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**JUVENILE JUSTICE ADMINISTRATION: THE CASE OF TIGRAY REGIONAL
STATE**

BY

Mohammedberhan Kahsay Nuru

ADDIS ABABA UNIVERSITY

SCHOOL OF LAW

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Advisor: Mr. Yonas Birmeta

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**JUVENILE JUSTICE ADMINISTRATION: THE CASE OF TIGRAY REGIONAL
STATE**

A Thesis Submitted To the School of Law of Addis Ababa University in Partial Fulfillment of
the Requirement of Masters Degree in Human Rights Law

BY MOHAMMEDBERHAN KAHSAY NURU

ADVISOR: Mr. YONAS BIRMETA

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Declaration

I, student Mohammedberhan Kahsay Nuru, hereby declare that this thesis is an original and has never been presented before in any other university.

I also declare that the material/information presented in this thesis, to the best of my knowledge, has been duly acknowledged.

Student- Mohammedberhan Kahsay Nuru

Signature

Date

Advisor- Mr. Yonas Birmeta Adnew

Signature

Date

Acknowledgement

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Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CFCs	Child Friendly Courts
CPUs	Child Protection Units
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NGOs	Non Governmental Organizations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children’s Fund

Short names

Beijing rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
CRC Committee	Convention on the Rights of the Child Committee
JDLs	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
Riyadh guidelines	United Nations Guidelines on the Prevention of juvenile Delinquency
Vienna guidelines	Guidelines for Action on Children in the Criminal Justice System

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Abstract

Children in conflict with the law are vulnerable and hence need special protection and support services that are appropriate to their age and level of maturity. Special protection need to be given with a view to protect children in conflict with the law from further hardship and trauma that may result due to their participation during criminal proceedings. Having this in mind, the purpose of this study is to assess the juvenile justice administration in Tigray regional state. To this end, quantitative and qualitative research methodologies were used and questionnaires, interviews, and field visits were used as data gathering tools. A total of 129 persons were made part of this study from judges, public prosecutors, police, advocates, children in conflict with the law, human right commission experts, labour and social affairs bureau expert, members of the parliament and social workers. The responses of those respondents were interpreted and analyzed. The core findings of the research are the following;

In the case of legislative measures, it is a positive development that Ethiopia is a state party to different human rights instruments in general and children's right like CRC and ACRWC in particular. Furthermore, there are also domestic laws like the FDRE constitution and Tigray constitution, the revised criminal code and the criminal procedure which have key provisions on the right of the child in conflict with the law. However, there are still some problems that need to be addressed in relation to these laws like; the minimum age of criminal responsibility is too low, the maximum age limit for juveniles is not in line with the international instruments, lack of non judiciary diversionary mechanism in the laws, absence of clear and detailed rules and guidelines on the application of juvenile cases, the problem of the law to give awareness to the large varieties of non institutional dispositive measures.

It was also discovered that the situation relating to children in conflict with the law was very poor in Tigray regional state. The professionals' working in the administration of justice suffers from a clear lack of adequate knowledge with the words and sprits of the law protecting children in conflict with the law. The system is also suffering from lack of child friendly infrastructural facilities like CPUs, CFCs, and non existence of any of the legally envisaged institutions to administer the educational measures prescribed by the criminal code. Furthermore, the concept of diversion is not known in the regional state and the diversionary role assigned to the courts by

the criminal procedure code is not much understood by the police and the courts. In other words, there are not diversionary programs (centers) in the regional state. There was also problem of networking among the justice professionals and other NGOs and CSOs. With regard to these shortcomings, the research makes some relevant recommendations which are believed to be of help to the government in the better implementation of juvenile justice.

CHAPTER ONE

GENERAL BACKGROUND

1. Introduction

It is after the Second World War that the international community pledged to promote and protect human rights and fundamental freedoms as one of the purposes of the United Nations¹ (UN). The first global document setting the international human rights standards is the Universal Declaration of Human Rights² (UDHR). Spearheaded by the UDHR, a number of other international and regional human rights instrument came into existence.³ These instruments govern some aspects of children's rights.

Specifically with respect to juvenile justice administration, until the nineteenth century there were no differentiations accorded to age in the method of bringing offenders to trial, in the form of trial itself, in the punishments that could be imposed, nor, generally, in the way in which they were enforced.⁴ Although a lack of capacity in young children was recognized, most children were subject to the same procedures as adult offenders. They were incarcerated along with adult prisoners and were subject to the same types of punishment. It is at the beginning of the twenty century that children were barely distinguished from other offenders in the criminal justice process.⁵ The notion of the young offender as belonging to a distinct category in terms of criminalization was established to allow for the creation of a court specially designated for the

¹ The Charter of the United Nations signed on June 26, 1945 and entered in to force on October 24, 1945 at Sanfrancisco. This is the first international document that uses the notion of ' human rights' and states under its article 1(3) one of the purposes of the UN is promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

² Adopted and proclaimed by the UN General Assembly resolution 217A (111) on 10thDecember, 1948. This instrument is based on the recognition of the inherent dignity and of the equal and inalienable rights and freedoms of all human beings whether adults or children.

³ To mention some of the conventions: International Covenant on Civil and Political Rights (the ICCPR, 1966); International Covenant on Economic, Social and Cultural Rights (the ICESCR, 1966),the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT, 1984); the Convention on the Elimination of All Forms of Discrimination Against women (the CEDAW, 1979); the African Charter on Human and Peoples' Rights (the Banjul Charter, 1981) and the Convention on the Rights of Persons with Disabilities(CRPD,2006).

⁴ Radzinowicz, L. And Hood, R. (1986), *The Emergence of Penal Policy in Victorian and Edwardian England (A History of English Criminal Law)* Vol. 5, London, p.133.

⁵ The path to the modern juvenile justice system began in 1899 when the Illinois legislature passed the Juvenile Court Act in 1899. The Act created the first juvenile court to deal with delinquent and neglected children under the age of 16 years. It laid the foundation for the rest of the states in the US and, by 1917; all but three states had adopted similar laws.

young, the child court, and it was accepted that young offenders would be dealt with in separate institutions, the industrial and reformatory schools, rather than prison.⁶

Internationally, as the situations of children are specific, different international and regional instruments concerning the different aspects of children right such as the United Nations Convention on the Rights of the Child⁷ (CRC) and the African Charter on the Rights and Welfare of the Child⁸ (ACRWC) came in to existence. For much of human history, children were treated as ‘objects’ and, at best, as ‘mini human beings with mini rights’ but the CRC brought about a paradigm shift in how we think of children and how we treat children i.e. it recognizes the child as a full human being and respect for all the concomitant rights he/ she holds.⁹ The charter also plays the same role as of the CRC, corroborating the African reality.

In addition to these international and regional binding instruments, there are also other rules and guidelines specifically deal with child justice like; United Nations Standard Minimum Rules for the Administration of Juvenile Justice,¹⁰ United Nations Guidelines on the Prevention of juvenile Delinquency,¹¹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty,¹² and Guidelines for Action on Children in the Criminal Justice System.¹³ The CRC and ACRWC and the UN rules and guidelines call for “child friendly justice.”¹⁴ In the outline for its 1995 General Discussion on the “Administration of juvenile justice”, the CRC Committee stated that the Convention, together with the United Nations rules and guidelines on juvenile justice, “call

⁶ Kelly, Christine, (2012), *Criminalization of children in Scotland 1840-1910*, university of Glasgow, p. 21.

⁷ United Nations Convention on the Rights of the Child (CRC), General Assembly Resolution 44/25 (1989)

⁸ African Charter on the Rights and Welfare of the Child (ACRWC) (1990) OAU Doc CAB/LEG/24.9/49 (1990)

⁹ Benyam D Memzur, ((2008)23 SA PR/PL.), *The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game? P.1*

¹⁰ Popularly called “*the Beijing Rules*” and adopted by the UN General Assembly resolution 40/33 in Beijing, China, on 29 November 1985.

¹¹ Popularly called “*the Riyadh Guidelines*” and adopted by the UN General Assembly resolution 45/112 of 14 December 1990.

¹² Shortly called *JDLs* and Adopted by UN General Assembly resolution 45/113 of 14 December 1990

¹³ Also called ‘*Vienna guidelines*’ and Annexed to Economic and Social Council Resolution 1996/13 of 23 July 1996

¹⁴ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies) defined Child friendly justice as; *justice systems which guarantee effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles in the CRC and all other related international and regional instruments. It gives due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.*

for the adoption of a child oriented systems that recognizes the child as a subject of fundamental rights and freedoms and ensures that all actions concerning him or her are guided by the best interests of the child as a primary consideration.”¹⁵ Therefore, child friendly justice is a practice where all stipulated standards of child justice are fulfilled and thereby all rights of children are protected in the course of investigation, prosecution, adjudication and correction to those children in conflict with the law. International instruments also emphasize the need to divert children away from judicial proceedings whenever possible and to redirect them to community support services.¹⁶ According to the laws, the formal justice system should only deal with a few numbers of children who have committed very serious crimes and represent a threat to their society. Detention of children should always be a measure of last resort.¹⁷

In order to be able to give effect to their obligations deriving from the international legal rules governing the administration of juvenile justice, states shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.¹⁸ Our country, Ethiopia, is a state party to the CRC and ACRWC.¹⁹ In addition to these instruments, Ethiopia is also a state party to different international human right instruments. The Federal Democratic Republic of Ethiopia Constitution²⁰ (FDRE constitution), provides that international agreements ratified by Ethiopia are not only an integral part of the law of the country,²¹ but also the fundamental rights and liberties contained in the Constitution to be interpreted in conformity with the UDHR, international covenants on human rights and international instruments adopted by Ethiopia,²² therefore, Ethiopia is duty bound to be governed by these instruments.

¹⁵ Rachel Hodgkin and Peter Newell,(2002), *Implementation Handbook for the Convention on the Rights of the Child*, fully revised edition, p. 590.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ CRC, *supra note 7*, article 40 (3).

¹⁹ Ethiopia ratified the CRC on December 9, 1991 by virtue of Proclamation 10/1992 and the ACRWC on October 2, 2002 by virtue of Proclamation 283/2002.

²⁰ Constitution of the Federal Democratic Republic of Ethiopia (FDRE) Proclamation No.1/1995, *Federal Negarit Gazeta*, 1st Year, No.1. 21st August 1995.

²¹ *Ibid.* article 9 (4)

²² *Ibid.* article 13(2)

Taking in to account these facts, this study will address juvenile justice administration in the case of Tigray regional state.²³ The researcher believe that, having international and regional instruments as well as national laws to protect children's right in the criminal justice system is crucial but it's not enough. The proper implementation of these instruments and laws on the ground is as important as having these instruments and laws. This full implementation needs comprehensive laws, trained professionals and strong linkage of the justice system with other stake holders. Therefore, in this research; analysis will be made whether the Ethiopian laws are adequate and comprehensive enough in the protection of children in conflict with the law and how the international, regional instruments as well as the domestic laws are being administrated on the ground in the Tigray regional state.

2. Statement of the Problem

It's generally accepted that due to his/her physical and mental immaturity, the child needs special safeguards and care. This is guaranteed in different international and regional conventions, other UN rules and guidelines and different countries' national laws. This is a critical step towards child protection, but it is not enough. These laws and conventions should be implemented on the ground to the desired level. Ethiopia is a state party to different international and regional human rights conventions in general and children's right in particular, so it has a duty to be bound and to adhere to these conventions in its laws as well as in practice. The whole purpose of the research is to see and evaluate the administration of Juvenile justice as envisaged in different international, regional instruments, UN rules and guidelines and national laws in Tigray regional state juvenile justice system.

The problems to be addressed by this research can be summarized as;

- ❖ Is the Ethiopian legal regime comprehensive and adequate enough in providing rights of children in conflict with the law or there are some gaps to be filled?
- ❖ Are the rights of children in conflict with the law practically implemented in the Tigray regional state criminal justice system?
- ❖ Is the Tigray regional state's criminal justice system equipped with child friendly infrastructural, institutional, technical and other facilities in line with the international and national legal standards?

²³ It is one of the regional states of Ethiopia which is located in the northern part of the country.

- ❖ Whether there is specialized capacity on the side of justice professionals to fully and adequately respond to the right of children and to their needs in a child-sensitive manner or they are incapacitated by lack of expertise.
- ❖ Whether there intersectoral linkage & cooperation between the criminal justice system, other stake holders of governmental institutions and civil society organizations and NGOs to better protect children in conflict with the law.

3. Objectives of the Research

3.1. General Objective: the main objective of this research is to explore the extent to which the rights of children in conflict with the law are protected in Tigray Regional State justice system. This is done by critically analyzing different international and regional instruments that are relevant to children's right, national laws and finally how they are being administered in the lives of children on the ground.

3.2. Specific Objectives: the specific objectives of the research are;

- ❖ To provide an overview of the protection of children in the juvenile justice system in international and regional instruments ratified by Ethiopia, other UN guidelines and rules as well as national laws.
- ❖ To examine these instruments and laws whether they are being administered on the ground to the desired level.
- ❖ To acquaint professionals who are working in the justice system with knowledge on children's right so that they would improve the real application and implementation of the rights of these persons which are envisaged in the instruments and laws.
- ❖ To identify and examine the problems of the justice institutions and other stakeholders why they don't fully implement the instruments and laws.
- ❖ To shed a light on the creation of strong linkage and cooperation between the criminal justice systems and other stake holders, both institutional and professionals' connection, and how it is important in the full realization of the rights of children.
- ❖ To draw conclusions and recommendations on what measures to be taken for better administration of the juvenile justice system.

4. Research Methodology

In conducting the research, the following methodologies were employed

- ❖ **Desk research** were conducted for reviewing of some relevant materials that deal with the administration of juvenile justice, examine the adequacy of the existing legal regime in providing guarantees and rights to children in conflict with the law.
- ❖ **Questionnaires** were used to gather information from the criminal justice system professionals. The information, thus, gathered related to the nature and compatibility of the practice of justice administration with the law, the level of awareness of these professionals as to the rights of children, and the institutional capacities of law enforcement and judicial bodies to deal with the problem of children in conflict with the law.
- ❖ **Interviews** were conducted with justice system professionals, children in conflict with the law and other stakeholders. However, the name of children subject to the interview were made to be confidential.
- ❖ **Personal observations** were conducted to observe the situation of children in conflict with the law how they are being treated in practice.

5. Significance of the Research

The study stresses on examining and assessing whether the rights of children in conflict with the law are realized in practice to the extent that they would be assumed to be realized in the laws. The researcher believes this would be a valuable input for the justice professionals how they can carry out their duties in accordance with the law and to improve the implementation of the rights of children. It may have also an indication for, due to the gaps, an intervention of different stakeholders which are mandated or interested to protect children's right in general and children in conflict with the law in particular, to draw or revise their policies. It may also be a valuable source for child right activists, academicians and other interested persons and to come up with their own contribution to fill the gaps that hinder the proper administration of these rights. It might also be used as a source for further research.

6. Scope of the Research

As we can observe from the research title, it is restricted to the administration of juvenile justice. In addressing this very topic, international and regional child right instruments to which Ethiopia is a state party, UN rules and guidelines and national laws were employed. The geographical coverage of the study, whether the practices of the juvenile justice system is in line with the instruments and the laws is the Tigray Regional State.

7. Limitation of the Research

The problems faced while I was doing this thesis are; the police were hesitate to disclose the real information on the status of children in their station and actually what they do and some of the public officials are also not cooperative as it is required. The major limitations worth mentioning include lack of properly recorded disaggregated data, lack of awareness of the public officers about the protection of children in conflict with the law.

8. Structure of the Chapters

The research is divided into five chapters including this introduction. The second chapter looks at the international legal framework and soft laws for the protection of the rights of the child in conflict with the law. The third chapter looks at the domestic legal framework for the protection of the rights of the child in conflict with the law. The fourth chapter discusses the practice of juvenile justice administration in Tigray regional state and the challenges in the implementation of the rights of the child in conflict with the law. Chapter five contains conclusions and recommendations.

CHAPTER TWO

JUVENILE JUSTICE IN INTERNATIONAL AND REGIONAL CONTEXTS

Introduction

As the problem of children in conflict with the law became an issue of global concern, an increasing number of states began to look for ways to remove child offenders from the adult criminal court system. It became imperative to develop an international framework which would guide states in establishing their own child justice systems. States have realized and accepted the importance of a separate legal regime for the protection of the child. This can be seen from the adoption of the CRC and the ACRWC. In addition to these, there are also wealth of international “soft laws”²⁴ that deal with the administration of juvenile justice systems. Although these soft laws are not legally binding on states, they reinforce and expand the provisions contained in the CRC and the ACRWC. In addition to this, there is unchallenged extension of the legal force that the Committee on the CRC has ascribed to states in concluding observations and General Comments according to these rules and standards. Rather than see them as non-binding per se, states appear to have accepted without comment, the application of the rules to the juvenile justice system.²⁵ International soft law is relevant in this field in that it is influential in policy development within states and its role, therefore, cannot be ignored. The ICCPR also contained specific provisions on the administration of juvenile justice.²⁶

The need for a separate juvenile justice system that is responsive to the needs and welfare of children in conflict with the law is premised on the realization that children who become involved in crime do not, by so doing, lose their right to be treated as children. It is for this reason that it has been said that the law should protect children from the rigors of the criminal justice system until they are old enough to take full responsibility for their actions.²⁷

²⁴ C. M. Bassiouni, (1994), *The Protection of Human rights in the Administration of Criminal Justice: A Compendium of United Nations Norms and Standards*, Transnational Publishers Inc. New York. p. 191

²⁵ G. Van Bueren, (2006), *A Commentary on the United Nations Convention on the Rights of the Child: Article 40*, (Martinus Nijhoff Publishers, Leiden), p. 3.

