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**Minimum age for criminal responsibility in Ethiopia and the rights of a child: A  
comparative Study**

*A Thesis Submitted to the School of Graduate Studies of Faculty of Law at Addis Ababa  
University in Partial Fulfillment of the Requirements for the Award of the Degree of Master of  
(LL.M) in Human Rights Law*

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**August, 2024**

**Declaration**

I, Mahlet Beyene hereby declare that the thesis “ Minimum Age for Criminal Responsibility in Ethiopia and the Rights of a Child: A comparative Study” represents my original work, with citations and quotations where other people's works have been used. To the best of my knowledge, it has not been submitted before to any other institution for any other purpose.

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## **Acronyms**

ACM- Age of Criminal Majority

CRC- Convention on the Rights of a Child

CJS- Criminal Justice System

IAC- International Armed Conflict

ICCPR- International Covenant on Civil and Political Rights

ICCPR- International Covenant on Civil and Political Rights

ICESCR-International Covenant on Economic, Social, and Cultural Rights

IHL – International Humanitarian Law

MACR- Minimum Age of Criminal Responsibility

NIAC-Non International Armed Conflict

OECD-Organization for Economic Co-operation and Development

UDHR- Universal Declaration of Human Rights

## **Abstract**

*Different approaches have been followed by different legal systems concerning the minimum age of criminal responsibility (MACR). The minimum age of criminal capacity in Ethiopia used to be nine years of age, one of the lowest in the world. The main objective of this research is to explore Ethiopian laws on the minimum age for criminal responsibility of a child vis-à-vis the international rules that govern the juvenile justice administration and compare them with other countries. The study was doctrinal research method with a comparative qualitative analytical approach for the reason that it will endeavor to assess Ethiopia's MACR with other countries with better jurisprudence on the rights of a child, like; Uganda from common law legal system; Iceland and Sweden from civil law legal system; and Djibouti, and South Sudan from sub-Saharan and the horn of East Africa countries. The finding shows that Even though the CRC committee has voiced its worry over the rise of MACR, Ethiopia has yet not take steps toward it, as stated in the general comment. The conclusion is that in Ethiopia, the current provisions fall short of international standards in a number of ways, and that child's rights are at risk in the current system. Uganda, Djibouti, Iceland, Sweden and south Sudan were fixed much higher minimum ages 12-15 years as of criminal capacity. Thus, Ethiopia must review its laws pertaining to children and bring them in accordance with international law principles. Specifically, the researcher recommend that like Uganda, Ethiopia should make an Amendment to the Criminal Code art 52 and an increase in the MACR from 9 to 12 years old which is least MACR in aforementioned countries.*



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## CHAPTER ONE

### 1. INTRODUCTION

#### 1.1. Background of the study

The first ever child rights convention the Convention on the Rights of the Child(CRC) defines the term “child” as every human being that has not attained the age of eighteen.<sup>1</sup> Besides, there are a bunch of rights that are accorded to children which need to be protected and respected by everyone in a special way from other adult human beings. Children by the reason of their physical and mental immaturity need special care and protection besides adhering to the rights that are already stated in international bills of human rights. That is also the same reason for the enactment of CRC as it is also stated under the preamble.<sup>2</sup>

All human beings including children have the right to freedom of movement and from arbitrary detention, as envisaged under Art 3 of the Universal Declaration of Human Rights (UDHR) and Art 9 of the International Covenant on Civil and Political Rights(ICCPR) and entitled to every person the right to life, liberty and security of a person.<sup>3</sup> In the same way, the CRC under art 37 (b) stated that every child has the right not to be subject to arbitrary and unlawful detention and it should also be considered as a last resort; though that detention is legal.<sup>4</sup>

As far as detention is concerned, the age of a person who has committed a crime matters to detain and make responsible yet the detention is lawful. Thus, there should be a determined age for criminal responsibility by which the liability of a person for criminal actions begins.

The age of criminal responsibility is the age at which a child is considered by law to have understood the wrongness of his actions and that could result in criminal charges.<sup>5</sup> Even very young children could violate the penal law, but if they commit an offense while under the

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<sup>1</sup> Convention on the Right of the child, United nation General assembly, 20 November 1989

<sup>2</sup> Ibid, Preamble

<sup>3</sup> Universal declaration of human rights, United nation General assembly, 10 December 1948. And Art 3 and international covenant on civil and political rights, UN general’s assembly, 16 December 1966, Treaty Series, vol. 999, p. 171, art 9.

<sup>4</sup> Convention on the Right of the child, United nation General assembly, 20 November 1989, Art 37(b)

<sup>5</sup> Amnesty International, ‘Why we need to raise the minimum age of criminal responsibility’ (25 January 2022) <<https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/>> accessed 30 January 2022.

minimum age of criminal responsibility (MACR), the unassailable assumption is that they cannot be formally charged and held accountable in penal law. The reason is that a child who has not reached the minimum age of criminal responsibility is assumed to have no mental capacity to commit a crime.<sup>6</sup> When a child violates the law and comes into contact with authorities there is considerable variation around the world regarding how to handle juvenile offenders.

Hence, the minimum age of criminal responsibility is crucial and yet very difficult because it recognizes that the child has reached the emotional, mental, and intellectual maturity to be held accountable for their actions by taking into account children's and young people's developmental differences and decision-making abilities.<sup>7</sup> Different countries set a wide range of minimum age for criminal responsibility, ranging from as young as six like North Carolina and seven like Liberia, United Arab Emirates, and India; to as old as sixteen like Cape Verde, Guinea-Bissau and Argentina.<sup>8</sup> Besides, there are also states with no determined MACR like the Democratic Republic of Congo and Malaysia.<sup>9</sup>

Article 40 (3) of the Convention on the Rights of the Child requires States Parties to seek to promote, among other things, the establishment of a minimum age below which children are presumed not to have the capacity to violate the penal law, but no minimum age is specified.<sup>10</sup> The committee interprets this provision as requiring States Parties to establish a MACR. There is considerable debate about the appropriate age for criminal responsibility. The Committee on the Rights of the Child adopted General Comment No. 10 which states 12 years as MACR.<sup>11</sup> However, General Comment No. 10 was replaced by the new General Comment which advised states not to have less than 14 years.<sup>12</sup> At the same time, it emphasizes that state parties should not lower their age of criminal responsibility to 14 which has already been set higher, and it

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<sup>6</sup> Graven, P. *An introduction to ethiopian penal law: (arts. 1-84 Penal Code)*. Addis Ababa, Ethiopia: Faculty of Law, Haile Sellassie I University : Oxford University Press. (1965) p144

<sup>7</sup> Papadodimitraki, Y., 'Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Germany' [2016], *Center for Youth and Criminal Justice*, 1-5.p1

<sup>8</sup> Cipriani, D., '*Children's Rights and The Minimum Age of Criminal Responsibility: A Global Perspective* (2009), 187-224.

<sup>9</sup> Ibid

<sup>10</sup> Convention on the Rights of the Child, adopted on 20 November 1989, entered into force on 2 September 1990 (hereunder CRC) Art. 40(3)

<sup>11</sup> UN Committee on the Rights of the Child, CRC General comment No 10 (2007) Children's rights in juvenile justice 25<sup>th</sup> April, para 32

<sup>12</sup> Ibid

strongly encourages States to introduce a higher MACR. According to the Committee, this practice has resulted in lower ages of criminal responsibility for more serious offenses, leaving children vulnerable to discriminatory practices.

Children require our protection, as well as assistance in learning and growing, to break the cycle of offending and disadvantage. Special protective measures can be taken in these children's best interests if necessary; though, Children who are at or above the MACR at the time of the commission of an offense or infringement of the penal law but are under the age of 18 can be formally charged and subject to penal law procedures; these procedures, as well as the outcome, must be fully compliant with the principles and provisions of the CRC as elaborated in the general comment.<sup>13</sup>

Ethiopia is a state party to the CRC and international bills of human rights adopted by the UN General Assembly which are treated as an integral part of the law of the land<sup>14</sup> and have an obligation to adhere to those rules and should strive for granting better protection for children. Similar to other countries Ethiopia has a determined minimum age for the responsibility of juvenile delinquency which starts from nine years.<sup>15</sup> This is contrary to the internationally accepted MACR which is 14 as the GC No. 24 stated not even close to the amended GC No. 10 states (i.e 12 years). Besides, Children over the age of 15 but under the age of 18 are prosecuted as adults and subject to the normal provisions of the Criminal Code. The committee has expressed its worries and requested Ethiopia to raise MACR to the internationally accepted level before the adoption of GC 24. Nevertheless, Ethiopia has not taken a step to comply with it yet.

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<sup>13</sup> UN Committee on the Rights of the Child, CRC General comment 24 (201x), replacing General Comment No. 10 (2007) Children's rights in juvenile justice 8th October 2019(hereunder General Comment No. 10), para 33

<sup>14</sup> Constitution of Federal Democratic Republic of Ethiopia (hereunder FDRE Constitution), Proclamation No 1/1995, Article 9

<sup>15</sup> The Criminal code of Federal Democratic Republic of Ethiopia (hereunder FDRE criminal code), proclamation No 414/2004, Federal Negarit Gazeta, 1<sup>st</sup> year no1, Article 52

## 1.2. Statement of the problem

According to the United Nations Population Fund (UNFPA), Ethiopian population in 2024 is estimated over 129.7 million 23% of the total population is between the age of 10-19 and 39% of Ethiopia's population is under the age of 14 which is approximately 49.3 million.<sup>16</sup>

There is no doubt that the Ethiopian juvenile justice system should be designed compatible with the CRC and relevant international standards. There is an internationally stated minimum age to be complied with by the countries and stating below that age is inappropriate and unacceptable. However, countries set different years as a minimum year for criminal responsibility, so Ethiopia also sets 9 years of age as MACR.<sup>17</sup>

Ethiopia is a party to CRC and human rights treaties hence, she shall adhere to them and should act accordingly. However, even though the CRC committee has voiced its worry over the rise of MACR in Ethiopia, Ethiopia has yet not take steps toward it, as stated in the general comment.<sup>18</sup> The committee's conclusion was made before the adoption of General Comment No. 24 which states 14 years as MACR, yet, Ethiopia doesn't seem to give attention and take a step accordingly even after GC No. 24. And again concluding observation of the international human right committee in December 2022 urges the state to ensure compliance with the Covenant, particularly Article 24, and other international standards; the country's juvenile justice system must prioritize the age and developmental needs of children. This requires raising the minimum age of criminal responsibility and establishing specialized courts staffed by trained judges to handle cases involving all children in conflict with the law, including those aged 15 to 18. By implementing these measures, the country can ensure that children are treated in a manner that is both just and appropriate for their age, focusing on rehabilitation and support rather than solely on punishment.<sup>19</sup>

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<sup>16</sup> World population dashboard Ethiopia Available at <https://www.unfpa.org/data/world-population/ET> last accessed date ( May 2024)

<sup>17</sup> FDRE criminal code, Article 52

<sup>18</sup> Committee on the Right of the Child, Concluding observations on the combined fourth and fifth periodic reports of Ethiopia (2015), available at: [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ETH/INT\\_CRC\\_COC\\_ETH\\_20797\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ETH/INT_CRC_COC_ETH_20797_E.pdf)

<sup>19</sup> International Human Rights Committee, Concluding observations on the second periodic report of Ethiopia,(2022), available at <https://www.ohchr.org/en/countries/ethiopia>

This shows that the state's incompatibility with the core principles of the CRC and other countries with the best child rights experience which is discussed in the coming chapter.

### **1.3. Research Methodology**

In this study, a doctrinal research method was employed since the thesis intends to examine the rights of children and the minimum years of criminal responsibility in Ethiopia and in different countries of the world which requires consulting national legislations, international and regional treaties, and writings of scholars. Furthermore, the research also employs a comparative qualitative analytical approach for the reason that it endeavors to assess Ethiopia's MACR with other countries with better jurisprudence on the rights of a child. Ethiopia is a federal state with a civil law legal system, combined with procedural laws principally inspired by the common law system.<sup>20</sup> Therefore, the experience of five countries from the two major legal systems such as the Uganda from common law legal system; Iceland and Sweden from civil law legal system were selected; and from sub-Saharan and the horn of East Africa countries Somalia, Djibouti, and South Sudan were selected since they are very similar with income level and Geopolitics of Ethiopia.

### **1.4. Data Collection tools**

The research reviewed primary legal and policy instruments which are ICCPR, ICESCR, UNCRC, ACRWC, FDRE Constitution, and Criminal Code, and the criminal or penal codes of Iceland, Sweden, Uganda, Somalia, Djibouti, and South Sudan are also consulted to be able to compare with the Ethiopian MACR established under the FDRE criminal code from legal documents.

