



**JIMMA UNIVERSITY**

**COLLAGE OF LAW AND GOVERNANCE**

**SCHOOL OF LAW**

**DETERMINATION AND ENFORCENT OF PENALTIES AND MEASURES ON YOUNG OFFENDERS IN KAFA ZONE, SOUTH NATIONS, NATIONALITIES AND PEOPLES REGIONAL STATE OF ETHIOPIA**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF LLM IN HUMAN RIGHTS AND CRIMINAL LAWS**

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**APRIL, 2021**

**JIMMA, ETHIOPIA**

## **Declaration**

I declare that this thesis titled, “determination and enforcement of measures and penalties on young offenders: The Case of kafa zone” is my own work, that it has not been presented for any degree or examination in any other university, and all the sources I have used or quoted have been indicated and acknowledged as complete references.’

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## **AKNOWLEDGEMENT**

First of all, I would like to praise Almighty GOD for his unconditional Love of me through Lord Jesus. He gave me the strength, patience and guidance to start and finish this thesis successfully. I have been alone but Lord has been with me in everything, thank you GOD through Jesus. Secondly, I would like to thank the SNNPRS attorney general office for giving me the chance to return back to law school from where I have learned a lot of skills that will help me to serve my people and my country.

Thirdly, I would like to provide my appreciation to my advisors DR. Tadesse Simeneh (principal adviser) and Mr. Yiheyis Kidanemariyam (co-adviser). They thought me that how can it be possible to be successful in challenging time.

Lastly, I want to thank again GOD for you my darling. You waited me until I successfully accomplished this thesis. I Love you always mekdi!! You are my special!!

## **Abstract**

For the purpose of this research Young offenders are persons under the age of eighteen but above nine who are involved in criminal offences. Unlike adult offenders, they are required to be treated in special and separate procedures owing to their immaturity to take criminal responsibility and for being vulnerable social groups to defend themselves. Both national laws such as FDRE constitution, FDRE criminal code, CPC, SNNPR constitution, etc and international laws like CRC, ICCPR and other international standards have incorporated the same notion where persons under the same classes are required to be treated in special way. The purpose of juvenile justice is to hold young people accountable by imposing measures that have meaningful consequences for them and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. Therefore, persons who involve in the notion of juvenile cases should have the knowhow about the purpose of juvenile justice system. When young offenders are involved in criminal acts they shall be taken immediately to the nearest court who shall direct the issue of commencement of investigation and framing of charge on them. Having considered the immature mind set up of juveniles alternative measures are advisable and imposition of penalty should be taken as the last resort if the alternative measures are not effective and it shall be enforced in strict segregation from adult offenders. The researcher assessed the determination and enforcement of measures and penalties in kafa zone through questionnaires, interviews, field observation and document analysis. Judges, public prosecutors, investigating police officers, administrators of Bonga correction center and young offenders in the correction center are participated as respondents in data collection. Data collected from the study area shows that there is clear violation of laws dealing with juvenile justice by persons involved in the cases of young offenders. While the law requires the authorization of court to begin investigation and to frame charge on young offenders, most cases are conducted without this authorization. The requirement of law to try cases of young offenders in separate trial and separate accommodation is not strictly obeyed. Both in police stations and in correction center, young offenders are imprisoned with adult offenders due to the absence of separate accommodation. Alternative measures are also not taken as a primary option. Therefore, the researcher has suggested the corrective measures to be taken to tackle the problems through awareness creation programs for justice actors and effective implementation of laws and standards to make rehabilitation of young offenders sound and achieving its goal.

## Acronyms

ACHPR - African Charter on Human and Peoples' Rights

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

Art- article

CC-criminal code

CFJ-Child friendly justice

CJP- Criminal Justice Policy

CPC- Criminal procedure code

CRC-Convention on the rights of the children

CSOs- Civil Society Organizations

FDRE- Federal Democratic Republic of Ethiopia

FDRE CC. Federal Democratic Republic of Ethiopia Criminal Code

ICCPR- International convention on civil and political rights

I/R- Inspector

NGOs- Non-Governmental Organizations

OAU-organization of African union

P- Page number

Para – paragraph

SNNPR- South Nations Nationalities and Peoples Region

SMR – Standard Minimum Rules

UN-united nations

UNODC -United Nations Office on Drugs and Crime

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## CHAPTER ONE

### Introduction

#### 1.1. Background

The notion of child offender is considered differently in different nations. Some use the term child offender, others use young offenders and juvenile offenders. Since they can be used interchangeably, to know who a child offender is it is better to know who is a child. The International Convention on the Rights of the Child provides that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier<sup>1</sup>. This provision gives the opportunity that the maximum age limit might be below 18 years. According to the Beijing rule, a juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence<sup>2</sup>. The African Charter on the Rights and Welfare of the Child<sup>3</sup> also provides that a child means every human being below the age of 18 years.

The national legislations of Ethiopia do not define who the child is, however it provided classes of persons who require special treatment in the criminal justice system due to their immaturity related with age unlike adults. This can be inferred from the FDRE criminal code which provides three classes of children based on criminal responsibility. These are infants whose age is below nine years, young person's between the ages of nine and fifteen years, and young person's over fifteen but under eighteen years of age<sup>4</sup>. Children under the first category are completely exonerated from criminal responsibility while the second and third groups are responsible for criminal offences they committed and considered as young offenders. Therefore, it can be inferred from the above legislation that young offenders are offenders whose age is between nine and eighteen years.

In the criminal justice system, unlike adult offenders, young offenders are required to be treated in special and separate procedure owing to their immaturity<sup>5</sup> to take criminal responsibility and for

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<sup>1</sup> Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, article 1

<sup>2</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) General Assembly resolution 40/33, annex, adopted on 29 November 1985, part one 2.2/c

<sup>3</sup> African Charter on the Rights and Welfare of the Child (ACRWC) OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999, article 2

<sup>4</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia 2004( FDRE CC) Article 52, 53 and 56

<sup>5</sup> Committee On The Rights Of The Child, General Comment No. 10 (2007) Children's Rights In Juvenile Justice, Para 10



being vulnerable social groups<sup>6</sup> to defend themselves. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law is required to be his or her reformation, re-integration into his or her family and social rehabilitation<sup>7</sup>. Convention on the rights of the children (CRC) provides that in all actions concerning children the best interests of the child shall be a primary consideration<sup>8</sup>. The arrest, detention or imprisonment of a child who committed an offence shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time for treatment of children rather than applying ordinary punishment<sup>9</sup> in considering their procedural due process right. They shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

It is provided under human right instruments that, states to take measure including to promoting the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law<sup>10</sup>. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence assuming their constructive role in society. Taking appropriate measures towards juveniles not only help for the protection of their rights, but also it serves short- and long-term interest of the society at large<sup>11</sup>. The interest of both the child and the society cannot be served by disregarding the interest of the young offender because a mistaken form of punishment might easily result in a person with a more distorted personality being returned to society.

There are several other international standards which are widely recognized approaches to juvenile crime and the treatment of children in conflict with the law<sup>12</sup>. These standards inform

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<sup>6</sup> Tesfaye, A. (2017). Child Rights Protection in Ethiopia: Critical Analysis of the Statutory Rape Provisions of the Criminal Code and Their Application. *Beijing Law Review*, 8, 499-525. <https://doi.org/10.4236/blr.2017.84028>

<sup>7</sup> ACRWC [supranote 3] article 17/3 see also International Covenant on Civil and Political Rights (ICCPR) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, article 14/4

<sup>8</sup> CRC [supranote 1] article 3/1

<sup>9</sup> Ibid article 37

<sup>10</sup> Ibid article 40/3

<sup>11</sup> General Comment No, 10 [supranote 5] Paragraph 3

<sup>12</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex); the United Nations Rules for the Protection of

and guide reform initiatives in the juvenile justice sector and provide framework within which societies and communities are expected to define their own response to juvenile crime and shape the interventions of the criminal justice system in the lives of children in conflict with the law.

In Ethiopian criminal justice system, in principle Criminal law applies to all alike without discrimination. However, as exception it provides that certain groups including young offenders are required to be treated differently due to the special personal characteristics of the criminal<sup>13</sup>. Based on this exception separate provisions regarding young offenders on the issue of criminalization and determination of sentence are provided. In treatment of young offenders an attempt is made to address the problem of child delinquency, the seriousness and the proportion of offences they commit and certain specific guidelines and restrictions apply regarding punishment to be imposed and the standards of detention for child offenders, irrespective of the offence committed. Before assessing sentence, court may require detail information about the young offender under both classes of age<sup>14</sup> after which it may order appropriate measure that needs to be reformative effect on the offender.

The Criminal procedure code (CPC) of Ethiopia<sup>15</sup> also provided for separate provisions which deal with procedures applicable on cases concerning young persons with emphasis on the role of courts in treatment of young offenders. Even though it is difficult to say national laws are sufficiently incorporated issues concerning treatment of young offenders unlike international human right instruments, practical proper application of the existing law itself is not common in some areas. The practical application of the existing law can be determined by proper determination of appropriate measures and proper enforcement of those measures on offender as it provided in legislations. Therefore, the purpose of this study is to examine whether the determination of measures on young offenders in the study area is in line with principles of FDRE criminal law and provisions of human right instruments on child right and whether it is enforced effectively.

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Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex); and the Guidelines for Action on Children

<sup>13</sup> FDRE CC [supranote 4] article 4

<sup>14</sup> Ibid article 54-56

<sup>15</sup> The Criminal procedure code proclamation 1961 (CPC), article 171-180

## 1.2. Statement of the Problem

FDRE criminal law provides that, generally it aims the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes<sup>16</sup>. It requires the enforcement and interpretation of criminal law in line with principle of legality which provides that, the Court may not impose penalties or measures other than those prescribed by law. However, dealing with young offenders' demands flexibility, so as to be able to consider and meet their individual needs due to their immaturity and greater vulnerability; so that it provided separate provisions applicable on them<sup>17</sup>. The purpose of taking measures on young offenders is to hold them accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. Apart from the criminal legal response to the criminal action, the practitioners in the juvenile criminal justice system also have to keep in mind the educational and treatment needs of the offender<sup>18</sup>. Basically, in determining penalties on them, courts have to obey special procedures to be applied in case of trial of young offenders<sup>19</sup>. To say the measures taken on offenders are appropriate and effective, it should have been taken based on special procedures provided for juvenile offenders<sup>20</sup>; and it needs to be enforced properly in a way that reform the alleged offender.

In the study area the issue of young offenders is commonly raised and different courts around the study area are conducting criminal proceeding including the case of young offenders where a number of young offenders are sentenced and detained in prison center. The researcher's prior assessment<sup>21</sup> of the notion implies that, the numbers of young offender are increasing from time

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<sup>16</sup> FDRE CC [supranote 4] article 1

<sup>17</sup> Ibid article 53, 56 and 157-168

<sup>18</sup> Ibid article 54/2 and 55

<sup>19</sup> Ibid article 157, see also article 53/1 which provides that the penalties and measures to be imposed by the courts shall be only those provided in Articles 157-168 of this Code.

<sup>20</sup> Ibid article 171-180

<sup>21</sup> The researcher got a chance to contact I/r Takele Tadese coordinator of kafa zone police department crime investigation office, in 2019, who raised the existence of problem on treatment of young offenders both from family and law enforcement bodies. Under aged youths are involved in different criminal activities by their own and by the direction of other adults. The 2010 E.C justice sector report of the kafa zone shows the existence of the same

to time in the zone and they are imprisoned in correction centers. when the trial and pre-trial processes are conducted, procedural requirements of trial of young offenders including representing the offenders at trial, separate trial and imposition of alternative measures are not strictly observed and treatment of young offenders are not in a way of strict segregation during both pre-trial and post-trial criminal proceedings. Even though the law provides for the immediate involvement of court in any case where the young person involved<sup>22</sup>, it is not strictly implemented. This made the effectiveness of the goal of criminal law on juvenile offenders to fall in question in the study area. The aim of juvenile justice which is to turn the young perpetrator into a law-abiding citizen and reforming became failed due to the absence of appropriate and adequate measures lack of proper treatment for their rehabilitation rather they are going to be recidivists and experiences complex crimes. Under aged offenders are being employed as instrument for the commission of crimes secretly planned by adults. Even though the law provided alternative measures as primary options for young offenders, it is not common to take those measures rather imprisonment is taken as primary options. It is better to assess the rationale behind these measures.

Even though certain provisions dealing with young offenders requires further clarification, the clear provisions of both substantive and procedural criminal laws that dealing with the notion of young offenders are not implemented properly. Having these problems no legal study was conducted to avert those problems in the study area. So this necessitated to conduct research in order to examine the determination and enforcement of penalties and measures (if any) by which the effectiveness of the provisions of criminal law and human right instruments regarding young offenders in the study area has been evaluated. Basically appropriateness of penalties and other measures imposed on the young offenders; challenges in determination and enforcement of penalties and measures have been evaluated. Finally, based on the finding of the study justifiable solutions have been recommended.

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problem in the zone. The number of young offenders is increased in prison center when compared with previous years.

<sup>22</sup> CPC [supranote 15] article 172

### **1.3.Objective of the Study**

#### **1.3.1. General Objective**

The general objective of this study is examining the practice of determination and enforcement of penalties and measures on young offenders in kafa zone.

#### **1.3.2. Specific Objective**

- Assessing how court determines penalties and measures on young offenders
- Examining how courts and rehabilitation centers treats young offenders aged 9-15 and 15-18 respectively
- Examining the challenges in both determination and enforcement of penalties and measures on young offenders

### **1.4.Research Question**

The research is tried to answer the following questions

#### **1.4.1. Basic Question**

What is the practice of determination and enforcement of measures and penalties in Kafa zone, SNNPR state of Ethiopia?

#### **1.4.2. Sub-Questions**

- ✓ How court determines penalties and measures on young offenders?
- ✓ What measures are taken by courts on young offenders between the ages of 9-15 years and 15-18; and how they are enforced?
- ✓ What are the challenges in determination and enforcement of penalties and measures on young offenders? What are causes for those challenges?

### **1.5. Significance of the Study**

- ✓ To enhance the concern of bodies responsible for enforcement of law in the study area to work in the issue of reforming young offenders
- ✓ To give important insight and input for appropriate bodies responsible for policy or law making to include adequate and more detailed legal basis for justice actors on the treatment and enforcement of measures on young offenders
- ✓ To set out challenges what justice actors are facing in the determination and enforcement of

measures on young offenders in the study area and to propose appropriate solutions in order to avert those challenges

- ✓ To identify the role of judges, public prosecutor, police officers, prison centers and other concerned bodies in the treatment and enforcement of measures on young offenders
- ✓ To provide an important input for further inquiry in other areas at regional or national level so as to improve the role of justice actors in protection of rights of young offenders.

## **1.6. Research Methodology**

The researcher employed empirical research methods. The researcher has examined determination and enforcement of measures and penalties on young offenders in the specific study area in line with different international human right instruments and national legislations dealing with young offenders. In the data collection and analysis of data both qualitative and quantitative tools were employed.

Qualitative research method is concerned with the interpretative understanding of the people under the study by closely listening and treating them as human being with knowledge and experience, instead of mere subjects of the study.<sup>23</sup> It employs research data collection techniques such as participant observation, semi and unstructured interviewing, focus groups, and the qualitative examination of texts, among many others.<sup>24</sup> On the other hand, quantitative research method deals with numbers and anything that is measurable in systematic way of investigation of phenomena and their relationship.<sup>25</sup> It uses different social survey techniques such as structured interview and self-administered questionnaire, experiments, structured observation, the analysis of official statistics.<sup>26</sup> Further, a mixed research method combines both qualitative and quantitative approaches, to provide a variety of perspectives from which a particular phenomenon can be studied and they share a common commitment to understanding and improving the human condition, a common goal of disseminating knowledge for practical

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<sup>23</sup> Bryman, A. (2003), 'Quantitative and Qualitative Research: Further Reflections on their Integration', in *Mixing Methods: Qualitative and Quantitative Research*, Brannen J. (ed.), London, Ashgate, p.58

<sup>24</sup> Ibid

<sup>25</sup> Christina H. (2015), *Qualitative and Quantitative Approaches to Social Research*, University of Warwick, pp. 2

<sup>26</sup> See Bryman, A. [Supranote 23] pp. 59

use.<sup>27</sup> A combination of both approaches provides for cross-validation or triangulation of two or more sources of data to study the same phenomena in order to gain a more complete understanding of that phenomenon and they also provide for the achievement of complementary results by using the strengths of one method to enhance the other.<sup>28</sup> Accordingly, this study utilized questionnaire data collection techniques and analysis of the data based on numerical presentation as one part of quantitative research approach. Also, in order to triangulate the data that has been observed through questionnaires, the study also used in-depth interviews with different stake holders and focused individuals, under qualitative research approach. Decision of courts on previous cases on young offenders in each of courts under study area has been referred.

### **1.6.1. Source of Data**

The researcher gathered data by using both primary and secondary sources. The primary data sources were interviews, questionnaire, and participant observation. The secondary data sources were different literatures; cases, journal articles, official reports and legislations including human right instruments.

### **1.6.2. Target Population**

As stated earlier, since the objective of this study was to examine the determination and enforcement of measures and penalties on young offenders in kafa zone, the target populations of the study were the young suspects and/or prisoners, the investigators/police officer, prosecutor, judges and prison administrators found in this zone. Top officials and randomly selected professionals have been involved as informants and participants in data collection. Young offenders in the prison center are also interviewed.

### **1.6.3. Data Collection Methods:**

In the collection of the required data and information from the primary sources, the following methods were employed:

#### **1.6.3.1. Interview:**

This method has been used to gather information in-depth from judges, Public prosecutors, investigator police officers, administration staffs of Kafa zone correction center and young

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<sup>27</sup> Joanna E. et al. (2002), Revisiting the Quantitative-Qualitative Debate: Implications for Mixed Methods Research, Kluwer Academic Publishers, pp.48

<sup>28</sup> Ibid

offenders. Participants were interviewed using both structured and unstructured interview questions. The justification to use this method in this study is that it was expected to help the researcher to gather in-depth information among different informants about the practice of determination and enforcement of penalties and measures on young offenders in the study area. It enabled the researcher to triangulate the source of information in order to get reliable and accurate data about the young offenders and to check whether judges are determining appropriate measures on offenders and whether law enforcement organ (prison administration) is properly enforcing measures and penalties imposed on those offenders. Challenges in both determination and enforcement of measures on young offenders are raised in depth in the interview made with concerned bodies.