²⁶ International Covenant on Civil and Political Rights (ICCPR) General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, articles 6(5), 10(2) (b), 10 (3) & 14 (4).

²⁷ J Fortin, (2003), *Children’s Rights and the Developing Law*. 2nd Edition, Butterworth, London, p. 545.

This chapter will examine the international and regional legal and soft law instruments that are enunciated for the protection of the rights of the child in conflict with the law and the basic themes incorporated in these instruments.

2.1. The Concept of Juvenile Justice

Juvenile justice systems have developed in the world in order to protect the special rights of children in conflict with the law. Children are susceptible to difficult circumstances, whose level of maturity is lower than that of adults, and as such people with special needs. Therefore, children who are suspected, accused or convicted of crimes are to be separated from adult criminals, tried in specialized child courts and if their cases are proved, might be sent to correctional or training institutions or dealt with in any other less punitive way. In all cases affecting children, the paramount consideration, should be given to the best interests of the child.

Therefore, the concept of juvenile justice encompasses all aspects of the complex system of dealing with children and young people who commit offences.²⁸ It denotes the notion that even when children commit offences, they are still children with rights and must be treated as such. The procedures and the infrastructural facilities for administering the law should be in line with the special care and treatment of children. For this reason, every nation is obliged to adopt and formulate appropriate child-sensitive procedures, the use of infrastructure for trial of children, the detention and correctional institutions etc. are addressed with the special attention that the child deserves.

2.2. International and Regional Conventions for the Treatment of Children in Conflict with the Law

2.2.1. The United Nations Convention on the Rights of the Child

CRC deals with a wide range of child rights including civil, political, social, cultural and economic rights. It is the most fundamental convention relating to the protection of the rights of the child. It lays down the moral claims to which children are entitled both as people and because

²⁸ Caroline Ball, et al. (2001) *Young Offenders: Law, Policy and Practice*, (2nd Edition, London, Sweet & Maxwell), p.3.

of their special status as minors.²⁹ It consolidates the protections of children's rights scattered in various human rights treaties under a single comprehensive document.³⁰

The CRC defines the child as, "every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier."³¹ This provision has given the mandate to state parties to allow children below 18 years of age to attain majority in their domestic laws. However, allowing a child below 18 years of age to attain majority is the exception other than the rule which would be applied in a very limited circumstances.³²

The CRC is premised on a set of four principles which guide consideration of all issues relating to the rights of the child, including the administration of juvenile justice. These are the 'best interests of the child,'³³ non-discrimination,³⁴ the right to life, survival and development,³⁵ and the right to be heard.³⁶

The CRC also provides a framework within which juvenile justice is to be understood in articles 37 and 40. Article 40 covers the treatment of the child beginning from his or her arrest right through to his or her final release from the juvenile justice system.³⁷ It upholds what should be the positive aim of a juvenile justice system, which is to rehabilitate children in conflict with the law in line with the principle of best interests of the child.³⁸ Therefore, article 40 outlines minimum guarantees for the treatment of children in conflict with the law.

Article 37, which is a corollary of article 40 provides for due process rights of the accused child and prohibits the imposition of the death penalty and life imprisonment on a child without parole. The article further prohibits arbitrary deprivation of liberty and states that any arrest, detention or imprisonment must be used as a measure of last resort and for the shortest period. If a child is deprived of liberty, he or she should be treated in a humane manner, respectful of the inherent

²⁹ Don Cipriani, (2009), *Children's rights and the minimum age of criminal responsibility: A global perspective*, p.19.

³⁰ Jonathan Todres, (1998-1999), 'Emerging limitations on the rights of the child; *The UN Convention on the Rights of the Child and its early case law*' 30 Columbia Human Rights Law Review 159, p. 170

³¹ CRC, *supra note 7*, article 1

³² Sharon Detrix, (1999), *a commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, the Hague), p. 57

³³ CRC, *supra note 7*, article 3.

³⁴ *Ibid.* article 2.

³⁵ *Ibid.* article 6.

³⁶ *Ibid.* article 12.

³⁷ R. Hodgkin and P. Newell. *Supra note 15*, p.540.

³⁸ *Ibid.* p. 547

dignity of human beings, which takes into account the special needs of a person of that age. Depriving young persons of their regular family and social life, of educational opportunities and of simple choices such as to enter, stay or leave places at their own will have fundamental impact on the personal development as well as exercise of human rights.³⁹ Therefore, The CRC proposes a child centered approach setting a standard to be achieved by state parties.⁴⁰

2.2.2. The African Charter on the Rights and Welfare of the Child

like the CRC, the ACRWC is a comprehensive instrument that covers a wide range of children's rights but taking into consideration the virtues of the African cultural heritage. According to the Charter, the child requires protection in conditions of dignity, freedom and security.⁴¹ In addition to the charter itself, states parties to the charter have also reaffirmed adherence to the principles provided 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.⁴²

The ACRWC defines a child as every human being below the age of 18 years.⁴³ There are not exceptions in this definition unlike the CRC. Although the charter is not as detailed as would be expected and desired, it embodies the principles contained in the CRC.⁴⁴ Furthermore, the wording of the obligations under the Charter is less onerous on states parties when compared to the CRC, which obliges states to ensure and respect the rights contained therein.⁴⁵

With respect to juvenile justice, it is dealt in article 17 of the charter. This article is not as exhaustive and comprehensive as the CRC.⁴⁶ The charter provides, like the CRC, states are only obliged to implement the Charter to the maximum extent of their resources and it neither gives a minimum age for criminal responsibility nor does it propose guidelines for determining this age.

³⁹ W. Schabas and Sax H.(2006), *A Commentary on the United Nations Convention on the Rights of the Child: Article 37*, Martinus Nijhoff Publishers, Leiden p. 34.

⁴⁰ See Anne Skelton and Tshehla B, (September 2008), *Child Justice in South Africa*, Institute for Security Studies Monograph 150, p. 17.

⁴¹ ACRWC, *supra note 8*, the Preamble.

⁴² *Ibid.*

⁴³ *Ibid.* article 2.

⁴⁴ *Ibid.* articles 4 (1), 3 & 5

⁴⁵ Compare article 1 of the Charter to article 2 of the convention.

⁴⁶ For example, the charter does not state the recurrent theme in all legislation on juvenile justice, that detention shall be the last resort and that no child shall be deprived of their liberty in an arbitrary or unlawfully manner.

2.3. International Rules and Guidelines for the Treatment of Children in Conflict with the Law

2.3.1. The Beijing Rules

These rules were the first international instruments to comprehensively deal with the issue of the administration of juvenile justice stressing a child rights approach.⁴⁷ The Rules provided new standards of child justice⁴⁸ and are important in that they are based on the principles of the UDHR, ICCPR and the ICESCR.⁴⁹

The rules are expressly mentioned in the preamble of the CRC and some of the fundamental provisions of the rules are incorporated into the Convention and are as such, legally binding.⁵⁰ The rules provide guidelines for States in protecting child rights and providing for the child's needs in the creation of separate and specialized infrastructure for child justice.⁵¹ They also recognize that children, owing to their stage of development require particular care and assistance with regard to their physical, mental and social development and require legal protection in conditions of peace, dignity and security. The Rules invite member states of the United Nations to adopt their national legislation, policies and practices to bring them in line with the Rules.⁵² According to the Rules, juvenile justice should be conceived as an integral part of the national development process.

In general, the rules provide a framework within which a national juvenile justice system should operate. They set standards for a fair and humane response to children who find themselves in conflict with the law⁵³ from the time they are arrested, throughout the ensuing processes of investigation, prosecution, adjudication and disposition, non-institutional treatment, institutional treatment and aftercare.

⁴⁷ Geert Cappelaere, (1995), *Introduction to United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, Defence for Children International (DCI).

⁴⁸ A D Viccica (1989) 'The promotion and protection of children's rights through the development and recognition of an international notion of child justice and its child centered perspective in the United Nations', 68 *Nordic Journal of International Law* 68, p.8.

⁴⁹ Beijing Rules, *supra* note 10, paragraph 1 of the preamble

⁵⁰ To mention some; non-discrimination and detention as a measure of last resort and for the shortest period possible time

⁵¹ Geert Cappelaere (1995), *Supra* note 47.

⁵² Beijing Rules, *supra* note 10, paragraph 5 and 9 of the Preamble.

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

2.3.2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

These rules stipulate the standards applicable to children deprived of their liberty i.e. outline specific circumstances under which children can be deprived of liberty and focuses on conditions of detention. These include those held in custody at the pre- trial and trial stage as well as those committed to rehabilitation institutions.⁵⁴ It is sufficiently broad to cover not only prisons and police detention, but also any facility that children cannot leave at will. The principal message of this instrument is that deprivation of liberty ought to be a measure of last resort and even then it should be for “the minimum necessary period” and “limited to exceptional cases.”⁵⁵ In other words, the rules are founded on the understanding that detention should be avoided where possible, but where it is inevitable; each child must be treated as an individual, having his or her needs met as far as possible. The importance of these rules can be gleaned from the fact that they are repeated in more or less similar terms by other instruments.⁵⁶ The purpose of the JDL rules is “to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of juveniles.”⁵⁷ They are essentially intended to counteract the detrimental effects of deprivation of liberty by ensuring the protection of the rights of child offender and their welfare while in custody.⁵⁸

2.3.3. United Nations Guidelines for the Prevention of Juvenile Delinquency

These guidelines set minimum standards for the prevention of juvenile delinquency. These guidelines are preventive in nature and focus on the child, the family and the involvement of the community. The guidelines are very comprehensive and view the child as fully fledged member of society emphasizing their participation on the prevention process.⁵⁹ They are aimed at minimizing the circumstances and conditions, which drive children to crime or expose them to victimization and entrapment in irregular situations. This is indicative of the changing attitude of

⁵⁴ JDL Rules, *supra* note 12.

⁵⁵ Nikhil Roy & Mabel Wong ‘Juvenile justice: *modern concepts of working with children in conflict with the law*’ available at <http://www.crin.org/docs/save-jj-modern-concepts.pdf> [last accessed on 20 June, 2015] P.15. Furthermore, see JDL rules, *supra* note 12, Rule 2.

⁵⁶ Beijing Rules, *supra* note 9, rule 17; Riyadh Guidelines, *supra* note 10, guideline 46; CRC, *supra* note 7, article 37

⁵⁷ Defence for Children International (2003), *Kids behind Bars: A Study on Children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam: available at www.kidsbehindbars.org (last accessed May 10, 2015) p. 12.

⁵⁸ Nikhil Roy & Mabel Wong, *supra* note 55.

⁵⁹ Geert Cappelaere (1995), *introduction to United Nations Guidelines for the Prevention of Juvenile Delinquency*, Defence for Children International (DCI).

society as to the role of the community in the prevention of juvenile delinquency and the place of the child as a rights bearer. Furthermore, they indicate situations which would need official intervention and encourage an environment conducive to healthy development, integration and adjustment.⁶⁰ In general, the guidelines deals with ‘socialization processes’, education, participation of youth within community structures, the role of the media, and socioeconomic circumstances. The idea of prevention is seen within a broader development context

2.3.4. Guidelines for Action on Children in the Criminal Justice System

These guidelines, unlike the other soft law on the subject, are addressed to all stakeholders in the administration of juvenile justice in addition to states. Notably, this was the first UN document that covered child offenders, child victims and child witnesses within its ambit. The aims of the Guidelines are to provide a framework for the achievement of two main objectives, which are the implementation of the CRC in order to achieve the goals set out for the administration of child justice and to facilitate the provision of assistance to states for the implementation of the CRC. They also aim to promote and apply the United Nations standards and norms in child justice and other related instruments. They promote respect for human dignity that is compatible with the principles that underlie the CRC, a holistic implementation of the CRC through the maximization of resources, child participation, accountability and transparency in all operations related to the child in conflict with the law.⁶¹

In order to ensure effective use of the guidelines for action, improved cooperation between governments, relevant entities of the united nations system, NGOs, professional groups, the media, academic institutions, children and other members of civil society is deemed essential. So, the guidelines are a step forward in the protection of the rights of the child in conflict with the law as they show a realization that all stakeholders including non-state actors have to be involved in the promotion and protection of these rights and the task should not be left to states alone. States cannot, therefore, justify their failure to meet the latter requirement on the basis of their economic situation because the guidelines are addressed to all national and international stakeholders and there is an emphasis on cooperation to achieve these goals.

⁶⁰ A D Viccicia,(1989), *supra note 48*, p.70

⁶¹ Vienna guidelines, *supra note 13*, see generally paragraph 4 - 9 of the guidelines.

2.4. Basic Themes of These Instruments

There are certain basic themes that are enunciated in these international and regional legal and soft law instruments that form the basis for the protection of children in conflict with the law. This section will expound on what these principles are and are very vital in an attempt to form a standard in comparing with the child justice systems in Tigray Regional State.

2.4.1. The core principles of the child

Child participation- The recognition of the child's right to be heard and to participate in proceedings against him is a shift from the paternalistic attitude where the child was viewed as an object rather than a subject of the juvenile justice system.⁶² This is one of the most innovative features of the CRC, ACRWC and a radical development in recent years. Therefore, the child should be considered and treated as full bearer of rights and should be entitled to exercise all his/her rights in a manner that takes into account their capacity to form their own views as well as the circumstance of the case.⁶³

The CRC in Article 12 (1) and ACRWC article 4(2) states, "States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and the maturity of the child." The articles proceed to emphasize the need of the child to be heard in judicial or administrative proceedings being held against him whether directly or through a competent legal representative.⁶⁴ This may necessitate the provision of legal aid to the child to ensure that the child is actually heard. The right to be heard is a core part of a fair trial and must be respected at every stage of the criminal justice process.⁶⁵ For this right to be effective, the Committee on the Rights of the Child has stressed the need for the child to be informed not only about the charges but about the whole criminal justice process that is facing

⁶² Sloth-Nielsen and Gallinetti J (Eds.) ((2004), *Child Justice in Africa: A Guide to Good Practice*, Community Law Center, p. 18

⁶³ African Child Policy Forum (ACPF) and Defense for Children International (DCI) (2012), *Achieving Child Friendly justice in Africa*.P.16

⁶⁴ Committee on the Rights of the Child (CRC committee) General Comment No. 5: (2003) *General Measures for the Implementation of the Convention on the rights of the Child*, CRC/GC/2003/5, paragraph 12.

⁶⁵ Committee on the Rights of the Child (CRC committee) General Comment No.10: (2007) *Children's Rights in Juvenile Justice*, CRC/C/GC/10, paragraphs 43-45.

him and the measures that may be imposed.⁶⁶ The older and mature the child is, the more weight should be given to his/her views.⁶⁷

Best interest of the child- This principle guides all provisions of the CRC and the ACRWC including those that make provision for the treatment of child offenders.⁶⁸ The CRC provides that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”⁶⁹ The ACRWC which complements the CRC also provides this principle as; “In all actions concerning the child by any person or authority the best interest of the child shall be the primary consideration.”⁷⁰

Although there is no generally accepted definition of “best interests of the child,” the term generally refers to the deliberation that the courts, for example, to undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. In the case of children in conflict with the law, the best interest principle means that repression/ retribution must give way to rehabilitation and restorative objectives of the criminal justice system where children are concerned.⁷¹ In all actions concerning children, child sensitive procedures should be taken in to account. Therefore, the principle requires contextual application of the principle on a case-by-case basis, considering close and individualized examination of a number of factors related to the child’s circumstances, needs, views and evolving capacities that are specific to each child. Therefore, whilst judicial authorities make the final decisions about best interests, multidisciplinary approaches should be used in assessment of best interests.⁷² The committee on the right of the child in its general comment also re affirms this very concept.⁷³ The best interest principle can also be read into the

⁶⁶ *Ibid.* paragraph 44 and the Beijing rules, *supra note 10*, Rule 14.2, Riyadh guidelines, *supra note 11*, guideline 3 and 10.

⁶⁷ ‘Human rights in the administration of justice, (2003), A manual on human rights for judges, prosecutors and Lawyers’, United Nations. New York and Geneva, available at www.ohchr.org/Documents/Publications/training9Titleen.pdf [accessed on may 22, 2015]

⁶⁸ Sloth-Nielsen and Gallinetti J (Eds.), *supra note 62*, p.18.

⁶⁹ CRC, *supra note 7*, article 3.

⁷⁰ ACRWC, *supra note 8*, article 4.