Moreover, secondary documentary sources such as published and unpublished books, journals, articles, encyclopedias, reviews, General comments, factsheets, official reports and research papers.

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<sup>20</sup> Addleshaw Goddard, Ethiopia, available at <https://www.addleshawgoddard.com/en/doing-business-in-africa/africa-countries-a-z-list/ethiopia/> accessed on August 1, 2024.

## **1.5. Objectives**

### **1.5.1. General objective**

The main objective of this research is to explore Ethiopian laws on the minimum age for criminal responsibility of a child vis-à-vis the international rules that govern the juvenile justice administration and compare other countries' best experiences.

### **1.5.2. Specific objectives**

- To appraise the Ethiopian minimum age of criminal responsibility under Ethiopian laws.
- To scrutinize the conformity of Ethiopia's MACR with the relevant international standards and core principles of the CRC.
- To examine the relation of MACR with the rights of a child and the aim of the criminal justice system.
- To analyze the relevance of raising the MACR in Ethiopia by taking the experience of other countries.

## **1.6. Research questions**

- ❖ What should be the minimum age level for a child to appear before an Ethiopian juvenile court?
- ❖ Is Ethiopia's MACR compatible with relevant international standards and the core principles of the CRC?
- ❖ How does setting such a low MACR goes in line with the aim of criminal law and the juvenile justice system?
- ❖ What are the lessons should be learned by Ethiopia from foreign jurisdiction concerning MACR?

## **1.7. Organization of the study**

This research paper contains five chapters. The first chapter provides introduction.

The second chapter is devoted to the literature review of the major historical trends behind MACRs.

Chapter three examines International and regional instruments regarding MACR.

The fourth chapter analyzes Ethiopia's legal system on MACR and the experience of selected states.

Finally, the last chapter contains the conclusion and recommendation.

## CHAPTER TWO

### 2. OVERVIEW OF THE MAJOR HISTORICAL TRENDS BEHIND MINIMUM AGES OF CRIMINAL RESPONSIBILITY (MACRS)

#### Introduction

There is extreme variation worldwide in setting MACR varying from six years old, like South Carolina to sixteen years old, like Cape Verde, Guinea–Bissau and Argentina.<sup>21</sup> In this chapter, the researcher explores the concept of MACR and its development vis a vis the ancient legal system to find the reason behind the variation nowadays.

Furthermore, the contribution of religious, customary, and traditional laws in a different country will be considered as customary, traditional, and religious law systems are so prevalent in evaluating children's criminal guilt in many nations, they provide another dimension.

#### 2.1. Development of the concept of a minimum age of criminal responsibility

The development of MACR is traced back to various sources including Babylonian law, Hebrew law, and Greek law among other ancient bodies of laws which referred to the harsh punishments for certain crimes up on deliberate wrongdoing. The Law of the Twelve Tables was the Romans' first documented legal code, and it applied such concepts more directly to children. Children defined as pre-pubescent are mentioned in two dispositions in penal law, and the Twelve Tables distinguish between voluntary and involuntary offenses as a foundation for lowering punishments which resulted in a lessening of punishment for most offenses, but not a complete absolution from criminal responsibility.<sup>22</sup> Pre-pubescent children are between 9-12 years.<sup>23</sup>

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<sup>21</sup> Capriain D, (n 6) p71.

<sup>22</sup> Ibid

<sup>23</sup> Kriteen Cherney, 'Understanding Tweens: A transformative age'. (July 30, 2020) <<https://www.healthline.com/health/understanding-tweens-a-transformative-age>,> last accessed date, October 20<sup>th</sup> 2024.

Nevertheless, the precise age range can vary, with some children showing symptoms as young as 8 years old and some may stay in this phase until they are 13 years old.<sup>24</sup>

The increasing impact of Greek philosophy on Roman law resulted in a wider examination of moral criteria in general and in particular concerning children. Pre-pubescent children's illegal conduct was pardoned by Lex Cornelia (c. 81 B.C.) on the assumption that they could not intend harm, which went beyond simple mitigation of the penalty.<sup>25</sup> Children were subject to all punishments once they reached puberty.<sup>26</sup>

Ancient Roman law does not have an age-based separation between categories, instead identifying them by their physical features. Potential criminal responsibility was also established on an individual basis among both categories, depending on whether children were regarded as capable of establishing criminal intentions. Later on, they started to separate by age although there was an age difference for boys and girls which eventually became the accepted standard in practically all European legal systems.<sup>27</sup>

In practice, however, independent courts decided the meaning and age restrictions of children's criminal liability. Despite the non-existence of a uniform legal framework, case law demonstrates that legal practice was logically inconsistent and contradictory, and the rules were frequently broken.<sup>28</sup>

The French legal system is another most influential in the history of law on MACR. The Penal Codes of 1791 and 1810 established a 16-year-old penal majority age for the first time. However, it was decided in court whether or not youngsters under the age of 16 had acted responsibly and criminal liability was technically precluded if they had not exercised judgment, and no penalties could be imposed. Without a lower age restriction, criminal liability and reduced penalties would have resulted if youngsters under the age of 16 had acted prudently.<sup>29</sup>

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<sup>24</sup> Ibid

<sup>25</sup> Don cipriani, (n 6), p72

<sup>26</sup> Ibid

<sup>27</sup> Ibid p 73

<sup>28</sup> Ibid

<sup>29</sup> Ibid, p74

The French Penal Codes of 1791 and 1810 served as models in Europe and the Americas throughout the 1800s. After the first half of the 1800s, several countries that had embraced the French model began integrating MACRs in their codes, and MACR inclusion became a regular practice.<sup>30</sup>

The initial Fundamental Principles were also passed in 1924, although MACR regulations were subjected to a protracted sequence of changes, ranging from 11 to 16 years until 1958. The Soviet penal code was liberalized and rationalized after Stalin died in 1953. As a result of the 1958 Fundamental Principles, new criminal codes were passed in all 15 republics between 1959 and 1961. These purport to impose MACRs of 14 years for certain "serious felonies" and 16 years for culpability in all other crimes. The Russian Soviet Federated Socialist Republic Criminal Code of 1960 and the Russian Soviet Federated Socialist Republic Criminal Code of 1958 both have articles 10 and 11 respectively containing a list of "serious offenses."<sup>31</sup> Nonetheless, criminal responsibility was founded on an account of criminal intent, as well as the recognition of the necessity for sufficient maturity.<sup>32</sup>

Rather than expanding the list of "serious crimes," the MACR maintained it even after the Soviet Union's disintegration and thirteen of the fifteen former Soviet nations still have a MACR for "severe crimes" and a higher limit for lesser offenses except for Uzbekistan and Georgia, these countries maintain the 14-year/16-year division.<sup>33</sup>

## **2.2. MACR and age of criminal majority (ACM)**

Due to the existence of other related concepts to the MACR and the widespread misconception, it needs to distinguish them to properly grasp the very essence of the concepts and their

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<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid, p86

relationship too. To specify the reach of the juvenile justice system, international legal doctrine generally makes a distinction between MACR and the age of criminal majority (ACM).<sup>34</sup>

The earliest age at which minors can be held accountable in adult criminal courts is the minimum age of penal majority. International norms consistently agree that a nation's minimum age of penal majority must be 18 or older, which means that youngsters should only be the subject of juvenile justice procedures. Contrary to such criteria, adult criminal courts nonetheless have jurisdiction over some minors in many nations, and occasionally, the ACM is the same as the MACR. Thus, in adult courts, criminal liability may be deemed to exist at the absolute youngest age.

As evidenced by the numerous age limit stables in the worldwide comparative literature, the MACR has far more diversity than the ACM, which is generally set at the age of 18.<sup>35</sup> However, there are further age restrictions that are pertinent that limit the range of acceptable responses, specify the maximum length of time or severity of a response, or specify which court or institution is appropriate within a child justice system. The complicated layered character of youth justice systems cannot therefore be understood by making a simple contrast between the MACR and the ACM.

Therefore the major difference between the two is that ACM is that presumed age at which a person matured enough to understand the consequence of his/her actions and is fully responsible for the outcome whatsoever or the age a person considered to be an adult. MACR is the age at which the criminal responsibility begins and they will not be fully subject to criminal punishments. Nevertheless, there will be alternative measures applicable for them to make them good citizens.

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<sup>34</sup> Leenknecht, J., Put, J. and Veeckmans, K. 'Age limits in Youth Justice: A comparative and conceptual analysis', (2020), *Erasmus Law Review*, pp. 13.

p 13

<sup>35</sup> Don cipriani, (n 8),p78

## CHAPTER THREE

### APPRAISAL OF INTERNATIONAL AND REGIONAL INSTRUMENTS CONCERNING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY OF THE CHILD

#### Introduction

Since the adoption of UDHR how a government treated its citizens became an international concern and no longer a domestic issue other states were precluded from interfering. Every member state to the International Bill of Human Rights which has now achieved the status of international customary law in which all countries in the world shall obey it and by default give their consent to interfere with other states in the matter of human rights violation and hereby the matter is no longer domestic affair rather it is an international one. States voluntarily assumed obligations through signing international treaties. In general, they should adhere to those treaties and the entitlement therein.

International human rights law obliges the state to act or to refrain from acting in a certain way to promote and protect human rights and the fundamental freedoms of individuals or groups and it is recognized that international organizations of non-state actors such as armed groups and businesses must also respect basic human rights guarantees.

There are also UN General Assembly resolution 45/113 of 14 December 1990 specify the standards that must be followed when denying children their liberty, i.e., they detail the precise conditions that must exist when denying children their liberty and concentrate on confinement. These include people who are detained pending trial and during the trial as well as those who are admitted to treatment facilities.<sup>36</sup> To prevent adolescent delinquency, the UN adopts guidelines that provide minimum criteria. The child, the family, and community participation are the three main focuses of these prevention-oriented principles. The regulations are highly thorough and

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<sup>36</sup>JDLs, Adopted by UN General Assembly resolution 45/113 of 14 December 1990

emphasize the child's involvement in the prevention process while viewing them as complete members of society.<sup>37</sup>

### **3.1. International instruments**

#### **3.1.2. Convention on the Rights of a Child (CRC)**

According to the CRC, a child is "any human being below the age of 18 years, unless the age of majority is earlier under the law relevant to the child." State parties are required by this clause to permit minors to become the major under their domestic laws even if they are under the age of 18. However, it is the exception to the rule and would only be used in extremely specific situations to let a child under the age of 18 become a major legally for only reasons that the best interest of the minor.

A comprehensive spectrum of children's rights, including civil, political, social, cultural, and economic rights, are covered under the CRC. It is the most essential convention about the defense of children's rights. It unifies under a single comprehensive treaty the safeguards for children's rights that are dispersed among multiple human rights accords.<sup>38</sup>

The CRC is based on a set of four guiding principles that direct discussion of all matters of children's rights, including the operation of the juvenile justice system. Those are the right to life, survival, and development,<sup>39</sup> the best interests of the child,<sup>40</sup> the prohibition of discrimination<sup>41</sup> and Respect for the views of the child<sup>42</sup>.

The convention has left a gap, notwithstanding its importance for enhancing child protection and realizing their rights. Although it's a suggestion to the states to establish a minimum age of criminal responsibility<sup>43</sup>, it doesn't specify a certain age as a standard for the MACR.

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<sup>37</sup> Geert Cappelaere, 'Introduction to United Nations Guidelines for the Prevention of Juvenile Delinquency' (1995) Defence for Children International (DCI)

<sup>38</sup> Jonathan Todres, 'Emerging limitations on the rights of the child; The UN Convention on the Rights of the Child and its early case law' (1999) Columbia Human Rights Law Review 159, p. 170

<sup>39</sup> CRC, Art 6

<sup>40</sup> Ibid, Art 3

<sup>41</sup> Ibid, Art 2

<sup>42</sup> Ibid, Art 12

<sup>43</sup> Ibid, Art 40 (3) (a)

Yet it stated that children shall be treated in a manner that is appropriate to their well-being and proportionate to both their circumstances and the offense, Article 40 requires the state to offer care, guidance, and supervision orders; counseling; probation; education and vocational training programs and other alternatives to institutional care.<sup>44</sup>

Even though, the CRC doesn't specify a certain age as MACR doesn't falls to indicate what state parties should be cautious in any actions and decisions including determination of MACR;

As it is enshrined under Article 37 of the Convention on the Rights of the Child no child under the age of 18 years shall be subjected to torture or other cruel, inhuman, or degrading treatment, or unlawful detention, and no child shall be sentenced to death or life imprisonment without the possibility of parole for crimes committed.<sup>45</sup> In addition to the prohibition of physical punishment, limitation or denial of contact with family members; collective punishment; and any other form of punishment that may endanger a juvenile's physical or mental well-being are also banned.<sup>46</sup>

### **3.2. The main international standards and norms for the administration of the juvenile justice system**

The 1985 Beijing rule is the pioneer of UN rules on the administration of juvenile justice and the minimum standard that states should comply with while they detain juveniles. Later on, other rules were also adopted like the 1990 Havana and Riyadh guidelines. The main objective of this rules is that juveniles should not be subject to any form of detention unless and otherwise, it is the last resort. There are also Vienna guidelines and Annexed to Economic and Social Council Resolution 1996/13 of 23 July 1996.