#### **1.6.3.2. Questionnaires:**

Questionnaires are found to be effective methods of data collection in which the anonymous nature of questionnaire leads to honest responses from respondents.<sup>29</sup> In questionnaires the independence and equality of opinion among respondents helps a lot to enhance the competency and reliability of the data gathered.<sup>30</sup> This method has been used to gather information from judges, Public prosecutors, investigator police officers, administration staffs of Kafa zone correction center and young offenders in the prison centers. Relevant questionnaire composed of close- and open-ended questions that reflect the objectives of the study has been prepared for all categories of respondent participating in filling questionnaire.

#### **1.6.3.3. Observation:**

Practical observation of court rooms of kafa zone high court including selected woreda courts, Kafa zone correction center and other selected woreda police stations has been conducted. This method has been used to see the treatment condition of young offenders and to ascertain whether organs entitled for enforcement of measures on young offenders are properly enforced it. The condition of separate accommodations in those institutions is also observed through this method.

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<sup>29</sup>Maurtala G.(2015), A Critical Analysis of the Techniques of Data Gathering in Legal Research, Journal of Social Science and Humanities, Vol.1,No.3,PP.266-274,p.268

<sup>30</sup> Ibid.



#### **1.6.3.4.Document Analysis:**

This method is used to collect information from secondary sources such as decisions rendered by courts in the selected woreda courts on young offenders. National legal frame works such as FDRE constitution, FDRE criminal code, criminal procedure code and relevant legislations regarding young offenders have been accessed in line with standards of international and regional human right instruments.

### **1.6.4. Sampling Methods**

#### **1.6.4.1.Sampling Area**

The study covers the determination and enforcement of measures and penalties in (both at zonal and woreda level) in kafa zone. Accordingly, in order to understand the role of justice actors on the given notion, the researcher has collected empirical data from judges, prosecutors, police officers, prison administration staffs and young offenders. Police officers, prosecutors and judges are included both from kafa zone and from randomly selected three woreda and one town administration<sup>31</sup>. In addition to this the sampling area of this study covers the Kafa Zone Correction Center, kafa Zone High Court, kafa zone police department, First Instance courts of selected woreda and police stations in those woreda.

#### **1.6.4.2.Sampling Techniques and Sample Size**

The researcher employed a combination of different sampling techniques to identify sources of data. As far as interview concerned, in order to identify the concerned stakeholder or key informants, purposive and snowball sampling method has been employed. Purposive sampling technique is a sampling technique which typically used in qualitative research, involving the identification and selection of individuals or group of individuals that are proficient and well-informed with the phenomena under the study.<sup>32</sup> In this sampling technique the researcher decided what needs to be known and sets out to find people who can and are willing to provide information.<sup>33</sup> Using this sampling technique the researcher has selected officials of each of the institutions and coordinators of respective offices. Participants are interviewed using structured

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<sup>31</sup>Among the total of twelve Woreda and two towns Administration, the researcher selected participants from Chena, Bita, Gewata woreda and Bonga city administration. To select this woreda the researcher grouped the woredas using cluster sampling method depending on their geographical area and using simple random sampling three woreda and one town administration is selected.

<sup>32</sup>Ilker E.,SulaimanA.Rukyan S.(2016),Comparison of convenience Sampling and Purposive Sampling, American Journal of Theoretical and Applied Statistics.Vol.5,No.1,pp.2

<sup>33</sup>Ibid

and semi-structured interview questions.<sup>34</sup>

The researcher also conducted an interview with young offenders using snowball sampling techniques. In snowball sampling informants with whom contact has been made use their social networks to refer the researcher about other people who have potential information to the study.<sup>35</sup> This helps the researcher to address hidden population groups that cannot be easily accessible through other sampling techniques. Using this sampling technique the researcher conducted an interview with young offenders who have provided special information for the study.<sup>36</sup>

Concerning questionnaires, the researcher employed simple random sampling techniques to select judges, public prosecutors, investigating police officers from both woreda and zonal institutions. In Simple random sampling techniques, each units of the population has equal chance of inclusion in the sample.<sup>37</sup> This sampling technique provides unbiased and better estimation of the parameters if the population is homogeneous.<sup>38</sup> The following table shows the total population and sampled respondents.

Area of informants	Total Population size	Sample of respondents	Percentage
Judges	$1 \times 8 = 8$ } $4 \times 4 = 16$ } $= 24$	$3 + (2 \times 4) = 11$	45.8
Public prosecutors	$1 \times 12 = 12$ } $4 \times 5 = 20$ } $= 32$	$5 + (2 \times 4) = 13$	40.6
Investigating police officers	$1 \times 4 = 4$ } $4 \times 4 = 16$ } $= 20$	$2 + (2 \times 4) = 10$	50

<sup>34</sup> Presidents of four selected first instant court and one high court, head of the office of public prosecutors and coordinator of crime prosecution of four woreda and the same persons from zonal institution has been interviewed. Coordinators of crime investigation in each of selected woreda and zone police department, director of correction center, person in charge of supervision of prisoners, coordinator of prisoners' rehabilitation and correction; and persons in charge of entry and exit of prisoners are interviewed.

<sup>35</sup> Mahin N. Et Al. (2017), Snowball Sampling: A purposeful Methods of Sampling in Qualitative Research, pp.2

<sup>36</sup> Using this sampling technique the researcher interviewed three young prisoners through the prior information about them from preceding young prisoners.

<sup>37</sup> Singh A. and Masuku.M (2014), Sampling Techniques and Determination of Sample Size in Applied Statistics Research :An Overview, International Journal of Economics, Commerce and Management, Vol. II, Issue 11, pp.4

<sup>38</sup> Ibid

Prison administration staffs	1x9=9	5	55.5
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Table 1.1: Sample size of respondent for questionnaires from zone and four woreda institutions

As far as young prisoners are concerned the researcher employed stratified sampling techniques to select different categories of respondents. A stratified sampling technique is applied to obtain representative sample, when the population from which a sample is drawn does not constitute a homogeneous group.<sup>39</sup> Under this sampling technique the population is divided into several sub-populations that are individually more homogeneous than the total population.<sup>40</sup> Using these sampling techniques the researcher divided the young prisoners in kafa zone correction center into two categories (these are young offenders convicted for the crime punishable with imprisonment exceeding ten years or convicted for crimes punishable not exceeding 10 years) and each category is also grouped into two based on age (offender under fifteen and above fifteen years).

The following table shows the respondent Sub- population of young prisoners and the sample size selected by the researcher.

Key Informant Categories		Population Size	Sample of Respondents	Percentage
Convicted for the crime punishable with imprisonment exceeding ten years	Age 9-15	3	2	66.6%
	age 15-18	6	3	50%
Convicted for the crime punishable with imprisonment not exceeding ten years	Age9-15	7	3	42.8%
	Age 15-18	11	4	36.3%
Total	Age 9-15	10	5	43.47%
	Age 15-18	17	7	41.1%

<sup>39</sup> Hitesh M.(2018), Data Collection and Sampling,pp.28

<sup>40</sup> Ibid

Table 1.2: Sample size of respondent young inmates for questionnaires

The data of twenty seven young offenders are given from prison administrators which the researcher classified them in to two based on kinds of crime they convicted in relation to punishment. Each group is also grouped based on the age of offenders.

Regarding document analysis, the researcher has observed dead files of courts decided on young offenders. Due to the time restraint cases of only three consecutive years (2010, 2011 and 2012 E.C) are seen from each of four first instance courts and high court. The cases no decided in 2012 are lower in number when compared to previous two years. It was due to the effect of Covid-19 pandemic restraint. The following table shows case observations.

Institution	Total case filed				Cases of young offenders in three years				Sample case taken	
	2010	2011	2012	total	2010	2011	2012	Total	In no.	In %
High court	180	184	86	450	13	12	7	32	10	31.25
Chena	187	169	74	430	57	63	21	141	30	21.27
Bitu	179	191	83	453	55	59	33	147	30	20.4
Gewata	165	188	79	432	47	44	26	117	30	25.6
Bonga town	227	238	147	612	91	103	48	242	45	18.59
Total	938	970	469	2377	263	281	135	669	145	21.67

Table 1.3; shows review of case files from courts in the study area

### 1.6.5. Data Analysis and Presentation

At the end of data collection, responses on the questionnaires has been encoded and analyzed in the tabular form. Coding has been designed to reduce the information in ways that facilitate interpretations of the findings. Hence, detailed descriptions of the codes and the coding procedure have been prepared in advance. To minimize error of qualitative information, consideration has been given for careful records of notes and observations. The data that has been collected through questionnaires and interviews has been tallied, systematically organized in items and tabulated for analysis purpose. Based on the tables and additional information that

were obtained from the interview and field observation analysis and interpretation of the data has been made. The data has been analyzed quantitatively and qualitatively

#### **1.6.6. Scope of the Study**

Since the thesis deals with determination and enforcement of penalties on young offenders, the study is limited only to criminally responsible juvenile offenders between the ages of nine to eighteen years. It doesn't deal with sociological aspects of juvenile justice system, but only limited to the applicability of the laws once juvenile come in conflict with the criminal law. This includes only the activities from the very beginning of submission of the offender before woreda courts to the serving of sentences in rehabilitation center.

The study area is Kafa zone (south west Ethiopia in the region of southern nation nationalities and peoples regional state). Kafa zone is among south west Ethiopian zones that have incorporated peoples with related cultural setups and population having approximately identical socio-economic features and this zone incorporated twelve woreda and two town administrations. There are fourteen first instance courts and police stations in the zone with one high court and one correction center in Bonga town which is 449 k.m from Addis Ababa and 484 km from Hawassa city. The study has included zonal institutions and four woreda to take sampling which was selected by simple random sampling techniques. The researcher has tried to assess prior studies in the zone having considering repeated problems in treatment of young offenders from different sources. Even though the problem related with young offenders is commonly raised in the area, no prior studies were conducted in this area on the title determination and enforcement of measures and penalties on young offenders.

#### **1.6.7. Ethical Issues**

While conducting this study, issues of research ethics have been taken in to consideration. In the development of the instruments of data collection sources has been acknowledged through citation and plagiarism has been considered. Respondents and participants of the study have been given brief explanation about the purpose of the study and have been quietly asked to fill the questionnaires, to be interviewed, and different documents related to young offenders has been obtained with their prior permission.

## **1.7.Organization of the Study**

The researcher organized the study in to four chapters. The first chapter is an introductory chapter. Chapter two of the study is the conceptual and legal frame works on determination and enforcement of measures and penalties on young offenders. Under this part both international and national laws on young offenders have been discussed. Chapter three of the study tried to provide analysis of penalties and measures taken by judiciary in light of human rights instruments and national legislations related to young offenders; and its enforcement which has been conducted based on data that have been collected by researcher. The final Chapter of the research provides conclusions and forwarded recommendations based on the finding of the study.

## **1.8.Literature Review**

There is no prior study conducted in the study area on the issue of young offenders. Even there is no published research at national level on the title of determination and enforcement of penalties and measures on young offenders. However, some studies are conducted on general juvenile justice systems in Oromiya region and Addis Ababa. The study conducted by Abdi Tesfa<sup>41</sup> in 2013 shows that the juvenile justice system of Oromiya region is characterized by a fatal inconsistency of the practices with the words and spirit of laws. Even though juvenile justice and human right instruments provides arrest or detention of juveniles as a last resort and for shortest period of time, in the study area imprisonment as a penalty is dominantly imposed as compared to other measures. The research has highlighted the stages from investigation to correctional institutions in limited areas in the Oromiya region. However, the research failed to provide what factors are contributing to take such measures by justice actors. In general as this study covers the whole juvenile justice system in the region, it have not detailed problems in each institution and not expressed legal gaps they faced in the application of law. Study conducted in two sub-cities of Addis Ababa<sup>42</sup> shows the existence of problem in treatment of young offenders both in correctional institutions and police stations. However, study focused on juvenile offenders whose age is between nine and fifteen. Generally, both studies are conducted in general juvenile justice

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<sup>41</sup> Abdi Tesfa, *Juvenile Justice System in Oromiya Region: The Law and the Practice*, research conducted in Oromia Justice Sector Professionals Training And Legal Research Institute, 2013,

<sup>42</sup> Mebrihit G/Michael, *A Critical Assessment Of The Practice Of Juvenile Justice Administration In Nefas silk Lafto And Lideta Sub-Cities of Addis Ababa*, LLB thesis in St. Mary's University College, 2008

administration in whole region and city administration respectively. My thesis is on the specific issue of determination and enforcement of measures and penalties which basically focused on judicial and correctional institutions. Moreover, those works did not thoroughly address measures taken by judiciary and executives in detail even in the study area and not provided causes, whether practical or legal, for the existing juvenile justice administration in their respective study area, which this study tried to address in proposed study area. In general, there is no exhaustive and comprehensive research done that explores the determination and enforcement of penalties on young offenders in Kafa zone. Therefore, this research has attempted to fill this gap.

## Chapter Two

### 2. Conceptual and Legal Framework on Young Offenders

The purpose of this chapter is first to synopsise the conceptual notion and legal protection provided for young offenders under international and domestic legal instruments. It also presents the legal basis for determination of measures and the enforcement of those measures on young offenders both at international and domestic level. Accordingly, the chapter is divided into two major parts. While the first part deals with the conceptual notion related to young offenders including measures taken on them and the second part deals with international, regional and national legal frameworks related with young offenders.

#### 2.1. Conceptual Framework on Young Offenders

##### 2.1.1. The Notion of Young Offenders

The term young offender is used interchangeably with other words such as child offenders and juvenile offenders. CRC under article 1 defined child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier<sup>43</sup>. Under Beijing rule juvenile offender is defined as a child or young person who is alleged to have committed or who has been found to have committed an offence<sup>44</sup>. The FDRE criminal law and criminal procedure code have recognized the term young offenders (persons) to express persons involved in the criminal activities at the age between nine to eighteen years<sup>45</sup>. For the purpose of this research Young offender is persons under the age of eighteen but above nine who are involved in criminal offences<sup>46</sup>. Unlike adult offenders, they are required to be treated in special and separate procedures owing to their immaturity<sup>47</sup> to take criminal responsibility and for being vulnerable social groups<sup>48</sup> to defend themselves. Both national laws and international laws have incorporated the same notion where persons under the same classes are required to be treated in special way.

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<sup>43</sup>CRC[supranote 1] article 1

<sup>44</sup> Beijing Rules[supranote 2] rule 2.2/c

<sup>45</sup> FDRE CC [supranote 4] chapter IV and CPC [supranote 15] article 171

<sup>46</sup> Ibid

<sup>47</sup> General Comment No. 10 [supranote 5] Para 10

<sup>48</sup> Tesfaye, A. (2017) [supranote 6] 499-525



### 2.1.2. Determination of Age

As long as criminal responsibility is concerned, determination of age is crucial to identify juveniles from adult offenders and not to punish irresponsible child for the mere fact of commission of prohibited acts. In addition to providing age limit to attain adulthood, CRC required state parties to provide minimum age limit below which children shall be presumed not to have the capacity to infringe the criminal law.<sup>49</sup> Children at or above the minimum age at the time of the commission of an offence but younger than 18 years are formally charged and subject to juvenile justice procedures<sup>50</sup>. As it is clearly provided in article 1 of CRC, the upper age limit of young offenders is 18 years. So that offenders under the age of 18 have the right to be treated with the rules applicable on juvenile offenders<sup>51</sup>. The United Nations provided under the Beijing rule that in those legal systems recognizing the concept of the age 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 of the offender<sup>52</sup>. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility regarding age become meaningless. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment<sup>53</sup>. The committee on child convention recommended to the state parties which limited the applicability of their juvenile justice rules to children under the age of 16 years (or lower), or which allow by way of exception that certain children are treated as adult offenders (for example, because of the category of the offence), should change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years at the time of the offence<sup>54</sup>. The committee also noted that the system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices<sup>55</sup>. The modern approach would be to consider whether a child can live up to the moral and

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<sup>49</sup> CRC[supranote 1] article 1 and 40/3(a)

<sup>50</sup> Committee on the rights of the child (children's right in juvenile justice) General Comment No 24 Para 30

<sup>51</sup> Ibid Para 37

<sup>52</sup> The Beijing Rules [supranote 2] rule 4

<sup>53</sup> United Nations Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council resolution 1997/30, annex, adopted on 21 July 1997, rule 12

<sup>54</sup> General comment 24 [supranote 50] Para 40, see also general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, Para 88

<sup>55</sup> General comment no 24[supranote 50]Para 43

psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behavior. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behavior and other social rights and responsibilities like marital status, civil majority, etc<sup>56</sup>. To simplify the confusion in this respect, states should ensure the effectiveness of their birth registration programmes.

### **2.1.3. Child Friendly Justice**

In countries that do not have any degree of specialization, children in conflict with the law are dealt with in largely the same way as adults. Both adult criminal justice systems and juvenile justice systems may frequently use deprivation of liberty as the primary sentencing option. Both may also fail to consider the needs and best interests of the child and to address the root causes of conflict with the law. Indeed, whilst a country may operate specialized procedures for children in conflict with the law, an effective juvenile justice system requires that the varying needs of children be assessed, that children in conflict with the law are referred to appropriate services, and that they are offered care and assistance with reintegration into the community. Moreover, a juvenile justice system should operate a child-friendly environment, using appropriate language and the minimum possible employment of physical restraints<sup>57</sup>. Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings<sup>58</sup>.