⁷¹ CRC Committee General Comment No.10, *supra note 65*, paragraph 10.

⁷² ACFP and DCI, *supra note 63*, p.18.

⁷³ Committee on the Rights of the Child, General Comment No.14, 2014, CRC/GC/2014, paragraph 1 provides that; the concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It

Beijing Rules provision that juvenile justice shall “emphasize the well being of the juvenile.”⁷⁴ Therefore, there can be no doubt that the juvenile justice system is meant to help and not hurt the child in conflict with the law.

Non- discrimination- The CRC calls for State parties to respect the rights of the child “without discrimination of any kind irrespective of the child’s or his/ her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁷⁵ By this principle, state parties are obliged to take all the necessary steps to ensure that all children in conflict with the law are treated equally by establishing rules, regulations or protocols, which enhance the equal treatment of child offenders and provide redress, remedies and compensation.⁷⁶ Legislative provisions that ensure that children are not discriminated against when they come into contact with the criminal justice system are important in order to avoid children being denied their rights on different protected grounds.⁷⁷ The CRC Committee also calls for equal treatment of all child offenders within the juvenile justice system.⁷⁸

Life, survival and development-The treaties place an obligation upon state parties to recognize every child’s inherent right to life and to ensure, to the maximum extent possible, the survival and development of the child. States parties are expected to interpret development in its broadest sense as a holistic concept embracing the child’s physical, mental, spiritual, moral, psychological and social development, to achieve optimal development of all children.⁷⁹

2.4.2. Detention as a last resort and conditions of detention

Liberty depriving sanctions and measures in this sense are not only those applied by a court after a court proceeding but includes police and pre-trial detention as well as any forms of custody and

is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child’s best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs.

⁷⁴ Beijing Rules, *supra note 10*, rule 5

⁷⁵ CRC, *supra note 7*, article 2. In addition to this the ACRWC, *supra note 8*, articles 3 & 26; JDL Rules, *supra note 12*, rule 4; Beijing Rules, *supra note 10*, rule 2.1 provide this principle.

⁷⁶ CRC General Comment No 10, *supra note 65*, paragraph 6.

⁷⁷ ACPF and DCI, *supra note 63*, p.26

⁷⁸ *Ibid.*

⁷⁹ CRC Committees General Comment No 10, *supra note 65*, paragraph 12.

placement in closed institutions, be they called prisons, residential or reformatory schools or mental health institutions. Deprivation of liberty, regardless of which form it takes, constitutes the most severe instrument of justice and is associated with the most negative consequences and it more severe for children in conflict with the law, who are more vulnerable than adults and whose value systems, perceptions of the world and roles in society are not yet fully developed. Furthermore, children are most likely to become victims of torture and other forms of abuse while in police custody or detention. It is also at this stage that the juvenile is likely to be denied the presence of those parents, social worker, legal representative who might best provide protection against such acts.⁸⁰ It is for the above reasons that international instruments postulate that liberty depriving sanctions should only be ordered as a last resort and for the shortest appropriate period of time.⁸¹ Therefore, as much as possible pre-trial detention should be replaced with alternative measures such as close supervision and placements with family or education institutions,⁸² and separation of the child from his family should be a measure of last resort.⁸³

If the detention of the child is inevitable, a model juvenile justice system in institutionalizing a child aims, “to provide care, protection, education and vocational skills, with a view to assist them to assume socially constructive and productive roles in society.”⁸⁴ They should be treated in a manner consistent with their needs as young persons.⁸⁵ This implies that children are to be kept separate from adults and detained in separate institutions or in a separate part of an institution also holding adults because children are impressionable, hence susceptible to the negative influences of the more hardened adult offenders and by virtue of their lower physical strength, such separation ensures their safety.⁸⁶

⁸⁰ UNICEF (1998) Innocenti digest: Juvenile Justice 10, available at www.unicefirc.org/publications/pdf/digest3e [last accessed on May 25, 2015], p. 8.

⁸¹ CRC, *supra note 7*, article 37 (b) ; Beijing Rules, *supra note 10*, rule 13.1, 17 (1)-(4), 18 (1)-(2), 19 (1); JDL Rules, *supra note 12*, rule 2, Riyadh Guidelines, *supra note 11*, guideline 46, CRC general comment No. 10. *Supra note 65*, paragraphs 28, 29, 70 & 77.

⁸² Beijing Rules, *supra note 10*, rule 13.2

⁸³ *Ibid.* Rule 18.2 and the ICESCR in Article 10 (1) provides the family as the “the natural and fundamental group unit of society.” The family therefore, plays a crucial role in ensuring the success of the rehabilitation of the child in conflict with the law.

⁸⁴ Beijing Rules, *supra note 10*, rule 26.

⁸⁵ CRC, *supra note 7*, article 37(c).

⁸⁶ Larry J Siegel & Brandon C Welsh (2009), *Child delinquency: Theory practice and law* p. 593.

The CRC Committee corroborates this idea and recommends that the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort.⁸⁷ If the child should be deprived of his/her liberty, the length of the deprivation should be determined by the judicial authority without precluding the possibility of a child's early release.⁸⁸

The physical environment within prison facilities for children should be such that the health, safety and dignity of children are ensured. This includes sleeping arrangements that are not crowded; separate, sufficient and clean bedding that is regularly and timely changed; and, clean and accessible sanitary installations.⁸⁹ In addition, suitably prepared meals of sufficient quantity and quality by standards of diet, hygiene and health should be served at regular hours and water should be made available to the children at any time.

2.4.3. Diversion

Diversion is the channeling of children into appropriate re integrative programs and services, where the intervention of the formal court system is not necessary.⁹⁰ It aims to find viable and constructive ways of keeping a child from coming into contact with the justice system unnecessarily, and has been internationally acknowledged as a key element in the shift from the retributive to the restorative justice system for child offenders.⁹¹ In an effort to prevent the negative effects of criminal justice process the international legal frameworks on child justice emphasize the need where appropriate to divert the case from the trial process to other formal or informal alternatives provided human rights and legal safeguards are upheld.⁹² The CRC requires states, where appropriate, to adopt measures which divert from judicial proceedings, while maintaining the legal safeguards for the protection of the rights of the child offenders. The CRC

⁸⁷ CRC Committee General Comment No.10, *supra note 65*, paragraph 28.

⁸⁸ CRC, *supra note 7*, article 37(b) and JDLs, *supra note 12*, rules 1 and 2.

⁸⁹ JDLs Rules, *supra note 12*, rules 33 & 34 (Though these rules provide for the possibility of small group dormitories and individual bedrooms, the Standard Rules for the Treatment of Prisoners require that not more than two detainees should share a cell).

⁹⁰ Buyi Mbambo (2005) 'Diversion: A central feature of the new child justice system' in *Traggy Maepa (ed) Beyond retribution prospects for restorative justice in South Africa*. p.77.

⁹¹ *Ibid.*

⁹² CRC, *supra note 7*, article 40 (3) (b) and Beijing Rules, *supra note 10*, rule 11.1.

has been interpreted as requiring States at the very least to develop legislation, guidelines and directives to ensure recourse to diversion.⁹³

The Beijing Rules envisage the involvement of the community in the diversion process with the caveat that any diversion involving community service shall only be done with the consent of the juvenile or his parents.⁹⁴ The rights of the child must be fully protected in all diversion measures and such should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility and gives informed consent to the diversion.⁹⁵ All in all, diversionary measures should be commensurate with the offence and take into consideration the child's age and individual circumstances, the child's willingness to cooperate, the impact of the crime on victim and community, any previous offence and opportunity for diversion, and the availability and strength of family and community support.⁹⁶

2.4.4. Specialized legislation, procedures and institutions

In order to be able to give effect to their obligations under the international human rights law, state parties have a duty to create a juvenile justice system with specific laws, procedures, authorities and institutions in line to the specific needs, problems and situations of children alleged to have infringed the law.⁹⁷ In this regard the CRC committee recommended; a comprehensive juvenile justice system further requires the establishment of specialized units within the police, judiciary, court system, prosecutor's office and provision of specialized defenders or other representatives for children.⁹⁸ The committee also recommends states parties to establish juvenile courts either as separate units or as part of existing regional/district courts and where that is not immediately feasible for practical reasons, the states parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.⁹⁹

⁹³ Sloth- Nielsen, J. Gallinetti (eds.), *supra note 62*, p.24.

⁹⁴ Beijing Rules, *supra note 10*, rule 11 (3). The commentary to rule 11 (1) provides that; this diversion is done where the offence is not serious and where "the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner."

⁹⁵ See CRC General Comment No 10, *supra note 65*, paragraphs 25 &27

⁹⁶ Nikhil Roy & Mabel Wong, *supra note 55*.

⁹⁷ CRC, *supra note 7*, article 40(3).

⁹⁸ CRC General Comment No 10, *supra note 65*, paragraph 92.

⁹⁹ *Ibid.* paragraphs 93, 94 and 97.

Therefore, according to the international standards, juvenile justice system must uphold the rights and safety and promote the physical and mental well-being of children in conflict with the law.¹⁰⁰ This is to ensure that children are treated differently from adults in a safe environment which complies with norms regarding the well being of the child.¹⁰¹ The specific national legislation should strike a fair balance between the interests of the child, the state and the community.¹⁰²

2.4.5. Dignity

Treatment that is consistent with the child's sense of dignity is central to juvenile justice. Children should be treated with care, sensitivity and respect throughout any procedure or case, with special attention for their wellbeing and particular needs, and with full respect for their physical and psychological integrity.¹⁰³ This treatment should be guaranteed, no matter the reason for their coming into contact with the judicial or non-judicial proceedings, and regardless of their legal status or capacity.¹⁰⁴

The CRC calls upon State parties to treat child offenders "in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others."¹⁰⁵ This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child.¹⁰⁶ It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well being, and the pervasive forms of violence against children.¹⁰⁷ Furthermore, a child shall not be subjected to inhumane and degrading treatment or punishment.¹⁰⁸ Clothing worn by child offenders in institutions should not be humiliating or

¹⁰⁰ UNICEF (1998) Innocenti digest, *supra note 80*.

¹⁰¹ Nikhil Roy & Mabel Wong, *supra note 55*, P. 78.

¹⁰² Beijing Rules, *supra note 10*, rule 2.3.

¹⁰³ ACFP and DCI, *supra note 63*, p. 23.

¹⁰⁴ *Ibid*.

¹⁰⁵ CRC, *supra note 7*, article 40 (1). Furthermore, the CRC also makes explicit mention of the right to dignity and worth in its preamble. This principle is based on the fundamental human right enshrined in article 1 of UDHR.

¹⁰⁶ CRC General Comment No 10, *supra note 65*, paragraph 13.

¹⁰⁷ *Ibid*.

¹⁰⁸ CRC, *supra note 7*, article 37 (a).

degrading¹⁰⁹ and there ought to be supervision of the sleeping areas in the institutions to ensure protection of the child but the same should be unobtrusive.¹¹⁰

2.4.6. Establishing minimum age of criminal responsibility

State parties to both the CRC and the ACRWC are required to establish a minimum age of criminal responsibility to demarcate the age at which children are presumed to lack criminal responsibility.¹¹¹ Children who are too young and insufficiently mature should not be brought to the criminal justice system. The rationale behind setting a minimum age for criminal responsibility is to protect children who infringe penal laws but have no capacity for necessary mens rea or guilty intent to commit the offence. However, there is no clear international standard regarding the age at which such responsibility can be reasonably imputed to a child and neither the CRC nor ACRWC set a limit. Although the choice must not be arbitrary, there is arbitrariness in setting a minimum age because states have excessive discretion and there are no laid down criteria for determining the minimum age for criminal responsibility. Therefore, leaving the decision of determining the minimum age for criminal responsibility entirely in the discretion of states is detrimental to the child in conflict with the law because it exposes children to the possibility of entering the criminal justice system at a very young age.

The Beijing Rules recommends that the beginning of the minimum age of criminal responsibility should not be fixed at too low due to the emotional, mental and intellectual maturity of the child.¹¹² The justification for this is that historical and cultural factors play a role in determining the minimum age of criminal responsibility.¹¹³ Relying on this rule, the CRC Committee encourages state parties to increase their minimum ages of criminal responsibility to at least 12 years and to continue to increase the age.¹¹⁴

2.4.7. Due process rights

Any person accused of an offence has a right to the due process of law which entails a fair treatment and trial.¹¹⁵ Children in conflict with the law are accorded important due process rights

¹⁰⁹ JDL Rules, *supra* note 12, rule 36.

¹¹⁰ *Ibid.* Rule 33.

¹¹¹ CRC, *supra* note 7, article 40(3) (a).

¹¹² Beijing Rules, *supra* note 10, rule 4.

¹¹³ *Ibid.* Commentary to rule 2.

¹¹⁴ CRC General Comment No 10, *supra* note 65, paragraph 32.

¹¹⁵ UNICEF (1998) Innocenti digest, *supra* note 80, p.5.

and guarantees that are meant to secure their fair treatment and trial. Some of the fundamental rights of Children in conflict with the law are: the right to remain silent, the right to be heard by the police, the prosecutor and the judge; be notified promptly of the charges; the right to legal or other appropriate assistance; presence of parents or guardians except where not in the child's best interests; determination without delay by a competent and independent and impartial authority or judicial body; a fair hearing; confront and cross-examine witnesses; a free language interpreter; full respect of privacy at all stages of the process; and judicial review of decisions.¹¹⁶

Some of these guarantees are well established in international human rights law¹¹⁷ while some are designed to meet the specific needs and interests of children. These special guarantees for children include in camera proceedings which are meant to guard the right to privacy of child offenders, and the right of presence of parents and guardians to provide psychological and emotional assistance to the child, modified courtroom procedures and practices to allow for the expeditious handling of cases and in an atmosphere of understanding and to enable the child to participate and express him/herself freely.¹¹⁸ These special protections stem from a child's right to be treated in a manner which respects his/her dignity and worth and which takes into account his/her evolving capacities as encapsulated under both the CRC and the ACRWC.

2.4.8. Sentencing options

In the case of post trial detention, where a child's case is not diverted from the formal court procedure, non-institutional measures should be made available to ensure that the child is dealt with in a manner appropriate to his/her well-being and proportionate to the offence and with due regard to his/her circumstances.¹¹⁹ The CRC obliges to state parties to develop and promote a variety of dispositions such as care; guidance and supervision orders; counseling; probation; foster care; education and vocational training programs; and other alternatives to institutional care.¹²⁰ The Beijing Rules also provide community service, financial penalties, compensation and restitution, intermediate treatment and group counseling as alternative sentencing options.¹²¹

¹¹⁶ CRC, *supra note 7*, see generally article 40 (2) (b).

¹¹⁷ ICCPR, *supra note 26*, article 14.

¹¹⁸ Human rights in the administration of justice, *supra note 67*.

¹¹⁹ CRC, *supra note 7*, article 40(4).

¹²⁰ *Ibid.*

¹²¹ Beijing Rules, *supra note 10*, rule 18.

The above measures allow flexibility in sentencing and assure that the deprivation of liberty is used only as a measure of last resort and for the shortest possible period of time. They also stress the importance of the family as the fundamental institution and the natural environment for the development and wellbeing of children.¹²²

¹²² CRC, *supra note 7*, the preamble.

CHAPTER THREE

THE ETHIOPIAN LEGAL AND POLICY FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW

Introduction

This chapter basically focuses on the domestic legal and policy frameworks relating to the protection of children in conflict with the law. In Ethiopia there is no separate legal framework that governs the protection of children in conflict with the law rather general instruments that govern the protection of adults also provides the protection of children in conflict with the law. In these general legal instruments there are special procedures that are applied only to children between nine and fifteen years of age. Furthermore, there are some policies and programs that are crucial for the administration of criminal justice system in general and juvenile justice in particular.

3.1. The FDRE Constitution

The FDRE constitution is the most fundamental legal instrument in relation to the rights of a person in general and children in particular. The constitution specifically provides the right of children in article 36. This does not, however, mean that this is the only constitutional provision that deals with the rights of children. As citizens, children are also entitled to all the human rights and freedoms that are enshrined in the Constitution.¹²³ But when extending other rights and freedoms to children they must be guided by the basic principles specified in article 36 of the constitution. In this regard the constitution provides that;

“In all action concerning children undertaken by public and private institutions of social welfare, courts of law, administrative authorities of legislative bodies, the primary consideration shall be the best interest of the child.”¹²⁴

This provision passes a message that, since the best interest of the child is the guiding principle, it should be considered throughout the process of administration of justice too. All the concerned bodies involving in the administration of juvenile justice such as the police, courts of law, the public prosecutor and corrective or rehabilitative institutions must make this principle as their cardinal guideline in their actions in relation to children in conflict with the law. The

¹²³ See FDRE constitution, *supra note 20*, chapter three (articles, 13-44).