Furthermore, there are also a bunch of general assembly resolutions guidelines, and general comments adopted to enhance the administration of the juvenile justice system and to ensure the better care and protection of children.

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<sup>44</sup> Ibid, Art 40 (3) (b)

<sup>45</sup> Ibid, Art 37

<sup>46</sup> Ministry of Justice of Montenegro Juvenile Justice Reform Commission U N I C E F, 'The rights of children in conflict with the law' (2007) Podgorica, p 8

It is acknowledged that child needs special attention and support for their physical, mental, and social growth due to their developmental stage and that they also need legal protection in settings that promote peace, dignity, and security. To comply with the Rules, member nations of the UN are encouraged to develop their own national laws, regulations, and ethical standards.<sup>47</sup> Moreover, it has been said that the state must work strongly on crime prevention rather than criminalizing children.

“The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents.”<sup>48</sup>

Besides, in the opinion of the majority of scholars, labeling a young person as "deviant," "delinquent," or "pre-delinquent" frequently encourages the development of a recurrent pattern of bad behavior in children.<sup>49</sup> Hence, states should focus on crime prevention measures and make sure that the environment is not cooperative for crime and criminal behavior.<sup>50</sup> The concept of responsibility would lose all meaning if the age of criminal liability was set too low or if there was no lower age restriction at all.<sup>51</sup>

General comment No. 24 defines a criminal majority as follows

“Age of criminal majority: the criminal majority is the upper age limit beyond which the juvenile justice system does not apply and a person who commits a crime is treated as an adult in the ordinary criminal justice system.”<sup>52</sup>

The Rules stipulate that juvenile justice must be seen as a crucial component of a country's overall development. In principle, the laws offer a framework for how a national juvenile justice system ought to function. They establish guidelines for a fair and compassionate response to children who come into conflict with the law, starting with their arrest and continuing through

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<sup>47</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 [here after Beijing Rules], paragraph 5 and 9 of the Preamble

<sup>48</sup> The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 [here after Riyadh rules], para 2

<sup>49</sup> Ibid, para5

<sup>50</sup> United Nations Guidance Note of the Secretary-General UN Approach to Justice for Children, September 2008, p3

<sup>51</sup> Beijing rules, para 4

<sup>52</sup> General Comment No. 24 (201x), replacing General Comment No. 10 (2007) Children’s rights in juvenile justice, 18<sup>th</sup> September 2019, para 3

the subsequent investigation, prosecution, adjudication, disposition, non-institutional treatment, institutional treatment, and aftercare processes.<sup>53</sup>

In 2008 the United Nations Security General adopted a guideline on approaches to justice for children to enhance the rights of children at the national level which should be applied in all circumstances including but not limited to pre-conflict, during conflict, or post-conflict.<sup>54</sup> It comes forward intending to ensure better protection in the justice system including but not limited to social welfare sectors.<sup>55</sup> It further extends its scope to oblige either state or non-state to emphasize the need for ensuring the rule of law and the right of children for a child brought before where state or non-state judicial administration is involved for any reason.<sup>56</sup> States have also an obligation to educate the public about the rights of children who interact with the legal system as witnesses, defendants, or other types of offenders or for any other cause, as well as the effects of doing so.<sup>57</sup>

Moreover, it has been repeatedly said that the Use of deprivation of liberty of children shall be only as a measure of last resort and for the shortest appropriate period. Restorative justice, diverting situations, and other options for deprivation of liberty should be provided instead of detention. For the same reason, programming on justice for a child must draw from both informal and official judicial systems, so long as they uphold fundamental human rights tenets like gender equality.<sup>58</sup>

No person, including a child, should be imprisoned without cause or in an arbitrary manner.<sup>59</sup> A summary of the rights applicable to a juvenile deprived of liberty is provided under Art 37 of the CRC. Due to his psycho-physical growth, sensitivity, and specific needs, it is clear that prison is not the place for a young person. Nevertheless, the custody of minors is not outright forbidden

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<sup>53</sup> Geraldine Van Bueren, *'Child oriented Justice; an international challenge for Europe'* (1992) 6 International Journal of Law and the Family 381 P.383.

<sup>54</sup> Papadodimitraki, Y (n 7), p1

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid, p6

<sup>58</sup> Ibid, p3

<sup>59</sup> United Nations, *Universal Declaration of Human Rights*, adopted and entered into force December 10 1948.

, Art 9, United Nations, *International Covenant on Civil and Political Rights* adopted on 16 December 1966, and entered into force 23 March 1976 (hereunder ICC), Art 9(1)

under international law. There are signs that international law is shifting away from this and favoring alternate methods and the placement of a child in non-institutional settings with minimal mobility.

It is encouraged that the states have informal justice procedures like the resolution of family and community disputes, the protection of entitlements like access to public services, and the protection of land and property for children made orphans by HIV/AIDS or conflict are just a few of the issues that non-state justice mechanisms frequently deal with in a way that is directly relevant to the most disadvantaged children and supporting the incorporation of children's rights into non-state/informal justice procedures.<sup>60</sup> For the reason that it is believed it has a bad impact on the enjoyment of the rights and development of the child.

In 2007 the UN Committee on the Rights of the Child (hereafter 'the Committee') issued General Comment No. 10,<sup>61</sup> in which it declared that a minimum age of criminal responsibility below 12 years is unacceptably low. The Committee recommended a fixed minimum age of criminal responsibility of not lower than 12 years, and that state parties should progressively rise the minimum age of criminal responsibility. The Committee frowned on the use of two ages such as occurs in the application of rebuttable presumptions.

It observed that such rebuttable presumptions are not only confusing but also lead to children of the same ages being treated differently due to their maturity. Their treatment also depends on the quality of the rebuttal evidence presented by the prosecution, which also concerned the Committee.

These rules and guidelines are what are known as "soft laws," which are not legally obligatory yet it is a fundamental source for states as to how they should construct their juvenile justice systems. Whereas, international laws are intended to be called "hard laws" that are obligatory and the state should strictly comply with them. However, international law faces failure in conveying its binding effect over the so-called "soft laws" due to weak enforcement, and hence it all depends on the willingness of the state to adhere or otherwise to the rules.

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<sup>60</sup> Supranote 21, P4

<sup>61</sup> United Nations Committee on the Rights of the Child General Comment no. 10 (2007): Children's Rights in Juvenile Justice (2007)

### 3.3. Regional instruments

#### 3.3.2. African Charter on the Rights and Welfare of the Child (ACRWC), 1990

The ACRWC is a comprehensive document that addresses a wide spectrum of children's rights while also taking into account the positive aspects of African cultural heritage. A child needs to be protected in settings that uphold their dignity, freedom, and security, according to the Charter.<sup>62</sup> States parties to the charter have also reaffirmed adherence to the principles outlined in other international treaties, such as the African Charter for Human and Peoples Rights (ACHPR), general United Nations human rights instruments, and the CRC in particular. These other international treaties include the CRC and the general United Nations human rights instruments.<sup>63</sup>

Every person less than the age of 18 is considered a child according to the ACRWC.<sup>64</sup> In contrast to the CRC, there are no exceptions to this definition.

Article 2 of ACRWC reads

“For this Charter, a child means every human being below the age of 18 years.”

Although the charter lacks some of the expected and intended levels of detail, it nonetheless upholds the CRC's core values.<sup>65</sup> In addition, compared to the CRC, which requires governments to guarantee and uphold the rights contained therein, the language of the responsibilities under the Charter is less onerous for state parties.

Article 17 of the charter addressed how juvenile justice will operate.<sup>66</sup> The CRC is more exhaustive than this article. For instance, the underlying tenet of all juvenile justice legislation that imprisonment should only be used as a last option and that no child shall be arbitrarily or unjustifiably deprived of their liberty is not stated in the charter.

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<sup>62</sup> African Charter on the Rights and Welfare of the Child year of adoption 1990 OAU Doc CAB/LEG/24.9/49 entered into force 29 November 1999, (hereunder ACRWC), Preamble

<sup>63</sup> Ibid

<sup>64</sup> Ibid, Art 2

<sup>65</sup> Ibid I Art 4 (1), 3 & 5

<sup>66</sup> Article 17 states that there shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Similar to the CRC, the charter stipulates that states are merely required to implement it to the degree of their available resources. It neither specifies a minimum age for criminal responsibility nor does it offer any recommendations for calculating this age.

When it comes to child prosecution, the charter's safeguards are less robust than those of the CRC. It only guarantees the fairness and procedural due process of the law during the trial process, and it also stipulates that the child's reformation, reunification with his or her family, and social rehabilitation should be the primary goals of his or her care both during the trial and while in detention. Besides, the convention prohibits passing death sentences on children as a punishment.

It lacks a MACR specification, similar to the CRC because each state is free to decide what MACR should be<sup>67</sup> as a result they share the same gap even though the charter was adopted after the convention and did not address the shortcomings of the convention. The ACRWC expert committee does, however, frequently advise states parties not to set MACR lower than 12, as young children are less likely to commit crimes with a moral component as it did on the concluding observation and recommendation of the African Committee of Experts on the rights and welfare of a child to the government of the Republic of South Africa on its first periodic report on the implementation of the African charter on the right and welfare.<sup>68</sup>

### **3.4. Children in armed conflict and MACR**

According to the governing rule of armed conflict Geneva Conventions, armed conflict is categorized into two categories so-called international armed conflict (IAC) and non-international armed conflict (NIAC) which uses the involvement of states as a determining factor for its categorization.<sup>69</sup>

Taking into consideration the effects of hostility the main purpose of these Geneva Conventions is to minimize the effects of war and to provide protection for vulnerable groups of a community such as civilian and civilian objects, sick, wounded, and shipwrecked women and children.

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<sup>67</sup> ACRWC, Art. 17 (4)

<sup>68</sup> African Committee of Experts on the Rights and Welfare of the Child, concluding observation, South Africa, (2019) Para. 35

<sup>69</sup> Geneva Conventions, 1949, Common Art 2 and Common Art 3

IHL rules don't specifically state MACR a rather it defines the two categories of children under 15 for armed conflict and under 18 for criminal punishment. Earlier to the adoption of the two additional protocols the Fourth Geneva Convention has provisions dealing with the situation of children in hostility. It prohibits the recruitment and participation of children in armed conflict.<sup>70</sup>

There is some entitlement for children involved in armed hostility in both IAC and NIAC as it is provided under the two additional protocols of the Geneva Conventions. A child below 15 who is captured during an IAC is entitled to careful protection and has the right to stay in a separate section from the adult, and the death penalty shouldn't be executed on him.<sup>71</sup> Whereas, Art. 4 (3), (D) of APII Concerning NIAC, captured children below 15 are entitled to care and dignity, religious and moral education, and reunion with their families.<sup>72</sup>

Even though the Rome Statute set the minimum age of criminal responsibility at eighteen, International War Law, or IHL, permits the state to enlist children who are at least fifteen years old. Although the Rome statute was approved before the API or APII, there need to be certain modifications made to make it compliant with the statute though the one with better entitlement overrides another one and by the interpretation of the latter prevails over the former too the applicable law is the Rome statute. But yet the IHL rules should be crafted in a way to enhance entitlements and protect children from being a part of hostility by the mask of they give their consent is not appropriate at all to let a child experience that danger and cruelty at that age.

### **3.5. The core principles of CRC and MACR**

#### **3.5.2. The principle of non-discrimination**

Children's rights are frequently infringed for a variety of reasons, including discrimination. The prejudices and ideas that result in unequal treatment can be exposed by viewing rights from the child's race, color, gender, language, religion, ethnicity, disability, or any other status. In the CRC, the word "discrimination" is not defined yet it forbids any discrimination based on race, color, gender, language, religion, ethnicity, disability, or any other status. The definition of the

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<sup>70</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War Geneva, 12 August 1949., Art 50

<sup>71</sup> United Nations, *Additional Protocol II to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts* (1977)(hereunder APII), Art. 77 (3)(4) and (5)

<sup>72</sup> Ibid, Art. 4 (3), (D)

Covenant on Civil and Political Rights, however, has been provided by the Human Rights Committee.