Child friendly justice (CFJ) is part and parcel of the concept and practice of child protection particularly concerns children who come into contact to a justice system. It stipulates the principles and manners of treating children and handling their cases through the processes of justice. States are required to establish a child-centered, specialized justice system whose overarching aims is children's social reintegration, and which should guarantee that their rights are respected. The international laws also emphasize the need to divert children away from judicial proceedings whenever possible and to redirect them to community support services.

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<sup>56</sup> Beijing rule [supranote 2] commentary on rule 4

<sup>57</sup>United Nations Office On Drugs And Crime, Manual for the measurement of juvenile justice indicators, (new York 2006) pp 1

<sup>58</sup> Beijing Rules [supranote 2] rule 7

According to the laws, the formal justice system should only deal with the small minority of children who have committed very serious crimes and represent a threat to their society. Formal detention of child offenders should always be a measure of last resort.

CFJ is a practice where all stipulated standards of juvenile justice are fulfilled and thereby all rights of children are preserved in the course of investigation, prosecution, adjudication and correction to all children who come into contact to the system for what so ever reason. This applies for children who are victims as well as in conflict with the law and with regard to criminal as well as non-criminal matters. A CFJ system provides justice for children affected by violence and abuse, and makes the justice process friendlier to all children who pass through the process victims, offenders, and witnesses.

According to the recently adopted European Union guidelines<sup>59</sup> “child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed in the guidelines which are set based on and in recognition of the UN CRC and all other related international and European instruments and giving 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.

Regarding the application of CFJ or juvenile justice system, committee on the rights of the child provided that, this system shall apply to children who are above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence<sup>60</sup>. The committee recommended to the state parties which limited the applicability of their juvenile justice rules to children under the age of 16 years (or lower), or which allow by way of exception that certain children are treated as adult offenders (for example, because of the category of the offence), should change their laws with a view to achieving a non-discriminatory full application

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<sup>59</sup>*Guidelines of the Committee of Ministers of the Council of Europe on CFJ (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies); Available on web address: [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383); (accessed on 15 December 2010)*

<sup>60</sup> General comment No.24 [supranote 50] Para 38

of their juvenile justice rules to all persons under the age of 18 years at the time of the offence<sup>61</sup>. The committee also noted that the system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices<sup>62</sup>. Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society<sup>63</sup>. Sufficient attention should be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law. These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention.

#### **2.1.4. Purpose and Principles of Juvenile Justice System**

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence<sup>64</sup>. The purpose of youth sentences is to hold young people accountable by imposing sanctions that have meaningful consequences for them and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. A key principle of youth sentencing is that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person. In other words, the sentence on young offenders should fit the seriousness of the crime and take into account the maturity of the young person involved and the conditions under which the crime was committed. A sentence may also include the objectives of denouncing the criminal behavior and deterring

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<sup>61</sup> Ibid Para 40 and general comment No. 20[supranote 54] Para 88

<sup>62</sup> Ibid Para 43

<sup>63</sup> Beijing Rules [supranote 2] rule 1.4.

<sup>64</sup> Ibid rule 5

the young person from committing further offences<sup>65</sup> in addition to the general deterrence of the measure.

### **2.1.5. Young Offenders and Ethiopian Criminal Justice Policy**

FDRE criminal justice policy provided for 3 basic principles to be accepted while dealing with issues related with young offenders. These are principle of non-discrimination, best interest of the child and the survival and development of the child<sup>66</sup>. When young persons involved in criminal offences, measures as response to these offences needs to be aimed to educate and successfully integrate them with their family and society<sup>67</sup>. Judgment procedure and treatment of young offenders after judgment needs to be reformative and should make them peaceful and law abiding citizens. Unless the measures taken on them become failed to be successful or unless the gravity of the crime committed mandated to proceed to normal trial proceeding, it gives priority to alternative dispute resolution methods which should not be against constitutional rights of child offenders<sup>68</sup>. It provides for the establishment of separate criminal trial bench to trial cases of child offenders and to have investigators and prosecutors to investigate cases of young offenders to follow up it.<sup>69</sup>

### **2.1.6. Types of Punishment Applicable on Young Offenders**

When the commission of offence is materialized, penalty can be imposed against the wrong doer to achieve the objectives of the criminal law. There are three types of punishment that are included in the criminal law of Ethiopia<sup>70</sup>.

First, principal punishments consist of pecuniary penalties, compulsory labor, penalties entailing loss of liberty, and death penalty.

Second, secondary punishments include caution, reprimand, admonishment, apology and deprivation of rights.

Third, special measures that are applicable for adults in special cases; and there are measures and penalties that are applicable only to young persons. The third type of measure is the focus of this

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<sup>65</sup> [www.justice.gc.ca/Youth](http://www.justice.gc.ca/Youth)

<sup>66</sup> Federal Democratic Republic of Ethiopia Criminal Justice Policy (2011) (CJP) 6.3

<sup>67</sup> Ibid 6.4.1

<sup>68</sup> Ibid 6.4.3 & 6.4.4

<sup>69</sup> Ibid 6.4.5

<sup>70</sup> FDRE CC [supranote 4] article 90-165

thesis as we are dealing with young offenders. Penalties applicable on adult offenders basically the first classifications are not applicable on young offenders.

### **2.1.7. Determination of Penalty (Measures)**

Once juveniles become in conflict with the law they pass through different stages of arrangement of authorities and institutions. The primary components of the juvenile justice system include the police, prosecutor, juvenile court, and juvenile correction<sup>71</sup>. These primary components of juvenile justice system play different role for the attainment of the best interests of the child and due process of law. Determination of penalty is among different stages in criminal proceedings. As different parties are involved in the proceeding of justice system, person at different stages may take different measures within the limit of their responsibility. Police officers as one of the parties involved are at the front in the juvenile justice system which necessitated them to receive special training in child development, adolescent psychology, sociology, and counseling, in order to better equip them to handle the unique problems associated with policing juveniles<sup>72</sup>. The detention for juvenile suspected of committing crime in segregation from adults and considering the notion of best interest of the child and reformation need to be priorly informed to them. From the commencement of justice in motion to the last stage of execution of penalty (measures), court shall involve at different stage. While doing so, court may determine such measures taking in to consideration different factors as provided in criminal law and its procedures. In juvenile justice system, basically the goals were to investigate, diagnose and prescribe treatment, not to adjudicate guilt or fix blame<sup>73</sup>. As far as the best interest of the child is concerned judge should not determine measures solely on the seriousness of the penal infraction, but also based on the relevant psycho-social and family conditions<sup>74</sup>. The understanding level, the environment around like peer pressure and social movement, and family back ground both in literacy and economy needs to be considered. Having determined the culpability of juvenile, a judge should have the

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<sup>71</sup> Donald J. Shoemaker & Timothy W. Wolfe, *Juvenile Justice: Contemporary World Issues*, ABC-CLIO inc., 2005, p.44

<sup>72</sup> Jack E. Bynum & William E. Thompson, *Juvenile Delinquency: A Sociological Approach*, Pearson publ., 2007, p 376

<sup>73</sup> Ibid

<sup>74</sup> Eric L. Jensen & Jorgen Jepsen, *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems*, Hart Publishing, 2006, p 101

authority to craft a sanction that conforms to the offender's level of maturity and that enhances such a juveniles potential to make a positive contribution to society<sup>75</sup>

### **2.1.8. Enforcement of Measures and Penalties On Young Offenders**

The notion of enforcement of penalties and measures is related with determination of the same in criminal cases. Because, without proper enforcement, any penalty or measures taken on offenders became senseless. It is execution or giving effect to what is determined (decided) by judicial bodies. The main purpose of enforcement of measures or penalty is to make decisions in criminal cases to be justifiable, transparent and predictable in order to reform the alleged offender so as to integrate them with their community and to protect the peace, security, rights and interests of the people.<sup>76</sup> The same is true for young offenders who are convicted for their conflict with the law. Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition<sup>77</sup>. Moreover the enforcement of cases of young offenders demands solemn commitment and significant investment particularly from governments, CSOs/NGOs, and communities<sup>78</sup>. Appropriate enforcement of measures on young offenders is important notion which is one of the mechanism by which rights of children are implemented. Successful implementation of child protection and CFJ calls for a systematic approach, which is required to be designed and managed strongly. Such system comprises the set of laws, policies, regulations; the set of functions and services needed from all concerned sectors – especially social welfare, education, health, law enforcement and justice; the set of specialized institutional structures and resources particularly dedicated to the functions and services across the sectors<sup>79</sup>.

The enforcement of rights of children to be successful, Policy and legal frameworks that provide for and facilitate implementation of the child protection measures, Institutional frameworks and arrangements through which the child protection measures are

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<sup>75</sup> Michael A. Corriero, *Judging children as children: A proposal for A juvenile justice system*, Temple university press Philadelphia, 2006, p 45

<sup>76</sup> CJP [supranote 66] section 5.3

<sup>77</sup> Beijing rule [supranote 2] rule 23 Commentary

<sup>78</sup> Tsegaye Deda Baffa, 2011, *Introducing Child Protection and Child Friendly Justice in a Society with Complex Socioeconomic Challenges*, pp 10

<sup>79</sup> Ibid

implemented, Adequate amount of resources and Mechanisms or arrangements to integrate, synchronize and synergize the efforts of varied actors that take part in the implementation of child protection measures are crucial in the system<sup>80</sup>.

## **2.2. Legal Frame Work On Young Offenders**

The issue of young offenders was incorporated under different legal documents which includes international and regional human right instruments as well as national legislations. Under this part we will discuss the notion of young offenders as it provided under international and regional human right instruments and the inclusion under national legal documents of Ethiopia.

### **2.2.1. International Human Right Instruments**

#### **2.2.1.1. Convention on the Rights of Child**

International convention on the rights of the children begins with defining who are the children in its first article<sup>81</sup>. In addition to general provisions applicable to all children, this convention specifically provided the notion of young offenders regarding the treatment and measures to be taken on these offenders. Regarding treatment of young offenders it says that,

*States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated 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 and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society<sup>82</sup>.*

It can be understood from this provision that measures taken on these offenders have to be aimed to promote the dignity of the offender, reintegrating to the community and assuming their role in their society. In addition to this, it has to reinforce the child's respect for the human rights and fundamental freedoms of others. The measure to be considered as fair, concerned body have to take in to account the effect of measures with regard to child's age and the effect of measure towards the whole community who are affected by the crime. As long as the deterrence effect of penalty/measure is concerned the judicial bodies have to consider the implication of the measure towards the offender and to the whole community while taking measures on young offenders.

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<sup>80</sup> Ibid

<sup>81</sup> See CRC [supranote 1] article 1

<sup>82</sup> Ibid article 40/1



Measures that can be taken on young offenders can be alternative measures or penalty. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence<sup>83</sup>. In the case where the alternative measures are failed to be effective, penalty including arrest, detention or imprisonment of a child can be taken which shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time<sup>84</sup> which shall be enforced in segregation from adult offenders and they shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age<sup>85</sup>.

The procedural due process rights of young offenders are also recognized under the convention. Young offenders have the right to prompt access to legal and other appropriate assistance, the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action, to be presumed innocent until proven guilty according to law, to be informed promptly and directly of the charges against him or her, to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law in the presence of legal or other appropriate assistance, the right to appeal to competent body against decision made on them, the right to have free interpreter, etc<sup>86</sup>.

In order to give effect to the provisions of the convention, state parties are required 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<sup>87</sup>. State parties recognize the right of every child alleged as accused to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, child's re-integration and the child's assuming a constructive role in society; and to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike<sup>88</sup>.

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<sup>83</sup> Ibid article 40/4

<sup>84</sup> Ibid 37/b

<sup>85</sup> Ibid 37/c

<sup>86</sup> Ibid article 37/d & 40/2/b

<sup>87</sup> Ibid article 4 & 40/3

<sup>88</sup> Ibid 40/1 & 42

Whether measures taken on such offenders are alternative or penalty, states Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision, to the maximum extent of their available resources<sup>89</sup>. This implies that the responsibility of state towards young offenders is throughout the whole process of criminal proceedings including during determination of measures and enforcement of those measures. In addition to formal judicial proceeding, whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings are also recognized, providing that human rights and legal safeguards are fully respected<sup>90</sup>.

The CRC Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system, including the juvenile justice system which can be best served by full respect for and implementation of the principles of juvenile justice as enshrined in the Convention on the Rights of the Child<sup>91</sup>. This view of the committee is in line with the purpose of criminal law which is protection of the interest of the general public that can be effective by measures taken on specific cases including young offenders. Since the effects of measures on young offenders, whether negative or positive, have direct and indirect effect on the society it requires care while taking such measures not to have detrimental effect both on the offender and the whole community. Furthermore, Children differ from adults in their physical and psychological development, and their emotional and educational needs which constitute the basis for the lesser culpability of children in conflict with the law. Due to this separate juvenile justice system is required for the treatment of young offenders<sup>92</sup>.

#### **2.2.1.2. International Convention on Civil and Political Rights**

There are specific provisions of ICCPR which shall be applicable on young offenders. In the case of juvenile persons, the procedure shall take account of their age and the desirability of promoting their rehabilitation; and they shall be separated from adults and brought as speedily as possible for adjudication<sup>93</sup>. In all steps the length and the rate of adjournment in juvenile case

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<sup>89</sup> Ibid 3/3 & 4

<sup>90</sup> Ibid 40/3/b

<sup>91</sup> General comment no 24[supranote 50] Para 2

<sup>92</sup> Ibid Para 12

<sup>93</sup> ICCPR [supranote 7] article 14/4 & 10/2(b)

need to be too short and low unlike the cases of adult offenders. This provision considers the procedures of trial and pretrial criminal proceedings of young offenders. During post-trial stages they are also required to be segregated from adults and be accorded treatment appropriate to their age and legal status. The treatment of prisoners which shall be aimed to reform and social rehabilitation of offenders<sup>94</sup> shall be also applied to young offenders.

The right to legal representation is a minimum guarantee in the criminal justice system for all persons, and should equally apply to young offenders<sup>95</sup>. While this article allows the person to defend him/herself in person, in any case where the interests of justice so require, that person will be assigned legal assistance which shall be provided free of charge to the child<sup>96</sup>. In order to succeed the purpose of having legal representation, a person who representing the young offender must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law<sup>97</sup>.

### **2.2.1.3. Other International Standards**

Beyond the above general human rights instruments there are also another relevant UN standard minimum rules and principles which provide a comprehensive set of safeguards for the protection of the rights of young offenders in detailed manner.<sup>98</sup> It have designed the Rules for the Protection of Juveniles Deprived of their Liberty to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system<sup>99</sup>. The Rules are intended for the protection of juveniles consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in

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<sup>94</sup> Ibid article 10

<sup>95</sup> Ibid 14 (3) (d)

<sup>96</sup> General comment 24 [supranote 50] Para 62

<sup>97</sup> Ibid Para 63

<sup>98</sup> Among these instruments the major ones are, United Nations Standard Minimum Rules (SMR) for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 ; United Nations Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988; United Nation Standard Minimum Rules for the Treatment of Prisoners -Nelson Mandela Rules, Resolution by the general Assembly on 17 December 2015[On the report of the third committee 9A/70/490)

<sup>99</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113, annex, adopted on 14 December 1990, art 5

society<sup>100</sup>. though it is soft law, this rule have imposed obligation on states to incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach in addition to monitoring application of the Rules. States are also required to seek the increment of the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community<sup>101</sup>. This is aimed to reform the alleged offender and to re-integrate in the community in their future career. The Nelson Mandela Rules on treatment of prisoners provided that, all prisoners shall be treated with the respect due to their inherent dignity and value as human beings and shall not be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.<sup>102</sup> It also provided the right of prisoners to adequate living conditions. The right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding are also recognized in SMR. Fundamental right to enjoy good health and entitlement to a standard of medical care is retained by prisoners.<sup>103</sup> This can be seen from nelson Mandela rule which says every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.<sup>104</sup> Juvenile offenders are provided as vulnerable groups that they are not required to be discriminated;<sup>105</sup> Regarding juvenile offenders, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice provides that, while in custody, juveniles shall receive care, protection and all necessary individual assistance; social, educational, vocational, psychological, medical and physical, that they may require in view of their age, sex and personality.<sup>106</sup> Further this rule recognized that, the objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and

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<sup>100</sup> Ibid article 3

<sup>101</sup> Ibid article 8

<sup>102</sup> United Nation Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) Resolution by the general Assembly on 17 December 2015[On the report of the third committee9A/70/490) Rule 1

<sup>103</sup> Andrew C. and Helen F (2018), A Human Rights Approach to Prison Management, Handbook for prison staff, Third Edition, Institute for Criminal Policy Research at Birk beck, University of London,pp.51-52

<sup>104</sup> Nelson Mandela Rules [supranote 102] Rule 25

<sup>105</sup>UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5

<sup>106</sup>Beijing rules [supranote 2] Rule 13

vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.<sup>107</sup> It also requires the juveniles to be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults<sup>108</sup>.

The UN Body of Principles provided that “imprisoned person including young offenders or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.<sup>109</sup> The principle further requires that, every request or complaint shall be promptly dealt with and replied without undue delay and if the request or complaint is rejected, or in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority.<sup>110</sup> Similarly the SMR provides every prisoner right to have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.<sup>111</sup> And it shall be possible for prisoners to make requests or complaints to the inspector of prisons during his inspection and to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present. Additionally the Nelson Mandela Rules, in similar ways with the above instruments guaranteed every prisoners right to make request or compliant; to get their request or complaint be promptly dealt with and replied without delay; to be immune from any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.<sup>112</sup>

#### **2.2.1.3.1. The Role of Justice Actors**

The role of justice actors<sup>113</sup> in the treatment of prisoners are also recognized under those international instruments. Among them it is better to discuss the role of prosecutors. Judges police officers, legal counsels and probation officers (persons entitle to correct prisoners).