¹²⁴ *Ibid.* article 36 (2)

Constitution also deal with children in conflict with the law specifically and provides that; “Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults..¹²⁵ However, these child specific provisions do not deprive children of the protection accorded by the constitution for adults who came in contact with the criminal justice system. Therefore, children in conflict with the law should enjoy the right given to arrested, accused, kept in custody and convicted persons.¹²⁶

The impressive guarantees provided in the constitution for arrested, accused, kept in custody and convicted persons are, by and large, fully implemented by the criminal and criminal procedure codes at least for adults accused of crime.¹²⁷ For juveniles, however, the situation is different; the statute law frequently denies basic constitutional rights or else grants only a watered-down version of them.¹²⁸

3.2. The Criminal Code of Ethiopia

In line with the CRC and ACRWC, a child under Ethiopian law is defined as a person of either sex who does not attain the full age of 18 years.¹²⁹ But the criminal code of Ethiopia¹³⁰ takes different approach in the sense that children who may commit crimes are dealt differently depending on the age group to which they belong. For the purpose of criminal responsibility, the code has classified children into the following three age groups.

3.2.1. Children under the age of nine years

A child who has not attained the full age of nine years is totally exonerated from criminal responsibility. The assumption is that such a child is incapable of either understanding the nature of the consequences of his/her act, or regulating his/her conduct according to such

¹²⁵ *Ibid.* article 36(3). This is due to the physical and mental immaturity of children so as to protect them from the negative influences of adults if they are kept with them.

¹²⁶ *Ibid.* See generally articles 16-21 and 25.

¹²⁷ Stanley Z. Fisher, June 1970, *criminal procedure for juvenile offenders in Ethiopia*, journal of Ethiopian law, vol.vii, no.1, p.115-116.

¹²⁸ *Ibid.*

¹²⁹ The Civil Code of the Empire of Ethiopia, Proclamation No.165 of 1960, article 198 and the Revised Family Code (RFC) of 2000, *Federal Negarit Gazeta* Extraordinary Issue No1/2000, article 215

¹³⁰ The criminal code of the Federal Democratic Republic of Ethiopia, proclamation No.414/2004

understanding.¹³¹ In this regard the criminal code states that: “Infants who have not attained the age of nine years shall not be deemed to be criminally responsible. The provisions of this Code shall not apply to them. Where a crime is committed by infant, appropriate steps may be taken by the family, school or guardianship authority.”¹³²

3.2.2. Children between the ages of nine and fifteen years

These groups of children are thought of having limited responsibility for their action. Even though, they are held accountable for their offending behavior and can be found guilty in court, however, they will be entitled to special procedures, measures and penalties. The criminal code states: “Where a crime is committed by young persons between the ages of nine and fifteen years, the penalties and measures to be imposed by the courts shall be only those provided in Articles 157 – 168 of this code. Young persons shall not be subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult criminals.”¹³³

These special measures for a child in conflict with the law are provided in the same code.¹³⁴ These measures are; Admission to a Curative Institution,¹³⁵ Supervised Education,¹³⁶ Reprimand; Censure,¹³⁷ School or Home Arrest,¹³⁸ Admission to a Corrective Institution.¹³⁹ Furthermore, the special penalties are: Fine,¹⁴⁰ Imprisonment either in a corrective institution or in a penitentiary detention institution.¹⁴¹ In assessing these penalties or measures there are different elements that the court should consider. These different measures and penalties are designed to be applied in view of the nature of the offences, the circumstances of its commission, the state of health of the offender, and the moral conditions of the child.¹⁴² In this regard the code also provides that;

¹³¹ *Ibid.* article 48

¹³² *Ibid.* article 52

¹³³ *Ibid.* article 53 (1)

¹³⁴ *Ibid.* article 53 (2)

¹³⁵ *Ibid.* article 158

¹³⁶ *Ibid.* article 159

¹³⁷ *Ibid.* article 160

¹³⁸ *Ibid.* article 161

¹³⁹ *Ibid.* article 162

¹⁴⁰ *Ibid.* article 167

¹⁴¹ *Ibid.* article 168

¹⁴² Geset, M (2002), *critical evaluation of the juvenile justice administration in Ethiopia*, Addis Ababa, p.19

“In assessing these penalties or measures the court shall take in to account age, character, degree of mental and moral development of the young criminal, as well as the educational value of the penalties or measures to be applied.”¹⁴³

Therefore, even though these categories of children are held accountable for their offending behavior and can be found guilty in court, it does not mean that they should be treated as adults. So, children who are criminally responsible still need protection, assistance and support. That is why the code’s measures to be applied on children between nine and fifteen who have committed crimes are directed at education rather than retribution.

3.2.3. Children between fifteen and eighteen years of age

The criminal code like its predecessor, the penal code, considers children between fifteen and eighteen years of age to bear the same criminal responsibility as adults. The code states that;

“If at the time of the commission of the crime, the criminal was over 15 but under 18 years of age, he shall be tried under the ordinary provisions of this code.”¹⁴⁴

Therefore, this group of children are dealt with by the ordinary criminal justice system and treated as adults. However, being young they are thought of having the capability to be reformed and educated. So, in certain aspects, unlike the case of adult offenders the determination of sentence regarding this age group the court still has the option to apply ordinary mitigation of penalties or special penalties specified for children. In this regard the code provides;

”The courts 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 (article 166 to article 168).”¹⁴⁵

¹⁴³ The Criminal code of Ethiopia, *supra note 130*, article 55

¹⁴⁴ *Ibid.* article 56 (1)

¹⁴⁵ *Ibid.* article 56 (2)

These are the exceptions through which these groups of persons may be treated as children and thus different from adults. In addition, death penalty never be imposed on children under the age of 18 years¹⁴⁶ and these persons should be detained separately from adults.

3.3. The Criminal Procedure Code

The criminal procedure code,¹⁴⁷ which regulates the whole process of criminal justice system starting from pre-trial to post trial, is also applicable specifically to children in conflict with the law. It contains a chapter of ten articles¹⁴⁸ devoted to procedure in cases concerning young persons apparently purports to provide a comprehensive and self contained guide, covering criminal procedure from the first stage to the last.¹⁴⁹ Compliant and accusation, arrest, investigation, charge and plea, trial, judgment, sentence and appeal, all apparently meant to be governed by these few provisions.¹⁵⁰

3.3.1. Pre-trial procedure

The police may be informed the commission of a crime by way of accusation or compliant. Having the police informed the commission of the crime in either of these ways, custody of the suspected is then obtained either by use of summons or arrest with or without warrant. The “taking” of the juvenile to a court under the authority of article 172 of the code legally constitutes an arrest; therefore, the code provisions which govern the arrest and summons of adult suspects should be applied to juveniles as well.¹⁵¹

In any case where a young person is involved, the police, the public prosecutor, the parent or guardian or the complainant who apprehends a young offender shall immediately take him/her to the nearest Woreda court.¹⁵² The court shall, then ask the person bringing the child to

¹⁴⁶*Ibid. article 176 cum 117 (1).* One can deduce from this that, the code, is in conformity with article 37 of the CRC, article 3 (3) of the ACRWC, article 6 (5) of the ICCPR and in relation to the avoidance of death penalty. The code is also in conformity with article 37 of the CRC with regard to sentences with life imprisonment with possibility of release on children below the age of eighteen; his/ her conditional release depends on the ability to fulfill the conditions provided in article 113 of the criminal code.

¹⁴⁷ The criminal procedure code of the Empire of Ethiopia, *Negarit Gazeta* extraordinary issue No. 1 of the 1961, Addis Ababa.

¹⁴⁸ There is a special procedure in cases concerning young persons in book IV, title II and chapter three of the criminal procedure code. In this regard article 171 of the code provides that; “*Criminal cases concerning young persons shall be tried in accordance with the provisions of this chapter.*” The provisions of this chapter imply articles 172-180 of the code.

¹⁴⁹ Stanley Z. Fisher, *supra note 127*, p.127

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.* p. 132

¹⁵² The criminal procedure code, *supra note 147*, article 172(1)

state the particulars and the witnesses, if any, of the alleged offense or to make formal complaint, where appropriate, such statement or complaint shall be recorded.¹⁵³ If the young person is brought before the court without his/her parent, guardian or any other person in loco parentis, the court shall immediately inquire whether such persons exist and shall summon them to appear without delay.¹⁵⁴

In principle, the law does not require the young offender to pass through the rigorous independent police investigation.¹⁵⁵ Only where the court believes that further investigation is necessary, it may give instructions to the police on the manner of investigation.¹⁵⁶ Therefore, the police may not, on their own initiative, undertake any investigative steps which involve custody of the accused, such as compulsory medical examination¹⁵⁷ or interrogations¹⁵⁸ of him. This is for the purpose of not to frustrate the vital and praiseworthy purpose of article 172 to avoid the exercise of the police custody over young persons.¹⁵⁹

Where the case requires adjournment or transfer to higher court for hearing, the police must not in any way handle over the child. The rule is that, “Where the case requires to be adjourned or to be transferred to a superior court for trial, the young person shall be handed over to the care of his parents, guardian or relative and in default of any such person to a reliable person who shall be responsible for ensuring his attendance at the trial.”¹⁶⁰

In case of ordinary procedure, a person may not be tried without a charge being framed except in petty offence cases, however, contrary to this procedure in the case of young persons framing a charge is also neither necessary nor is allowed except where the accusation relates to an

¹⁵³ *Ibid.* article 172 (2)

¹⁵⁴ *Ibid.* article 173

¹⁵⁵ *Ibid.* article 22(2).

¹⁵⁶ *Ibid.* article 172(2)

¹⁵⁷ *Ibid.* article 34

¹⁵⁸ *Ibid.* article 27

¹⁵⁹ *Stanly z. fisher, supra note 127, p.134.* However, it would be proper for the police to conduct an investigation where necessary, to determine whether or not there is sufficient probability of guilt to justify issuance of a summons or application for arrest warrant without prior authorization of the court. For this purpose it might be necessary to visit the scene of the crime, summon and interview witnesses, conduct searches, or obtain a medical examination of the victim etc without special authority of the woreda court.

¹⁶⁰ The criminal procedure code, *supra note 147, article 172 (4)*, here, the law wants the child to stay within a family environment pending the final disposition of the case. This is in line with, In any case where a young person is involved, the police, the public prosecutor, the parent or guardian or the complainant must bring arrested juveniles immediately before the nearest woreda court.

offence that entails a penalty of rigorous imprisonment exceeding ten years or death, as a possibility, and even in such cases the public prosecutor must be instructed by the court to frame the charge.¹⁶¹

Finally, it is constitutionally guaranteed that, children as any other citizens are entitled the right to counsel. If children want to be represented by a counsel and if they may offer, they can have one of their choices in all cases of their appearance before the court. However, the court is duty bound to appoint an advocate in two cases under the special procedures; if no parent, guardian or other person in loco parentis appears to represent the young person; or the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death.¹⁶²

3.3.2. Trial procedure

If the above procedural prerequisites are fulfilled the court shall directly proceed to the hearing. All the proceedings involving children shall be held in chambers at any hearing and no person, even the public prosecutor, is required to present except when the hearing of the case is in the High Court.¹⁶³ This provision was probably designed to limit the publicity of juveniles' proceedings in order to safeguard the young person's reputation from damage through press and radio reports, gossip etc.¹⁶⁴ Furthermore, if any evidence or comment is going to be given which is undesirable that the child should hear, she/he shall be removed from the chamber for that while,¹⁶⁵ and all the proceedings shall be conducted in as much as informal manner as possible so that the child will not felt threatened or intimidated.¹⁶⁶ The law also prohibits the detention of a child together with an adult.

Once it is satisfied that the child is well represented and other procedural safeguards designed to assure the speedy, informal, fair and confidential nature of the trial are in order, the

¹⁶¹ The criminal procedure code, *supra note 147*, article 172 (3) and article 40 (2), furthermore, young offenders are exonerated from the preliminary inquiry procedure when charged with first degree homicide or aggravated robbery according to article 80 (3) of the same code.

¹⁶² *Ibid.* article 174

¹⁶³ *Ibid.* article 176 (1), however, witnesses, experts, the parent or guardian or representatives of welfare organizations are allowed to present in the hearings of woreda court according to the same provision.

¹⁶⁴ Stanly Z. Fisher, *supra note 127*, p.148

¹⁶⁵ The criminal procedure code, *supra note 147*, article 175

¹⁶⁶ *Ibid.* article 176. (2)

following procedures are like the adult procedures.¹⁶⁷ But in contrast to ordinary criminal procedure, it seems that all witnesses in juvenile proceedings, whether called in support of the charge or in defense are treated as a “court witnesses.”¹⁶⁸ Therefore, we can say that, the court in child cases is not merely an adjudication body, but also serves as a mechanism for diverting the child from the harsh process of criminal investigation and trial. In other words, the code attempts to integrate the principle of diversion by using the court structures.¹⁶⁹

3.3.3. Judgment and sentencing

After the pre-trial, trial, evidences concluded and defense has summed up the court shall pass judgment on whether the accused child is found guilty or not. The court, in its judgment, if the child is found to be not guilty, he/she shall be acquitted and set-free forthwith; whereas if he is found guilty, the court has to go in to the sentencing or assessment process. To give the correct measure or penalty to be applied to an accused is the most difficult task of the judge. In the time of assessment and to figure out that measure is in the best interest of the child in conflict with the law, the court needs assessment of multiple factors. This guiding principle is enshrined in the code which reads;

“The court may call before it any person or representative of any institution with a view to obtaining information concerning the character and antecedents of the child so as to arrive at a decision which is in the best interest of the child.”¹⁷⁰

This gives the court the discretion to take various steps like calling upon any person like psychologist, sociologist, a medical practitioner or any of those experts on human behavior and the neighbors and teachers of the young offender to give information about the young person. The child offender may also be given the chance to call its witnesses who can tell about his characters.¹⁷¹ After examination of both sides the court shall impose the appropriate measure or penalty to be taken under article 158 and the subsequent provisions of the criminal code.¹⁷²

¹⁶⁷ *Ibid.* articles 172 (2-3), 176 (4-6).

¹⁶⁸ *Ibid.* article 176(6).

¹⁶⁹ Apparently, the code assumes that judges and courts will be in a better position to appreciate the problems and different situations of young offenders.

¹⁷⁰ The criminal procedure code, *supra note 147*, article 177 (2)

¹⁷¹ *Ibid.* article 177 (3)

¹⁷² *Ibid.* article 177(1) of the Criminal Procedure Code (here I have referred to the provisions of the criminal code, even though the provision of the criminal procedure code referred to the penal code).

The court shall explain its decision to the young person and warn him against further misconduct, but where the condition of the child offender involves mental health problems with its multiple forms, the court is bound to order for his/ her admission to suitable institution.¹⁷³ If the court finds that the character and disposition of the young offender is bad, it may exercise its discretion of ordering such offender for an admission to a special institution designed for the correction and rehabilitation.¹⁷⁴

3.4. The Tigray Regional state Revised Constitution

The state of Tigray has promulgated its constitution in 1995, which is revised in 2002.¹⁷⁵ It incorporates a provision that prescribes recognition and protection to the rights of the child under article 36, which is, a carbon copy of the FDRE constitution. The constitution also contains provision under article 13(2) that instructs the interpretation of the chapter that prescribes rights and freedoms of citizens including rights of the child to be in accordance and with the view to international human rights treaties which Ethiopia has ratified.

The revised constitution of the Tigray regional state gives a protection to children in conflict with the law specifically under article 36 (3). In this provision the constitution gives due regard to separate the child offender from adult offender in detention centers. The best interest of the child is also provided under article 36 (2). There are also other provisions in the constitution that deal with general human rights that are applicable to all persons, including children. Therefore, the previous discussion about FDRE constitution is also applicable here.

3.5. Domestic Policies and Programs

In addition to the legal frameworks that are discussed before, Ethiopia has also developed policies and programs. This section will discuss these policies and programs.

¹⁷³ The criminal code of Ethiopia, *supra note 130*, article 158

¹⁷⁴ *Ibid.* article 162. This is to show that unlike the ordinary criminal law, child justice has no punitive objective rather taking care of the mental and physical well-being as well as the promotion of the best interest of the child.

¹⁷⁵ Proclamation No. 45/ 2002, The Revised Constitution of Tigray Regional State, Tigray Negarit Gazeta, 10th Year, No. 2, 15th November 2002.

The criminal justice policy of the Federal Democratic Republic of Ethiopia has been adopted as one of Ethiopia's social policies.¹⁷⁶ It is enacted for the purpose of guiding the criminal law and administration of criminal justice within Ethiopia. The main objectives of the policy are to ensure the safety and peace of the nation, nationalities, the people, individuals and the state against crime and establish a criminal justice system which protects the rights and freedoms of all individuals. The policy has included various provisions starting from the policy purpose, goals and areas of strategic action followed by general crime prevention methods then it discussed about improving the criminal investigation and prosecution process and the efficiency and fairness principles of the criminal justice process and sanctions.