It defines discrimination as

"any distinction, exclusion, restriction, or preference based on any ground, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons, on an equal basis, of all rights and freedoms."<sup>73</sup>

Article 2(1) of the convention's use of the phrase "to any child under their authority" demonstrates that the principle of non-discrimination does not just apply to children who are citizens of the State Party. Instead, people in the State unlawfully as well as guests, refugees, and children of migrant workers are covered by the clause.<sup>74</sup>

Hence, the implementation of this principle necessitates the gathering of disaggregated data as to the vulnerable individuals or groups of children, as well as reforms to the legal system, administrative procedures, resource distribution, administration, and educational initiatives to change attitudes.<sup>75</sup> As a result, the Committee has advocated for the necessity of positive discrimination or affirmative action on behalf of underprivileged and vulnerable children.<sup>76</sup>

So far as the principle of discrimination is concerned, the determination and application of MACR have to be without any form of distinction and here it again needs states' commitment to comply with it and make sure all children are seen equally without discrimination. All children have the same right to develop their potential in all situations and at all times and they should never be subjected to any discrimination. The provision forbids discrimination of any kind, irrespective of the child's parents or legal guardian, race, color, sexual orientation, language,

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<sup>73</sup> UN Human Rights Committee General Comment No 18, non-discrimination, 10<sup>th</sup> November, 1989

<sup>74</sup> Detrick, S., *A Commentary on the United Nations Convention on the Rights of the Child*, (1999), p71

<sup>75</sup> Yonas Birmeta and Girmachew Alemu, Yonas Birmeta and Girmachew Alemu, *Hand book on the rights of a child, Center for Human Rights, (College of Law and Governance Studies Addis Ababa University, In Collaboration with Save the Children Norway- Ethiopia, 2000), p39*

<sup>76</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (3<sup>rd</sup> edition, UNICEF, 2007), 23

religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth, parentage or other status.

Children who encounter the criminal justice system are disproportionately drawn from the most vulnerable segments of society. Those living in poverty, marginalized communities, or homelessness are overrepresented, often due to compounding disadvantages such as parental substance abuse, mental health challenges, or physical and psychological abuse. These circumstances render children particularly susceptible to exploitation and involvement in criminal activities. Additionally, children with disabilities, those trafficked, or displaced by conflict are at heightened risk due to their vulnerabilities, making them more likely to become entangled in the criminal justice system.

### **3.5.3. Principle of the best interest of the child**

This is the prominent principle and to ensure that the best interests of children is should be given top priority when making decisions that affect them, the best interests of children must be considered first by all public and private bodies, social welfare organizations, courts of law, administrative authorities, and legislative bodies.<sup>77</sup>

The best interests of a child must come first in all decisions that impact them. For instance, children should not be taken away from their families unless it is in their best interests, such as if one of their parents is violent. The Convention's spirit must always be followed when determining what is in the best interests of children, and their opinions and feelings must also be taken into account.<sup>78</sup>

Similarly, it should also be taken into account while determining MACR so child subject to prosecution and detention is in the best interest of the child. According to the principle, every action concerning children should be considered in the best of the child interest and fulfill what they exactly need in the situation they are in. Evaluating the best interests of a child is a distinct process that needs to be carried out in each case, taking into account the particular circumstances of each child or group of children based on

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<sup>77</sup> CRC, Art 3

<sup>78</sup> CRIN Child Rights International Network, General principles

<https://archive.crin.org/en/home/rights/themes/general-principles.html>, last accessed date July 2024.

*“age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.”<sup>79</sup>*

Considering that, the juvenile justice system should be implemented so that it rehabilitates and cultivates decent citizens for the future rather than punishing children for the wrongs they have committed which is what we should all look for and what is best for the child too.

The principle of prioritizing the welfare and safety of children is a cornerstone of child protection. Children possess an inherent right to development, free from harm, and with access to essential services. This necessitates a society that places their needs at the forefront of decision-making. Governments and institutions must evaluate the potential impact of their actions on children and ensure that child well-being is paramount. The principle manifests as a multifaceted concept: a fundamental human right, a guiding ethical principle, and a procedural rule that governs actions affecting children.

#### **3.5.4. Principle of the right to survival and development**

Art 3 and Art 6 of the UDHR and ICCPR respectively entitled everyone with the right to life so every state has to refrain from any act that makes the exercise of the right cumbersome.

Besides, the ICCPR<sup>80</sup> and CRC<sup>81</sup> prohibit death sentences not to be applied to crimes committed by those under the age of 18. The same provision of the ICCPR and AC shields expectant mothers from the death penalty and it further extends the protection of their right to the unborn child as well.

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<sup>79</sup>United Nations, *General Comment No. 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)* (2013), para48

<sup>80</sup> ICCPR, Art6

<sup>81</sup> CRC, Art 37(a)

Children's rights are crucial until they're still living and hence other rights are contingent upon their continued existence.<sup>82</sup> A lot of the rights in the Convention consider the development of a child as one of its primary objectives. For instance, “one of the aims of education is 'the development of the child's personality, talents and mental and physical abilities to their fullest potential.’”<sup>83</sup>

According to the guiding principle, a child's survival and development must be maximized by being protected from violence, neglect, and abuse. To put this principle into practice, state parties to the convention must take steps to guarantee the child's healthy growth.<sup>84</sup> In Article 5 of the African Charter on the Rights and Welfare of the Child, in the section titled "Survival and Development," this fundamental idea is also reflected.

To ensure children’s special protection and care for their holistic development, encompassing physical, intellectual, sexual, spiritual, and social well-being nations committed to child rights must prioritize children's interests and safety in all decisions. Governments and institutions should evaluate the potential impact of their actions on children and ensure that child well-being is paramount. A core obligation of these nations is to safeguard children's survival and foster their optimal development. Children’s development is multifaceted, encompassing physical, mental, sexual, social, traditional, and spiritual dimensions.

The principle directly related to children's economic and social rights is formulated in the Right to life article. The principle goes further than just granting children the right not to be killed and it includes the right to survival and development which is envisaged under Article 6:2 as: "State parties shall ensure to the maximum extent possible the survival and development of the child."<sup>85</sup> Thus, it calls attention to the vital importance of ensuring access to basic services and equality of opportunity for children to achieve their full development.

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<sup>82</sup> CRC, Art 6

<sup>83</sup> ‘General principles’, CRIN Child Rights International Network, <<https://archive.crin.org/en/home/rights/themes/general-principles.html>> last accessed date July 2024.

<sup>84</sup> Michael Gose, ‘The African Charter on the Rights and Welfare of the Child’ (2002) Community Law Center, Western Cape,6, p29

<sup>85</sup> CRC, Art 6:2

Since survival is vital beyond anything child's survival needs special care so long as they are under the control of their guardian. Nothing to the contrary shall be permitted if the determination and application of MACR contravenes this principle.

### **3.5.5. Principle of the views of the child**

According to the CRC, any child who can have an opinion has the right to freely express such opinions in any situation that may impact them.<sup>86</sup> The voice of the child must be heard and respected in all matters concerning his or her rights. To know what is actually in the interest of the child it is logical to listen to him or her. For example, those in power should consult with children before making decisions that will affect them.

States parties are urged to support children's freedom of thought and to foster the environment necessary for them to exercise their right to be heard. States Parties are required by the clause to presume that a youngster can establish his or her own autonomous opinion. States Parties, however, are not in a position to assume that a child is unable to establish opinions or form views of their own. As a result, the youngster is not obliged to provide evidence that they can make opinions.

This ensures that they will be treated as individuals with rights rather than being pitied. According to Art 5 of the CRC, every child has the right to unrestricted expression of their opinions. Considering their age and maturity, one should consider their opinions. In the end, how can parents, schools, judges, governments, and others know what is best for a child - from choices about what school they want to attend to what to do if they become pregnant - if they don't understand how and what the kids themselves think and feel? Making decisions for children without their agreement is one thing, but providing them with information and guidance on all possibilities and attempting to direct them toward what may be in their best interests is quite another.<sup>87</sup>

Children's ability to participate in trials effectively is a crucial factor to consider when defining MACR age levels. Younger children are frequently subjected to criminal proceedings in low

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<sup>86</sup>Ibid, art 12

<sup>87</sup> Ibid, and Art 17 of CRC

MACRs when they may not be able to adequately participate in their defense, and courts may not be able to identify all such children and transfer them to appropriate welfare or protection processes. From this perspective, the best course of action may be to set MACRs at a young age, when children are most likely to be capable of making valuable contributions to their defense during a trial.

Having regard to the above determining MACR is just as simple as setting a number it requires precaution and research also taking into consideration other countries' experiences and international consensus in this regard. Doing so will the problem of children under the influence of others and ending up in jail for the adults who mastermind the crime. Children are frequently the target of abuse and neglect, ineffective and careless parenting, and financial difficulties. Juvenile delinquency is not a success story; it is a result of society's failure to give its child a safe environment. Instead of aiding in their rehabilitation, societal marginalization results from labeling such children.

## CHAPTER 4

### A COMPARATIVE OVERVIEW OF ETHIOPIAN LAWS CONCERNING MACR AND OTHER SELECTED COUNTRIES

#### Introduction

Notably, there is a minimal international standard for a child's minimum age of criminal responsibility, which is 14 years old as recommended by GC No 24. Nevertheless, states' compliance with the norm, including Ethiopia, is still debatable. The issues relating to juvenile offenders are different from those relating to adult offenders because there is a distinction between the two groups of offenders that has less to do with degree and more to do with the character of their intelligence or volition. Even if a juvenile is more intelligent than an adult he/she does not perceive the world as an adult would. His/ her understanding of the world is not that of an adult. This suggests that in dealing with a juvenile criminal, the focus should be on what he needs rather than what he deserves, and that the offense should be seen only as a sign that the offender needed medical attention, education, or correction from this perspective.<sup>88</sup> Abuse and neglect, irresponsible and bad parenting, and economic challenges are all common occurrences for children from high-risk groups who may run afoul of the law. Juvenile delinquency is proof of a failing civilization, not a success story.<sup>89</sup>

As a result, this chapter will examine it will investigate nations with the best track records for adhering to international standards and the minimum age of criminal responsibility in different nations including Iceland and Sweden.

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<sup>88</sup> Graven, P., (1965) Addis Ababa: Addis Ababa, Faculty of Law, Haile Sellassie I University, in association with Oxford University Press, p144

<sup>89</sup> Ministry of Justice of Montenegro, *The Rights of Children in Conflict with the Law* (2007) p 4

In addition, Ethiopian Law's Minimum Age of Criminal Responsibility, as well as the precautions that should be taken to safeguard children from harmful policies and their complaints against international Minimum Standards.

#### **4.1. The Experience of Foreign Jurisdictions**

In the first instance, it is important to note that the concept of criminal responsibility does not bear the same meaning in all jurisdictions. In particular, in some countries, one age hides another since the official age of criminal responsibility may not be the lowest age at which a child can be involved with the justice system, because the system allows a lower age exception for a serious offense.<sup>90</sup>

Alternatively, the minimum age may apply to all offenses except serious crimes. Yet another alternative approach exists in that some countries with a low minimum age have a system of “steps” whereby different measures are applicable for specified age groups.

It is therefore important to keep in mind that the MACR in each country is in no way an automatic indication of the way a child will be dealt with after committing an offense. Accordingly In many countries around the world, the MACR is between 14 and 16 years.<sup>91</sup> It's developments of the MACR in several foreign jurisdictions that amended their legislation according to ratifying the CRC will now be examined.