##### **2.2.1.3.1.1.prosecutors**

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<sup>107</sup>Ibid rule 26

<sup>108</sup> Ibid Rule 8

<sup>109</sup> UN Body of Principles [supranote 105] Principle 33

<sup>110</sup> Ibid Principle 33

<sup>111</sup>Beijing rule [Supra note 2]rule 36

<sup>112</sup>The Nelson Mandela Rules [Supra note 103] Rule 56 and 57 respectively

<sup>113</sup> Based on paragraph 13 of general comment no. 10 [supranote 5] Justice actors includes police officers, prosecutors, judges, probation officers, legal counsels

The UN Guidelines on the Role of Prosecutors stated that, prosecutors shall, in accordance with the law, execute their duties fairly, consistently and expeditiously, and respect and protect human dignity and defend human rights, thus contributing to guarantee due process and the smooth functioning of the criminal justice system.<sup>114</sup> Further, the guideline provided that, prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.<sup>115</sup> Similarly the International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors provided that, “When, under local law and practice, prosecutors exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they would always act in the public interest.<sup>116</sup>” Concerning this specific guideline, the United Nations Office on Drugs and Crime and International Association of Prosecutors Guide emphasized that depending on the jurisdiction prosecutors may have a number of roles to play at the post-sentencing stage including supervision of prison conditions for those serving a sentence.<sup>117</sup> The detail provided in those guidelines implies the existence of great role of prosecutors in the juvenile justice system at different stages from the commencement of investigation to the execution of final judgment. principle of imprisonment in modern criminal justice system is the proper rehabilitation and the correction of offenders<sup>118</sup> by which supervision of the execution of court decision by public prosecutor as required by the above instruments could be well observed through the prosecutors’ effective follow-up and supervising of juvenile prisoners’ treatment including young offenders in correction centers.

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<sup>114</sup>Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Guideline 12

<sup>115</sup>Ibid Guideline 11

<sup>116</sup> International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Standard 4

<sup>117</sup> The Status and Role of Prosecutors ,A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide, Criminal Justice Handbook Series, 2014, pp.49

<sup>118</sup>See Nelson Mandela Rule [supranote 103] Rule 4; and FDRE CC [Supra note 4] Preface, Para 8 which stated that “wrongdoers instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the reform of criminals.”

### **2.2.1.3.1.2.Judiciary**

The reaction taken by decision making body shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society<sup>119</sup>. Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum. The well-being of the juvenile shall be the guiding factor in the consideration of her or his case. Each case shall from the outset be handled expeditiously, without any unnecessary delay.<sup>120</sup> The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically. Courts have to direct other actors that are involved in juvenile justice system, basically the investigation procedure on young offenders, preparation of charge by prosecutor and execution of measures taken on offenders by court to be enforced by correction centers or other rehabilitation centers or family or school shall be conducted with the direction of courts.

### **2.2.1.3.1.3.Prison Administration**

Regarding prisoners who are segregated the guideline says that “For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison”<sup>121</sup>. Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups<sup>122</sup>. Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counseling for sexual abuse or violence. They shall receive education on

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<sup>119</sup> Beijing rule [supranote 2] rule 17.1

<sup>120</sup> Ibid rule 20

<sup>121</sup> Nelson Mandela Rules[supranote 103] Rule 38/2

<sup>122</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) rule 54

women's health care and have regular access to gynecologists, similar to adult female prisoners<sup>123</sup>. Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making<sup>124</sup>.

#### **2.2.1.3.2. Alternatives Measures**

Having considering the effect of alternatives measures to imprisonment, UN bodies have proposed to take alternative measures on juvenile offenders. The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society<sup>125</sup>. When implementing the Rules, Member States shall endeavor to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention. Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.<sup>126</sup> Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures. Conferences, seminars,

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<sup>123</sup> Ibid rule 38

<sup>124</sup> Ibid rule 65

<sup>125</sup> United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex, of 14 December 1990) article 1.2

<sup>126</sup> Ibid rule 11



symposiums and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures<sup>127</sup>.

The prevention of juvenile delinquency is an essential part of crime prevention in society which requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood<sup>128</sup>. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young person's can develop attitudes free of crime.

### **2.2.1.3.3. Personnel's in Juvenile Justice System**

All persons who have contact with or being responsible for children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials, judges and magistrates, prosecutors, lawyers and administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice<sup>129</sup>.

Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases<sup>130</sup>. Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies. A minimum training in law, sociology, psychology, criminology and behavioral sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority<sup>131</sup>.

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition

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<sup>127</sup> Ibid rule 18

<sup>128</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) rule 2

<sup>129</sup> UN Guidelines for Action on Children [supranote 53] rule 24

<sup>130</sup> Beijing rule[supranote 2] rule22

<sup>131</sup> Ibid Commentary on rule 22

against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.<sup>132</sup> Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law<sup>133</sup>.

States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Wherever, necessary national legislative and other measures should be considered to accord all the rights of and protection for the child where the child is brought before a court other than a juvenile court.<sup>134</sup>

To fulfill their functions, police officers who commonly or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile offense shall be specially instructed and trained. In large cities, special police units should be established for that purpose.<sup>135</sup> As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

## **2.2.2. Regional Human Right Instruments**

### **2.2.2.1. African Charter on the Rights and Welfare of the Child (ACRWC)**

Like other human right instruments ACRWC provided the concept of young offenders. Article 17/3 of the charter provides that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation. They are entitled to special treatment in a manner consistent with their sense of dignity and worth and which reinforces their respect for human rights and fundamental freedoms of others. It required states to provide minimum age below which children shall be presumed not to have the capacity to infringe the penal law.<sup>136</sup>It also

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<sup>132</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment article 5

<sup>133</sup> Ibid article 11

<sup>134</sup> Guidelines for Action on Children [supranote 53]rule 14/d

<sup>135</sup> Tokyo rule [supranote 125] rule 12

<sup>136</sup>ACRWC [supranote 3] article 17/4

provided that in all actions concerning the child undertaken by any person or authority including judicial and administrative proceedings, the best interests of the child shall be the primary consideration to which Young offenders are entitled to enjoy.<sup>137</sup> Like any other children under care of certain institution or person, they are entitled to protective measures including effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect. It can be understood from this provision that states are required to provide conditions good for institutions responsible for the treatment of young offenders in order to succeed the aim of measures. As long as the purpose of measures taken on young offenders is to reform and to rehabilitate them and to re-integrate in the society, person in charge to treat them have to consider the purpose of the treatment. The charter required states Parties to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.<sup>138</sup>

#### **2.2.2.2. African Charter on Human and Peoples' Rights**

Though specific provision dealing with young offenders is not provided in African Charter on Human and Peoples' Rights, article 5 of this charter has particular relevance for the protection of the right of young offenders which declares every individual right to the respect of their human dignity and prohibited all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment. The Charter also provides a number of other rights such as the right to life, liberty and security of the person, religion, the right to work, health and education<sup>139</sup> which are also relevant for the protection of right of persons under these groups.

#### **2.2.3. National Legislations**

The criminal justice system of Ethiopia has incorporated basic principles on administration of criminal justice such as the rule of no crime and no punishment without the law, non-retroactivity, presumption of innocence, right to confrontation, right against self-incrimination,

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<sup>137</sup> Ibid article 4

<sup>138</sup> Ibid article 16

<sup>139</sup> African Charter on Human & Peoples' Rights (ACHPR), Adopted 27 June 1981, Articles 4,6,8,15,16 and 17 respectively

and right to counsel and right to review which generally applicable to all classes of parties in criminal system. Also there are special sections of the criminal law containing both substantive and procedural rules exclusively designed for juvenile offenders, and there are special sections of the procedural law likewise designed for juveniles. The FDRE constitution has also provided the general notions that can be applicable on young offenders. We are going to discuss this notion under this section

### **2.2.3.1.FDRE CONSTITUTION**

The domestication of international human rights instruments ratified by Ethiopia is of major significance of the constitution of The Federal Democratic Republic of Ethiopia<sup>140</sup>. The key place given to these international human rights instruments is re-emphasized and extended under article 13(2) in which international human rights instruments are viewed as standards for the interpretation of Chapter 3 of the constitution, which deals with fundamental rights and freedom. The constitution also addresses the rights of children separately, under article 36 with general policy guidelines that acknowledge “the best interest of the child” as a basic principle in the design and implementation of programmes that affect children. Regarding the treatment of young offenders it 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. States have assumed responsibility to provide those special protections and to establish institutions to ensure and promote their adoption and advance their welfare, and education<sup>141</sup>.

General provision of the constitution article 20/5 which was provided for accused persons is also applicable for young offenders. It says that accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense. It can be clearly understood from the nature of the young offenders that unless they are represented by their family or legal advocate, they may not defend them in criminal proceeding which may result for miscarriage of justice. This may necessitate state to assign free legal counsel to represent young offenders unless they are allowed to be represented by their legal guardians or they employed legal counsel by themselves.

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<sup>140</sup> Constitution of the federal democratic republic of Ethiopia (FDRE) proclamation no 1/1995, Article 9/4

<sup>141</sup> Ibid Article 36/6

Due to the general nature of the constitution, subordinate laws are expected to address detail issues. It can be inferred from the provision of constitution that deals with notion of the best interest of the child<sup>142</sup> that measures concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies are required to give primary consideration to the best interest of the child, which shall be provided in detail in subordinate laws.

The revised constitution of SNNPRS<sup>143</sup> incorporated the notions of young offenders in the same way with FDRE constitutions. The specific provision of the constitutions dealing with juvenile offenders provides that in all actions concerning children, the primary consideration shall be the best interest of the child<sup>144</sup>. The same provision under sub-article 3 concerns with segregation of juvenile offenders from adults when they admitted to corrective or rehabilitative institutions or who become wards of state or placed in orphanages.

#### **2.2.3.2.Criminal Procedure Code (CPC)**

Criminal procedure code of Ethiopia has provided with separate provisions concerning procedures pertinent in cases of young offenders<sup>145</sup>. However, it did not expressly provided who are young offenders rather it can be inferred from its cross reference to penal code regarding provisions applicable on young offenders. It provides that where the young offender is involved in criminal offences, it shall be immediately taken to the nearest woreda court by those who have seen the involvement of the offender<sup>146</sup>. Courts are expected to be the initial justice actor concerning their cases though other justice actors may involve in taking offender to the nearest court and in enforcement of measures taken by court. Whether to commence investigation on young offenders or to prosecute (frame the charge), police and prosecutor respectively have to be instructed by court<sup>147</sup>. In each stage of the proceeding the offender shall be represented by advocate who shall be appointed by court where no parent, guardian or other person in loco parentis appears to represent the young person, or the young person is charged with an offence

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<sup>142</sup> Ibid. art 36/2

<sup>143</sup> Revised constitution, 2001, of the southern nations, nationalities and peoples regional state proclamation no 35/2001

<sup>144</sup> Ibid, article 36/2.

<sup>145</sup> See CPC [supranote 15] article 171- 180

<sup>146</sup> Ibid article 172/1

<sup>147</sup> Ibid 172 ( 2&3)

punishable with rigorous imprisonment exceeding ten years or with death<sup>148</sup>. These conditions are not provided as cumulative requirements rather having either of them, the court has to appoint legal counsel to represent young offenders. It can be inferred from the FDRE constitution which says that accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense<sup>149</sup>. The phrase ... miscarriage of justice... can be easily understood in cases where young offenders are accused in which they may not defend themselves due to the nature of trial and their immaturity.

As per article 176 of CPC where the young person is brought before the court, all proceedings shall be held in chambers and it shall be conducted in an informal manner. Nobody shall be present at any hearing except, witnesses, experts, the parent or guardian or representatives of welfare organizations. The public prosecutor shall be present at any hearing in the High Court. This provision does not provide whether the prosecutor can involve in woreda courts or not. Even though the new criminal procedure and evidence law (draft) have omitted the word high court and allows the presence of prosecutor where the charge is filed<sup>150</sup>, it has also its own limitation. Because it says that "Where the accusation against a young person involved in crime relates to an offence punishable with rigorous imprisonment exceeding ten years or life imprisonment or death, the court shall direct the public prosecutor to frame written charge suitable to the young person"<sup>151</sup>. If prosecutor is not allowed to attend chamber of child offender for the sake of protecting the rights of young offender, what about the rights of victim (either individual or general community) to be represented by prosecutor? As long as offender is represented by legal advocate why not prosecutor is allowed to participate in crimes punishable not exceeding 10 years rigorous imprisonments? The law provides the procedures of examination in chief, cross-examination, re-examination and additional questions with respective persons authorized to ask it both in time of hearing prosecutors witness and defense witness. If so who shall cross-examine defense witness on behalf of prosecutor? This provision does not consider the interest of the whole community to be protected by the involvement of the prosecutor who is considered as public defender. Even though having separate chamber for young offenders is

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<sup>148</sup> Ibid 174

<sup>149</sup> FDRE constitution [supranote 140] Article 20/5

<sup>150</sup> Draft Criminal law Procedure and Evidence Code of the Federal Democratic Republic of Ethiopia article 382/1

<sup>151</sup> Ibid article 380/1

aimed to protect the rights of those offenders, involvement of advocates of offender while prosecutors are prohibited can be taken as miscarriage of justice towards the society. Being young offender may not be the issue for the community, rather they focus the offense committed and the measures taken on the offender. Justice system without representing the people is considered as Educating the technique of crime and how to withdraw from penalty to young offender.

After conviction of the offender for the purpose of decision, 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 young person so as to arrive at a decision which is in the best interest of the young person<sup>152</sup>. Measures that can be taken on young offenders can be sending to a corrective or curative institution or care of another person in the absence of family and/or when they failed to exercise proper care and guardianship or warning offender against further misconduct or penalty as provided under criminal code. In addition to these, court may warn, admonish or blame the parents or other person legally responsible for the young person where it appears that they have failed to carry out their duties<sup>153</sup>.

### **2.2.3.3.FDRE CRIMINAL CODE**

The general part of the FDRE criminal code has provided its objective and purpose at the beginning of the code which says that

*“The purpose of the Criminal Code of the Federal Democratic Republic of Ethiopia is to ensure order, peace and the security of the State, its peoples, and inhabitants for the public good. It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.”<sup>154</sup>*

The wording of this provision implies Prevention of crime; deterrence, incapacitation, and rehabilitation principles are taken as the aims of the Criminal Code. The criminal law gives a cautionary notice of punishable crimes to the offenders and potential criminals and it

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<sup>152</sup> CPC [supranote 15] article 177/2

<sup>153</sup> Ibid article 77/1, 78 and 79/2

<sup>154</sup> FDRE CC [supranote 4] Article 1

incapacitates offenders by isolating them from the society either temporarily or permanently when they failed to respect prior notice given to them. Rehabilitation of inmates are also taken by giving education, vocational training and install a parole system either through short term or long term imprisonment except death penalty to return him or her to the society.

The code has also provided the specific notion concerning young offenders with detail provisions to be applicable on them in case of their involvement in criminal activities. Criminal code provided three classes of young person's for the purpose of criminal responsibility. These are infants whose age is below nine years and not assume criminal responsibility for their act. Young offenders whose age is between nine and fifteen years are the second categories on whom special provisions of criminal law are applicable. Ordinary provisions applicable on adults shall not be applied on them. Lastly, young offenders between the age of fifteen and eighteen are subject to ordinary provisions of the criminal law. However, in assessment of sentence on these categories of offenders courts may apply ordinary mitigation of penalty or may apply special penalties specified for offenders between the ages of nine to fifteen<sup>155</sup>.

#### **2.2.3.3.1. Determination of Age**

The FDRE criminal law has clearly provided the age limit for young offenders to be responsible for criminal acts. Unlike other international human right instruments the FDRE criminal code provided two minimum ages of criminal responsibility; this are 9 year and 15 year where offender under the age of 9 is completely exonerated from criminal responsibility but offender between 9 and 15 are responsible for criminal offences in special case unlike offenders between 15 and 18 who can be treated as normal adult offenders with the exception of few penalties which are only applicable on adult (18 and above aged) offenders. So the age 9 is minimum criminal age for those under 9 to 15 and 15 are minimum criminal age for those 15 to 18.

#### **2.2.3.3.2. Measures Applicable on Offenders Between the Age of Nine to Fifteen**

FDRE criminal code provided separate provisions applicable on young offenders who aged nine to fifteen<sup>156</sup>. Children in this group are criminally imputable. However, they shall not be subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult

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<sup>155</sup> Ibid article 56

<sup>156</sup> Ibid article 53



offenders<sup>157</sup>. There are special measures and penalties applicable to this group. Penalties are ordered if the alternative measures have been applied and failed to be effective. These measures include admission to a curative institution, supervised education, oral reprimand, school or home arrest and commitment to a corrective institution defined as a special institution for the correction and rehabilitation of young offenders<sup>158</sup>. Penalties on the other hand include fine and imprisonment<sup>159</sup>. Corporal punishment that was among such penalties is no more valid under the new law.

**2.2.3.3.3. Measures Applicable on Offenders Between the Age of Fifteen to Eighteen**  
Offenders over the age of fifteen but fewer than 18 are as a matter of principle subject to the ordinary provisions of the criminal law. But judges have discretionary power either to mitigate the sentence or use the special provisions applicable to young offenders. Further, death sentence cannot be passed upon an offender who has not attained his eighteenth year of age at the time of the commission of the crime. With respect to imprisonment, such person shall be separated from adult offenders in prison until attaining age of majority.