When we see the part of the policy document that deals with juvenile offenders, the policy provides in chapter six and in section 6.2 the policy provides for responding to juvenile offenders which includes 5 articles. The first article deals with the general part and it says that during all proceedings and even after a conviction, juvenile offenders must be handled in such a way as to enable them to change their ways, develop a positive attitude and grow into peaceful and law-abiding citizens. The objective of the system's intervention is to educate them and allow them to successfully reintegrate their family and their community. The second article deals with the legal protection for juvenile offenders providing that they shall not be compelled to appear as witness or plead guilty or be cross-examined or used as prosecution witness. The third article deals with a new concept that shows in the case of juvenile offenders' preferences are given to alternative remedial measures. The fourth article provides for implementing Alternative Remedial Measures and the fifth article provides for special units which include special juvenile offenders' benches to be established for conducting proceedings against juvenile offenders in the court having jurisdiction. Likewise, special units for monitoring juvenile offenders and investigating youth crime will be set up by the investigating organ and the prosecution.

Therefore, the policy has tried to incorporate new concepts like methods of settlement outside of the court such as diversion, suspension and alternative remedial methods. Furthermore, the policy also provides that laws, guidelines, programs amended and drafted with respect to the relevance, substances, nature and detail implementation of the alternative remedial measures on

¹⁷⁶ The National Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, Adopted by the FDRE Council of Ministers in 2010 and issued in 2011.

juvenile offenders shall be considered in line with the rights and special protection of juvenile offenders accepted by the constitution, the international treaties and practices.

There had been some laws that were made following the enactment of the policy and the Criminal Procedure Code of 1961 is under amendment on the basis of the policy. The draft revised Criminal Procedure Code incorporated significant measures to ensure children's access to protective and child friendly justice system. These include measures such as application of diversionary methods and setting up child friendly structures at various levels in the judicial process in line with international principles and standards.

Ethiopia has also develop a draft Comprehensive National Child Policy with due consideration of the principles and provisions of the CRC and ACRWC to guide the works of various actors dealing with children and also promote the rights of children. The policy emphasize on three central strategies: development and growth, prevention, protection and rehabilitation, care and support for children.¹⁷⁷

Furthermore, Ethiopia has also adopted National Human Rights Action Plan which is the first of its kind to the country.¹⁷⁸ The purpose of national action plan is to improve the promotion and protection of human rights in a particular country.¹⁷⁹ Within this general purpose the goal of the Ethiopian action plan is “to come up with a comprehensive and structural means for the better respect, protection and promotion of the fundamental human and democratic rights recognized under the FDRE constitution.”¹⁸⁰ In terms of scope the action plan it is prepared to address in detail the issue of civil and political rights, economic, social and cultural rights, rights of vulnerable group's rights to clean environment and right to development.¹⁸¹ Therefore, it is a comprehensive action plan embracing civil and political as well as economic, social and cultural

¹⁷⁷ Comprehensive National Child Policy of Ethiopia, final draft, prepared by Ministry of Women, Children and Youth Affairs, April, 2011, p. 2.

¹⁷⁸ The Federal Democratic Republic of Ethiopia: National Human Rights Action Plan, 2013-2015, Unofficial Translation.

¹⁷⁹ Abraham Ayalew, *ETHIOPIA'S FIRST NATIONAL HUMAN RIGHTS ACTION PLAN: AN OVERVIEW*, Ethiopian Journal of Human Rights, March 2013 Vol. I, p. 229

¹⁸⁰ National Human Rights Action Plan, *Supra note 178*, P. 3

¹⁸¹ *Ibid.* p.8

rights with due consideration for the indivisibility, interdependence and interrelatedness of human rights.¹⁸²

Concerning the protection of children, chapter four of the action plan gives emphasis to the rights of vulnerable groups like women, children, elderly, persons with HIV/AIDS and persons with disability.¹⁸³ Actions have been taken by the government to strengthen the juvenile justice administration with human resources and institutional restructuring; and to prepare conditions that would enable coordinated work among the courts, the police and other institutions.¹⁸⁴ In particular, regarding juveniles who become wards of the state, successive awareness creation courses have been given to the various levels of judges, police and officers of correction and rehabilitation centers.¹⁸⁵ However, there are still problems and challenges on juvenile justice administration like the unavailability of child friendly and interactive system of justice; the limited accessibility or weak capacity of counsel to children as delinquents, or victims in terms of legal or psychological support; and the absence of legal framework considering the ways and means of correcting or rehabilitating juvenile delinquents within and by communities themselves.¹⁸⁶ Furthermore, the non-separation of juvenile offenders from adults in some correction centers and, similarly, the children who accompany persons under custody.¹⁸⁷

The EHRC, in close operation with the Ministry of Justice, is entrusted with a mandate to monitor and follow up the implementation of the action plan.¹⁸⁸ The EHRC is also empowered to take necessary measures for the preparation of a successive plan.¹⁸⁹

3.6. Compatibility and Adequacy of Ethiopian Laws with International Instruments

One can conclude that there is no huge gap as such in Ethiopia with regard to substantial laws and their provisions. To start with criminal responsibility of the child, even if considerations concerning the age at which children are capable of understanding consequences differ widely

¹⁸² Abraham Ayalew, *supra note 179*, p. 232.

¹⁸³ National Human Rights Action Plan, *Supra note 178*, p.145-153

¹⁸⁴ *Ibid.* p.149

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.* p.150-151

¹⁸⁷ *Ibid.* p.151

¹⁸⁸ *Ibid.* p.185

¹⁸⁹ *Ibid.* p.186

across culture, and even within societies the Ethiopian laws set a minimum age of nine under the criminal law and below which age children shall be presumed not to have the capacity to infringe the criminal law. This is in line with article 40 (3) of the CRC and article 17 (4) of the ACRWC.

The constitutional rights of the child are also almost direct copy of the international standards, particularly with regard to the “best interest of the child” in article 36 (2) and prohibition of corporal punishment under article 36 (1) (e) of the FDRE constitution. These provisions are in line with article 3 (1) of the CRC, article 4 of ACRWC and, rule no.18 of Beijing Rules.

The fact that the domestic laws of Ethiopia on the administration of juvenile justice is, by and large compatible with the corresponding minimum international standards does not mean, however, that they are all coherent and adequate enough to address all rights and issues of children in conflict with the law. There are short comings in the sense that the Ethiopian laws face with gaps and lacks in essential details. Some of the short comings of the Ethiopian laws are;

3.6.1. Existence of disposition measures that are not congruent with the stated objective of juvenile justice administration

In line with the minimum international standards, the objective of administration of juvenile justice in Ethiopia is that of the rehabilitation of the child in conflict with the law. However, some of the disposition measures contained in the criminal code of Ethiopia like the court’s power under article 168 (1) (b) to order the young offender to serve a sentence of imprisonment in an ordinary prison rather than in a “corrective institution” of the reform school type is not in line with this objective. No matter how horrible the crime committed, it is hard to accept that society might “write off” a child of nine or eleven years as “incorrigible.” Surely, at least until middle adolescence, there is hope that every youth may be salvaged by appropriate care and discipline. Assuming the availability of corrective institution envisioned by article 162 of the criminal code, it is a more proper environment for convicted young person than a prison. Therefore, this provision is geared more towards satisfying the vengeance needs of society than towards either reforming the behavior of the child or promoting his/her best interest and well being.

3.6.2. The absence of laws that sufficiently recognize diversion and other non-judicial and noncustodial mechanisms

In the criminal procedure code or other laws, there is no provision for measures dealing with children in conflict with the law without resorting to judicial proceedings. The criminal procedure code provides that judicial bodies, in the form of courts, are to carry out this function. Furthermore, in the measures provided in the criminal code like; ‘Supervised Education’ (article 159), ‘Reprimand; Censure’ (article 160), and ‘School or Home Arrest’ (article 161) deal with community-based measures and can be considered as diversionary measures. However, none of the dispositive provision of the law may be applied unless the juvenile has first been convicted of one of the crimes prescribed by the special part of the criminal code, in accordance with the appropriate general part principles of guilt, causation, justification and excuse, etc.

The other problem is, even though it is the police who normally have the first encounter with children in conflict with the law, the Code does not recognize any diversionary role to the police and it does not regulate how the police should handle children in conflict with the law. The code neither provides other institutions for the diversion of the child too.

3.6.3. Inadequacy of the existing substantive and procedures for the handling of young offenders

The juvenile justice administration of Ethiopia lacks in the details of the existing substance and procedures. The Criminal Procedure Code of Ethiopia gives the impression that only the special procedures (Art. 171-180) should apply to young persons. Complaint and accusation, arrest, investigation, charge and plea, trial, judgment, sentence and appeal, all apparently meant to be governed by these few provisions. As pointed out by Fisher, “inevitably, such brief coverage has kept many matters unsettled and it is often problematic whether and how much of the rest of the code should be used to fill the gap.”¹⁹⁰

Low threshold for minimum age of criminal responsibility: the minimum age of criminal responsibility provided in the criminal code it is low because, reasonably speaking, a child whose age is nine or ten is emotionally, mentally and intellectually not matured. In other words, this child couldn’t have the mental capacity to know the consequences of his act or omission or of

¹⁹⁰ Stanley Z. Fisher, *supra note 127*, p. 127.

regulating his/her conduct according to such understanding.¹⁹¹ In addition to this, the CRC Committee encourages state parties to increase their minimum ages of criminal responsibility to at least 12 years and to continue to increase the age.¹⁹²

Classification of children in relation to their entitlement to special protection: The protection accorded to children alleged to have committed crimes, charged or sentenced under the international legal framework, extends to all children under the age of eighteen. The Ethiopian criminal justice system, however, has excluded children above the age of fifteen from most of these forms of protection.¹⁹³ The law effectively deprives this group of children of their entitlement to protection by making them subject to the same substantive and procedural rules as adults. The only special protection they are subjected to is judicial discretion in sentencing.

Lack of practical guidelines and detailed rules in handling young offenders in the process of administration of criminal justice: The criminal law does not have detailed rules in which institutions are to apply these measures and it fails to specify the responsibilities and controlling mechanisms of these institutions. The criminal procedure code also lacks detailed rules and guidelines on the application of its protections and guarantees.¹⁹⁴ Consequently one observes either arbitrary application or a complete neglect of these principles usually to the detriment of the children. In other words, this problem creates uncertainty and confusion resulting in children being treated the same with adults by the police and even at times by the judiciary.

¹⁹¹ The criminal code of Ethiopia, *supra* note 130, article 48.

¹⁹² CRC General Comment No 10, *supra* note 65, paragraph 32. Furthermore, the Beijing Rules, *supra* note 10, rule 4.1. States: "In those legal systems recognizing the concept of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

¹⁹³ This is in contravention of articles 2, 37 and 40 of the CRC and articles 3 & 17 of the ACRWC.

¹⁹⁴ For instance, the procedural mechanisms of enforcement of such principles as informal hearings, parental and legal representation, administration of educational measures, and secrecy are not provided for in the code.

CHAPTER FOUR

THE PRACTICE OF JUVENILE JUSTICE IN TIGRAY REGIONAL STATE

Introduction

When the transitional government assumed power in 1991, Tigray became among the nine constituents of the Ethiopian federal government under the FDRE constitution. Tigray is located in northern Ethiopia and it lies between 12⁰ -15⁰ north and 36⁰-45⁰ east. Tigray is bordered by Eritrea to the north, Amhara Regional State to the south and south west, Sudan to the west and the Afar Regional State to the east. Its ecological zones include Dega (high land), woyna dega (medium altitude) and kola (lowland).¹⁹⁵ The Tigray Regional State population was 4,316,988, of whom 2,126,465 were men and 2,190,523 women; urban inhabitants number 844,040 or 19.55% of the population.¹⁹⁶ With an estimated area of 41,409.95 square kilometers, this region has an estimated density of 100 people per square kilometer. For the entire region 992,635 households were counted, which results in an average for the Region of 4.4 persons to a household, with urban households having on average 3.4 and rural households 4.6 people.¹⁹⁷ The total area coverage of the region is 41,409.95 km² (15,988.47 sq mi) and Agriculture is the dominant source of livelihood.

According to the current administrative structure of the regional state, Tigray is subdivided in to seven administrative zones; the southern, south eastern, eastern, central, western, north-western zones and mekelle (special zone). Moreover the zonal administration is divided in to woredas, and woredas in turn subdivided to Tabias. With regard to the protection of children, unlike the federal setting in which children are within women and children affairs minister, they are in the ambit of labour and social affairs bureau¹⁹⁸ and the respective zonal and woreda structures.

Having this general background the subsequent part of the study is devoted to analyze the practical application of international, regional instruments and national laws as well as the

¹⁹⁵ Asmelash w/mariam, 2006, *The effects of land reform on peasant, social organization*. A.A.U, Department of sociology and social anthropology, p. 8

¹⁹⁶ Census conducted by the Central Statistics Authority of Ethiopia (CSA), 2007.

¹⁹⁷ Ibid.

¹⁹⁸ The issues of children are within the ambit of this bureau according to the Revised Proclamation No. 215/2012, 'Definition of Powers and Duties of the Executive Organs of Tigray Regional State,' Tigray Negarit Gazeta, No. 4, 19th Year, 2012. According to this proclamation, the bureau, in collaboration with other concerned bodies, has a duty to assure that the rights of children are properly implemented.

evaluation of the practice of Tigray Regional State juvenile justice. Mekelle, Adigrat, Adwa and Axum were selected as sample places of this thesis. This is because they are among the major towns of the region, therefore, they are assumed to be in a better position than other small towns to protect children in conflict with the law infrastructural as well as professionals working in the justice system. Furthermore, there are some beginnings in providing infrastructural facilities like closed circuit television, social workers and other facilities to better protect the child.¹⁹⁹

4.1. Back Ground Information of Respondents

The data analyzed in this chapter were obtained through interviews and questionnaires administered to the police, judges, public prosecutors, children in conflict with the law, advocates, prison officials, human right commission experts, bureau of labour and social affairs expert, the parliament and social workers. Field visit was also conducted to the justice institutions by the researcher.

Table 1 back ground information of the police stations, courts, and public prosecutor’s office

Name of the city/ town	name of the police station, court and public prosecutor’s office
Mekelle	Kedamay woyane
	Semen
	Ayder
Adigrat	Adigrat
Adwa	Adwa
Axum	Axum

¹⁹⁹ Unfortunately all the closed circuit televisions are not functional all over the region. Child friendly setting, a kind of forum in courts, is established by Tigray regional state supreme court in collaboration with UNICEF in Mekelle kedamay woyane court and Adigrat woreda court only, however, no case has been entertained in such specialized forums.

Table 2 back ground information of the respondents to the questionnaire

Name of the institution	Number of respondents					Advocates
	Police	Judges		Public prosecutors		
		Woreda court	High court	Woreda court	High court	
Kedamay woyane	6	3	3	4	2	10
Ayder	5	3		4		
Semen	4	3		4		
Adigrat	2	4	3	3	4	
Adwa	2	3	2	3	3	
Axum	2	3		2		
Total	21	19	8	20	9	

Table 3 Children in conflict with the law interviewed

Name of the institution				Remark
Police stations	Number of respondents	Prison centers	Number of respondents	Most of the children interviewed are assumed to be between fifteen and eighteen years old.
Kedamay woyane	3	Mekelle	4	
Ayder	2			
Semen	2			
Adigrat	2	Adigrat	3	
Adwa	2	Adwa	3	
Axum	2	Axum	3	
Total	13		13	

Table 4 back ground information of respondents to an interview

Name of the interviewee	Institution	Position	Date of the Interview
Abyot G/hiwot	Human rights commission	Children and women's expert	15/10/07
Commander Shefena	Tigray Prison administration	Children and women expert	5/10/07
Commander Teberh Ebrahim and Sajin Tsega G/Michael	Mekelle prison administration	Counselors	19/10/07
Dawit Amaha	Human rights commission	Investigator	15/10/07
Desta G/ Michael	Advocate		1/11/07
Dhab Ahmed	Bureau of labour and social affaires	Child expert	03/11/07
Hriti Mihreteab	Supreme court	President	11/9/07
Inspector Gidey W/haweria	Adwa prison center	Prisoners administration team coordinator	25/10/07
Inspector Tesfay Tewelde	Axum prison center	Prisoners administration team coordinator	25/10/07
Shemshu Kahsay	Member of the parliament		17/11/07
Solomon Embaye and Kiros member	Kedamay woyane court	Social workers	18/10/07
Tewelde Tsegay	Adigrat police station	Social worker	23/10/07
Tsehaye Weldu Wubet	Advocate	President of advocates' association	20/10/07
V.Inspector Teklay Yohannes	Ayder police station	Crime investigator	18/10/07
V/commander Mengstu	Semen police station	Crime Investigation head	12/10/07
V/commander Teklay Amare	Adigrat prison center	Head	26/10/07

4.2. Finding and Analysis of the Research

As we can infer from the above tables, the total respondents from the interviews and questionnaires were 129 and these constitute a various range of representation in terms of work experience, academic back ground and interaction with children in conflict with the law. Taking such representative nature of respondents at the end will enable the researcher to come up with different data from different perspectives. Therefore, how the Tigray regional state juvenile justice system functions in the ground is analyzed as follows.