##### **4.1.1. Djibouti**

Republic of Djibouti is located at a strategic place in the Horn of Africa, between the Red Sea and the Gulf of Aden, and shares a border with Ethiopia in the west, Eritrea in the northwest, and Somaliland in the south. Its geographic location and relative stability in an area marked by different international tensions make it a strategic point for military bases of great powers. France has a significant military presence in Djibouti. Djibouti also hosts the most extensive military base of the United States in Africa, the first Chinese military base abroad, and the first

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<sup>90</sup>UNICEF, 'Innocent Digest on Juvenile Justice 1998' Available at <http://www.unicefirc.org/publications/pdf/degest3e.pdf> 4> Accessed on 05 March 2024

<sup>91</sup>Victorian Aboriginal legal service Policy Brief, 'Raising the Age of Criminal Responsibility' (2022) p 12

Japanese military base since World War II.<sup>92</sup> Djibouti shares a sea border with Eritrea, Somaliland, and Yemen.<sup>93</sup> Djibouti's legal and judicial systems are largely inspired by French legislation. Laws are codified in which the system of the country is based on the coexistence of Islamic law (Sharia), customary law, and civil law inherited the French Napoleon Code.<sup>94</sup>

#### **4.1.1.1. Legal and policy framework of minimum age of criminal responsibility**

The Constitution stipulates in its preamble Djibouti's commitment to the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights whose provisions are directly incorporated in the Constitution. Basic human rights are enshrined and guaranteed in Part II of the Constitution thereby providing the necessary basis for incorporating these and other rights into national legislation. Article 10 enshrines the sanctity of human life which includes the right to life, freedom, security and integrity of the individual. Article 16 further prohibits torture, abuse and inhuman, cruel, humiliating or degrading treatment.

Djibouti signed the CRC on 30 September 1990 and ratified it on 6 December 1990.<sup>95</sup> It has also signed the Optional Protocols to the CRC on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography on 14 June 2006, and ratified them on 27 April 2011.<sup>96</sup> Djibouti has signed the Optional Protocol to the CRC on a communications procedure, but has not yet ratified it.<sup>97</sup> At the time of signing the CRC, Djibouti made the following reservation: "the Government of Djibouti shall not consider itself bound by

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<sup>92</sup> AzizTuffi Saliba, DJIBOUTI V. FRANCE: REFLECTIONS ON THE JURISPRUDENTIAL CONTRIBUTIONS OF THE JUDGMENT" (2023) Rev. Fac. Direito UFMG, Belo Horizonte, n. 82, pp. 57-74, 58

<sup>93</sup> *Mustafe Mohamed H. Dahi, 'Researching the Legal System of the Republic of Djibouti' available on <<https://www.nyulawglobal.org/globalex/djibouti1.html>> accessed August, 2024*

<sup>94</sup> Ibid

<sup>95</sup> Ratification Status of the Convention on the Rights of the Child, UNITED NATIONS TREATY COLLECTION, available at: <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)> accessed August 5, 2024

<sup>96</sup> Ratification Status of the Optional Protocol on the involvement of children in armed conflict, UNITED NATIONS TREATY COLLECTION, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en) > accessed August 5, 2024; and Ratification Status of the Optional Protocol on the sale of children, child prostitution and child pornography, UNITED NATIONS TREATY COLLECTION, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en)> accessed August 5, 2024

<sup>97</sup> Ratification Status of the Optional Protocol on a communications procedure, UNITED NATIONS TREATY COLLECTION, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en) > accessed August 5, 2024

any provisions or articles that are incompatible with its religion and its traditional values.” However, the Djibouti government withdrew this reservation on 7 December 2009. As ratified treaties take precedence over national law, it seems that they are part of the national legal system.<sup>98</sup>

As the CRC is part of the national legal system, it does not need to be incorporated into national law. However, in May 2015, Djibouti passed an Act called the Child Protection Code which directly refers to the CRC and incorporates several children’s rights.<sup>99</sup>

To this end the legislature has set out a number of special provisions in the Criminal Code and other national pieces of legislation (Family Code) for children and older persons. Protecting a child’s right to life is based on measures guaranteeing a child’s survival and self- fulfillment, responsibility for which falls primarily to the parents. However, the State provides legal support and ensures protection of the family and of minors by imposing sanctions on legal guardians for attitudes likely to cause harm to minors such as abandonment, neglect and endangerment (articles Article 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.<sup>100</sup> Criminal law also aims to protect the morality of adolescents by punishing activities leading to their corruption (articles 458 to 462), or involvement in sexual acts (articles 463 to 466) and procuring (article 396). 63. It also ensures that the physical integrity of children is protected by prohibiting violence, abuse and murder (articles 325, 326, 330 and 332).

Under penal code of Djibouti, Children under the age of 13 can only be subject to “protective measures, support, supervision, and education” for committing an offense. Children aged 13 or older are sentenced under the Penal Code.<sup>101</sup>

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<sup>98</sup> Constitution of the First Republic of Djibouti, 15 September 1992, as modified in 2006, 2008, and 2010, art. 70, < [https://www.constituteproject.org/constitution/Djibouti\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Djibouti_2010.pdf?lang=en),> and in French at :< [http://www.presidence.dj/la\\_constitution.htm](http://www.presidence.dj/la_constitution.htm) > accessed August 5, 2024

<sup>99</sup> Child Protection Code, 18 May 2015, available in French at:

<[http://www.presidence.dj/jo/texte.php?num=95&date\\_t=2015-05-18&nature\\_t=Loi](http://www.presidence.dj/jo/texte.php?num=95&date_t=2015-05-18&nature_t=Loi).> accessed August 5, 2024

<sup>100</sup> Djibouti, Act No. 59/AN/94 on the Penal Code Art 451 to 457

<sup>101</sup> Ibid, Article 32.

## **4.1.2. South Sudan**

### **4.1.2.1. Legal and policy framework of minimum age of criminal responsibility**

The Government of Southern Sudan has the political will and commitment to the provisions of the African Charter on the Rights and Welfare of the Child [ACRWC] and the United Nations Convention on the Rights of the Child [UNCRC].<sup>102</sup> This commitment is evident in the Interim Constitution of Southern Sudan. The Bill of Rights, Article 21 of the Interim Constitution of Southern Sudan, details children's basic rights reflecting the fundamental standards outlined in the UNCRC and ACRWC.

The child rights situations in South Sudan continues to lag behind despite of the government commitment to a number of international protocols and standards. In view of this, child rights coalition was founded in the year 2012 with 15 members and has since grown to 36 members.<sup>103</sup> South Sudan has ratified a number of international and regional human rights instruments including the United Nations Convention on the Rights of the Child (UNCRC), it has ratified the two Optional Protocols to the UNCRC on the sale of children, child prostitution and child pornography.<sup>104</sup> The South Sudan Legislative Assembly has passed the African Charter on the Rights and Welfare of the Child (ACRWC), yet certain formalities are still outstanding for full ratification.

In signing the UNCRC and ACRWC agreements and other related international agreements e.g. the Millennium Development Goals [MDGs], adopted by United Nations Members States in September 2000 and the Plan of Action of a World Fit for Children [WFFC], adopted at the United Nations Special Session on Children in May 2002, the Government of Sudan and thus the Government of Southern Sudan has committed itself to improving conditions for children and to monitoring progress towards that end.

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<sup>102</sup> Ministry of Gender, Social Welfare and Religious Affairs Government of Southern Sudan Juba, "Initial Report to the African Committee on the Rights and Welfare of the Child" (2011)

<sup>103</sup> Child Rights Civil Society Coalition – South Sudan, UNIVERSAL PERIODIC REVIEW OF THE REPUBLIC OF SOUTH SUDAN CIVIL SOCIETY ORGANIZATIONS' SUBMISSION TO HUMAN RIGHTS COUNCIL OF THE UNITED NATIONS 1st JULY 2021, 3

<sup>104</sup> Ibid

The Child Act, 2008, provides a comprehensive legal framework for realizing child rights in line with international law, and sets out the rights and duties of all parties responsible for the care of children including rights and duties of child. The purpose of this Act is to extend, promote and protect the rights of children in Southern Sudan, in accordance with provisions of Article 21 of the Interim Constitution of Southern Sudan, 2005, and as defined in the 1989 United Nations Convention on the Rights of the Child and other international instruments, protocols, standards and rules on the protection and welfare of children to which Sudan is signatory.<sup>105</sup> As per Article 138, sub article 1 No child under the age of twelve years shall be prosecuted for a criminal offence as it shall be conclusively presumed that he or she is incapable of committing an offence. Thus, the increase in the MACR to 12 years is a positive step for South Sudan in complying with the provisions of the UNCRC and the ACRWC.

Similarly, the South Sudanese penal act states 12 years as MACR and Minors under the age of twelve are not subject to criminal prosecution and no Assumption of Criminal Incapacity for Individuals over Fourteen Years of Age. However, if the contrary is proved the child between the age of 12 and 14 may not be criminally liable.<sup>106</sup>

### **4.1.3. Uganda**

#### **4.1.3.1. Legal and policy framework of minimum age of criminal responsibility**

Uganda ratified the UN Convention on the Rights of the Child (UNCRC) in 1990, an independent Child Law Review Committee (CLRC) was appointed by the Minister of Children's Welfare.<sup>107</sup> A group of six consultants from Africa and Europe joined the CLRC helping them with law reform in a broader context. The CLRC began its work in drafting children's legislation that would benefit disadvantaged children and children in conflict with the law.<sup>108</sup> It divided its work into three distinct areas, 'young offenders', 'child care' and 'domestic relations'. The

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<sup>105</sup> Laws of Southern Sudan the Child Act 10, the Southern Sudan Gazette No. 1 Volume I dated 10<sup>th</sup> February, 2009. Printed by Ministry Legal Affairs and Constitutional Development, by Order of the Government, art 5

<sup>106</sup> Act 9 Penal Code Act 2008 *Southern Sudan Gazette* No. 1, Vol. I (10 Feb2009), ch 3, §§ 30-32.

<sup>107</sup> Masereka Isaac, 'The application of the doctrine of doli incapax in Uganda's contemporary legal system' (2019) thesis submitted to the college of humanities and social sciences in partial fulfillment of the requirement for the award of a master of arts degree in human rights and development of kampala international university, 7

<sup>108</sup> Ibid

CLRC agreed on the principles that should underpin and guide its work. The first principle was that the UNCRC, the African Charter on the Rights and Welfare of the Child (ACRWC) and other relevant nonbinding UN Rules be the guide when legislating for children.

#### **4.1.3.2. The 1995 Constitution of the Republic of Uganda**

In 1995 that Uganda promulgated a new constitution that incorporated children's rights. All laws and conventions are subordinate to the Ugandan Constitution: any law or custom that is inconsistent with a provision of the Constitution is considered void.<sup>109</sup> Article 257 (1) of the Constitution of the Republic of Uganda, 1995 defines a child to mean a person under the age of eighteen years. This makes it important therefore to establish that children being charged with a crime have attained the age of criminal responsibility and that they are under 18 years, to avoid having children undergo criminal systems and proceedings for adults.

#### **4.1.3.3. Children's Act Cap 59**

The CRC has been incorporated into Ugandan law by the Children Act. Notably, the CRC and the Organization for African Unity's Charter on the Rights and Welfare of the African Child are only incorporated "with appropriate modifications to suit the circumstances in Uganda".

In 1992 the CLRC handed over the final report detailing child law reform to the relevant ministry. A few years later they produced the draft Bill and sent it to Parliament's National Assembly for the Bill to be debated. In 1996, the Bill became a Statute when Parliament enacted it as the Ugandan Children's Statute No.6 of 1996. Prior to the promulgation of the Children's Act the MACR was raised from 7 years old to 12. Section 2 of the Children Act defines a child to mean a person under the age of eighteen years. Section 88 of Children Act Cap 59 provides that MACR shall be twelve years.

Even though, it is not clear why the age of 12 years and not 14 years as recommended by the CRC was chosen increasing the MACR from 7 years to 12 years is a positive step for Uganda in complying with the provisions of the UNCRC and the ACRWC.

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<sup>109</sup> Constitution of the Republic of Uganda, Chapter 1 Article 2, 1995)

#### 4.1.4. Iceland

Like Ethiopia, Iceland is a state that adopts a civil law legal system and hence it has its constitution which is a supreme law of all enacted national legislations and has also incorporated rights and protection for its citizens.<sup>110</sup> Among civil law legal system, Iceland is the leading country having the best protection for children around the world.<sup>111</sup>

The June 13 2019 UNICEF report of the 31 wealthy nations, Sweden, Norway, Iceland, Estonia, and Portugal have the most policies that are family-friendly. Although, Switzerland, Greece, Cyprus, the United Kingdom, and Ireland are the bottom five,<sup>112</sup> according to a new UNICEF report, quality childcare is inaccessible in many of the world's wealthiest countries, Luxembourg, Iceland, Sweden, Norway, and Germany rank the highest on childcare provisions among 41 Organization for Economic Co-operation and Development (OECD) and EU countries.<sup>113</sup> Iceland has two pieces of domestic legislation the Act of Child Protection, No. 80/2002, and the Child Welfare Act, No. 76/2003 which are in line with the tenets of international agreements to which Iceland is a party, particularly the Convention on the Rights of the Child that have since been passed in Iceland concerning children.