#### **2.2.3.4. Other National Laws Related With Young Offenders**

The implied interpretation of the provisions of federal attorney general proclamation<sup>160</sup> shows the role of public prosecutor for the protection of the rights of young offenders. Attorney general has the power to follow the implementation and enforcement of judgments and orders given by courts under criminal case, applies to the court that gave judgments and orders and makes corrective action to be taken where they have not been implemented or their implementation is contrary to law<sup>161</sup>. Also it has the power to organize or ensures the establishment of systems for the proper execution of criminal punishments imposed by the court of law. Public Prosecutors are also expressly mandated by the law to monitor the correction facilities and take appropriate measures to ensure the proper treatment of prisoners.<sup>162</sup> It has to visit persons under custody at police stations and correction facilities, ensure their handling and stay is carried out in accordance with the law, cause unlawful act to be corrected; take measures or cause measures to

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<sup>157</sup> Ibid article 53

<sup>158</sup> Ibid article 158-162

<sup>159</sup> Ibid article 167 and 168

<sup>160</sup> Federal Attorney General Establishment Proclamation No. 943/2016

<sup>161</sup> Ibid article 6/3(f)

<sup>162</sup> Ibid Article 6(8) (c) and South Nations, Nationalities and Peoples' Region State Attorney General Establishment Proclamation No.177/2018 article 6(5) (I)

be taken based on the law against people who are found to have transgressed the law<sup>163</sup>. Insuring the implementation of international and regional human right treaties is another duty of attorney general. Based on the provisions of this proclamation the role of prosecutors is decisive for the proper enforcement of the rights of young offenders when penalties are imposed that necessitates the entrance in prison centers in addition to follow up young offenders staying in police stations until the final judgment is rendered. Supervising and inspecting the correction facilities is the basic elements of ensuring human rights compliance in prison and essential to make prison and prison leaders accountable for what happens in the prisons.<sup>164</sup> The same notion was also incorporated under attorney general establishment proclamation of SNNPR<sup>165</sup>. Since attorney general has the duty to follow up and insure the implementation of the criminal justice policy, prepared and ratified by federal governments in the respective regions<sup>166</sup>, and since the notion of young offenders is among basic issues in the criminal justice policy, it have decisive and direct role to ensure protection of young offenders rights.

In criminal justice system rehabilitation centers have decisive role to give effect for the aims of criminal law. Due to this prison centers are established with the aim to admit and ward prisoners, and provide them with reformative and rehabilitative service in order to enable them make attitudinal and behavioral changes, and become law abiding, peaceful and productive citizens<sup>167</sup>. So it shall ward and reform the prisoners it admits upon judicial sentences including young offenders, maintain prisoners' health care; and provide with free medical treatment, food and; undertake and encourage tasks, services and activities necessary for the physical and mental well-being of prisoners; provide prisoners with academic education, vocational training, and social work services and counseling services to facilitate their post-release rehabilitation and respect for the law<sup>168</sup>.

Regulation for the treatment of federal prisoners<sup>169</sup> has provided respect of human dignity unless restricted by the penalties imposed on prisoners and ensuring the executions of penalties to be educative and rehabilitative as basic principles of treatment of prisoners. Article 5/3/a of this

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<sup>163</sup> Proclamation No. 943/2016 [supranote 160] article 6/8/c

<sup>164</sup> Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Professional Training Series No. 9, 2003, pp. 368

<sup>165</sup> Proclamation No. 177/2018 [supranote 162]

<sup>166</sup> Ibid article 6/2

<sup>167</sup> Federal Prisons Commission Establishment Proclamation No. 365/ 2003 article 5

<sup>168</sup> Ibid article 6

<sup>169</sup> Treatment of Federal Prisoners Council of Ministers Regulations No. 138/ 2007 article 3

regulation provides for the prison administration to treat juvenile prisoners under separate accommodation from other prisoners. However, unlike criminal law and other human right instruments dealing with segregation of juvenile offenders, the expression of this provision” To the extent that circumstances allow juvenile prisoners under the age of 18 shall have separate accommodations”<sup>170</sup> has not provided as mandatory. This opens the way for abuse of power by prison administrators in treatment of young offenders.

The regulation has also deals with treatment of prisoners by providing conditions of premises including clothing, bedding, sanitation, food and medical service to prisoners<sup>171</sup>. In addition to this prison shall make the necessary arrangements to allow prisoners to participate in different rehabilitation and recreational activities; and Professional counseling service shall be provided to prisoners-during their stay in prison to bring about behavioral change so that they can become law abiding and productive citizens after their release<sup>172</sup>. This program is basically necessary for young offenders for their age is immature that necessary counseling may contribute for their behavioral changes that exposed them for the commission of the crime.

SNNPR state has adopted regulation<sup>173</sup> for prison administration in the region to make inmates of prisons to be treated with due respect to their human rights during their stay in prison and to enable them become responsible and law-abiding citizens upon reintegration in to the society. Carrying imprisonment to ensure human dignity physically and morally; and Execution of sentence of imprisonment toward the rehabilitation and facilitation of the post-release reintegration of inmates is taken as basic principle of prison center<sup>174</sup>. It has recognized segregation of prisoners based on the age and other factors for the sake of facilitation of their socialization and rehabilitation<sup>175</sup>. Accommodation standards like open classes, clothing, bedding, sanitation, food and medical service to prisoners are required to be provided with. Inmates shall, during their stay in prison, be made to receive counseling service that will enable

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<sup>170</sup> Ibid article 5/3

<sup>171</sup> Ibid article 6-11

<sup>172</sup> Ibid article 24 & 25

<sup>173</sup> The southern nations, Nationalities and peoples regional state manner or treatment of in mates of prisons regulation, regulation No 45/2005

<sup>174</sup> Ibid article 4

<sup>175</sup> Ibid article 6

them bring behavioral change and become law-abiding and productive citizens upon reintegration into the society when they finish their prison terms<sup>176</sup>.

### **2.3.Conclusion**

In this chapter the researcher has discussed the conceptual and legal notions concerning young offenders. Based on the definition given by different international and national laws, Young offenders are defined children or young persons whose age is below eighteen year but above minimum age limit provided by respective states (for instance nine year for Ethiopia) and is alleged to have committed or who has been found to have committed an offence. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years are formally charged and subject to juvenile justice procedures.

The juvenile justice system emphasizes on the well-being of the juvenile and ensures that any reaction to juvenile offenders to be always in proportion to the circumstances of both the offenders and the offence. CFJ is a practice where all stipulated standards of juvenile justice are fulfilled and thereby all rights of children are preserved in the course of investigation, prosecution, adjudication and correction to all children who come into contact to the system for what so ever reason.

In Ethiopian justice system when young persons involved in criminal offences, measures as response to these offences needs to be aimed to educate and successfully integrate them with their family and society. Judgment procedure and treatment of young offenders after judgment needs to be reformative and should make them peaceful and law abiding citizens. The law provides for the establishment of separate criminal trial bench to trial cases of child offenders and to have investigators and prosecutors to investigate cases of young offenders to follow up it. It also requires separate and active implementation of measures taken on young offenders. Different international, regional and national legal instruments have provided the issue of juvenile offenders; basically the notion of treatment of juvenile offenders with the role of different justice actors is discussed in those instruments.

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<sup>176</sup> Ibid article 32

## **Chapter three**

### **The Practice of Juvenile Justice in Kafa Zone**

#### **3.1.Introduction**

In this part the researcher analyzed the practical realities of the criminal justice process with regards to young offenders from criminal investigation stage to their treatment in correction facilities in the study area. Though the title of the thesis is determination and enforcement of measures and penalties on young offenders which is related with courts and correction centers, since juvenile justice is required to be began with the order of courts both for investigation and prosecute or for others the researcher have involved investigating police officers and prosecutors to assure the enforcement of law by concerned bodies.

As it discussed in the previous chapters the juvenile justice system emphasizes on the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence<sup>177</sup>. Measures are taken on young offenders with the aim of holding young people accountable by imposing sanctions that have meaningful consequences for them and that promote their rehabilitation and reintegration into society, there by contributing to the long-term protection of the public. The well-being of both young offenders and the society is required to be taken as pillars in juvenile justice system. Here the researcher has provided what are commonly observed practices of treatment of young offenders in the study area.

#### **3.2.Determination of Age**

To enforce the aim of criminal law it is crucial to consider the proper age of offenders to make them responsible for the acts they committed, in addition to the other points to be considered. Determination of measures without proper determination of the age of offenders may result to the punishment of irresponsible persons for the mere fact that they have committed prohibited acts. The upper limit of young offenders is provided under CRC article 1 which is 18 year. Persons under this age limit but above minimum age limit are required to be treated by laws of juvenile offenders. Even though the minimum age limit of young offenders in our law is confusing as it is double (fifteen for those within fifteen and eighteen; and nine for those within

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<sup>177</sup>Beijing Rules [supranote 2] rule 5

nine and fifteen), the practice in the study area implies that investigating police officers have discretion to determine the age of offenders except in few cases where accused changes what he said for investigators to judges during trial stage. While commencing the case the file is submitted to the police by victim where it begins investigation without considering the age of offender by correcting what the offender said. Unless the guardians of the young offenders argue with police officer regarding the age, it continues the investigation and warns the offender not to change his age what is recorded in police file<sup>178</sup>.

In certain cases the police bring the offender to the court to get the order of investigation of the age. However, the result of the age investigation is not submitted to the court rather continues the crime investigation without the order of court on the stay of young offender and the way the investigation is to be conducted. Usually Courts do not consider giving the meaningful order on the age investigation results submitted by police officer. In one pending case in Bita woreda<sup>179</sup>, police officer submitted the medical result of the age of offender which is below fifteen years to the court, and then the court directed the police officer to discuss with the prosecutors what to be done. But police officer continued investigation without contacting with prosecutors and submitted the investigated file to the prosecution office that returned back it as per article 38/C for failure to follow procedures of juvenile offenders. After series argument the file was sent to prosecutors of kafa zone who ordered the woreda prosecutors to prepare charge on offenders without any action for violation of the procedures. Within this long argumentative procedures offender was arrested in police stations for long times.

In some cases police officers fail to investigate the age of young offenders for the fear of expense required for medical investigation. So, it forces the offender to say his age to be above fifteen years where person under this age limit are treated as normal adult offenders. If the offender is below fifteen, some courts release him/her without taking any appropriate measures which incites police officer to violate the rights of offenders.

Based on the practice of the court in the study area, community considers that persons under fifteen years as irresponsible before law. Due to this some persons employ persons under this

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<sup>178</sup> As per interview made to Bita woreda prosecutors Mr. Fetene Gero and Mr. Biniam Mesfin (public prosecutors of Bita woreda), it is common to continue the investigation without the order of the court in their woreda.

<sup>179</sup> The case of Alemayehu Aango accused for assault (pending case)

age group as instrument for crimes like arson, damage of property, theft, etc. the victims of the crime also selects to revenge the offenders rather than submitting the case before law. In general the issue of age determination and measures on the results creates crisis in the community which deserves necessary solution.

### 3.2. Commencement of Investigation and Preparation of Charges

When young offenders are suspected for violation of criminal law they are required to pass through special procedures in investigation and preparation of charges unlike adult offenders. CPC says that the court may give instructions as to the manner in which the investigation should be made. Preparation of the charge by the public prosecutor shall be ordered when the accusation is relates to an offence punishable with rigorous imprisonment exceeding ten years or death.<sup>180</sup> This means whether to commence investigation on young offenders or to prosecute (frame the charge), police and prosecutor respectively have to be instructed by court<sup>181</sup>.

Data collected from the study area discloses that the practice of commencement of investigation and prosecution is against what is provided under CPC and other human right instruments. Among 669 cases files of young offenders from the study area, the researcher has tried 145 sample files from woreda and high courts.

Level of institutions		Sample of cases observed	Commencement of investigation				Preparation of charges			
			Authorized		Not authorized		Authorized		Not authorized	
			In no	In No.	By %	In no.	By %	In no.	By %	In no.
Woreda	9-15	58	14	25	44	75	12	20.7	46	79.3
	15-18	77	0	0	77	100	0	0	77	100
Zonal	9-15	1	1	100	0	0	1	100	0	0
	15-18	9	0	0	3	100	0	0	9	100
Total	9-15	59	15	25.4	44	74.6	13	22	46	78
	15-18	86	0	0	86	100	0	0	86	100

Table 3.1 shows nature of commencement of investigation and charges on young offenders

It was shown in table that, the commencement of investigation in woreda where the cases of young offenders are occurred in abundance very few. 89.65 % of cases investigated without the

<sup>180</sup> CPC [supranote 15] article 172/2&3

<sup>181</sup> Ibid

authorization of the court. The remaining 10.35% of cases are requested the permission of court order to begin investigation. Some investigators only request the authorization of court to check the age of suspects and without submitting medical result to the court they proceeds to the investigation. This controversy is occurred for offenders under the age of eighteen years. The investigation procedure for offenders between fifteen and eighteen years is like adult offenders. In all matters they are seen as adult offenders from investigation to the trial stage.

The prosecution procedure is the same to investigation of both classes of offenders. As a normal case prosecutors frame the charge based on the file submitted by police officer except the few prosecutors<sup>182</sup> that request the court authorization in case of crimes punishable ten years and above. If the crime by which the young offender suspected is punishable with less than ten years, they frame the charge and submit it to the court as a normal case. 91.04% of cases are submitted without the authorization of the court to frame the charge. Courts also continue the trial of case without any order for violation of the procedural laws regarding young offenders.

### **3.3.Nature of Trial for Young Offenders**

CPC provides that where the young person is brought before the court all the proceeding shall be held in chambers so that nobody shall be present at any hearing except witnesses, experts, the parent or guardian or representatives of welfare organizations<sup>183</sup>. The trial of young offenders is required to be informal nature and persons entitled to involve in normal trial are not allowed to involve in the trial of young offenders. Trial of the case on the normal chambers is completely prohibited by law. The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express her or himself freely<sup>184</sup>. However, 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 young person so as to arrive at a decision which is in the best

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<sup>182</sup> Gewata woreda prosecutor (Mr.Iyob Imiru) said that when the police file discloses crime committed by young offender is punishable with ten years and above they requests the court authorization before framing the charge. But in case the crime is punishable below ten years they frame the charge without the court order.

<sup>183</sup> CPC [supranote 15] article 176/1

<sup>184</sup> Tokyo Rules [supranote 125] rule14/2



interest of the young person<sup>185</sup> in addition to persons to be involved in the trial as specifically listed in the criminal procedure code<sup>186</sup>.

Here the issue of the involvement of prosecutor is controversial as the law says the public prosecutor shall be present at any hearing in the High Court<sup>187</sup>. Some argue this provisions as that the law prohibits involvement of prosecutors in the lower courts while the cases of young offenders are proceeding except in high court. The others argue that since it has not expressly prohibits its involvement it is not fair to prohibit the involvement of prosecutor by implied interpretation of the law. Conducting the trial with advocate who represented the offender without prosecutor that represents the victim and the whole society would result to miscarriage of justice towards the victims. The same is true for researcher who argues that the involvement of prosecutor should be determined based on whether the offender is represented or not.

The adjournment of cases of young offenders is also needs to be different for young offenders in order to realize the fair and timely trial of the cases. However, what is observed in the study area is that no difference is made in this regard. The following table summarized these notions.

Level of courts	Age level of offenders	Nature of trial				Adjournment of case				Prosecutor Involved		Prosecutor not involved	
		Formal		Informal		Normal		Informal		In no	By %	In no	By %
		In no	By %	In no	By %	in no	In %	In no	By %				
Woreda	9-15	2	50	2	50	4	100	0	0	2	50	2	50
	15-18	4	100	0	100	4	100	0	0	4	100	0	0
High court	9-15	0	0	1	100	1	100	0	0	1	100	0	0
	15-18	1	100	0	0	1	100	0	0	1	100	0	0
Total	9-15	2	40	3	60	5	100	0	0	3	60	2	40
	15-18	5	100	0	0	5	100	0	0	5	100	0	0

Table 3.2 shows nature of trial, adjournment and involvement of prosecutors based on the response from judges on questionnaires

The nature of trial in the study area shows that it is common to conduct cases of young offenders in formal trial except in few cases. 50% of woreda courts in the study area try the case in formal trial while the remaining is informal. Even cases where the trial conducted informally are not for

<sup>185</sup> CPC [supranote 15] article 177/2

<sup>186</sup> Ibid article 176

<sup>187</sup> Ibid

the rights of offenders rather in cases where the victim and witnesses are minors<sup>188</sup>. Though informal trial is also advisable in cases for minor victims and witnesses it is not only the cases where it to be informal but it should also be in cases where offenders are young.

The adjournment of cases of young offenders is not differentiated from that of adult offenders even in case of remand<sup>189</sup>.

There is controversy on the involvement of prosecutors in the trial in woreda courts. Some courts argue that since CPC does not incorporated prosecutors under the list of persons to be involved in the trial of young offenders, they excludes them from involvement at first instance courts while other courts and prosecutors argue that conducting trial based on the charge framed by prosecutor without its involvement is unfair and against public interest which is to be represented by prosecutor. It is not uniform in woreda to woreda, while 50% of woreda courts allow its involvement, the remaining 50% are not allows involvement of prosecutors in trial.

### **3.4. Legal Representation**

In criminal proceeding the right to representation is basic requirement for protection of accused persons in general and young offenders in particular. The right to legal representation is a minimum guarantee in the criminal justice system for all persons, and should equally apply to young offenders<sup>190</sup>. While this article allows the person to defend him/herself in person, in any case where the interests of justice so require, that person will be assigned legal assistance which shall be provided free of charge to the child<sup>191</sup>. The same notion is incorporated under article 20/5 of the FDRE constitution which says that accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense. It can be clearly understood from the nature of the young offenders that unless they are represented by their family or legal advocate, they may not defend them in criminal proceeding which may

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<sup>188</sup> Based on the interview with Ms. Nigist Gezahegn (social worker in Bonga city first instance court) most of the time criminal cases are commonly seen informally when either the victims or witnesses are under aged.

<sup>189</sup> Interview made with three young offenders in Bonga prison center(Fikadu kebede currently aged 10 year and he was sentenced for 6 years for the crime of rape, Tarekegn Abate currently aged 12 years and he was sentenced for one year and six months for the crime of theft and Tamirate Alemayehu 15 years and he was sentenced for five year imprisonment for the crime of being accomplice for abduction) shows that they all are detained in police station with repetitive remand and prohibition of bail right

<sup>190</sup> ICCPR[supranote 7] article 14 (3) (d)

<sup>191</sup>General comment No 24 [supranote 50] Para 62

result for miscarriage of justice. This may necessitate state to assign free legal counsel to represent young offenders unless they are allowed to be represented by their legal guardians or they employed legal counsel by themselves.

As CPC, in each stage of the proceeding the offender shall be represented by advocate who shall be appointed by court where 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<sup>192</sup>. This conditions are not provided as cumulative requirements rather having either of them, the court have to appoint legal counsel to represent young offenders. International standards also notified that, throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country<sup>193</sup>. The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. In addition to representation to make the purpose of having legal representation effective, a person who representing the young offender must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law<sup>194</sup>.

