJECTIVE OF THE INTERVIEW: Is to assess the work of the child friendly benches in courts of SNNP Regional State with specific emphasis on Hadiya Zone in line with the fundamental principles of a child friendly justice in criminal justice system to children involved the criminal justice as suspects, witnesses and/or victims of crime as stipulated in the national laws and international instruments on the rights of the child. The interview aims at looking into the workings, achievements and things that delay progress of the child friendly benches in this regard. Thus, your kindly answer to the following questions based on personal and/or practical experiences has a paramount importance for the quality of the study.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

General profile of interviewee

Name:

Sex:

Age:

Educational level:

Date:

Questions:

1. Are there effective child friendly benches built to accommodate children's physical and mental maturity in courts of SNNPR and Hadiya zone? If yes, please specify their figure and organizational setup and if no, what do you think is the reason behind its absence?
2. Do you think that the child friendly benches in courts equipped enough with the courtroom furnishings, necessary material, technical and professional and other facilities?

3. Do you think that judge and prosecutors involved in such special benches effectively trained on child justice issues and techniques of handling children in the justice system?
4. How do you evaluate the implementation of the basic principles of child rights in criminal justice system in the region? For example, the right to participation, best interests of the child, right to development and non-discrimination.
5. Are there friendly court services accessible for children in court environment? For instance, using child friendly language, improved access and quality legal representation, private waiting rooms and psychosocial services?
6. Do you think that the existing laws, procedures and practices bring the effective change without enacting/having comprehensive child law and pro child practices? If yes, how? If no, what do you suggest?
7. How do you see the selection and appointment of staff members working with or for children involved in criminal justice with regard to their background? Is it effective or not?
8. Do you think that courts follow a trend of taking recesses during testimony in order to adapt the proceedings to the child's age? Please explain it.
9. Do you think that there is a problem of mixing different levels of child vulnerability in courts?
10. Do you think that there is a multidisciplinary support in courts by suitable persons who can liaise with child maturity, like psychologists, social workers, physicians, etc in order to enable them to participate freely?
11. What is your view on the future of the child-friendly benches on the following options?
 - i. Is it good to stand alone or;
 - ii. Merge with adult oriented justice.
Give reason for your view.
12. Would you mention some other problem you witnessed with regard to child friendly bench that are not mentioned above?
13. What do you think are the major challenges that delay progress of child friendly benches in criminal justice system in the region?
14. What would be the effect of justice system that is unresponsive to children's needs, physical and mental immaturity?

15. What is your organization's role towards solving these major challenges?
16. What possible recommendations your organization could made for promoting child friendly benches in the region and providing it to children involved in criminal justice?

I thank you once again!

Annex-D- Guideline for interview with Coordinator of the Child Justice Project Office at the SNNPRS Supreme Court

Prepared by Democracy Petros

In Partial Fulfillment to an LLM Thesis to be submitted to the School of law, Addis Ababa University

TOPIC: Child Friendly Benches in Courts of the SNNP Regional State: The Case of Hadiya Zone

OBJECTIVE OF THE INTERVIEW: Is to assess the work of the child friendly benches in courts of SNNP Regional State with specific emphasis on Hadiya Zone in line with the fundamental principles of a child friendly justice in criminal justice system to children involved the criminal justice as suspects, witnesses and/or victims of crime as stipulated in the national laws and international instruments on the rights of the child. The interview aims at looking into the workings, achievements and things that delay progress of the child friendly benches in this regard. Thus, your kindly answer to the following questions based on personal and/or practical experiences has a paramount importance for the quality of the study.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

General profile of interviewee

Name:

Sex:

Age:

Educational level:

Date:

Questions:

1. Are there effective child friendly benches built to accommodate children's physical and mental maturity in courts of SNNPR and Hadiya zone? If yes, please specify their figure and organizational setup and if no, what do you think is the reason behind its absence?
2. Do you think that the child friendly benches in courts equipped enough with the courtroom furnishings, necessary material, technical and professional and other facilities?
3. Do you think that judge and prosecutors involved in such special benches effectively trained on child justice issues and techniques of handling children in the justice system?
4. How do you evaluate the implementation of the basic principles of child rights in criminal justice system in the region? For example, the right to participation, best interests of the child, right to development and right to non-discrimination.
5. Are there friendly court services accessible for children in court environment? For instance, using child friendly language, improved access and quality legal representation, private waiting rooms and psychosocial services?
6. Do you think that the existing laws, procedures and practices bring the effective change without enacting/having comprehensive child law and pro child practices? If yes, how? If no, what do you suggest?
7. How do you see the selection and appointment of staff members working with or for children involved in criminal justice with regard to their background? Is it effective or not?
8. Do you think that courts follow a trend of taking recesses during testimony in order to adapt the proceedings to the child's age? Please explain it.
9. Do you think that there is a problem of mixing different levels of child vulnerability in courts?
10. Do you think that there is a multidisciplinary support in courts by suitable persons who can liaise with child maturity, like psychologists, social workers, physicians, etc in order to enable them to participate freely?
11. What is your view on the future of the child-friendly benches on the following options?
 - i. Is it good to stand alone or;

ii. Merge with adult oriented justice.

Give reason for your view.

12. Would you mention some other problem you witnessed with regard to child friendly bench that are not mentioned above?
13. What do you think are the major challenges that delay progress of child friendly benches in criminal justice system in the region?
14. What would be the effect of justice system that is unresponsive to children's needs, physical and mental immaturity?
15. What is your office's role towards solving these major challenges?
16. What possible recommendations your office could made for promoting child friendly benches in the region and providing it to children involved in criminal justice?

I thank you once again!