##### 4.1.4.1. The Constitution of Iceland

When Iceland conducted constitutional reform in 1995, the chapter concerned with human rights was added to help enable the inclusion of the European Charter on Human Rights (ECHR) by ensuring that local law complied with the international standard. The constitution fully recognizes the incorporation of ECHR and UNCRC. In 2013, after years of piecemeal development of children's rights law, the UNCRC was fully and directly incorporated into national law by an Act of the Icelandic Parliament. There was also the incorporation of the first

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<sup>110</sup> UPDATE: 'Researching Icelandic Law' (GloLex) <<https://www.nyulawglobal.org/globalex/Iceland1.html>> (Accessed: April 11, 2024).

<sup>111</sup> "Kids Rights Index" (Kids Rights Foundation October 18, 2022) <<https://www.kidsrights.org/research/kidsrights-index/>> accessed January 11, 2024

<sup>112</sup> UNICEF, 'Sweden, Norway, Iceland, Estonia and Portugal rank highest for family-friendly policies in OECD and EU countries, F' <<https://www.unicef.org/press-releases/sweden-norway-iceland-and-estonia-rank-highest-family-friendly-policies-oecd-and-eu>> Accessed: January 11, 2024.

<sup>113</sup> UNICEF, 'Affordable, quality childcare inaccessible in many of world's wealthiest countries' <<https://www.unicef.org/press-releases/affordable-quality-childcare-inaccessible-many-worlds-wealthiest-countries-unicef>> (Accessed: January 11, 2024).

and second Optional Protocols to the convention though, neither of these Acts has constitutional standing.<sup>114</sup>

Art 68 of the Constitution enshrined the protection from torture and other cruel, inhumane, or humiliating treatment or punishment. This clause is especially significant for children in state custody, but it also alludes to the state's positive duty to provide proper protection in the family and other circumstances.<sup>115</sup>

As previously indicated, article 3 of the CRC served as inspiration for the provision concerning child rights. The various Article 3 subsections are not distinguished in the preparatory works. Stakeholders are required by Article 3(1) to determine how their activities may affect children to guarantee that the best interests of children are given priority. As it requires states to provide the child with the protection and care necessary for his or her well-being, Article 3(2) is more in line with Art 76, Subsection 3 of the Icelandic Constitution.

A new human rights chapter that drew influence from several international human rights instruments was one of the ideas made by the Constitutional Council. One of the standout elements is a clause that strengthens children's rights since the Constitution lacks appropriate protection for children. The rights of children are outlined in draft article 12 as follows:

“All children shall be guaranteed by law the protection and care that their welfare requires. In all decisions affecting the child's affairs, the child's best interests must always come first. Children must be given the freedom to express their thoughts in all circumstances that affect them, and their opinions must be given proper consideration in light of their age and maturity.”<sup>116</sup>

#### **4.1.4.2. Policy concerning child right**

The state of Iceland offers children more attention and wants to make sure they get better protection in every circumstance, including police investigations and legal proceedings. Moreover, it has an ombudsman designated specifically to oversee child protection and

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<sup>114</sup> Ibid

<sup>115</sup> Thorarensen (n 11) 174; 177; Parliamentary Assembly 1994–95, Document 389 – case 297.

<sup>116</sup> Stjórnlagaráð (n.d.) *A Proposal for a new Constitution for the Republic of Iceland*. a Constitutional Council, appointed by an Althingi resolution.

guarantee that children's rights are always upheld.<sup>117</sup> The Ombudsman draws attention to matters that affect children, keeps track of legislation, and examines other official activities. By offering information and guidance on how children's rights might be protected and realized, the Ombudsman for Children helps children even more. It was established by statute 83/1994 and has been in use since January 1, 1995. The Act on the Children's Ombudsman was amended in December 2018 by the Parliament, strengthening the Ombudsman's authority and mandate. Its oversight of the development and application of the Convention and other international human rights instruments to which Iceland is a party is now specifically stated in the Act. The Ombudsman for Children is appointed for a term of five years and is permitted to hold office for a total of ten years. Moreover, it prepares and submits a supplementary report to the United Nations Committee on the Rights of the Child regarding the state's periodic report.<sup>118</sup>

The state of Iceland pays more attention to the family, which is an institution that helps children develop better and prepares them to be good citizens. In light of this, the state has developed a family policy that requires each member of the family to do all they can to support the family as a whole. These rules support them in taking appropriate care of the family's children and guarantee each child's right to grow up in health, peace, and dignity given that they are dependent on their parents for their most basic needs, such as food, healthcare, and education so far as young children are helpless and reliant on people.<sup>119</sup>

Applying punishment, threats, or intimidation to a child or young person that can be expected to harm the child psychologically or physically is punishable by fines, custody, or imprisonment of up to two years, according to Article 64 of the Protection of Children and Young People Act. This indicates the state's sensitivity to the right and protection of a child in general and psychological and physical wellbeing in particular. Lastly, for gross or immoral behavior toward

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<sup>117</sup> The Ombudsman for Children Act No 83/1994, Entered into force on January 1, 1995, art 1

<sup>118</sup> Supplementary Report from The Ombudsman for Children in Iceland – To The United Nations Committee On the Rights of the Child Regarding Iceland'S Fifth and Sixth Periodic Report, June 2018 p3

<sup>119</sup> Ostner I. and Schmitt, C., 'Family policies in the context of family change: The Nordic countries in comparative perspective' (2008) Wiesbaden Germany: VS, Verl.

a child or young person, as well as for offending or insulting him or her, fines, custody, or imprisonment of up to two years may be imposed.<sup>120</sup>

#### **4.1.4.3. The Penal Code**

The lower age limit to make a child liable for the crime is 15 and hence, no one under the age of 15 may be punished for an offense committed, according to Iceland's penal code<sup>121</sup> and no one may receive a term of longer than eight years in prison for a crime committed while they were between the ages of 15 and 18. A conditioned suspension of an indictment is a method that may be employed if a juvenile between the ages of 15 and 21 admits to an offense. Teenagers between the ages of 15 and 18 typically serve their prison terms at suitable facilities after consulting with the government agency for child protection.<sup>122</sup>

Persons under the age of 15 and convicted of a crime are handled by child welfare services. Juvenile offenders between the ages of fifteen and seventeen had to deal with both the child welfare system and the criminal court system. The criminal court system handles juvenile offenders between the ages of 18 and 20. Yet, the process and sentencing criteria for juvenile offenders are different from those for adults. Parents, legal guardians, and child welfare must be notified of the offense if the suspect is under the age of 18, and they must be present when the suspect is interviewed by authorities. Those who are thought to be delinquents cannot be held in custody. When a minor between the ages of 15 and 17 is found guilty of a crime, community punishments are nearly always applied, such as suspended sentences, probation or other forms of supervision, community service, drug or alcohol treatment, or electronic monitoring.<sup>123</sup>

Authorities frequently support mediation in cases involving minors. A successful mediation could lead to charges being dropped by the prosecutor or sentences being reduced by the judge. Icelandic police emphasize crime prevention more than they do the sentencing of young criminals. Iceland supports community-based preventative initiatives such as parental

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<sup>120</sup> State Party Reports Iceland, “[Parts of State party report relating specifically to relevant legal minimum ages, and articles 37 and 40], Juvenile justice information portfolio - committee on the rights of the child - 3. state party reports’ <[https://www.unicef-irc.org/portfolios/documents/393\\_iceland.htm](https://www.unicef-irc.org/portfolios/documents/393_iceland.htm)? (Accessed: January 11, 2024).

<sup>121</sup> *The General Penal Code* (1940). No. 19 (12 February), art 14

<sup>122</sup> *Juvenile justice - iceland* (no date) *Google Sites: Sign-in*. Available at: <https://sites.google.com/site/icedjuvenile/law-courts-corrections-1> (Accessed: January 11, 2024).

<sup>123</sup> Stamatel, J.P. (2021) *Examining crime and justice around the world*. Santa Barbara, CA: ABC-CLIO, an imprint of ABC-CLIO, LLC, p83

counseling, educational initiatives, legal education, and laws to regulate elements that encourage unlawful activity, like alcohol.<sup>124</sup>

Hence the penal code of Iceland clearly states that the MACR starts from the age of fifteen years which is even higher than the minimum standard stated by the UN which is 14<sup>125</sup> and there are special measures to be considered in the administration of justice involving offenders below the age of eighteen in general and fifteen in particular. Besides, it is very well articulated and gives better protection by creating a presence of other concerned bodies and making sure that the child's interest is at its best. Besides, the state appreciates other options rather than deprivation of liberty and making them suffer for a year behind bars, and their teenage memory won't be taken away from them take into consideration the fact that children need to have a better place to spend their childhood and they all have the right to spend their time as a child playing with others with full freedom which might be under restriction for a child in the institution established for children convicted of a crime.

The CRC committee's concluding observation of the 5<sup>th</sup> and 6<sup>th</sup> reports of the state of Iceland was vital and the committee encouraged the state's proper attention to the right and protection of a child and the concern given for the best interest of the child incorporation on the Child Act which is one pillar of the CRC.<sup>126</sup> Nevertheless, it expresses its worry about the inadequate application of the principle in administrative and legal proceedings, as well as the lack of awareness among professionals dealing with children.<sup>127</sup>

The committee, therefore, calls on the state to give the best interest of the child proper consideration and to be consistently applied in programs, legislative, administrative, and judicial proceedings, including parental custody and mediation, decisions on asylum, international protection, and residence permits and to Offer direction to all pertinent authorities regarding how

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<sup>124</sup> Ibid

<sup>125</sup> UN Committee on the Rights of the Child, CRC General comment 24 (201x), replacing General Comment No. 10 (2007) Children's rights in juvenile justice 8th October 2019, para 33

<sup>126</sup> Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Iceland, United Nations CRC/C/ISL/CO/5-6 Convention on the Rights of the Child Distr.: General 23 June 2022, P 4

<sup>127</sup> Ibid

to determine the child's best interests in every situation and how to give those interests the weight they deserve as a top priority.<sup>128</sup>

#### **4.1.5. Sweden**

The rationale behind for selecting Sweden is; like Ethiopia it is one of country that adopt the civil legal system and the best examples of the protection of the rights of a child in general and complying with the international standard of MACR. Sweden has a written constitution that incorporates the rights of citizens and noncitizens. In Sweden, promoting and protecting human rights (including children's rights) is an integral part of national and foreign policies, and the Convention on the Rights of the Child (CRC) states that a child's perspective will take precedence over all measures. The country aspires to be an ideal environment for a child to grow up in and recognizes the importance of CRC in achieving that goal.

##### **4.1.5.1. The constitution of Sweden**

Numerous legal instruments in Sweden, a country known for its commitment to human rights and social welfare protect children's rights. The Swedish Constitution, which includes essential laws and concepts, serves as a solid framework for safeguarding and advancing children's rights throughout the country.

The Swedish constitution is made up of four fundamental laws (the Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression), establishes Sweden's essential governing principles and fundamental rights. While it does not explicitly address children's rights against arbitrary arrest, it does establish principles.

The first is the idea of equality. It is central to the Swedish Constitution and applies to all citizens, regardless of age. Article 2 of the Instrument of Government stated that "all public power in Sweden proceeds from the people."<sup>129</sup> This principle emphasizes the idea that everyone, especially children, is entitled to equal treatment and protection under the law. Furthermore, Article 6 of the Instrument of Government provides the right to personal integrity<sup>130</sup>,

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<sup>128</sup> Ibid

<sup>129</sup> Sweden Constitution *Instrument of Government* (1995) Art 2

<sup>130</sup> Ibid, Art 6

emphasizing the individual's inviolability and protecting against arbitrary intervention into one's private life. This rule is especially important for children since it guarantees their right to privacy and protection from exploitation or abuse.

Every citizen of the state is entitled to protection from restriction of his liberty in his interactions with governmental entities. In addition, he/she will be granted freedom of movement inside the Realm as well as freedom to leave it. Art 8 of the instrument of government grants every citizen which also includes children the right to personal liberty and freedom of movement within and out of the realm.<sup>131</sup> The same entitlement goes to foreigners under art 22(4) and (5) of the same document.<sup>132</sup>

Provisions 9 and 11 deal with the limitation and how it should go in the cases of deprivation of liberty when a public authority other than a court of law engages in the act of deprivation of the right of a citizen on account of a criminal act or because he is suspected of having committed such an act, they shall be entitled to have the matter investigated by a court of law without delay.<sup>133</sup> However, this does not apply when the question is about transferring responsibility for executing a penal sanction imposed in another state. Besides, Art 11 of the same documents stated that

“The restriction must never go beyond what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restriction may be imposed solely on grounds of a political, religious, cultural or other such opinion.”<sup>134</sup>

#### **4.1.5.2. The Criminal code**

In Sweden, the MACR is 15,<sup>135</sup> and there is no juvenile court. However, there is legislation in place for young people under the age of 21 who are involved in offending.