Having this notion in mind, the researcher has tried to assess the practice of legal representation of young offenders in the study area from the stage of investigation to the trial stage which can be seen in table below. .

Level of court	Age level of Offenders	Observed cases in number	Have represented		Not represented	
			In no	By %	In no	By %
Woreda court	9-15	58	2	3.4	56	96.6
	15-18	77	0	0	77	100
High court	9-15	1	0	0	1	100
	15-18	9	0	0	9	100
Total	9-18	145	2	1.37	143	98.63

Table 3.3 shows legal representation of young offenders from investigation to trial stages

<sup>192</sup> CPC [supranote 15] article 174

<sup>193</sup> Beijing Rules[supranote 2] rule 15

<sup>194</sup> General comment No 24 [supranote 50] Para 63

To have fair justice in criminal proceeding it is better to have two sides are in an equal position. In criminal cases victims (state and society) are represented by public prosecutors and the offenders are required to be represented by advocates which can be employed by them or assigned by state for the sake of justice. It is easy to consider what justice is delivered after trial of parties with not bargaining power. Conducting trial of young offenders without representing young with appropriate body while the victim is represented by prosecutor is clearly results for miscarriage of justice. The same is true in the study area. Data collected from the study area (from first instance and high courts) implies that it is not common to represent young offenders either by legal advocate or his/her guardian while prosecutors are involved as a normal case. The researcher observed 145 sample cases among which, only two young offenders are (1.37%) represented by advocate who is employed by offender's family. Interview made with young offenders<sup>195</sup> in the Bonga prison center shows that even though they are under fifteen aged offenders and the crime they suspected was punishable with rigorous imprisonment exceeding ten years they are not represented by legal advocate, even their families are not requested to present in the trial<sup>196</sup>. In the absence of legal advocate to represent the young offenders; even they are not allowed to be represented by their guardians. Even though none of the institutions have employed advocate to give free service when required, failure of court to allow representation by legal guardian or ordering private advocates<sup>197</sup> to represent young offenders implies the justice actors in the study area have not gives concern on the issue of young offenders. Advocates regulation no 57/1999 implies the court may request the legal service of advocates where the issue of young offenders can be one of the case for which court may request advocates to represent them in the trial. The failure of the court is not only absence of employed advocate in their institution, but also failure to order the guardian of offender or private advocate to give service is another drawback of the courts in the study area.

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<sup>195</sup> Fikadu kebede, Tarekegn Abate and Tamirate Alemayehu [supranote 189]

<sup>196</sup> Fikadu kebede [supranote 189] who was convicted for abduction responded that the police officers in the woreda have warned his family not follow the trial and to be bail for him

<sup>197</sup> Council of ministers regulation no. 57/1999, federal advocates code of conduct regulation article 49/3 provides that any advocate shall render free of charge or up on minimum payment to persons to whom the court requests legal service

Level of courts	Have advocate		Have no advocate		Have psychologist or social worker		Have no psychologist or social worker	
	In no	By %	In no	By %	In no	By %	In no	By %
Woreda court	0	0	4	100	2	50	2	50
High court	0	0	1	100	0	0	1	100

Table 3.4 shows advocates, psychologists and social workers in the court

Among four first instance courts and one high court in the study area (samples), no court has employed legal advocate. For the purpose of treatment of both young offenders and victims the existence of psychologists or counselor or social workers is required by international standards. There is a position of those professions in each institution in the study area. However, only Gewata woreda and Bonga city administration first instance courts have psychologist and social work experts respectively, though they are not performing the task of their position. Mr. Mitiku Gebreyohannis<sup>198</sup>, psychologist in Gewata woreda court, said that even though he was employed in a position of caring children, he is not working the task required of his position. He works the opening of file in the court. He has not performed any task related with both young offenders and victims and no conditions are provided to perform what his position requires. Mrs. Nigist Gezahegn<sup>199</sup> is also social worker in Bonga city administration first instant court. Bonga city administration first instant court is the only court in the zone that has separate room for both young offenders and victims or witnesses. Based on the interview with Mr. Nigist, they are working commonly to treat the victim of the crime and how child witnesses can give their testimony to the court in separate room. They treat in rare cases the issue of young offenders when the judge orders for that. She said that their work in relation to offender is depending on the order of the court. If the court doesn't orders their involvement to treat the young offender they may not involve by their own motion, but in case of victims they can involve.

<sup>198</sup> Interview made with Mr. Mitiku Gebreyohannis shows that employment of psychologist in the court is as a formality, no task is performed in relation to both young offenders and victim. He is order by the institution to open the file and facilitate the enforcement of other judgments.

<sup>199</sup> Mr. Nigist was employed as a social worker by INICEF, an international organization works for the welfare of children. Later she becomes the employee of the court as social worker expert.

### 3.5.Measures Taken on Young Offenders

In the case of juvenile persons, the procedure shall take account of their age and the desirability of promoting their rehabilitation while determining measures on them; and they should be separated from adults and brought as speedily as possible for adjudication<sup>200</sup>. The punitive measures are not advisable for young offenders rather the alternative measures like counseling, supervised education, school/home arrest, admission to curative/corrective institutions, etc, are more advised to be taken. However, in the cases alternative measures are failed to be effective, penalties including imprisonment can be taken as a last resort which is required to be for shortest appropriate period of times and be enforced in separation from another adult offenders. Their treatment should be carried out respecting their inherent human dignity and in a manner which takes in to account the needs of persons of their age.

Unlike the provisions of both international and national legal instruments regarding measures to be taken on juvenile offenders, practice in the study area shows that measures taken on young offenders are against the requirement of law. Even though the law requires alternative measures to be taken as primary options on young offenders and to take penalty as a last resort when the first option is failed to be effective, the sample taken from the study area implies that penalties like fine and imprisonment are commonly taken on this classes of offenders. Penalties should be ordered if the measures have been applied and failed to be effective. These measures include admission to a curative institution, supervised education, oral reprimand, school or home arrest and commitment to a corrective institution defined as a special institution for the correction and rehabilitation of young offenders<sup>201</sup>. Though some measures are inaccessible in the area, the existing options are not utilized properly. Penalties on the other hand include fine and imprisonment. The priority of law to take appropriate steps to have a broad range of alternative and educative measures at the pre-arrest, pretrial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders<sup>202</sup> is not obeyed by concerned bodies.

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<sup>200</sup> ICCPR [supranote 7] article 14/4 & 10/2(b)

<sup>201</sup>FDRE CC [supranote 4] article 158-162

<sup>202</sup> UN Guidelines [supranote 53] Rule 15

The following table illustrates kinds of measures taken on young offenders based on the questionnaires collected from courts and files seen from the courts. Kinds of measures taken on offenders of different class by courts are provided in number and in percent based on total no of respondents.

Kinds of measures	On offenders below 9		On offenders 9-15		On offenders 15-18	
	In no.	In %	In no.	In %	In no.	In %
Admission to curative institutions	0	0	0	0	0	0
Supervised education	0	0	0	0	0	0
School/home arrest	0	0	0	0	0	0
Oral reprimand	0	0	0	0	0	0
Commitment to corrective institutions	0	0	0	0	0	0
Fine	0	0	8	5.517%	17	11.72
Imprisonment	1	0.689%	47	32.4%	69	47.59%
Suspension of penalty	0	0	2	1.379%	0	0
Others	0	0	1	0.689	0	0
Total case	1	0.689%	58	40%	86	59.31

Table 3.5 kinds of measures taken on young offenders in the study area

The above table implies that the practice of taking alternative measures on young offenders in the study area is in its initial stage. Among 145 cases observed more than 97% cases are disposed by imposition of penalty (both fine and imprisonment) and only 2 cases are disposed by suspension of penalty after conviction of the offenders. One case from Bitu woreda is disposed without any measure only for being aged fewer than fifteen. Though the researcher has not found the court file, judges from Bonga town first instant court have responded in the interview that, they had ordered the admission of one young offender to Addis Ababa juveniles' corrective institutions in 2006 E.C for being convicted of homosexual crime. However, this measure is omitted due to the excess expense required to transport and treat offenders in Addis Ababa. Most judges take absence of corrective institutions for young offenders as a reason for the measures they imposed on them. Those offenders sentenced with imprisonment are treated with adult

offenders in Bonga prison center. Whether they are within the age level of 9-15 or 15 to 18 they are corrected in normal condition of the prison center. The following table shows the general data of measures taken on young offenders in the study area.

Level of court	Age classes of offenders	No. of cases observed	Kinds of measures			
			Alternative measure		Penalty	
			In no	By %	In no	By %
Woreda courts	9-15	58	2	3.5	56	96.5
	15-18	77	0	0	77	100
High courts	9-15	1	0	0	1	100
	15-18	9	0	0	9	100
Total	9-15	59	2	3.4%	57	96.6
	15-18	86	0	0	86	100
	Total	145	2	1.4	143	98.6

Table 3.6 shows general measures taken on different classes of offenders

It was seen from the data collected through questionnaires and interviews in addition to document analysis, from four first instant courts and one high court in the study area that only on two cases (1.4%) are disposed by alternative measures and on the remaining 143 cases (98.6%) penalty of fine and imprisonment are decided. These two cases are from Gewata woreda where two young offenders are accused with other offenders for destruction of forest. They are represented by legal advocate by their own. After conviction of the offenders the court has suspended the enforcement of penalty for one year. No court have taken alternative measures on offenders between age of fifteen to eighteen rather they are considered as normal adult offenders in all cases. Even on young offenders aged from nine to fifteen on whom alternative measures are more advisable, 96.6 of the cases (57 cases from 59 cases of offenders between and to fifteen) are disposed with penalty which is ordered to be enforced in prison center.

### 3.5.1. The Effect of Measures

Measures taken on young offenders in the study area have the negative consequence both on the offenders and also on the whole community. Regarding offenders between the age of fifteen and eighteen the normal procedure and penalties are imposed by courts in the study area. But there is



some variations regarding offenders below fifteen years where some courts<sup>203</sup> releases without any action while others imposes penalties like adult offenders with minimizing penalty for being young offenders. This is common both to first instant and high courts in the study area. The penalties imposed on those young offenders are ordered to be enforced in Bonga prison center where they are imprisoned with adult offenders without any separate treatment from adults. They stay there with adult offenders including those sentenced for life imprisonment and recidivists who are teaching them the technique of grave crimes<sup>204</sup>. Based on the interview made with Bonga correction center staffs, most of the prisoners in the institution have prior record in the same institution. Especially, it is common for young offenders who come back with another offence, after their exit from the institution<sup>205</sup>. As they said the main cause for this repetition of crime is the stay of different offenders in the same compound due to the absence of sufficient class to separate them based on their age, nature of crime and other factors. This is clear violation of the rights of young offenders to be treated separately from adult offenders. Some courts like Bita woreda courts have releases young offenders without any action taken due to the offender are aged less than 15 years. This also exposed offenders to the reactions of victim and his/her family as the revenge and others employs young offenders as an instrument for they are considered as irresponsible<sup>206</sup>.

### **3.6. Separate Accommodation**

Providing separate accommodation for prisoners helps to protect the physical and mental integrity of prisoners, to better monitor them individually and to contribute to their rehabilitation.<sup>207</sup> International standards and national laws as noted in previous chapter of this paper, requires the correction centers to have separate accommodation for prisoners based on

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<sup>203</sup> In Bita woreda, after the completion of the proceeding the court orders the young offenders to be released for being aged less than fifteen years old. The prosecutors of this woreda said that judges in this institution have no know how about the special procedure regarding young offenders. The trial is normal like trial of adult offenders.

<sup>204</sup> I/R Indale Alemu (director of the Bonga prison center) said that some young offenders are come back in their institution after completing the first sentence and committing another crime. Their stay with adult offenders of grave crime makes them recidivists rather than being reformed in the institution.

<sup>205</sup> Inspector Damtew G/mariyam, the coordinator of entry and exit of prisoners, said that many prisoners in the institution have the history of arrest in their institution when they are young.

<sup>206</sup> Based on the interview made with S/n Ketema Kebede (coordinator of Bita woreda police crime investigation), the releasing of young offenders by court without any measure is obstacle for their crime control activities in the community. The community is not willing to apprehend the offender with police officers due to the fear that they might be set free, rather they become silent and chooses to revenge by themselves.

<sup>207</sup> UNODC Second Specialized Module on Classification, Sentence Management and Rehabilitation, Manual for Trainers, 2013, pp.21

their age, sex, criminal records, health condition and legal reason for their detention<sup>208</sup> and should be kept in separate institutions or parts of institutions, taking in to account the necessities of their treatment; thus: Young prisoners should be kept separate from adults<sup>209</sup>. FDRE criminal code under article 176 and 110/2 provides that in carrying out of penalties entailing loss of liberty the rule of segregation until majority shall be strictly observed for offenders between fifteen and eighteen years of age. They should not be confined with adult prisoners who are sentenced to rigorous imprisonments. Separate treatment is decisive to reform young offenders owing to their immature mind set up which can be either easily corrected if they treated properly or easily deceived when neglected. From investigation to correction center they are required to be treated in segregation from adult offenders. Appointing separate personnel to treat young offenders and treating them in separate places is required both under international human right instruments and national legislations. In addition to the existence of separate place and persons assigned to treat young offenders, provision of sufficient resources in order to serve offenders properly is crucial thing.

In the case where the alternative measures are failed to be effective, penalty including arrest, detention or imprisonment of a child can be taken which shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time<sup>210</sup> which shall be enforced in segregation from adult offenders and the treatment is required to be in humane manner and respect for the inherent dignity of the young offender, and in a way which takes into account the needs of persons of their age<sup>211</sup>. Person responsible for their handling shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their discharge from correction center<sup>212</sup>. Accordingly, prison authorities shall supply comprehensive programmes and services that address these needs, in consultation with inmates themselves and the appropriate concerned bodies<sup>213</sup>. Beyond being young, women offenders shall receive education on women's health

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<sup>208</sup> United Nations Standard Minimum Rules (SMR) for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 ; See also Article 6 of the Regulation No. 45/2005 [supranote 173] ” which requires separate treatment of prisoners based on age, sex, nature of penalty

<sup>209</sup> Nelson Mandela Rules [supranote 1102] rule 11 and FDRE CC [supranote 4] article 53/1

<sup>210</sup> CRC [supranote 1] article 37/b

<sup>211</sup> Ibid article 37/c

<sup>212</sup> Nelson Mandela Rules [supranote 102] Rule 38/2

<sup>213</sup> Bangkok Rules [supranote 122] rule 54

care and have regular access to gynecologists, similar to adult female prisoners<sup>214</sup>. This can be realized in a condition where they are segregated from other adult offenders in the institution they are serving the measures taken on them. Regulation for manner of treatment of inmates has recognized segregation of prisoners based on the age and other factors for the sake of facilitation of their socialization and rehabilitation<sup>215</sup>.

The segregation of young offenders from adults is considering the notion of best interest of the child and reformation of the offender should be given priority. Data collected from the study area implies that from police station to prison center no institution have separate place for young offenders.

Level of institutions	Have separate place of detention for young offenders				Have no separate place of detention for young offenders			
	Before judgment		After judgment		Before judgment		After judgment	
	In no.	By %	In no.	By %	In no.	By %	In no.	By %
Woreda police stations	0	0	0	0	4	100	4	100
Zonal police stations	0	0	0	0	1	100	1	100
Correction center	0	0	0	0	1	100	1	100

Table 3.7 shows place of detention for young offenders in kafa zone

Beyond the data collected from concerned bodies in the study area through questionnaire and interviews, the researcher personally observed police stations and corrections centers where young offenders are imprisoned with adult offenders for no place is separately provided for the treatment of young offenders. In police stations they stay with adult offenders until final judgment is rendered except they are released with bail. The researcher has interviewed young offenders<sup>216</sup> in the prison center who are detained in woreda police stations with adult offenders for at least one month before they are convicted for crime which they were suspected. Even though fulfillment of correction facilities is difficult due to the economic condition of our country, providing separate class even within the same institution (which is easy task) is not performed both in police stations and prison center (not correction center because offenders are

<sup>214</sup> Ibid rule 38

<sup>215</sup> regulation No 45/2005 [supranote 173] article 6

<sup>216</sup> Fikadu kebede, Tarekegn Abate and Tamirate Alemayehu [supranote 189]

not corrected properly rather punished and becoming experienced offenders for the future). Though persons involved in juvenile cases are required to be trained in child treatment, no police officer in the study area have the knowhow about the juvenile justice system, rather they treat the case like normal criminal cases. The only segregation observed in this institution is male and female inmates. Collective treatment of young offenders with adults who habituated in prison center for rigorous imprisonment exposes them to be recidivists<sup>217</sup>.

### **3.7. Personnel for Treatment of Young Offenders**

In the treatment of young offenders, it is necessary to equip persons involved in the system to have trained with notion of treatment of young offenders. All persons who have contact with or being responsible for children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials, judges and magistrates, prosecutors, lawyers and administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice<sup>218</sup>. Police officers as one of the parties involved in juvenile justice are at the front in the juvenile justice system which necessitated them to receive special training in child development, adolescent psychology, sociology, and counseling, in order to better equip them to handle the unique problems associated with policing juveniles<sup>219</sup>. The requirement of professional person is necessary in the stage of investigation, trial and post trial stages while they are in correction centers. To treat young offenders as required by law persons trained in child development, adolescent psychology, sociology, social work and counseling are important in investigation class, trial room and correction centers in addition to legal advocate

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<sup>217</sup> I/R Indale Alemu,[supranote 204] said that different offenders have interred in this institution for additional crime after their release by completion of previous penalty imposed when they were young. He said that he considers one of the factors for this recidivism after completion of previous penalty is collective treatment of different classes of offenders due to the absence of resource to provide separate classes for different offenders including young offenders.