4.2.1. Specialized institutions for children in conflict with the law

The existence of specialized institutions dealing with children in the structures of judicial and law enforcement organs plays a significant role in ensuring fair and speedy treatment and trial of children in conflict with the law. In other words, it is believed that specialized Child Protection Units²⁰⁰ (CPUs) and Child Friendly Courts²⁰¹ (CFCs) would contribute to the discharging cases of children efficiently and fairly in an informal and child-friendly environment.

The police were asked whether there are effective and specialized CPUs and other infrastructural facility to accommodate the mental and physical maturity of the child in their station: 80.95 % of the respondents replied negatively. There is no such setting in their station; therefore, children are detained in a place where adult suspects are detained. The remaining respondents, those from Kedamay woyane and Adigrat police stations, replied positively in the sense that to some extent there is such setting for those children between nine and fifteen years old. There is separate room for those groups of children to remain separate from adult suspects at the night time.²⁰² This doesn't mean, however, they are enough to protect the rights of children to the fullest extent

²⁰⁰ Generally, these units are specialized police systems with particular specialization and responsibilities related to children in the law enforcement and criminal justice processes. Usually, they are established under municipal police departments. In Ethiopia, the specialized police units are called Child Protection Units (CPUs). They are established under municipal police structures and concerned with the aspects of violence against children as well as youth offending, and the corresponding measures of proactive as well as reactive nature. They exist to provide and facilitate specialized services of protection and treatment for particularly vulnerable children in the respective communities, children under a high risk of abuse and offending as well as those who are abused, and those in conflict with the law. There are such settings in the capital, Addis Ababa.

²⁰¹ They are a specialized court that assesses the child holistically in a non-threatening and participative manner and decisions based on the best interest of the child balanced with the interest of justice. They are also useful mechanisms of diverting of children from the criminal justice system.

²⁰² V. commander Mengistu, semen police investigator coordinator also said that the police sometimes keep the younger children in their offices or allowed them to spend the night in one of the rooms the police use for purposes other than detention.

because these separate rooms are not adequately furnished with infrastructural facility in line with the children's mental and physical maturity, and the so-called separate rooms are adjacent to the other rooms so that they share all other facilities with adults.²⁰³ In other police stations of the region children suspected of a crime are detained together with adult suspects whether in the day or at the night.²⁰⁴ The prison centers also lack such separate infrastructural setting for convicted children. The practice of the placement of prisoners in the regional state is carried out on the basis of the principle of separate accommodation for female and male prisoners only.²⁰⁵ The main justification consistently given by police and prison administrators for not observing the rule on separate detention of children and adults is resource limitation. However, the researcher believed that this is not the only problem, other factors like lack of awareness about child rights, as well as giving due attention to the issue and problem of using available resources appropriately also explain the situation.

In the case of CFCs and other infrastructural facilities in the court; 77.78 % of the judges, 82.76% of the public prosecutors and all of the advocates replied that there are not CFBs built to accommodate children's physical and mental maturity so that children's cases are treated in ordinary criminal courts. On the other hand, the remaining respondents replied that there is a separate room for the treatment of children in conflict with the law in Adigrat woreda court and Mekelle kedamay woyane court.²⁰⁶ However, having separate room in such courts doesn't mean

²⁰³ In addition to the respondents, the researcher personally observes these stations and confirms this fact.

²⁰⁴ Mebrat Mulatu, 13 years old, suspected for homicide, is still in police station with adult suspects for about six months. This reveals much of the situation in the region.

²⁰⁵ Commander Shefena, prison administration of the state of Tigray, women and children head, said that there is separate room for those children below 18, during the night time, in Mekelle and Adigrat prison centers but not in other prison centers of the region. The researcher also confirms this when he made a field visit to such prison centers. Children are serving their sentences with those persons convicted for very serious crimes such as homicide. This is a clear violation of both international standards and Ethiopian laws on the classification and placement of children deprived of liberty which, among other things, require that children should be detained separately from adults. CRC, *supra note 7*, article 37/c/, JDLs, *supra note 12*, rule 29, FDRE constitution, *supra note 20*, article 36/3/ and article 25/2/ of the Federal Prisons Commission Establishment Proclamation.

²⁰⁶ Child justice project offices, established by Tigray regional state Supreme Court in collaboration with UNICEF, are only found in Mekelle kedamay woyane court and Adigrat woreda court and police station. Five social workers are working in these project offices. This reveals that, there are no adequate social workers in the region. Furthermore, the existing services are project-based and are not provided on a regular basis, and hence their sustainability is not guaranteed.

that it is fully functional so that all issues of children are addressed as it is required.²⁰⁷ 11.11 % of the respondents said that, even though we don't have separate bench for children in conflict with the law, some of children's cases, as much as possible, are entertained in different setting in their court.²⁰⁸

Generally the above results reveal that, children who are suspected or accused of a crime entertained their cases like adults.²⁰⁹ Children are often handled by the criminal justice system in no different way from other cases of criminality despite the attempt of the law to provide a diversionary mechanism to be undertaken by the court. Currently there are no functional CPUs and children's courts in the regional state although there are some beginnings towards their establishment. Establishment of specialized units for children in the prosecution offices has not been totally pursued in the regional state.

4.2.2. Diversion

Diversory measures are meant to avoid a child's early contact with the criminal justice system. Diversion of child offenders from the formal criminal justice system is provided for in article 40(3) (b) of the CRC, which calls for such measures to be used in appropriate cases, provided the rights of the children involved are respected. Respect for the rights of the child entails securing the informed consent of both the child and his/her parents to the diversion, bearing in mind the child's right to be heard and taken seriously in matters affecting him/her.

In the criminal procedure code of the empire of Ethiopia or other laws, there is no provision for measures dealing with children in conflict with the law without resorting to judicial proceedings. The criminal procedure code only provides that judicial bodies, in the form of courts, are to carry out this function. Furthermore, in the measures provided in the criminal code like; 'Supervised

²⁰⁷ Surprisingly, no case has been entertained within these separate rooms ever because the system doesn't work at all and there are not child specific specialized judges, public prosecutors, advocates and other professionals in the courts, except the four social workers all over the region.

²⁰⁸ Judges of Mekelle high court said that the only option we have in case of grave offences is, the proceeding is closed, social worker is called from Kedamay woyane and some arrangements are made like the setting of the court and the cloth they wear. However, this practice is not uniform to all children in conflict with the law.

²⁰⁹ Allowing children and adults to share the same waiting area and courtroom, and to mingle freely while they wait for their cases to be clearly violates the right of the child offender to privacy. It exposes children to the adult criminal system from which they are supposed to be shielded. There is therefore an urgent need for government to provide separate facilities for children in conflict with the law.

Education,’ ‘Reprimand; Censure,’ and ‘School or Home Arrest’ deal with community-based measures at the court level and can be considered as diversionary measures.²¹⁰

The practice of Tigray regional state shows that courts only impose reprimand; Censure if the suspected child is between nine and fifteen years old and if the offence committed is not grave in nature. In the case of pre-trial diversionary measures, the law has no any provision on this matter and the justice professionals have no any knowhow about the concept of pre-trial diversionary measures. Therefore, it is difficult to think the availability of diversionary centers in the regional state in the absence of any know how about the concept.²¹¹

4.2.3. Arrest and detention

In order to meet international standards, deprivation of liberty of a child must be lawful and not arbitrary; it must be imposed as a measure of last resort when no other appropriate alternative measures are at the authorities’ disposal, and must be for the minimum possible period of time and limited to exceptional cases.²¹²

For the question whether the police take the suspected child to nearest woreda court and detention as a last resort; all the respondents’ police replied that they take the child to the nearest woreda court but the police officers admit that, most of the times, if the suspected child is arrested by the police in the afternoon he/ she detained with adult suspects until the following day.²¹³ The practice shows, however, whether the child is arrested in the morning or in the afternoon, the police first take the suspected child not directly to the court rather to the police

²¹⁰ But these measures are imposed once the child is convicted.

²¹¹ All the police, public prosecutors, judges and advocates, replied that they don’t have a knowhow about the concept of pre trial diversion. Furthermore, there is no even a single diversionary centers in the region. However, Community Based Correction Programs for the sake of diverting children are available in the capital, Addis Ababa. These programs take a noncustodial approach emphasizing on an informal system of care, rehabilitation and reintegration of juveniles especially for first time offenders and petty offenders. They were established to divert juveniles from the criminal justice Process into correction programs which challenge the offending behavior of juveniles while allowing them to remain in the communities with their families. They are aimed at realizing the best interests of juveniles by; preventing potentially vulnerable children from involving in crime; keeping juveniles at home rather than institutions; avoiding trauma, labeling and stigma associated with formal justice processes and avoiding criminal records for juveniles; reducing the chances of future involvement in crimes through targeted individual rehabilitation and finally, increasing collaboration between the police and local communities in preventing crime for children.

²¹² CRC, *supra note 7*, article 37(b); JDLs, *supra note 12*, rules 1& 2 of the JDLs.

²¹³ But four respondents from kedamay woyane and Adigrat said that, these children between 9 and 15 remained separate from adult suspects in the night time.

station. In other words, in most cases, the practice of detaining children is in accordance with the rules applicable to adults that require a person be arrested, taken to the police station and presented to court within 48 hours.²¹⁴ Therefore, the practice with respect to children below the age of fifteen is a violation of the provisions of the criminal procedure code which requires the police to immediately present the child to the nearest woreda court and seek instructions.

4.2.4. Legal representation and immediate notification of the parents or guardians

Normally, the police do not inform the family of the children between the ages of fifteen and eighteen before or after the arrest unless parents and relatives are accidentally present at the time. The police rather attempt to contact families only for children below the age of fifteen, however, usually after the arrest and detention has taken place. If the parents or guardian are present, these groups of children, in most instances, remain with their parents or guardians until the police finish its investigation. However, if the suspected child has no parent or guardian or if they can't assure the bail bond or the crime is grave in nature, in most instances, they remain in the detention center with adult suspects. The legal representation of children while they are in police is almost nonexistent throughout the region.

Asked for parent or guardian's support in court proceedings: the judges, the public prosecutors and most of the advocates said children are made to be supported by their parents or guardians in court proceeding. However, the support is not enough because most parents or guardians have no knowhow about the law.²¹⁵ Legal representation is made only to those cases that are grave in nature.²¹⁶ Even in grave cases, an advocate is appointed by the order of the court without any payment; therefore, he/ she didn't take the case seriously like other paid cases.

²¹⁴ The criminal Procedure Code of Ethiopia, *supra note 147*, articles 58 and 29

²¹⁵ The problem arises, however, when the child is street or he comes from country side or the parent/ guardian is not willing to support the child. Since there is no any institution to support the child he/she would be provided before the court without any help from anyone else. Advocates support the child in grave offences only after the court orders to do so.

²¹⁶ Ato Tsehaye Weldu, Advocates association president, said that one advocate at least should represent one case as a probono service in a year. The advocate that is appointed to represent children in conflict with the law is not specialized in child rights, rather he/ she has an obligation to serve freely. Therefore, there are problems in defending children's case as it is required. The advocate is is not adequately trained in child rights. This is due to lack of the required focus/ commitment given to the advocate. Strengthening this Desta G/Michael, advocate, strengthens this and said there is no child specific specialized advocate, I am here to represent mebrat mulatu (13 years old and she is suspected for homicide), because I have the obligation to serve the public freely, however, I don't have specialized knowledge on children's rights.

4.2.5. Protection of Basic principles of the child

On the question whether the basic principles of the child are effectively protected; all judges, 58.62 % of the public prosecutors and 50 % of advocates replied that, most of the time in family cases, they are protected. In the case of children in conflict with the law, even though there are some hindrances, the basic principles are protected as much as possible by; prioritizing the cases of children, close proceedings, take appropriate measures to respect the best interest of the child, considering the age of young offenders when the court renders final judgment. On the other hand, the remaining respondents replied that the basic principles are not effectively protected because there is lack of infrastructure, professionals and capacity gaps and there is back log and delay in most cases and especially children's participation in the court rooms is very problematic.

However, there is one fact that can't be denied and all the respondents agree: there is a problem for the effective implementation of the basic principles as it is ought to be due to the fact that; there is lack of trained judges who work specifically with children, absence of other professionals who can support in courts, the financial constraints to equip courts to be effective, courts failure to consider these rights fully in the justice process etc.²¹⁷

4.2.6. Proceedings of the court

The criminal procedure code stipulates, where the young person is brought before the court all the proceedings shall be held in chambers. On the question of what seem the Proceedings of the court: 88.89% of judges, 51.72 % of public prosecutors and 60% of advocates replied, in most cases, the proceedings of the court for cases of children between the age of nine and fifteen is closed. The remaining respondents replied the other way round, the proceedings of the court are public and this affects the right to privacy and dignity of children.²¹⁸

The formal or informal nature of the proceeding depends on how the judge perceived children and to the extent of the knowledge on children's rights he/she has. In most cases, even it is

²¹⁷ Solomon Embaye and Kiros member, social workers at Kedamay woyane court, also raises the above problems and said that they are doing much in family cases but not that much in children in conflict with the law.

²¹⁸ This is not in line with the CRC and the ACRWC and the domestic laws which require that the privacy of a child in conflict with the law be fully respected at all stages of the proceedings, to avoid harm to the children by undue publicity.

closed; judges entertain children's case formally. This is due to the absence of adequately trained professional as well as detail guidelines on what the judge should do while entertaining children's cases.²¹⁹ Furthermore, in the case of whether it is public or closed, most of the respondents agree that the police and the public prosecutors only think how to win the case, the right of the child is not that much of their concern, because their performance of work is assessed by how much cases they win.²²⁰

4.2.7. Sentencing options and punishment

Measures and sanctions for children in conflict with the law should always be constructive and individualized responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental wellbeing and development, and the circumstances of the case. Sentenced to a custodial sentence, which should be a last resort and for the shortest possible period of time, the conditions of prisoners aged below eighteen years must take account of their age.

Determining whether or not a child has reached fifteen years of age is particularly essential since the results are crucial in deciding whether or not the child benefits from the protection accorded by Ethiopian criminal law. The option used by the police and the court for the verification of the correct age of the suspected child is: baptism certificate, medical examination, birth certificate but it is uncommon, vaccine certificate, education certificate, and physical observance/presumption as the case may be. However, when the crime is grave in nature, most courts and nearly all high courts use the medically ascertained estimation as his/ her correct age of the suspected child.²²¹ Having no single procedure to verify the correct age of the child in the region affects the best interest of the child as a primary consideration.

²¹⁹ Perhaps the most significant influence of the absence of corrective institutions and penitentiaries with separate facilities is observed in the trial itself. Courts do not go into the full scale trail of a young offender presented to them. This means that procedural requirements of camera hearing and informality of the proceeding, among others, are not respected.

²²⁰ The public prosecutor also participates in woreda proceedings and charges a child if the crime is punishable above ten but below fifteen years. Here court authorization is needed.

²²¹ This has its own problems because it is still estimation of the medical doctor depending to the physical appearance of the suspected child and it takes long time so that it makes the trial time longer and would result in longer detention periods for the child. Furthermore, it gives a huge discretion to the police and the court.

Essentially there are two courses open when the police investigation of a young offender is completed. If the child is less than fifteen year of age, children are often immediately released after being 'advised' or 'reprimanded' by the court, but other options that are provided in the criminal code are not imposed by courts.²²² In other words, no court in any of the sites covered has taken any measure against a young offender whether correctional or educational. The reason for this as admitted by all judges interviewed is the absence of any of the institutions that can carry out the measures prescribed for young offenders by the criminal code.²²³ That's why, since the police know the likely outcome of a court process in the case of children between nine and fifteen, they are sometimes tempted to resort to detaining children suspected of committing crimes without presenting them to court so as "to educate" them. Furthermore, there is no explicit mechanism to monitor children who are advised and reprimanded in the presence of their parents by the court.²²⁴ But if the case is grave in nature, courts impose imprisonment like adults.²²⁵

4.2.8. Conditions of detentions and prisons

The rooms in the police and prison visited by the researcher are overcrowded, lack of up standard food, clothes, beds, mattresses or blankets to children and many of the centers do not have sufficient water and sanitation facilities.²²⁶ Overcrowding could be largely due to the frequent recourse to and excessive length of pre-trial detention, no diversionary services for juveniles in the region and the limited or almost non existence of training to the police and prison officials. In some detention centers there is also both physical and psychological harassment to the child from the police and adult suspects.²²⁷

²²² In the decided cases where the researcher had assessed, courts impose reprimand, counseling and suspension of enforcement of penalty if the crime is not punishable above 10 years imprisonment or death.

²²³ This is true because in no part of the region is there any special corrective institution established to cater for the correctional needs of young offenders. Moreover, in no part of the region is there any charitable organization, whether public or private that has the specific task of seeing to the reintegration into the community of convicted young offenders (bodies such as schools or the family).

²²⁴ In case of street children, no one is around to follow up their behavior.

²²⁵ There is a 12 years old child, sentenced for 3 and half years, in Axum prison center with adults. She has served one and half years in the prison center until the researcher made personal visit.

²²⁶ The interviewed children said that, relatively speaking, prison centers are better than police stations in this regard.