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<sup>131</sup> Ibid, Art8

<sup>132</sup> Ibid, Art 22(4) and (5)

<sup>133</sup> Ibid, Art9 and 11

<sup>134</sup> Ibid, Art 11

<sup>135</sup> *Swedish Penal Code (2022)* art 1, § 6.

In general, people under the age of 21 avoid imprisonment. Imprisonment for a young person aged 18 to 21 is reserved for serious crimes, and between the ages of 15 and 18 is extremely rare and reserved for special cases. A young person under the age of 21 can be sentenced to youth service if he or she consents and the sentence must be proportional. Those under the age of 18 are considered children and require special measures, assistance, or treatment. These special measures are sometimes extended to people under the age of 21. Those under the age of 18 are considered children and require special precautions, assistance, or care. These special measures are sometimes extended to people under the age of twenty-one.

The Prosecution Authority requests social services' input during the investigation and before the final decision (the information that the prosecution should be aware of has already been determined). It may waive prosecution if the public or private interest is not disregarded and in exceptional circumstances. To ensure consistency in agency collaboration, formal processes and institutions have been established. The Prosecution Authority has been providing specialized training courses for prosecutors dealing with young people. Children (as victims, suspects, or witnesses) may have difficulty understanding the investigation and trial process; therefore, local prosecution offices have specially trained prosecutors to handle cases involving children and young people and ensure they are heard.<sup>136</sup>

The law establishes specified time restrictions for inquiries, which must be completed as soon as possible. There should be a restricted number of interviews performed as quickly as feasible, but no later than two weeks after the prosecution decides to launch an inquiry.<sup>137</sup> An inquiry into a young person should be done by a specially trained police officer or prosecutor. If the child has previously been investigated, the current investigation should, if possible, be conducted by the same individual.

If it does not jeopardize the inquiry, children under the age of 15 should be interviewed with their parents or guardians. Guidelines for interviewing children propose that the interviewer meet

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<sup>136</sup> Center for youth & criminal justice, [www.cycj.org.uk](http://www.cycj.org.uk) March 2016 Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Sweden, Yanna Papadodimitraki, CYCJ, p2

<sup>137</sup> Ibid

with the child in advance in a comfortable location so that the youngster is familiar with the individual.<sup>138</sup>

In principle in Sweden Young individuals under the age of 15 cannot be arrested, however, they can be detained for up to three hours following a decision to release or the conclusion of an interrogation. Young individuals under 18 are held only for particular reasons. They are turned over to social services to ensure that no one interferes with the inquiry or reoffends. The Swedish Police arranges for the Prosecution Authority to contact social and child protective services.

#### **4.1.5.3. Child Policy**

Barnombudsmannen, the Ombudsman for Children, is a government agency that monitors whether public institutions and others are following the Child Convention. Barnombudsmannen reports any shortcomings they find in Sweden to the government. They also make proposals for how Swedish laws might be changed to improve children's rights in Sweden.<sup>139</sup>

There is a Barnombudsmannen, or the Children's Ombudsman, which is an institution in Sweden that advocates for the rights and interests of children and young people. It was established by the Swedish law known as the "Lag om Barnombudsman" or the "Children's Ombudsman Act" (1993:335) which establishes the role, responsibilities, and powers of the Children's Ombudsman.

Sweden's dedication to upholding and advancing children's rights is demonstrated by the Barnombudsmannen. It is essential in influencing laws, beliefs, and behaviors that have an impact on children's lives through its advocacy, empowerment, and educational programs. Barnombudsmannen is a pillar of Sweden's progressive culture, guaranteeing that every child has the chance to flourish in a society that appreciates their rights and well-being as the country continues to fight for the rights of its youngest people.<sup>140</sup>

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<sup>138</sup> Ibid

<sup>139</sup> <https://www.informationsverige.se/en/om-sverige/individens-rattigheter-och-skyldigheter/barnets-rattigheter.html>, children's right ,Last accessed: August 24-2024

<sup>140</sup> Ibid

#### **4.1.6. Ethiopia**

Ethiopian law does not explicitly define 'child.' Instead, terms like 'minor' and 'infant' are used. The Revised Family Code under Article 215 refers them as 'minors' and those are persons under eighteen.<sup>141</sup> This aligns with the UN Convention on the Rights of the Child, which considers anyone under eighteen as a child.

The Criminal Code and the Labor Law of Ethiopia, specify certain age limitations for specific reasons defined by such laws. These rules have no bearing the same notion as the CRC and the revised family code. The labor law specifies the age for a reason to set a minimum age to be an employee taking into consideration the economic situation of the vast majority of people in the country.<sup>142</sup> Besides, regardless of civil liability, criminal liability must have a minimum age for young offenders to be held accountable for their actions because the penalty is severe and there is no vicarious liability to hold someone's parents accountable for their actions.

Although children who violate criminal law should not be left they should be obeyed to the law and the criminal justice should have a measurement to correct and make them good citizens. Even though, any action that involves young people has as its goal transforming them from children into responsible adults. Investigating the reasons why infants commit crimes and changing the conditions that encourage them to do so are the primary tasks. Children who are exempt from criminal law don't mean they are free to act however they wish. They are instead solely under the control of their parents or other people who are exerting parental authority. Corrective measures can be mandated at home or school for wrongdoing, but not in court. However, the Revised Family Code's provisions and Articles 576 and 659 are meant to prevent infants from developing criminal tendencies as a result of their parents failing in their duties.<sup>143</sup>

This does not mean that the provisions applicable to juveniles are not of a panel nature, quite the contrary, young offenders other than infants are subject to criminal law, yet they constitute a

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<sup>141</sup> Federal Negarit Gazetta Extra Ordinary Issue No. 1/2000 The Revised Family Code Proclamation No. 213/2000 ,Art. 215

<sup>142</sup> Federal Negarit Gazette No. 89, 5th September, labour proclamation no 1156/2019, Art 89(1) and (2), sets 15 years as a minimum age to consider someone a young worker and to hire someone below the age of 15 years is prohibited.

<sup>143</sup> graven, P. (1965). Addis Ababa: Addis Ababa, Faculty of Law, Haile Sellassie I University, in association with Oxford University Press, p144

special category of wrongdoers, as he emphasized by the fact that in many countries, the law concerning them is enacted separately and not embodied in the penal code. And that they are tried by specialized courts under special rules of procedure to the same effect, the Article 22(2) and 171 up to 180 criminal procedures code. They come under special rules. However, they are treated differently from an adult for only so long as they are different.<sup>144</sup>

Concerning juvenile delinquents such orders of a curative, educational, or corrective nature as may be necessary for their good in as much as the commission of an offense by a minor indicates that something is wrong with him, it is desirable. Not wrong should be remedied as quickly as possible. Yet, as long as he is an influence, the remedy must be administered principally by his parents. Moreover, the concept of retribution is almost absent from the laws applicable to young offenders. The issue is not whether to punish a minor by their level of guilt under Art. 86, but rather how to ensure that they receive the best care under Art. 54. If a penalty art 171-173 is ordered, it may not be imposed unless it will serve the goal that the Code is trying to achieve more effectively than "Measures."

When a juvenile criminal commits a major crime that is usually punishable by a period of rigorous imprisonment of 10 years or more, or by capital punishment, the penalty of imprisonment may be imposed. The court may order him to be sent to:

Either to a correctional facility where he can be subjected to particular safety, segregation, or discipline measures in the public interest; or to the broader public.

If the court judges the youth incorrigible and likely to cause disturbance, insecurity, or corruption of others (art. 173 (1), EPC), the youth will be sent to a penal detention institution (which means an ordinary prison).

The court is supposed to assess the length of detention based on the seriousness of the conduct committed and the age of the offender at the time of the offense when imposing the imprisonment sentence. It must be for a minimum of three years and may be for up to ten years (art. 173 (2)). When a young person is committed to a penal detention facility, however, the

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<sup>144</sup> Ibid

segregation concept is used. Due to a shortage of facilities, however, young criminals are not kept segregated from adult convicts in practice.

The penalty of jail will not be imposed unless one of the special measures has been tried and failed; however, the penalty of imprisonment is not necessary, and the court may impose one of the lower penalties even if the conviction is for a "severe" offense.<sup>145</sup>

A teenager sentenced to a corrective facility may be moved to a penal institution if his behavior or the danger he poses necessitates such action, or if he has reached the age of majority and the sentence imposed on him is for a time that exceeds his majority. In such a case, the court must take into account the time spent in the corrective program while determining the length of the detention and the outcomes obtained (art. 173 (2)).

Labeling such juveniles leads to social marginalization rather than aid in their rehabilitation. If juvenile criminals are criminalized while also being denied the 'second chance' they deserve, their 'chances' will only lead to reoffending when they reach adulthood.<sup>146</sup> Moreover, there is a practical problem that there is a situation where juvenile offenders are imprisoned with adult offenders. That would worsen the case and juvenile offenders still tend to commit a crime again and become a recidivist.

#### **4.1.6.1. The FDRE Constitution**

Children as a part of a citizen and people all rights and entitlements enshrined under the FDRE constitution granted to them equally without any distinction. The FDRE constitution, the supreme law of the land<sup>147</sup> enshrined general elements in the constitution, such as the right to life, the right to personal safety, and the right to liberty<sup>148</sup>, to which all people are entitled including children. Besides, every person has a right to protection from bodily harm.<sup>149</sup> In a similar vein, the constitution's prohibition against cruel treatment provisions applies to convicted who have been found guilty as well as those who have been arrested and detained on suspicion

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<sup>145</sup> Philippe Graven Philip graven, "An Introduction to Ethiopian Penal Law" [1965] An introduction to Ethiopian penal law: (Arts. 1-84 Penal Code), p144

<sup>146</sup> *The Rights of Children in Conflict with the Law* (Ministry of Justice of Montenegro 2007), p 11

<sup>147</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Federal Negarit Gazeta, 1st Year, No.1(hereunder FDRE Constitution art 9(1)

<sup>148</sup> Ibid, Art 14-17

<sup>149</sup> Ibid, Art 16 and 25

of a crime. It has also restrictions against double jeopardy and the absence of criminal law retroactivity.<sup>150</sup>

The special provision in the constitution deals with the rights of the child and emphasizes the need to ensure child rights are enshrined under Art 36 of the constitution. Under the aforementioned provision on children's rights in the constitution, it is stated that juvenile offenders admitted to corrective or rehabilitative institutions and juveniles who are made subjects of the state or placed in public or private orphanages must be kept apart.<sup>151</sup> Furthermore, it is stated that the interests of the child, specifically the juvenile, must always come first in all decisions involving children made by public and private welfare institutions, courts of law, administrative authorities, or legislative bodies.<sup>152</sup> In the same vein, it reaffirms the need to consider the best interests of a child which is one of the major principles of the CRC.

The essential concepts of children's rights are laid out in the constitution, which is the supreme legislation of the land.<sup>153</sup> Even while children are entitled to all of the rights protected by the Constitution, there is a particular provision specifically for children to emphasize the need for additional protection.<sup>154</sup> Since they are still young, they require special care, as they will be the nation's future heirs and be responsible for ensuring that it survives and prospers in the years to come.

#### **4.1.6.2. The 2004 FDRE Criminal Code**

The criminal code of Ethiopia is the law that governs the criminal matters and actions that are committed within the territory of Ethiopia and in some extraterritorial criminal cases.<sup>155</sup>

The Code deals with juvenile delinquency in three different age ranges. The first is infancy which ends at the age of nine years, youth (which extends from nine to fifteen years, this being

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<sup>150</sup> Ibid, Art22

<sup>151</sup> Ibid, Art 36 cons

<sup>152</sup> Ibid

<sup>153</sup> Ibid, Art 9

<sup>154</sup> Ibid, Art 36 constitution

<sup>155</sup> Criminal Code of the Federal Republic of Ethiopia, Proclamation No. 414/2004, (here in after FDRE Criminal code,) Art 11-20

the limit of penal majority), and the last is an intermediary period extending between fifteen and eighteen years of age.<sup>156</sup>

A child below the age of nine is or infancy under the Ethiopian Criminal Code is considered immature, which means incapable of appreciating the nature and consequences of an act due to early age. Infants between the ages of 0 and 9 are exempt from criminal responsibility, as it is stipulated under Art 52 of the Ethiopian Criminal Code. As per this provision, the lower threshold for a legal majority is set at nine years. Either a Child who commits crimes before finishing their ninth year or a child who has not reached the age of ten is not criminally responsible for any offense that they may have committed and cannot be punished and are therefore never subject to the Ethiopian criminal code law.<sup>157</sup> The code stated that nine years is the minimum year of criminal responsibility and hence any person beyond the age of nine is responsible for the crime committed though the treatment and punishment differ based on their age.