<sup>218</sup> Guidelines for Action on Children [supranote 53] rule 24

<sup>219</sup> Jack E. Bynum & William E Thompson [supranote 72] p 376

Young offenders should be treated with those professionals during investigation, and trial stages. During their stay in prison, they should be made to receive counseling service that would enable them bring behavioral change and become law-abiding and productive citizens upon reintegration into the society when they cease their prison terms<sup>220</sup>. The researcher has tried to assess the existence of persons who trained special training to treat young offenders in the different institutions in the study area which is provided in table as follows.

Level of institutions	Have trained person to treat young offenders		Have no trained person to treat young offenders	
	In no.	by %	In no.	by %
Woreda police stations	0	0	4	100
Zonal police department	0	0	1	100
Woreda court	2	50	2	50
High court	0	0	1	100
Woreda prosecutor	1	25	3	75
Zonal prosecutor	0	0	1	100
Correction centers	0	0	1	100

Table 3.8 shows data about separate persons for treatment of young offenders

The assessment made in the study area as provided in the above table shows that from woreda to zonal level no police stations have persons trained in special training in treatment of child offenders. The investigation stage of crime which requires treatment of offender is normally conducted by regular investigators without the assistance of any trained professionals. As regards judicial disposition of cases of young offenders, there is no legal provision for the establishment and operation of a special court to entertain such cases. Thus, neither a separate court nor a division exists at present in the zone. Even the existing judges have no special training in juvenile justice and they are not assisted by experts such as a social worker or a psychologist. Only two woreda courts<sup>221</sup> have employed experts of psychology and social work though they are not working for the protection of offender. Psychologist in Gewata woreda has not trained except the general courses in studying regular degree program. He has not trained after employment in the position in the court. Also social worker on Bonga city administration first instant court have not got training from justice organs on the juvenile justice rather for a long

<sup>220</sup> regulation No 45/2005 [supranote 173] article 32

<sup>221</sup> Gewata woreda have psychologist and Bonga city first instant court have social worker

time ago (2006 E.C.) she have trained on child protection. Their focus is treatment of victims of the crime and witnesses rather than treating young offenders. Even though they are ready to perform the order of the judge regarding the treatment of young offenders, the disregarding of courts the issue of young offenders becomes one of the obstacles to dispose their responsibilities.

Above all correction centers are institutions that mandatorily requires psychologists, social workers and other professionals not only for the treatment of young offenders but also for the treatment of each classes of prisoners. Unfortunately, Bonga prison center have no any professionals trained for the treatment of offenders. It is questionable how the reformative objective of criminal law takes effect without proper counseling service in the institution. Courts are simply deciding penalty on young offenders without considering whether it is properly enforced or not. Not only young offenders are requires to be treated with those persons trained in psychology, sociology, social work and counseling but also inmates in prison centers require those treatment services to have change in their future socio-economic aspects and to be reformed. While there are more than eighty correctional officers in charge of security and other related intuitional activities and more than 1500 prisoners (including females and young offenders) in correction center, no persons trained in psychology, sociology, social work and counseling has employed to deliver rehabilitation services. Due to their immature mind set up such counseling service and legal awareness creations are crucial for the reformation of young offenders. However rather than getting such services young offenders are getting the techniques of commission of complex crimes from the experienced senior prisoners (as expressed by prison staffs). Due to this the purpose of criminal law to have correction center which is reforming offenders become failed in this institutions (study area). Even though the law provided the power and responsibilities of the attorney general to exercise a supervisory function in relation to the implementation of court decisions, to visit prisoners and to take appropriate measures to ensure their handling and reside is carried out in accordance with the law, cause unlawful act to be corrected; take measures or cause measures to be taken based on the law against people who are found to have contravened the law<sup>222</sup>, prosecutors are not performing their duties effectively. Though their visit of correction center have no meaningful solutions to the problems in the

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<sup>222</sup> Proclamation 177/2018 [supranote 162] Article 6(5) (i) see also Prosecutors Standard [supranote 116]Standard 4

institutions except taking data of prisoners, they have stopped this visit for a time being<sup>223</sup> while it is expected to correct the problems in the correction centers. Due to the failure of different concerned bodies to consider the issue of young offenders they are treated as adult offenders within detrimental conditions of the prison center.

### **3.8. Material Supports**

As it was discussed in the above topics there was the problem of enforcement of measures taken on young offenders in kafa zone. From the stage of investigation to the correction institutions, young offenders are exposed to violations of rights by persons involved in their case. The enforcement of rights of children to be successful, Policy and legal frameworks that provide for and facilitate implementation of the child protection measures, Institutional frameworks and arrangements through which the child protection measures are implemented, Adequate amount of resources and Mechanisms or arrangements to integrate, synchronize and synergize the efforts of varied actors that take part in the implementation of child protection measures are crucial in the system<sup>224</sup>. The reality in the study area is against this notion. Some lawyers understood the notion of juvenile justice in detail, though it is not implemented. Absence of separate place (even separate class in the same institutions) of treatment in each of the institutions in the zone clearly discloses the absence of material support for the treatment of young offenders. Materials necessary for health care, education, for food service, clothing and others are not provided sufficiently to the general prisoners. Absence of sufficient material can be one of the reasons for the failure of the enforcement of rules of juvenile justice system by justice actors. This mandate is given to executive branch of government in order to fulfill the required materials for the treatment of juveniles.

### **3.9. Challenges in the Determination of Measures on Young Offenders**

Determination of measures to be taken on young offenders is basically taken by courts. Taking this measure was commenced since the offender is submitted to the nearest court as per article 172 of CPC, where the court will determine what to be done taking in to account the best interest

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<sup>223</sup> I/R Indale Alemo [supranote 204] said that in previous time prosecutors of kafa zone had been visiting the institution where they give the legal awareness activities to the prisoners. However, recently they have not visited the institution

<sup>224</sup> Tsegaye Deda [supranote 78] pp .11

of the young offender<sup>225</sup>. To dispose the case properly and fairly based on laws dealing with young offenders<sup>226</sup>, body entitled to take measures needs to have correct inputs dealing with young offenders. The primary thing concerning this notion is proper determination of the age of the young offenders. In some cases the process of investigation of crimes committed by the young offenders are not commenced as provided in CPC by taking offender to the nearest court. The victims of the offence submits the file to the police who begins the investigation by taking the testimony of victim and witnesses until that time offender stays in the police station. Later the issue of young offender begun when the suspect says his age as minor, after his stay in police station for a minimum of 24 hours with adult offenders. In certain cases having known that the offender is under aged police officers arrests them for 24 hours as a rule. Therefore, the first challenge in the determination of measures on young offenders is failure of police officer to submit the offender before commencement of investigation.

Even though offenders are taken to the court with the above procedural defects from police, to determine the next procedure it is most challenging to the courts due to the absence of separate place of stay both in police stations and correction centers. Based on the nature of the crime committed by juveniles, the victim and his families are rushed to revenge when they are released without any measure taken (commonly arrest) by court. Even families are not voluntary to present in some cases by the fear of victims family. So courts are forced by these conditions to order the stay of young offenders as remand in police stations and correction centers where no separate place is provided for young offenders. So the other challenge in the determination of measures on young offenders is absence of separate place of treatment in the study area.

In order to determine proper measure on young offenders, courts should have been supported by professionals of social workers and psychologists. Judges themselves should also have basic concept of the juvenile justice system to treat young offenders as per what provided in law. Since some judges have bounded by the notion of punishment rather than the notion of treatment of young offenders through alternative measures, they are rushed to regular procedure having known the offender is minor. Having ordered the examination of the age of offender but being silent in the stay of offender and trying the same case which submitted without the court

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<sup>225</sup> FDRE constitution [supranote 140] article 36/2 provides that in all actions concerning children undertaken by ..... Courts of law, administrative authorities... the primary consideration shall be the best interest of the child

<sup>226</sup> CPC [supranote 15] article 171 & FDRE CC[supranote 4] title III chapter I section II



authorization of the investigation and charge, also failure to give appropriate decision after the result of medical examination of age is submitted<sup>227</sup> are commonly observed in the study area. So the lack of awareness on the part of some judges on the issue of juvenile justice and absence special professionals to treat young offenders in the court are common challenges though few of the courts that have such professionals are not utilized them correctly for they undermined the issue of young offenders.

### **3.10. Challenges in the Enforcement of Rights of Young Offenders**

While passing through different stages in the criminal proceedings there are rights young offenders are entitled to enjoy. From the stage of investigation to the enforcement of measures different challenges are observed in the study area. The first challenge is the minor focus given by concerned body<sup>228</sup> to the issue of treatment of young offenders in the study area. Even though young offenders are required to be immediately taken to nearest court when they involved in criminal activities, sometimes they stay in police stations with the order of court or due to difficulty to submit to the court immediately they may stay for a time in the same area. Having this fact is known, absence of separate place of stay (even temporary) in police stations of the whole woreda and zone implies failure of the police institution to consider the issue of young offenders as crucial. Having used its few budgets for other activities without such concern is clear implication. Conducting investigation of young offenders by untrained officers and failure to follow up the order of court on the same notion is the other implication of the reluctance of the police institutions.

The failure of prosecutors to follow up the enforcement of measures taken on young offenders while the law entitles them to do through continuous supervision and failure to take corrective measures on persons contravening the concerning juvenile justice is problems observed from the part of prosecutors office. The weakness of the system and the reluctance of some of the prosecutors is commonly hinders prosecutors not to execute their duty in an organized way.

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<sup>227</sup> Based on interview made with Mr. Fetene Gero and mr Biniyam Mesfin [supranote 171] court ordered the examination of age so that the police officer submitted the result which implies the age of offender is 13 years. However, the court said to the police that discuss with prosecutors what to do rather than directing the way how to commence investigation. However, police officer has continued investigation without communicating to public prosecutors.

<sup>228</sup> Concerned body means persons responsible to treat young offenders including police officers, prosecutors judges, prison administrators, general executive bodies, etc

Judiciary is the main role player in the administration of juvenile justice system. Law allows courts<sup>229</sup> to involve in cases of juveniles from the investigation to the final stage of execution of measures taken on them. The requirement of law to take alternative measures as a first choice than penalties can be performed by courts of law in the proceeding. The final decision is given by courts on whether certain offender is reformed or not. In addition to these courts have power to give necessary order and to take appropriate measures on persons that violates the rights of young offenders if complain is submitted. Unfortunately, courts are the main violators of the rights of young offenders in the study area. Having court violates this right; it is difficult for others to effectively work on the issue. The requirement of representation, separate trial, employment of trained personnel, giving priority to appropriate alternative measures than penalties which should be taken as a last resort, are main areas which courts contravenes the requirements of the law. As prison staff said having known the absence of separate place of treatment for young offenders, courts are using imprisonment as main option and failed to take alternative measures. There is no mechanism for courts to follow up whether measures taken on young offenders are properly enforced or not. This might be emanated from lack of basic notion of juvenile offenders by courts and their mind considers on punishment than reformation. Therefore, minor attention given by judiciary on young offenders while having more responsibility and role is the main challenge in the study area. Absence of material support to have separate trial is another challenge.

Correction centers are correctional institutions where prisoners sentenced by court serve their sentences, are reformed and rehabilitated; and where remand prisoners are held in custody until verdict<sup>230</sup>. The objectives of these institutions is to admit and ward prisoners, and provide them with reformative and rehabilitative service in order to enable them make attitudinal and behavioral changes, and become law abiding, peaceful and productive citizens<sup>231</sup>. Therefore the institution has responsibility to provide prisoners with academic education, vocational training, and social work services and counseling services to facilitate their post-release rehabilitation and respect for the law. Inmates who have not attained the full age of 18 years shall be kept separated

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<sup>229</sup> Investigation and framing of charge on young offenders are required to be conducted based on the direction of the court as per article 172/2&3 of CPC, and after investigation and charging the case is tried by court who can take appropriate measure on offender. It can also give appropriate order for the proper enforcement of those measures.

<sup>230</sup> Proclamation No. 365/ 2003 [supranote 167] article 2/4

<sup>231</sup> Ibid article 5 see also Fikadu K. and Wakitole D. (2017), Assessment of Living Conditions in Prison Centers in Oromia National Regional State, The International Journal of Business & Management, Vol. 5 Issue 3, pp.191

from others<sup>232</sup>. Having this clear duty, Bonga prison center have no those services to the prisoners in general and to the young offenders in particular. Absence of separate accommodation is the main challenge in the area not to enforce what the law requires from this institution. Young offenders are exposed to the commission of more complex crimes for they stay with adult offenders who sentenced with rigorous imprisonments. While the institution has duty to provide social work and counseling services to facilitate the rehabilitation of offenders<sup>233</sup>, absence of any professional in the institution to give these services is the problem observed.

In each institution of justice sectors, there is a problem of separate accommodation; they lack trained personnel, which were directly related with budget allocation to these sectors. Without sufficient budget allocated from concerned executive body, the existence of law alone is not sufficient to protect the rights of young offenders. To have separate accommodation both in police station and correction center, to set separate trial room, to employ trained experts and to train the existing persons on the issue of juvenile justice and to have separate reformation and rehabilitation centers for children, it needs to have sufficient resource and budget allocation from concerned governmental and non-governmental bodies. Therefore the budget and resource allocation problem is taken as a challenge in the study area to protect rights of young offenders.

### **3.11. Conclusion**

In this chapter the researcher has discussed the practice of juvenile justice in kafa zone. The juvenile justice system emphasizes on the well-being of the juveniles and ensures that any reaction to juvenile offenders to be always in proportion to the circumstances of both the offenders and the offence. International and national human right instruments and criminal legislations have provided procedural and substantive aspects of juvenile justice system that are required to be obeyed by justice actors who are involved in the cases of young offenders. The researcher has tried to assess the practice of juvenile justice in kafa zone through questionnaires and interviews submitted to key informants from selected 4 woreda institutions, and zonal institutions. Investigating police officers, prosecutors and judges are involved both from woreda and zonal institutions. Young offenders and administrators of Bonga prison center are also participated as respondents and informants. The researcher has observed selected police stations,

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<sup>232</sup> Ibid article 25/2, see also Regulation No. 45/2005 [supranote 173] article 6

<sup>233</sup> Proclamation No. 365/ 2003 [supranote 167] article 6/4

court rooms and correction center in order to assess the conditions of separate accommodation and few case files are also seen by researcher in order to cross check it with what is responded by questionnaire and interview questions.

The data observed shows that, some cases of young offenders are commenced without the court direction and in some cases examination of age is directed in the middle of examination. 75% of the investigators continued the investigation without the authorization of the court. The remaining 25 % of investigators requests the court order to begin investigation. Some investigators only request the authorization of court to check the age of suspects and without submitting medical result to the court they proceeds to the investigation. Prosecutors frame the charge based on the file submitted by police officer as a normal case except the few prosecutors that request the court authorization in case of crimes punishable ten years and above.

Though the law requires the trial of juveniles to be informal, 50% of cases of young offenders in the study are seen in formal trial and cases are adjourned as a normal case. While trial is conducted, no young offender is represented by legal advocate either free or paid. They confront prosecutors who commonly involved in trial of young offenders except few woreda courts. In some cases prosecutors are excluded from the trial.

While alternative measures are required to be taken as primary option and penalty as a last resort, only on 1.4% of the cases are alternative measures taken while penalties are imposed on the remaining 98.6 % of cases which are ordered to be enforced in prison centers and few with fine. No court have taken any alternative measures on offenders between age of fifteen to eighteen rather they are considered as normal adult offenders in all cases. Even on young offenders aged from nine to fifteen on whom alternative measures are more advisable, 88.2 of the cases are disposed with penalty which is ordered to be enforced in prison center. Since no separate accommodation is provided, penalties imposed are completed commonly with adult offenders which have the effect of recidivism on young offenders. Except two woreda courts, Gewata woreda and Bonga city administration first instance court, there is no person trained to follow up the treatment of young offenders even in prison centers. Absence of special trained personnel's to treat inmates in this institution has chilling effect for the rehabilitation of inmates in general and young offenders in particular.

Challenges in the determination of measures and enforcement of those measures are also discussed in this part. Basically, failure of police officer to submit the offender to the nearest court before commencement of investigation, absence of separate accommodation to young offenders, lack of awareness on the part of some judges on the issue of juvenile justice and absence special professionals to treat young offenders in the court, minor focus given by concerned body to the issue of treatment of young offenders, little attention given by judiciary on young offenders while having more responsibility and role in the issue, absence of material support to have separate trial, absence of any professional in the prison institution to give social work and counseling services and budget and resource allocation problems are taken as a challenge for both determination measures and enforcement of rights of young offenders in the study area.

## **Chapter Four**

### **Conclusions and Recommendations**

#### **1.1. Conclusions**

In criminal justice system, unlike adult offenders, young offenders are required to be treated in special and separate procedure owing to their immaturity to take criminal responsibility and for being vulnerable social groups to defend themselves. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law is required to be his or her reformation, re-integration into his or her family and social rehabilitation. International human right instruments such as CRC, ICCPR and other non-binding international human right instruments (soft laws having the nature of customary law) provides for the best interest of the child should be the primary consideration regarding measures to be taken on young offenders.

The arrest, detention or imprisonment of a child for being committed an offence shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time for treatment of children rather than applying ordinary punishment, in considering procedural due process rights of young offenders. When detention or imprisonment measures are taken on these classes of offenders, it should be enforced in segregation from adults and be accorded treatment appropriate to their age and legal status. States are required to take measure including to promoting the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.

Taking appropriate measures towards juveniles not only help for the protection of their rights, but also it serves short- and long-term interest of the society at large. The interest of both the child and the society cannot be served by disregarding the interest of the young offender because a mistaken form of punishment might easily result in a person with a more distorted personality being returned to society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young person's can develop attitudes free of crime. Taking imprisonment as primary option is considered as punitive and not reformatory effect on them.

In Ethiopian criminal justice system, separate provisions regarding young offenders on the issue of determination of measures and treatment of young offenders are provided under national procedural and substantive laws. An attempt is made to address the problem of child delinquency, the seriousness and the proportion of offences they commit and certain specific guidelines and restrictions that would apply regarding measure to be taken and the standards of detention for child offenders, irrespective of the offence committed are incorporated under the laws. In the carrying out of penalties entailing loss of liberty (imprisonment) the rule of segregation until majority shall be strictly observed for young offender between fifteen and eighteen. They should not be confined with Prisoners who are sentenced to rigorous imprisonment.