²²⁷ These problems are also forwarded by those children found in the detention centers. Abyot Abebe, human rights commission children and women's expert, also reveal these problems

Children who are detained with adult suspects run the grave risk of “contamination” in the sense that they are susceptible to adult criminal influence and they might turn into hard-core criminals when they are released.²²⁸ Furthermore, they may be subjected to homo sexuality, subjected to communicable diseases like HIV/ AIDS, Tuberculosis (TB) and other diseases.

4.3. Inter-sectoral Cooperation between the Justice System and Other Stake Holders

The successful implementation of children's justice programs requires co-operation and coordination between the various government bodies involved in the criminal justice system and other agencies, institutions and individuals working to help children in conflict with the law.²²⁹ in other words, If common assessment framework is established among professionals working with or for children and other stake holders (such as lawyers, psychologists, physicians, police, social workers and other governmental and NGOs stake holders) in proceedings or interventions that involve or affect children, it is easy to provide any necessary support to those taking decisions, and enabling them to serve children’s interests as best they can in any given case.²³⁰

With respect to Tigray Regional State juvenile justice administration; at the police level, there is no systematically designed and continuous personal and institutional linkage and cooperation with other stake holders outside the justice system on the issue of children in conflict with the law.²³¹ With respect to the court and public prosecutors; 85.18 % of the judges and 93.10 % of the public prosecutors replied that, they don’t know any governmental or NGOs that closely works with them. Some of the respondent judges replied that there is a linkage with UNICEF. However, the linkage is not systematic, continuous and strong. The Tigray regional state Supreme Court president confirms this idea of respondents and said that “we have a linkage with

²²⁸ V. Inspector Teklay Yohannes, Ayder police investigator, said it is surprising that the child is extremely different when he/ she is not mixed with adult suspected and when he/ she is mixed up. He/ she learns how to commit other crime, conceal evidences and deny what he/ she does etc systematically from the adult suspects.

²²⁹ Nikhil Roy & Mabel Wong, *supra note 55*, p.101

²³⁰ *Ibid*, furthermore, international standards provide this linkage and cooperation. See JDLs, *supra note 12*, rule 81 & 82, Guidelines for action, *supra note 13*, guideline 8, Beijing Rules, *supra note 10*; rule 26 and Riyadh Guidelines, *supra note 11*, guideline 60.

²³¹ The police officers subject to the questionnaire and interview said, had there been strong linkage and cooperation, it would have been easy to build a separate detention center and other infrastructural facilities for children only.

UNICEF, and in collaboration with it we have materials for child friendly setting in Mekelle, Adigrat, Adwa and Axum. The materials are there, however, not functional.”²³²

The human rights commission²³³ interact with the justice system mostly in capacity building, however, the relation it has is not systematic, strong and continually arranged.²³⁴ Commonly what the human rights commission doing is accepting petition. If the petition has sufficient ground to be investigated, the commission begins the investigation process, otherwise, there is no as such commitment to follow up what the rights of persons in the ground are being treated on its own initiative.²³⁵ The labour and social affairs bureau which children are within its ambit also didn't do much work in connection with children in conflict with the law. Its focus is on creating job opportunities, once children are suspected and the following procedures, it didn't give emphasis as such.²³⁶ However, now a day it is on process, in collaboration with prison administration, to construct rehabilitation center in the future for children in conflict with the law and the budget is already approved.²³⁷ In the case of prison administration too; the linkage and cooperation with other governmental and NGOs stake holders is not systematic and continuous.²³⁸

²³² Hriti Mihretab, Tigray regional state Supreme Court's president.

²³³ This commission was established by proclamation No. 210/2000. According to article 6 of the proclamation, the commission has the following duties and responsibilities: to ensure that the human rights and freedoms provided for under the constitution of FDRE are respected by all citizens, organs of state, political organizations and other associations as well as by their respective officials; to ensure that laws, regulations and directives as well as governmental decisions and orders do not contravene the human rights of citizens guaranteed by the constitution; to educate the public using mass media; to undertake investigation upon complaint or in its own initiation; to make recommendations for the revision of the existing laws, enactment of new laws and formulation of policies; to provide consultancy service.

²³⁴ Abyot G/ hiwot, human rights commission children and women's expert, Mekelle branch.

²³⁵ Dawit Amaha, human rights commission investigator, Mekelle branch.

²³⁶ Dahab Ahmed, labour and social affairs bureau, child expert.

²³⁷ Ibid.

²³⁸ Commander Shefena, prison administration of the state of Tigray, women and children head, said there is linkage and cooperation with Red Cross, OSSA, labour and social affairs bureau, prison follow ship (justice for all). However, the relationship is not systematic and continuous rather it is a kind of on/ off. The officials of different prison centers subject to the interview also shared this.

4.4. Challenges in the Protection of the Rights of the Child in Conflict with the Law

There are numerous challenges for the effective implementation of the rights of the child in conflict with the law in Tigray regional state. These challenges, in a majority of cases, relate to financial constraints, low levels of awareness about child rights, limited coordination amongst relevant institutions, lack of disaggregated data and regular evaluative research mechanism and lack of due attention by the concerned bodies.

4.4.1. Financial constraints

Budget is a very important component in advancing the protection and promotion of human rights in general and children's rights in particular. According to the different respondents; the budget allocated for children is not sufficient to effectively improve the protection and promotion of children's rights in general. It is difficult to establish separate child friendly infrastructural facilities like CPUs, CFCs, corrective and educational institutions and other infrastructural facilities in line with physical and psychological maturity of the child since these requires sufficient resources. In the police stations and prisons too, accommodation, food, and health services are not up to standard and a qualified psychologist/ psychiatrist is not employed except five social workers in two woreda courts and one police station of the region. This lack of budget is a huge short coming not only on infrastructure facilities but also justice professionals has been prevented from making initiatives in the field of systematic training and education on children's right in general and children in conflict with the law in particular. Therefore, in the absence of budgetary allocation expressly provided for child justice administration, if there is not sufficient, it is difficult to effectively realize and protect the rights of children in conflict with the law in the regional state.

4.4.2. Lack of trained professionals

Training for officials who work with children is a key component of an effective child friendly system. It is fair to observe that even countries that have poor resources in terms of special court rooms or facilities could nevertheless provide good services for children if the personnel who come in to contact with those children are well trained.²³⁹ This relates not only to the original professional training, but also to continuing, so that new knowledge, insights, methods and

²³⁹ ACPF and DCI , *supra note 63*, p.43

techniques can be shared.²⁴⁰ This training should, as far as possible, be multidisciplinary, with different role players being trained together, or at the very least being trained to understand the disciplinary perspectives of their counterparts.²⁴¹ But in the case of Tigray regional state, the officials in the criminal justice system could not be blamed outright for the manner they are handling children because most of the personnel have never received adequate training to treat children in a better way. Even those very few professionals who have taken training have not adequate knowledge on child rights because the training was for a very short period of time.²⁴² In addition to this, there is a problem of follow up how the training is applied in to practice. Some of the police officers and prison administrators did not receive formal education to the required minimum extent, let alone formal training related to child psychology and child rights. To put it in a nut shell, most officials involved in the administration of juvenile justice are not trained to deal with children in conflict with the law and there is a lack of recognition for the rights of the child in the criminal justice system. All judges and advocates work in civil and criminal cases at the same time. The public prosecutors also work on all criminal matters of all age groups. There is no specially trained judge, public prosecutor and advocate on children's matter.

4.4.3. Lack of inter-sectoral coordination and collaboration

There is a broad recognition of the values of interdisciplinary approaches when working with children in the justice system. A suspected child might be dealt with by officials from several different government departments and professional disciplines such as the police officials, prosecutors, social workers, advocates, prison administrators, medical practioners and judges etc. Therefore, inter-sectoral cooperation is very important in order to make sure that children are assisted safely and smoothly through the system; officials from different departments do not take

²⁴⁰ *Ibid.*

²⁴¹ This is provided in international instruments; Beijing Rules, *supra* note 10, rules 6, 12 & 22, Guidelines for action, *supra* note 13, guideline 24, JDLS Rules, *supra* note 12, guideline 85.

²⁴² In 2006, Tigray supreme court in collaboration with UNICEF gave a short training on children's right in general to; 48 participants from police, pp, judges, prison administration officials, social workers, and In 2007, Tigray Supreme Court in collaboration with UNICEF gave training on children's right and related concepts to; 41 participants from police, pp, judges, prison administration officials, social workers for 4 days, they come from alamata, enderta, shire and humera. But this training was mainly focused on child victims of a crime (According to the interview conducted with Solomon Embaye and kiros membre, social workers at kedamay woyane court). From the questionnaires distributed whether they take training or not; only 19.05% of the police, 33.33% of the judges, 31.03% of the public prosecutors and 10% replied that they were participated in training. These respondents also adds that even they take the training, it was very short and not detailed training so that it is hard to say that they have adequate and detailed knowledge on the rights and guarantees of such children.

different approaches; children are not asked to tell their story many times over; and they are otherwise protected over and above that; it is well understood that issues facing children are multi-faceted, and that professionals working together will make better decisions.²⁴³

In this regard, the Criminal Justice Policy of Ethiopia states that; collaboration among different stake holders contributes a lot to the realization of the rights of children since the task of protecting the rights of children requires the concerted effort of stake holders.²⁴⁴ But the policy provides that the desired result is not achieved because of lack of collaboration among different stake holders at different levels.²⁴⁵ Lack of accountability, responsibility as well as coordination among actors who don't consider children's affairs in their policies and programs have prevented children's multifarious problems from being addressed.²⁴⁶ This problem was seen in Tigray Regional State because, according to the respondents, there is no such a system, commitment to do such cooperation.²⁴⁷

4.4.4. Lack of disaggregated data and regular evaluative research mechanisms

Regular evaluative research mechanism is very crucial to built in to the system of juvenile justice administration to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration. Furthermore, it requires delivery of services in juvenile justice shall be systematically planned and implemented as an integral part of national development efforts.²⁴⁸ But in this regard the regional state lacks basic and disaggregated data in a data base on the number and nature of offences committed by children, the use and average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings, and children involved in the justice system.

²⁴³ ACPF and DCI, *supra note 63*, p. 46

²⁴⁴ Combined 4th and 5th Periodic Reports of the Federal Democratic Republic of Ethiopia to the United Nations Committee on the Right of the Child (2006-2011). April, 2012, p.7

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ The absence of a specific comprehensive children's law, guidelines has also undermined the process of establishing juvenile justice system which encompasses the value of interdisciplinary approach when working with children in the justice system. This is due to the existing legislations of Ethiopia such as the criminal code, the criminal procedure code, etc does not provide comprehensive and detailed information in a manner which clearly indicate the way juvenile justice should be conducted as to the child's involvement in criminal justice and regarding the establishment of child friendly justice environment.

²⁴⁸ Beijing Rules, *supra note 10*, rule 30. Furthermore, the CRC general comment no. 10, *supra note 65*, also recommends that, states parties to conduct regular evaluation of their practice of juvenile justice.

Therefore, in the absence of systematically collected disaggregated data and regularly conducted evaluation and research specifically on juvenile justice relevant to the administration of child justice, and necessary for the development, implementation and evaluation of policies and programs aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC, ACRWC and other relevant instruments to children it is difficult to have effective child friendly justice in police stations, courts and prison administrations of the regional state.

4.4.5. Problem of perception on the professionals and the general public

There is lack of awareness of the public on the rights of children in conflict with the law. Children in conflict with the law are widely perceived as criminals and therefore received very little sympathy. As a result, their rights are not seen as important to development as other children's issues. There is also an attitude widely held by criminal justice professionals to exclude persons within the age range of fifteen and eighteen, as children. Therefore, whenever they are asked about the situation of children, they usually refer to children below fifteen years of age. While lack of awareness about the rights of children might have contributed to this attitude, the criminal code's categorization of criminal responsibilities of children into three levels is the main reason to this confusion. Moreover, looking at the opinion of several judges, prosecutors and prison and police officials about the present law and practice concerning children, some of them are not enthusiastic to suggest any revision with regard to children within the age range of fifteen and eighteen deal with the problem at present.²⁴⁹

4.4.6. Lack of real commitment of the concerned bodies

In addition to the above problems, there is also lack of real commitment on the concerned bodies to establish, at least one, from those institutions that are stipulated in the criminal code. Had there been real commitment and cooperation of the different stake holders, the researcher and the respondents believe that, some improvements would have been achieved institutionally as well as professionally.

²⁴⁹ The reason they forwarded is that; these groups of persons are committing grave offences, at the present time, so they have to be punished like an adult. Furthermore, they know everything they do, if they are considered as a child they would be free from liability by the mere pretext of age. This would increase the commission of the crime.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

As the situations of children are specific, protection of their rights called for a specific and comprehensive instrument internationally. Taken in to account the fact that children are the most vulnerable members of any society, different international and regional instruments concerning the different aspects of children right such as the CRC and ACRWC come in to existence. These binding instruments brought about a paradigm shift in how we think of children and how we treat children. They recognize child as a full human being and respect for all the concomitant rights they hold. Specifically with respect to children in conflict with the law, it is dealt in articles of 37 & 40 of the CRC and article 17 of the ACRWC. In addition to these international and regional conventions, there are also other soft laws specifically deals with juvenile justice like; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines on the Prevention of juvenile Delinquency, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and Guidelines for Action on Children in the Criminal Justice System. The CRC and ACRWC and the UN rules and guidelines call for child friendly justice, emphasis is on reformative and corrective measures than punishment.

International instruments obliges to state parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law. As Ethiopia is a state party to different international and regional human rights instruments in general and child instruments in particular, the country is duty bound by these instruments. Furthermore, The FDRE constitution provides that international agreements ratified by Ethiopia are not only an integral part of the law of the country, but also they are used as frame work of interpretation in the sense that the fundamental rights and liberties contained in the Constitution to be interpreted in conformity with the UDHR, international covenants on human rights and international instruments adopted by Ethiopia. In addition to these international instruments there are national laws that address the administration of juvenile justice such as the constitution, the criminal code, the criminal procedure code.

The analysis and discussion of the thesis, presented in the previous chapters, show several inadequacies in the legal framework, administration and facilities for the treatment of children in conflict with the law. Even though the legal frameworks of the country are more or less compatible with the international instruments, there are some discrepancies like; the minimum age of criminal responsibility is too low, the maximum age limit for juveniles is not in line with the international instruments, lack of non judiciary diversionary mechanism in the laws, absence of clear and detailed rules and guidelines on the application of juvenile cases, the criminal code of Ethiopia fails to give awareness to the large varieties of non institutional dispositive measures. A huge gap exists, however, between what is in the law and the practice in Tigray regional state. The professionals working in the administration of justice suffers from a clear lack of adequate knowledge with the words and spirits of the law protecting children in conflict with the law. The system is also suffering from lack of child friendly infrastructural facilities like CPUs, CFCs, and non existence of any of the legally envisaged institutions to administer the educational measures prescribed by the criminal code. Furthermore, the concept of diversion is not known in the regional state and the diversionary role assigned to the courts by the criminal procedure code is not much understood by the police and the court. Therefore, it appears that the absence of these specialized institutions in any part of the regional state and trained professionals on the rights of children in conflict with the law is a significant factor accounting for the absence of a working system in administration of juvenile justice in the regional state.

The reasons for the rights which are guaranteed for children in conflict with the law not dully respected are; the problem of the law, financial constraint, lack of trained man power, lack of communication and coordination among the institutions involving the protection of juveniles and other governmental and NGOs stake holders, lack of evaluated research methods and lack of real commitment of the concerned bodies.

5.2. Recommendations

In order to address the issues and problems discussed in this thesis, the following recommendations are suggested by the researcher;

- ❖ The Ethiopian laws should be amended to include non-judicial diversion mechanisms and ensure that adequate safeguards to protect children from being sucked into the formal police investigation and judicial process.
- ❖ Revision of the law on the minimum age of criminal responsibility by raising it from nine to twelve years in line with the recommendation of the CRC committee and there is a need for revision of the law to ensure that the special measures are also applicable to children between fifteen and eighteen years old.
- ❖ The new proclamation on vital events registration should be put in to practice as quickly as possible so that the ages of children can quickly and easily be ascertained and to avoid the arbitrary age ascertainment by the police and the court.
- ❖ Immediate measures should be taken to enhance the capacity of the criminal justice officials and improve the physical environment of the court, prison and detention centers. In other words, the government should provide adequate funds and resources to the criminal justice system in order to enable them to provide the necessary services and facilities for children.
- ❖ Institutions should be established to entertain cases of children in child-friendly manner like CFCs, CPUs and non-judicial and non-custodial alternatives which is able to grant the child all the protections that meet international standards. Similarly there ought to be separate juvenile holding facilities that ensure that the child's rehabilitative, corrective, educational, medical needs (at least the institutions stipulated in the criminal code) are met in a setting that enhances the reintegration of the child back to society.
- ❖ It is recommendable to organize and establish an office of public defense staffed with the necessary legal experts who would assist children in conflict with the law for free. The government should work with NGOs to make free legal aid more available and accessible to all children in conflict with the law.
- ❖ Specialized training in child justice for key actors should be offered because the criminal justice system is lacking officers specially trained in juvenile justice. Therefore, specialized training on child justice should be provided on regular and permanent basis to the police, prosecutors, judges, prison administrators, advocates, social workers etc. It is also important

to give training on the rights of the child for those groups of people who directly or indirectly related with children. This will provide them with the necessary means and enable them to be responsive and sensitive to the needs of children in conflict with the law and thus fulfill their functions more effectively. Furthermore, there should be follow-up mechanism how the training is put in to practice.