Young offenders are defined as those between the ages of 9 and 15 who commit crimes, and if found guilty, they may face further punishments. Particularly, Article 53 of the Criminal Code states that young offenders should not be subject to the standard penalties applicable to adults and that only the special measures outlined under Articles 157–168 of the Criminal Code should be applied to them.<sup>158</sup> The measures include admission to a therapeutic facility, monitored education, reprimand or censure, home or school arrest, and admission to a corrective institution. Only in cases when the aforementioned special measures have been tried and failed; a fine or incarceration in a corrective or correctional detention facility may be imposed. Whenever the crime constitutes a serious crime that is punishable by rigorous imprisonment or jail lasting more than ten years may be subject to sentence. In any scenario, the custody of juvenile offenders and adult criminals is prohibited. However, this notion of separating juvenile criminals from adult offenders is not always respected.

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<sup>156</sup> Glory Nirmala., K. and Amha, M. (2009) *Criminal Law II Teaching Material*. Prepared under the Sponsorship of the Justice and Legal System Research Institute, p31

<sup>157</sup> Ibid

<sup>158</sup> FDRE Criminal code, (n 130) article 53(1)

Children who are above 15 but under 18 are charged as adults and subject to the regular criminal code rules. As it is provided under Article 56 of the Code, the Court may, in assessing sentence, take into account the circumstances of the case, in particular the age of the criminal, his incorrigible or dangerous disposition, and the likelihood of his reform, either by applying the general provisions regarding ordinary mitigation of penalties (Article 179) or by applying one of the special penalties specified for young persons (Arts. 166-168). Besides that, the fundamental distinction between children and adults is that the death sentence may only be imposed on offenders who, at the time of the offense, had reached the age of 18, as opposed to children.<sup>159</sup>

In general, it can be said that the system of sanctions and punishments that apply to minors is geared toward rehabilitation, and as a result, there is a greater emphasis on supervision, instruction, and adaptability in the course of care. The consequences of corporal punishment, however, run against not only the overall objectives of juvenile justice but also the Constitution and global norms.

When young people between the ages of nine and fifteen commit a crime, the court may only impose the punishments and measures outlined in Articles 157–168.<sup>160</sup> Young people cannot be imprisoned alongside adult offenders or subject to the standard punishments that apply to adults.<sup>161</sup> Articles 158 to 168's provisions will not be in effect unless the criminal is found guilty.<sup>162</sup> However, the requirements of sections 129 to 133 are used when the young person is irresponsible.<sup>163</sup>

The objective of subjecting young persons to any action is to turn juveniles into useful citizens. Therefore, the primary aims of any action taken concerning young persons are and must be education and correction. The commission of a crime by young persons implies that there are problems in bringing them up. These problems may arise from different causes that include the parents' failure to perform their legal duty to bring up their child properly, disunited family, poverty, migration, and association of young persons with criminals. Since the causes for the

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<sup>159</sup> Ibid, art 177(1)

<sup>160</sup> Ibid, Art 53

<sup>161</sup> Ibid

<sup>162</sup> Ibid

<sup>163</sup> Ibid

criminal behavior of young persons are different, the court should apply different penalties and measures that can correct and educate them.<sup>164</sup>

#### **4.1.6.3. The Ethiopian Child Policy**

According to a Central Statistics Agency estimate from July 2017, over 94 million people are living in Ethiopia, with children under the age of 18 making up more than half of this population. The nation, however, lacked a comprehensive kid policy. Concerns about the protection and well-being of children have recently emerged in Ethiopia. Consequently, the creation of the National Child Policy and its execution has taken center stage on the national agenda.<sup>165</sup> A National Children's Policy, which aspires to be larger and more inclusive, was adopted for the first time in 2017 in response to the fact that current policies do not adequately address the rights of children and that children merely gain from them like any other Ethiopian citizen.<sup>166</sup> In contrast to its prior fragmented approaches, the new strategy aims to address several child human rights challenges.

The NCP has made it clear that one of its goals is to create an environment that supports the promotion and protection of children's rights by preventing and eliminating social, economic, and detrimental traditional practices and abuses that interfere with their healthy upbringing. It is founded on three core tenets that are essential for safeguarding children. The three pillars on which the entire policy statement is built are children's growth and development, prevention of and protection from social, economic, and political adversity, and providing rehabilitation, care, and support for children in challenging situations. It stated that the need to take proper care and attention for a child under criminal justice administration means as a victim, witness, child who committed a crime, a child in a divorce decision, a child living with their parent in prison, and a child who has civil litigation.<sup>167</sup>

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<sup>164</sup> Glory Nirmala., K. and Amha, M. (2009) *Criminal Law II Teaching Material*. Prepared under the Sponsorship of the Justice and Legal System Research Institute, p31

<sup>165</sup> Policy Studies Institute of Ethiopia and UNICEF, ‘‘A Review of Child Sensitivity in Social Policies in Ethiopia’’ (2021) UNICEF Ethiopia and Policy Studies Institute of Ethiopia, 23 available at <https://www.unicef.org/ethiopia/media/6566/file/A%20Review%20of%20Child%20Sensitivity%20in%20Social%20Policies%20in%20Ethiopia.pdf> accessed date August 22<sup>th</sup> 2024

<sup>166</sup> Ibid

<sup>167</sup> NCP, 2017, P22

Hence, the development of the National Child Policy and its implementation has become a national agenda after all the issue should not be to punish a juvenile according to the degree of individual guilt, but rather to ensure the best possible treatment and penalties.<sup>168</sup>

#### **4.2. Analysis of the Minimum Age for Child Criminal Liability in Ethiopia visa vis with Djibouti, Somalia, south Sudan, Uganda Iceland, and Sweden Experience**

Ethiopia, Djibouti, Somalia, south Sudan, Uganda, Iceland, and Sweden each have unique approaches to addressing juvenile delinquency and promoting children's rights and welfare.

Djibouti, states 13 years as MACR. As a result, under children less than 13 years can only be subject to “protective measures, support, supervision, and education”.<sup>169</sup> Whereas, the Ugandan Constitution of 1995 incorporated children's rights .The Children's Act of 1996 incorporated the CRC and raised the MACR from 7 to 12 years old, aligning with the recommendations of the CRC and ACRWC. The Government of South Sudan has demonstrated a strong commitment to protecting children's rights, as evidenced by its ratification of international agreements and the inclusion of child rights provisions in its Interim Constitution. However, challenges remain in ensuring consistent implementation. The Child Act, 2008, provides a legal framework for realizing child rights, including a MACR of 12 years. While progress has been made, continued efforts are needed to address the specific needs of children and ensure their well-being. All the three states set the MACR below the standard yet higher than Ethiopia’s.

Ethiopia's approach focuses on rehabilitation over punishment for young offenders, considering factors like family dynamics and socioeconomic conditions. The National Child Policy introduced in 2017 aims to promote and protect children's rights through supporting their growth and development, preventing adversity, and providing rehabilitation and support in difficult situations. In Ethiopia, the minimum age of criminal responsibility is set at nine years old. Children under nine are exempt from criminal responsibility, while those between nine and fifteen are considered young offenders.

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<sup>168</sup> Glory Nirmala., K. and Amha, M. ‘*Criminal Law II Teaching Material*’ (2009) Prepared under the Sponsorship of the Justice and Legal System Research Institute, p31

<sup>169</sup>Ibid, Article 32.

Whereas, in Iceland, the minimum age for criminal liability is set at 15 years old. Those under 15 are handled by child welfare services, while special considerations apply to offenders between 15 and 18 years old. Special considerations are given to offenders under 18, with community-based sentences for those between 15 and 18 and involvement of both criminal courts and child welfare services in the justice system.

In Sweden, the MACR is again 15 years and focuses on rehabilitation and support for young offenders under 21, with imprisonment being reserved for serious crimes and special measures in place for those under 18. Its Child Policy revolves around the Ombudsman for Children, ensuring adherence to the Child Convention and advocating for children's rights through legal changes and educational initiatives. The focus is on creating a progressive culture where every child has the opportunity to thrive.

While Ethiopia emphasizes rehabilitation, Iceland prioritizes prevention and rehabilitation over harsh sentencing, and Sweden focuses on advocacy and legal changes to enhance children's rights. Each country's approach reflects its unique cultural, legal, and societal values in addressing juvenile delinquency and promoting children's well-being.

African in general and Ethiopia in particular has a culture that believes in punishing a child starting from a little age and seems that this deeply rooted culture that affects the system and make it hard to accept another alternatives than punishment. Most people may be able to understand they hasn't attain maturity but yet may consider punishment is the best solution rather than educational measures which is a better way in shaping juvenile offenders and can change their behavior in the best way that they could understand what they had done is wrong and shouldn't be done.

This has to be changed and should move forward with the world which is supported by scientific research and be reasonable enough for and decision and the commitment we made as a state.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATION**

#### **Conclusion**

When children under the MACR engage in criminal behavior, it is a sign of possible vulnerability that the social welfare system, not the child justice system, should address as part of its secondary preventive strategy. Under the MACR, children should receive special protective measures that support their parents and caregivers, address the underlying reasons for their offending behavior, and never involve deprivation of liberty or punitive or disciplinary measures. It should be handled by the social welfare system rather than the child justice system. In certain countries, this may entail planning extra or targeted capacity-building activities for pertinent social welfare organizations. These three child groups fall primarily under the social welfare system's purview, and it is never appropriate for this system to place children in closed institutions as a response to disruptive behavior, status offenses, or other problematic behavior.

States parties are encouraged to take note of recent scientific findings and to increase their minimum age accordingly, to at least 14 years of age. Besides, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance, 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, per article 41 of the Convention” (p9) the same para 22 of the GC 24)

For obvious reasons Ethiopia as a member state of the CRC needs to comply with everything that deals with a child that has come out for better protection of the rights like commentaries adopted so far as they are adopted based upon intense research and aimed to serve the better application of the convention.

Ethiopia sets nine years as the minimum years of criminal responsibility which is below the international standard that advocates 14 years as a minimum and states are encouraged to set higher than the standard. However, Ethiopia doesn't take a step to comply with the standard or the recommendation of the committee even if it describes its concern on the issue.

Besides, its criminal law doesn't consider physical and psychological development and emotional and educational needs while setting the minimum age and is not willing to consider even after the committee describes its concern which is against the very aim of the CRC.

Moreover, setting such a low minimum age for criminal responsibility doesn't comply with the aim of criminal law and the juvenile justice system which is not retribution but rehabilitation. On the other hand, the state of Uganda, Djibouti, south Sudan, Iceland and Sweden are countries that adopt the same legal system and the best examples of the protection of the rights of a child in general and complying with the international standard of MACR adopted by GC24 and making it higher than the standard which is 14-15 years as MACR.

## **Recommendations**

- Ethiopia must review its laws pertaining to children and bring them in accordance with international law principles.

- The researcher recommend that like Uganda, Djibouti, south Sudan, Iceland and Sweden, Ethiopia should make an Amendment to the Criminal Code art 52 and an increase in the MACR from 9 to 14 years old which is least MACR in aforementioned countries.
- There must be a quickly move to create and implement a comprehensive plan for the management of juvenile justice, should be subject to a separate justice system for children that: focuses on their rehabilitation and reintegration into society with a special emphasis on children between the ages of 15 and 18 who are protected by child justice laws rather than being treated as adults;
- The justice system stakeholders must make sure that the use of custody for juvenile offenders is limited to extreme cases, and work to improve the accessibility and standard of alternatives to incarceration, such as offering education, rehabilitation, and reintegration;
- The Ethiopian Laws and policies that permit the treatment of minors under the age of eighteen (18) as adults in criminal justice systems such as moving minors to adult courts should be changed to comply with the CRC.
- The government and civil society should work to increase public knowledge and comprehension of children's rights to ensure suitable and proportionate solutions within the framework of justice for children.
- The Avoid treating children as offenders; focus on rehabilitation, reintegration and pay much attention to prevention like Sweden and Iceland.
- Media broadcasters should question and exert influence over lawmakers to amend laws to bring them into compliance with the GC24 and the CRC.

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