The role and responsibility of parties involved in juvenile justice system are provided and they are required to act in considering the best interest of the child as a primary consideration. Courts are provided as the main actors in juvenile justice system as their role begins from the initial stage of commencement of investigation to the enforcement of final judgment. The cases of young offenders are required to be seen by separate trial in an informal manner and they would be treated by trained persons like social workers and psychologists from the stage of investigation to correction centers. Both police officers and public prosecutors have to get the direction of court to initiate the investigation and frame the charge respectively on young offenders.

In addition to the requirement of informal trial, young offenders are required to be represented by legal counsels. Both international and national legislations clearly provided that if accused have no sufficient means to pay for it and miscarriage of justice would result in the process, state shall provide legal counsel. The nature of young offenders due to their immature mental set up implies that unless they are represented by their family or legal advocate, they may not defend them in criminal proceeding which may result for miscarriage of justice and it necessitates for mandatory employment of legal counsel for young offenders.

Having this notion in mind data collected from kafa zone indicates that, the practice of juvenile justice is not conducted in line with the requirements of the law. From initiation of investigation to the final stage of enforcement of the judgment, there are clear transgressions of provisions of human right instruments and national laws.

Though offenders under eighteen years are considered as young offenders under human right instruments, our national law classified two classes of young offenders, nine to fifteen and fifteen to eighteen, by providing two minimum age limit, nine and fifteen, for criminal responsibilities. Offenders under eighteen but above fifteen years are treated as adult offender and except death penalty penalties applicable to adults are applicable on them. Even though the law says alternative measure can be applicable on these classes of offenders, no court is taking those alternative measures on them. For those under fifteen years, the requirement of examination of age is not strictly followed and the result of examination is useless in some cases. Because, after submission of medical report of age, courts usually fails to order the issue of investigation and the stay of offender, rather police officer simply initiates investigation without court direction. During interrogation police officer tries to raise their age to be above fifteen though in reality it is below fifteen continues the investigation as a normal case. Framing of charge is continued in the same way except few prosecutors who requests the court direction if the crime is punishable with imprisonment exceeding ten years. Therefore, double minimum age in our law is in contravention with international human right instruments in addition to opening the way for abuse by justice actors.

The trial of young offenders is required to be conducted informally in a condition that allows the juvenile to participate therein and to express her or himself freely. Practice in the study area implies that 50% of cases of juveniles are tried in formal process and no child is represented by either family or legal counsel, even for crimes punishable exceeding ten years imprisonments. Courts are reluctant to facilitate the representations as they undermined the notion of young offenders. No difference is made on adjournment of cases of young offenders. Though alternative measures other than imprisonment are advised to be primary option, imprisonment is taken as a primary choice, which is required to be taken as last resort. 95.2% of cases are disposed with imposition of imprisonment penalty which is enforced with adult offenders in prison center against the aim of juvenile justice system. Based on the interview made with prison staffs, due to the absence of separate accommodation for young offenders they are treated with adult prisoners including those sentenced for a grave crime which exposes them to be recidivists. Persons trained the treatment of young offenders are not employed in prison center and in most courts which makes the reformation of offenders to fall under question. The involvement of



prosecutors in the trial of young offenders is not uniform in the study area so that parties there raise controversial ideas.

The study also finds out the challenges in determination of measures on young offenders and in enforcement of those measures in the study area. Basically, failure of police officer to submit the offender to the nearest court before commencement of investigation, absence of separate accommodation to young offenders, lack of awareness on the part of some judges on the issue of juvenile justice and lack of special trained professionals to treat young offenders in the court, minor attention given by concerned body to the issue of treatment of young offenders, little attention given by judiciary on young offenders while having more responsibility and role in the issue, absence of material support to have separate trial, absence of any professional in the prison institution to give social work and counseling services and budget and resource allocation problems are taken as a challenge for both determination of measures and enforcement of rights of young offenders in the study area. In order to correct this problems the following possible recommendations are proposed.

## **1.2.Recommendations**

- Even though our law provided minimum age for criminal responsibility, two minimum age provided in our law is against CRC committee general comment to abolish double minimum age. It opens the way for abuse of power by courts neglecting the interest of young offenders. They left the moral and psychological components of criminal responsibility of offenders rather they focus on whether the age of offender is above fifteen or not. Therefore, two minimum age should be amended and person under eighteen years should be treated equally and enjoy the rights of young offenders under international human rights.
- In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained the notion of juvenile justice. Even judges, prosecutors and prison administrators should have provided with awareness creation on juvenile justice system.
- Absence of child rehabilitation center in the zone is the main cause for most of the problems the researcher found in the study area. Arresting them with adults is taken as an option. Therefore, government have to give due consideration to build separate child rehabilitation centers. In addition to this, it is advisable to facilitate to send young offenders in another area where the rehabilitation centers are established. This option should be temporary and exceptional option, because separating under aged persons from family contact (environment) for long time is not advisable.
- Courts should be active on the issue of juvenile justice so that, they have to provide legal advocate to the juvenile offenders. There are different options to have representation. Court may officially employ advocate, or it may request private advocates to represent young offender as pro bono service required from them. If this option fails, the court may order the guardian of the child to represent him or if possible to employ private advocate.
- Imprisonment of young offenders with adult offenders both in police stations and prison centers are one of the causes for recidivism of offenders in the study area. Therefore, without waiting the establishment of child rehabilitation center, zonal government has to establish separate places of treatment for young offenders in woreda and zonal level. Basically, there should be separate accommodation for young offenders in prison centers. Even though FDRE criminal code provided for the enforcement of measures taken on young offenders to be in strict separation from adult offenders, special laws dealing with prison administration both

enacted at federal and state level not have mandatory nature regarding segregation of prisoners based on age. It provided depending on condition and they have not provided measures to be taken on persons who violated the requirement of law. Therefore, laws dealing with prison administration and treatment of prisoners (specially, proclamation no 177/2018 and regulation No. 45/2005) should be amended to include segregation of prisoners based on age to be strict and to provide accountability in case of disobeying the law.

- Even though there is no separate institution to execute some of alternative measures, admission to these institutions, is not the only option. Absence of this institution should not be reason to arrest offender with adult offenders, or to set free without any action. It can reprimand both the offender and his family, it may order for supervised education and home or school arrest, it can also suspend the execution of penalty. However, no court has taken these measures, except imprisonment and in few cases setting free without any measure. Taking these measures may bring better result for both offenders and to the society than ordering arrest with adult offenders. Therefore, courts should take the above possible alternative measures.
- If imprisonment is the last option, stronger order should be given to prison centers to provide separate class of treatment even within the same institutions.
- It is better for SNNPRS attorney general to adopt comprehensive working manuals to increase the public prosecutors' effectiveness in conducting regular and consistent correction center visit and inspection; and to exercise supervisory function on the implementation of decision of court.
- Each court should have separate trial room with electronics materials comfortable for both young offenders' and victims in addition to professionals to treat them and to involve prosecutors and judges without contact with young offenders. This may easily solve the controversy raised on the involvement of prosecutors in the trial.
- Failure of the administrators of the correction center to give consideration while having responsibility to facilitate for the establishment of separate institution to enforce measures taken on young offenders is among the reasons for the absence of such institutions. Though enforcement of sentence including separate treatment of young offenders in the prison center is primarily their responsibility, the prison administration in the study area failed to perform it, even as much as its resource allows. Therefore, Bonga prison center have to provide separate class for

young offenders until separate institution establish in the area. In addition to this, all justice actors have to work to make the issue of young offenders to be their common concern and deal with concerned body to have such separate accommodations. Until separate institutions are established for the correction of young offenders, separate classes should be provided even within the institution of prison center as a temporary solution.

- Government has to provide material support for the establishment of treatment area and for the employment of trained persons. Awareness creation program should be planed to persons currently working in justice sectors including judges on the issues of juvenile justice systems.

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# Appendices

## A. Questionnaires

### JIMMA UNIVERSITY

#### COLLAGE OF LAW AND GOVERNANCE

#### SCHOOL OF LAW

#### Post-Graduate Program in Human Right and Criminal Law

#### Questionnaires and interview questions for thesis to be conducted on young offenders in kafa zone

##### I. Questionnaires to be Filled By Investigating Police Officers

This questionnaire is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law post graduate program, in order to assess the determination and enforcement of measures and penalties on young offenders in case of Kafa Zone. The researcher would like to assure the informants that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

Please mark “X” inside the box following your choice and write in specified blank space

Data collector Matewos Bashaye

Respondent name -----

1. How long you served as crime investigator? -----
2. Have investigated cases of young offenders? Yes  no
3. Do you have investigator assigned for cases of young offenders? Yes
- 3.1.If no how do you investigate cases of young offenders? -----

4. How do you know the ages of offenders, especially young offenders? -----
5. How do you commence investigation on young offenders? -----
6. Do your institution have separate place for temporary stay for young offenders? Yes  o
- 6.1.If your answer is no, what measures you take? -----
7. Do young offenders are represented during interrogation? Yes  o
8. What are the challenges in treatment of young offenders? How it can be corrected? -----

**II. Questionnaires for Prosecutors**

1. How long you have served as public prosecutor? -----, do you have served with another profession before being prosecutor? Explain -----
2. Do you have separate prosecutor assigned in your office for the purpose of young offenders? Yes  No
3. If your answer to the second question is yes, have you seen any cases concerning young offenders? Yes  no  how? -----
4. If your answer to the second question is no, how you do conduct cases related with young offenders? -----
5. Have you prosecuted young offenders? -----
6. If your answer to the fifth question is yes, how did you commence the proceeding? -----
7. Have you involved in trial proceeding of young offenders? Yes  no
8. Do you think procedural rights of young offenders are protected well? ----- Explain? -----  
-----
9. Do you have any communication with young prisoners/suspects? ----- Where/how? -----  
-----
10. Do you have visited prison center/police stations? Yes  no 
  - a. If your answer is yes, what do you observed regarding treatment of young offenders?  
-----
  - b. Is there any circumstance in which you have received any complaints from Inmates about their treatment and the prison condition? Yes  No
  - c. If your answer is yes, what are they and what measures you have taken? -----  
-----

**III. Questionnaire for Courts (Judges)**

1. How long time you served as a judge? ----- What was your profession before

being a judge? -----

2. Do you have entertained any cases related with young offenders?

Yes  no

3. If your answer to the first question is yes, how is the case commenced? .....

4. Do you think all cases of young offenders are beginning with the direction of courts?

Yes  no

5. What measures do you take in case the charge is submitted without judicial authorization? If any? -----

6. Do you have separate trial/bench for young offenders? Yes  no

a. If your answer is yes, do you have child expert or persons trained on child treatment?

b. If your answer is no, how do you trial cases of young offenders? -----

7. What measures do you have taken on young offenders?

a. For 9-15 years -----

b. For 15-18 years -----

c. Do you have imposed penalties on offenders aged 9-15 years? Yes  no

d. If your answer is yes, for what crime, what kinds of penalties? -----

e. What is the reason for imposing penalties on young offenders? -----

8. Do you think those measures are effective in a sense to reform and rehabilitate offenders in the society? Yes  no

9. Do you think that Ethiopian legislations are sufficient for the protection of the rights of young offenders? Yes  no

What is the reason for your answer? -----

10. Do you have access of human right instruments regarding young offenders?

Yes  no

a. . If your response is yes, do you apply it properly? Yes  no

b. . If no, what is the problem? -----

11. Does your institution have defense counsel? Yes  no

a. If your answer is yes, do you provide free legal defense to juveniles? Yes  no

b. If no, how do you protect the right to representation of young offenders? -----

-----

12. Have you ever seen cases of violation of rights of inmates? -----
13. How do you adjourn the cases of young offenders? -----
14. Who is commonly involved in the trial of child offenders? In what manner?  
 .....
15. What challenges and gaps do you observed/ faced in treatment of young offenders? Please explain-----
16. What measures should be taken to overcome the problems? By whom? -----  
 -----
17. Do prosecutors commonly involved in the trial of child offenders? Yes  no
- a. If your answer is yes, in what role? .....
- b. If no, how do compromise the interest of society (victims) and the rights of young offender who is represented by counsel? .....

**IV. Questionnaire for Prison Administrators And Staffs**

1. Do you have warded young offenders in your institution? Yes  no
2. If your answer is yes, do you have segregated them from adult inmates? Yes  no
- Explain -----
3. Do you have treated repetitive young offenders in your institutions? Yes  no
- If your answer to the third question is yes, what do you think is the reason? -----  
 -----
4. Do you have treated young offenders due to their age? Yes  no  what/why?  
 -----
5. How do you identify whether certain inmate is reformed or not? -----  
 -----
6. Do you think the services you offered are sufficient to reform the inmates? -----  
 -----
7. What challenges you have faced in treatment of young offenders? -----  
 -----
8. What weakness you observed from courts, prosecutors, other executives? -----  
 -----

**V. Questionnaire for Young Offenders**

Name ----- How much is your age now? Below 9  9-15  15-18

1. When you come in to this institution? -----
2. How much was your age when you were suspected for the crime? -----
3. By what crimes do you have arrested/convicted? -----
4. Have you experienced previously any measure other than formal justice process?
  - a. School/home arrest  b. Labor work  c. other  explain -----  
-----
5. What initiated you to involve in this crime?
  - a. Peer pressure  b. family pressure  c. personal motive  d. other   
explain -----
6. Have you previously convicted by other crimes? Yes  no   
If yes, by what crime and what measures are taken? -----  
-----
7. Have you arrested with order of court? Yes  no
8. Have you brought immediately to the nearest court after you're caught? Yes  no   
,in what time interval? 1-12  1-24  1-48  1-72
9. Who had brought you to the court? -----
10. Do your age examined by doctors? Yes  no
11. Where have you stayed until you convicted? -----
12. Do courts respected your right to be released with bail? -----
13. Have you represented by any legal counsel? Yes  no   
If yes is it free or by payment? Free/by government  by payment  family
14. Do you think that you have got speedy and fair justice? Yes  no  explain ---  
-----
15. Have you appealed on the judgment imposed on you? Yes  no  if no why?  
-----
16. Have you treated in each case in this institution in segregation from adults? Yes  no   
explain -----

17. Have you treated in separate class from investigation to the enforcement of measures?  
 Yes  no  explain -----
18. Have you get counseling and awareness creation service in this institution? Explain -----  
 -----
19. Have you get necessary services like food, water, free air, health treatment, toilet, natural light sanitation...etc from this institution? Yes  no  explain if any other -----  
 -----
20. Have you been visited by external bodies? Family  prosecutors  religious leaders   
 others  no  explain other -----
21. What lessons you have learned in your stay in this institution? -----
22. What will you do after your release from this institution? -----  
 What problems you faced in your stay in this institution? -----

## **B. Interview Questions Guidelines**

### **I. Interview Questions for Public Prosecutors**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law post graduate program, in order to assess determination and enforcement of measures and penalties in the case of kafa Zone. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

**Name of the Respondent** \_\_\_\_\_

1. Have you deal with cases related with young offenders? Yes  no
2. What is your role in the treatment of young offenders? From investigation to final stage of enforcement of measures (practical)?
3. How do you involved in cases related to young offenders?
4. Do you think the procedural rights of young offenders are protected? Yes  no   
Explain
5. Is there any legal or other corrective measures taken by your office to improve the prisoners' treatment and rehabilitation activities?
6. What are the major gaps and constraints that affect the effectiveness of public prosecutors role in the protection of rights of offenders in general and young offenders in particular?
7. What are the problems in treatment of young offenders in general justice system?
8. What measures are taken on young offenders?
9. What do you think is the effect of those measures on young offenders and to the whole community?
10. Do you think those measures are appropriate to reform the offenders? Why?

### **II. Interview Questions for Courts (Judges)**

1. How the cases of young offenders are brought to you?



2. How do you know whether an offender is young or adult?
3. In what procedure you treated them?
4. How do you adjourn the cases of young offenders?
5. What measures you have taken on them?
6. Have you acquired any information concerning young offender from persons responsible for the offender before taking measures?
7. Do you think those measures are enforced properly? Is there any mechanism that you follow the enforcement of measures on young offenders?
8. What do you think is the effect of those measures on young offenders and to the whole community?
9. Do the young offenders have represented in the proceeding? If yes, by whom?
10. Do you think that the rights of young offenders are protected without representation?
11. How do you compromise the interest of two sides without legal representation to young offenders?
12. How do you compromise the bargaining power in the absence of defense counsel while prosecutors involved in the trial and vice versa?
13. What is the challenge in treatment of young offenders?
14. How can it be averted?

### **III. Interview Questions for Prison Administrators and Staffs**

1. Do you often treat young offenders in your institution? Yes/no
2. How do you accept young offenders in your institution?
3. How many prisoners are there in the institutions? How many of them are young offenders?
4. Do you often accept repetitive offenders? If your response is yes, what do you think is the cause?
5. Do your institutions provide basic services necessary for young offenders? What are they?
6. Is there any mechanism through which your institution works with other bodies for the treatment of young offenders? Yes/no, if yes who are they?
7. What is the role of prosecutor in treatment of young offenders?
8. How many staff members (military? do your institution have?
9. Do you have special trained persons like psychologist, sociologist and social worker to treat offenders? Explain

10. What do you think is the major gaps and obstacles in your institutions in treatment of young offenders?

#### **IV. Interview Questions for Young Offenders**

1. What is your age?
2. By what crime you have convicted?
3. Who have brought you to the court?
4. Have you brought to court before commencement of investigation?
5. Where you have stayed until you have convicted?
6. Does public prosecutors involved in the proceeding? Yes/no,
7. Did your procedural rights such as right to presumption of innocence, right to silence, self incrimination, right to representation, etc are protected?
8. Did your case seen in separate trial? Who has involved in the chamber?
9. Have you freely confessed the crime?
10. Did you have learned from your stay in this institution? What?
11. To whom did you submit your complain, if any?