- ❖ Training of police and judicial officials on the need to divert children from the formal criminal justice process. Furthermore, encourage the designation and training of special police and judicial officials to exclusively deal with the problem of children conflicting with the law.
- ❖ Participation of the community in the process of solving the problems of criminal justice which involve children should be developed. In this regard, there is need for public awareness on the rights and guarantees of children in conflict with the law. This may be done through educational outreach programs in schools and in the community at large.
- ❖ Separation of detained children from adult suspects/ prisoners should be put in place immediately.
- ❖ There should be administrative mechanisms to monitor and supervise regularly how children are handled in the police, courts and prison.
- ❖ Strengthen the involvement of human rights commission, labour and social affairs bureau and other governmental and NGOs to actively involve in providing assistance to children in conflict with the law. It is also important to strengthen the capacity of bureau of labour and social affairs, human rights commission to effectively implement the international and other national laws related with children.
- ❖ Children are intermingled with labour and social affairs bureau in the regional state and this is very problematic to children. Therefore, children should be within women's' affairs bureau or other different structure.
- ❖ Mechanisms to record cases which involve children in a disaggregated data should be developed in order to avoid the problem of mixing with adult and to enact target oriented laws, policies and other measures.
- ❖ Recruitment of additional social workers in the region is very crucial. These officers should be attached to all children's courts once established. In the mean time, they should be attached to every correctional and rehabilitation institution for children.

- ❖ To carry out the recommended actions, it requires the development and implementation of different levels of interventions through the active involvement and sustained commitment of a cross section of different actors. Therefore, the creation of forums/platforms for inter-agency dialogue on the protection of children coming in contact with the criminal justice system is very vital. Such forums may be organized at different levels and may be used to facilitate experience sharing among key actors from across sectors in addition to dialogue within the criminal justice system.
- ❖ The term 'juvenile' is labeling and has negative and stigmatized connotations of a delinquent child who is socially unacceptable in society. This term has, over time, come to have criminal connotations. Therefore, the term 'juvenile' in different instruments should be amended to child or children in conflict with the law.

In general, the recommendations mainly seek to ensure compliance with the existing laws, and lobby for increased funding by government and the establishment of separate facilities for the children in conflict with the law. Further, the study recommends that specialized training is needed to all key actors and strong coordination on permanent and regular basis between different stakeholders is vital to make all the recommendations put in to reality.

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Annexes

Questionnaires/ Interview for police

1. Is there effective and specialized police station i.e. Child Protection Units (CPUs) and other infrastructural facility in order to accommodate the mental and physical maturity of children in conflict with the law in your station?
2. If your answer to question no.1 is no, what do you think is the reason for their non existence?
3. In cases where there are no CPUs and other infrastructural facility in the station, how the cases of children in conflict with the law are handled?
4. Are the police that handle the case of children in conflict with the law acquainted with knowledge on child justice issues in general and techniques of handling children in conflict with the law in particular?
(a) If yes, how? (b) If no, why?
5. Are there trainings to the police on the right of the child in general and children in conflict with the law in particular?
(a) If yes please specify its nature i.e. short term, long term or middle term? (b) If no, what is the reason? (c) What do you suggest?
6. Is the police, as an institution and the personnel working with it, has any linkage and cooperation with other stake holders be it governmental sectors or other Civil society organizations (CSOs) or Nongovernmental organizations (NGOs) for the better protection of children in conflict with the law)? (a) If so, how and with whom? (b) If no, why not?
7. Are children in conflict with the law detained separately from adult suspects? In other words, do you have separate cells for children in conflict with the law and adult offenders at your station?
8. Supposing you do not have separate cells for children in conflict with the law, how and where do you keep the children who are detained for various offences pending their appearance before court?

9. Do you think that the conditions in the detention centers are in line with the best interest of the child in terms of the number of child offenders they contain and the environments' suitability for children's rehabilitation? (a) If yes how? (b) If no please explain the problem.

10) Is the concept of diversion well known and applied by the police? If yes, please explain how it is conducted?

11. Would the police take the child in conflict with the law before the nearest woreda court immediately following their arrest? If your answer is no, please state your reason?

12. Do the police follow the conditions and procedures of arrest and detention stipulated in international child right instruments and domestic laws? In other words, is detention considered as a last resort and shortest possible time by the police? If your answer is no, what is the reason?

13. What mechanisms would you employ in order to verify the correct age of the suspected child?

14. After the verification of the age of the suspected, then what happened next? a) If the age of the child proven to be under 15? b) If the age of the child proven to be above 15?

15. How children above 15 and below 18 years of age are treated in your institution?

Should they be treated as adults or as a child? Please give your opinion on this.

16. What positive achievement has made by your institution for the better protection of children in conflict with the law?

17. What are the major challenges for your institution not to treat children in conflict with the law in child friendly manner?

18. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?

Questionnaire/ Interview for judges

1. Do you consider that the Ethiopian laws provide sufficient protection to children who come into conflict with the law or there are some gaps to be filled? State your reasons.
2. Are there effective and specialized courts (child friendly benches) and other infrastructural facility in order to accommodate the mental and physical maturity of the children in conflict with the law in your court?
3. If your answer to question no.2 is no, what do you think the reason for their non existence?
4. In cases where there are no child friendly benches and other infrastructural facility in the court, how the cases of children in conflict with the law are handled?
5. Are the judges that handle the case of children in conflict with the law well acquainted with knowledge on child justice issues in general and techniques of handling children in conflict with the law in particular?
 - a) If yes how?
 - b) If no what is the reason?
6. Are there trainings to the judges on the right of the child in general and children in conflict with the law in particular?
 - a) If yes please explain its nature i.e. short, long, or middle term?
 - b) If not, what is the reason?
7. Is the court, as an institution and the personnel working with it; has any linkage and cooperation with other stake holders be it governmental sectors or other civil society organizations (CSOs) or nongovernmental organizations (NGOs) for the better protection of children in conflict with the law?
 - a) If so how and with whom?
 - b) If no, why not?
8. Are the basic principles of child's right i.e. best interest of the child, non discrimination, participation etc effectively respected in child friendly manner in your court?
 - a) If yes, how?
 - b) If no why not?
9. Do Children in conflict with the law get full access to legal aid and be represented/ assisted by a lawyer in the court?
 - a) If yes, please explain it
 - b) If no why not?
10. Do children in conflict with the law get full assistance from their parents or guardians, in the court as it is expected?
 - a) If yes, please explain it
 - b) If no why not?

11. Is there multidisciplinary approach in the court like psychologist, social workers or other expert in order to better protect the child in conflict with the law in general and to freely participate in particular?
12. Do children in conflict with the law come immediately to the court by the police? If your answer is no, what do you think the reason?
13. How do you see the proceedings of the court: a) Specialized in nature i.e. informal and in camera b) Not specialized in nature i.e. formal and in public as it is for adults?
14. Is the concept of diversion well known and applied by the court? If yes, please explain how it is conducted?
15. When the court found the child guilty, does the court imposes:
 - a) the appropriate measures or penalties that are provided in the criminal code (Articles 158-168 of the code), or are
 - b) The court doesn't impose the appropriate measures or penalties
 - c) If your response is (b) what is the reason?
16. the law says, where the case requires to be adjourned, the child shall be handed over to the care of his/her parents, guardian or relative and in default of any such person to any reliable person who shall be responsible for insuring his/her attendance at the trial. Is this practically applied?
17. What mechanisms would you employ in order to verify the correct age of the suspected child?
18. After the verification of the age of the suspected, then what happened next? a) If the age of the child proven to be under 15? b) If the age of the child proven to be above 15?
19. How children above 15 and below 18 years of age are treated in your institution?
20. Please give your opinion on these persons (children between 15 and 18 years of age)
 - a) Should they be treated as adults or
 - b) Should they be treated as a child? Please give your opinion on this.
21. What are the major challenges for your court not to treat children in conflict with the law in child friendly manner?
22. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?

Questionnaire for Public prosecutors

1. Do you consider that the Ethiopian laws provide sufficient protection to children who come into conflict with the law or there are some gaps to be filled? State your reasons.
2. Are there effective and specialized courts (child friendly benches) and other infrastructural facility in order to accommodate the mental and physical maturity of the children in conflict with the law in your court?
3. If your answer to question no.2 is no, what do you think is the reason for their non existence?
4. In cases where there are no child friendly benches and other infrastructural facility in the court, how the cases of children in conflict with the law are handled?
5. Are the prosecutors that handle the case of children in conflict with the law well acquainted with knowledge on child justice issues in general and techniques of handling children in conflict with the law in particular? a) If yes how? b) If no what is the reason?
6. Are there trainings to the prosecutors on the right of the child in general and children in conflict with the law in particular? a) If yes please explain its nature i.e. short, long or middle term? b) If not, what is the reason?
7. Is the prosecutor, as an institution and the personnel working with it; has any linkage and cooperation with other stake holders be it governmental sectors or other civil society organizations (CSOs) or nongovernmental organizations (NGOs) for the better protection of children in conflict with the law? a) If so how and with whom? b) If no, why not?
8. Are the basic principles of child's right i.e. best interest of the child, non discrimination, participation etc effectively respected in child friendly manner in your court? a) If yes, how? b) If no why not?
9. Do Children in conflict with the law get full access to legal aid and be represented/ assisted by a lawyer in the court? a) If yes, please explain it b) If no why not?
10. Do children in conflict with the law get full assistance from their parents or guardians, in court as it is expected? a) If yes, please explain it b) If no why not?
11. Is there multidisciplinary approach in the court like psychologist, social workers or other experts in order to better protect the child in conflict with the law in general and to freely participate in particular?

12. Do you think that the conditions in the detention centers/ prison centers are in line with the best interest of the child in terms of the number of child offenders they contain and the environments' suitability for children's rehabilitation?
13. If the answer to the above question is no, please state the problems in? i) Detention centers
ii) Prison centers iii) Other reformatory institutions if any
14. How do you see the proceedings of the court: a) Specialized in nature i.e. informal and in camera b) Not specialized in nature i.e. formal and in public as it is for adults?
15. When the court found the child guilty, would you suggest to the court to impose; the appropriate measures or penalties that are provided in the criminal code (Articles 158-168 of the code)? If you don't suggest what is the reason?
16. How children above 15 and below 18 years of age are treated in your institution?
17. Please give your opinion on these persons (children between 15 and 18 years of age)
a) Should they be treated as adults or b) Should they be treated as a child?
18. What positive achievement has made by your institution for the better protection of children in conflict with the law?
19. What are the major challenges for your institution not to treat children in conflict with the law in child friendly manner?
20. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?

Questionnaire/ Interview for advocates

1. Do you consider that the Ethiopian law provides sufficient protection to children who come into conflict with the law or there are some gaps to be filled? State your reasons.
2. Are there effective and specialized courts (child friendly benches) and other infrastructural facility in order to accommodate the mental and physical maturity of the children in conflict with the law in courts?
3. If your answer to the above question is no, what do you think the reason for their non existence?
4. In cases where there are no child friendly benches and other infrastructural facility in the court, how the cases of children in conflict with the law are handled?
5. Are the advocates that handled the case of children in conflict with the law well acquainted with knowledge on child justice issues in general and techniques of handling children in conflict with the law in particular? a) If yes how? b) If no what is the reason?
6. Are there trainings to the advocates on the right of the child in general and children in conflict with the law in particular? a) If yes please explain its nature i.e. short, long or middle term? b) If not, what is the reason?
7. Are the basic principles of child's right i.e. best interest of the child, non discrimination, participation etc effectively respected in child friendly manner in courts? a) If yes, how? b) If no why not?
8. Do Children in conflict with the law get full access to legal aid and be represented/ assisted by a lawyer in the court? a) If yes, please explain it b) If no why not?
9. Do children in conflict with the law get full assistance from their parents or guardians, in the court as it is expected? a) If yes, please explain it b) If no why not?
10. Is there multidisciplinary approach in the court like psychologist, social workers or other experts in order to better protect the child in conflict with the law in general and to freely participate in particular?
11. How do you see the proceedings of the court: a) Specialized in nature i.e. informal and in camera b) Not specialized in nature i.e. formal and in public as it is for adults?

12. When the court found the child guilty, would you suggest to the court to impose; the appropriate measures or penalties that are provided in the criminal code (Articles 158-168 of the code)? If you don't suggest what is the reason?
13. Please give your opinion children between 15 and 18 years of age: a) Should they be treated as adults or b) Should they be treated as a child?
14. What do you think the major challenges of the criminal justice system in general and children's justice in particular in Tigray regional state?
15. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?

Interview for prison administrations

1. Are there effective and specialized child friendly prison/ rehabilitation centers and other infrastructural facility in order to accommodate the mental and physical maturity of children in conflict with the law in your prison station?
2. In cases where there are no such child friendly prison/ rehabilitation centers and other infrastructural facility in the station, how children in conflict with the law are handled?
3. Are there trainings to the prison administrators on the right of the child in general and children in conflict with the law in particular? a) If yes please specify its nature short, long or middle term? c) If no, what is the reason?
4. Is the prison administration, as an institution and the personnel working with it, has any linkage and cooperation with other stake holders be it governmental sectors or other Civil society organizations (CSOs) or Nongovernmental organizations (NGOs) for the better protection of convicted children? a) If so, how and with whom? b) If no, why not?
5. Are children in conflict with the law, including children between the age of 15 and 18 years of age, are imprisoned separately from adult suspects? In other words, do you have separate cells for children in conflict with the law and adult offenders at your institution?
6. Supposing you do not have separate cells for children in conflict with the law, how and where do you keep the children who are convicted for various offences?
7. Do you think that the conditions in the prison centers are in line with the best interest of the child in terms of the number of child offenders they contain and the environments' suitability for children's rehabilitation? a) If yes how? b) If no please explain the problem.
8. Do you think that the children in your institution are well rehabilitated? a) If yes how? b) If no, what is the reason?
9. What positive achievement has made by your institution for the better protection of children in conflict with the law?
10. What are the major challenges for your institution not to treat children in conflict with the law in child friendly manner?
11. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?

Interview for government stake holders, CSOs and NGOs

1. Do you consider that the Ethiopian laws provide sufficient protection to children who come into conflict with the law or there are some gaps to be filled? State your reasons
2. Do you have connection and cooperation with the criminal justice system in general and children's justice in particular? a) If yes how, b) If no why?
3. Are the justice system (police, public prosecutor, court and prison administration) as, an institution and the personnel working with it; has any linkage and cooperation with your institution for the better protection of children in conflict with the law)? a) If so, how and with whom? b) If no, why not
4. Would you think that children in conflict with the law will be better protected if there is a strong linkage between your institution and the justice system?
5. In what way do you think your institution can support the child justice system of the region in general and children in conflict with the law in particular?
6. What positive contributions have made by your institution for the better protection of children in conflict with the law?
7. What are the major challenges for your institution not cooperate with the criminal justice system?
8. What do you think the major challenges of the criminal justice system in general and children's justice in particular in the region?
9. What possible recommendations would you suggest to improve the administration of children in conflict with the law in the region in general?
 - a) about police b) about public prosecutor c) about the court d) about prison administration
 - e) about lawyers/ advocates f) other institution, if any

Interview for children in conflict with the law

1. What happened since you were first arrested by the police? a) The police take you to the nearest woreda court immediately? b) The police detain you in the police custody c) If your answer to the above question is (b), please specify where were you detained and for how long?
2. How do you see the condition of the detention/ prison center or other rehabilitation center (delete whichever is in applicable)? a) If it is suitable for you how? b) If no, what are the problems?
3. Were you get full access to legal aid and be represented/ assisted by a lawyer during: a) Investigation of the police b) court proceedings (trial)
4. If your answer to the above question is no, what is the reason?
5. Were you get full assistance from your parents or guardians during: a) Investigation of the police b) court proceedings (trial)
6. If your answer to the above question is no, what is the reason?
7. How do you see the police investigation process? a) it is safe (good for you) b) you are beaten or threaten by the police c) you are tortured by the police d) If others, please specify
8. Are you separately detained from adult offenders?(delete whichever is in applicable) a) while in police custody b) in prison administration
9. Would you provide with recreational facilities and other instructional programs in the police station/ prison centers (delete whichever is in applicable)?
10. Is the situation of the court suitable for you (informal and in camera) or it is formal and in public?
11. How your correct age is verified? Is it your correct age what is provided in the police document/ charged for?
12. What do you suggest for the better protection of children in conflict with the law? (Delete whichever is in applicable) a) about Police b) about the court: c) about public prosecutor) About Prisons: e) about cells at police, prisons and courts: f) any other suggestions: