



**A Child Rights-Based Approach to Diversion in Ethiopia: An Analysis of the
Community-Based Correction Program in Addis Ababa**

A Research Paper presented by:

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(Ethiopia)

In partial fulfillment of the requirements for obtaining the degree of

MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

Human Rights, Gender and Conflict Studies: Social Justice Perspectives

(SJP)

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The Hague, The Netherlands

December, 2015

Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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Acknowledgements

At the beginning and all the way to the end praise to the Almighty God, the Beneficent, Merciful, Creator and Sustainer of the Universe, without whose mercy and help I could not even take a single breath into my lungs , let alone to be the kind of person I am now.

A heart-felt extra appreciation goes to my supervisor Professor Dr. Karin Arts and my second reader Dr. Jeff Handmaker for their timely encouragement, constructive criticism, guidance and invaluable advice. I remain grateful to them.

Special thanks are reserved for the Forum on Sustainable Child Empowerment Ethiopia (FSCE) who provided the necessary support that enabled me to complete my thesis. Their help has been of enormous value.

I wish to express my gratitude to Mr. Luelsilasie Liben, Juvenile court judge in Addis Ababa; Miss Sityana Bereda, expert at the Federal Supreme Court Child Justice Project Office; Mr. Getahun Gebre and Mr. Endale Demisse, staffs of FSCE, for their constructive ideas and great help in the execution of my research.

I would like to extend my appreciation to all my friends; and colleagues (Commissioner Ali Suleiman, Mr. Girma Worku and Mr. Gebru Gebeyehu), for their support, in one way or another that has greatly contributed towards the completion of my study. Special thanks also goes to Dr. Zelalem Yilma, Tilaye Muluneh, Yemserach Endale and Zelalem Fikadu.

I am thankful to all my respondents who willingly participated in my research by providing me relevant information based on their experience.

Last, but not least, I would like to thank **MY FAMILY** and my **WIFE “Senukaye”** for providing me with moral support throughout.

*This Thesis is dedicated to Children in Conflict with the
Law in Addis Ababa.*

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List of Acronyms

ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
CBCCs	Community-Based Correction Centers
CBCP	Community-Based Correction Program
CICL	Children in Conflict with the Law
CPP	Child Protection Program
CPUs	Child Protection Units
CRBA	Child Rights-Based Approach
CRC	Convention on the Rights of the Child
CRC-GC	Committee on the Rights of the Child-General Comment
FDRE	Federal Democratic Republic of Ethiopia
FSCE	Forum on Sustainable Child Empowerment
GoE	Government of Ethiopia
NGOs	Non-Governmental Organizations
SC	Save the Children
UNOHCHR	United Nations Office of the High Commission for Human Rights
UNICEF	United Nations Children Fund

Abstract

International instruments, particularly the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), provide standards on the rights of the child that seek to ensure special treatment of children (allegedly) in conflict with the law. Rehabilitation and reintegration are central objectives. A Child Rights-Based Approach (CRBA) to juvenile justice, based on these international instruments, calls for states to take appropriate rights – based measures that protects the best interests of the child and keep children out of the domain of the criminal justice system through diversion. This paper analyzes the Community Based Correction Program (CBCP) in Addis Ababa that focused on diversion from a Child Rights –Based Approach. The analysis reveals that the experience of the CBCP in Addis Ababa is a viable option to tackle some of the fundamental problems that prevent the realization of the rights of children in conflict with law.

Relevance to Development Studies

Children in conflict with the law are one of the groups of people that are exposed to different types of abuse and exploitation. A CRBA to juvenile justice in general and diversion in particular aims at addressing the fundamental causes of marginalization, abuse and exploitation of this group of people. It will strengthen the accountability of the responsible organ for the realization of their right. Diversion in general and Community –based correction in particular helps to tackle the fundamental problems that prevent the realization of the rights of children in conflict with law. Therefore, this paper which develops a CRBA to the topic, using general principles of the UNCRC and ACRWC, is highly relevant to development studies.

Key Words: child rights –based approach, diversion, Ethiopia, child survival and development, non-discrimination, child participation and best interests of the child.

Chapter One: Introduction

1.1 Background of the Study

International and regional human rights instruments obliges states to create a separate juvenile justice system for them. Such a system should primarily focuses on rehabilitation and reintegration and protects children against all forms of violence (International NGO Council on Violence Against Children 2013:8). A child friendly juvenile justice system gives priority to “the “best interests” of the child in legislation, policy and practice and promotes the child’s sense of dignity and long lasting reintegration into society” (International NGO Council on Violence Against Children 2013 as cited in Akua Nyantakyi 2014:2). The core objectives of juvenile justice is to reintegrate the child in the society and promote the child assumes a constructive role in society (Doek J. 2013:2; Johnson, V. and R. Nurick 2006:4).

Despite the greater international attention now being given to children in the juvenile justice system (CRC General Comment 2007), in many parts of the world; children are not getting the necessary rehabilitation and reintegration services that can assist them in becoming - productive citizens. Rather, retributive punishments, which emphasize on punishment to correct the wrong done, and further stigmatize and marginalize the children involved, are practiced (International NGO Council on Violence Against Children 2013:7). While supposed to be a last resort only, deprivation of liberty¹ remains a common form of punishment for juvenile offenders (UNICEF 2009a:21) in most countries, including Ethiopia.

In fact, a Child Rights – Based Approach (CRBA) to juvenile justice calls on states keep children out of the domain of the criminal justice system through diversion

¹ According to UNICEF more than 1 million children are detained through justice system worldwide at any one time (UNICEF 2009a:21).

(CRC General Comment 2007). According to the International NGO Council on Violence Against Children (2013:13) this implies that- rights – based measures should be taken to divert children away from the formal justice system into community-centered social education and reintegration programs, wherever possible and appropriate.

States parties to the CRC are legally obliged to find a suitable non-custodial measure rather than criminalization and punishment of children and thereby ensure that children are deprived of their liberty only as a last resort and for the shortest appropriate period of time (CRC 1989 art.37). Article 40 of the CRC particularly deals with juvenile justice and prescribes that children suspected or accused of having broken the law get a child friendly treatment in a justice system that respects their rights. One of the many obligations that states have regarding CICL is, indeed, to ensure that they benefit from diversion- from the formal criminal justice system and alternative measures, as far as possible (CRC 1989 art.40 (3) (b)).

Children in conflict with the law (CICL)² or children accused of or recognized as having infringed the penal law, - are legally entitled to special consideration (special care and protection under international instruments). More in general, states around the world are obliged to ensure, to the extent possible, all children’s maximum survival and development (International NGO Council on Violence Against Children 2013: 11; CRC 1989 art.6).

A child rights-based juvenile justice system which promotes diversion among others, ensures the well-being of the child offenders by avoiding the negative consequences of inappropriate treatments and procedures in the formal justice systems (UNICEF 2009: 2 as cited in Akua Nyantakyi 2014:3). Detention has proved

²Children in conflict with the law is a preferred term to be used in this RP. According to the UN Committee on the Rights of the Child, the advantage of this term over others is that it does not have a criminal connotation (Hamilton 2011:3).

to be detrimental to children's development and to seriously hamper their reintegration in to society (ACPF 2007). This, from a CRBA perspectives, the CRC guide states to establish a workable mechanism to deal with CICL at community level, without resorting to judicial processes and subsequent detention (FSCE 2008:4).

1.2 Statement of the Problem

As a state party to the CRC, Ethiopia has an international obligation to comply with the CRC³. The UN Committee on the Rights of the Child has observed a lack compatibility between Ethiopian juvenile justice system and the CRC and ACRWC and other international standards. Although the 1995 Federal Democratic Republic of Ethiopia's (FDRE) Constitution enshrines the promotion and protection of children's rights, national laws protecting the rights of CICL are limited. Lack of legislative measures to harmonize with the principles and provisions of juvenile justice in the CRC is a major concern (Save the Children 2006:10). For instance, except the new criminal justice policy which is not practical, laws that recognize non-judicial mechanism and diversion measures are absent in Ethiopia.

Once a minor (a child between 9 and 15 years, according to the 2005 Criminal Code of Ethiopia art. 52) is found guilty of a crime, either ordinary measures will be taken (admission to curative institutions, supervised education, reprimand and school or home arrest) or a penalty will be passed. The latter may include fines and corporal punishment will be passed (Save the Children 2005a:4). Juvenile Court

³ Ethiopia ratified CRC in 1992 through proclamation no. 10/1992. Article 9 (4) of the Ethiopian Constitution stipulates that all international conventions ratified by Ethiopia shall be an integral part of the law of the nation. As of October 31/2015, the CRC has 196 state parties. See the UN Treaty Collection database available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

judges are not provided with a variety of options, or with flexibility to tailor a sentence to the individual child (Messele 2011).

The number of children committing offences in Ethiopia is reportedly increasing (ibid). According to FSCE (2008:4), over 4,000 children are arrested every year and become involved in the juvenile justice system. In 2008, the Forum for Street Children Ethiopia Child Protection Program reported that a total of 1,174 children (939 boys and 235 girls) were reported to Addis Ababa police commission as CICL (Messele 2011: 9). A report by Save the Children has also showed that there is an increase in the number of CICL in Addis Ababa (Save the Children 2005a:7). Children constitute up to 30% in some prisons and detention centers in Ethiopia (ACPF 2007). Due to their limited capacity, the corrective institutions⁴ in Ethiopia are not able to provide the necessary rehabilitative services (including moral and vocational education) for young offenders in the country (Save the Children 2006:13).

Despite the seriousness of the problem, the issue of juvenile justice in Ethiopia has not been given due emphasis by the government and non-governmental organizations (NGOs) alike (FSCE (no date): 3). The UN Committee on the Convention on the Rights of the Child⁵ (CRC), in its recent concluding observations (CRC 2015)⁶ on Ethiopia, identified deprivation of liberty is not being used as a measure of a last resort and the need to strengthen the availability and the quality

⁴Addis Ababa Rehabilitation Institute for Juvenile Delinquents is the only remand home in Ethiopia located in Addis Ababa, where young offenders between the ages of 9-15 years be detained. Remand homes are designed to function mainly as punitive rather than correctional institutions (Save the Children 2006:13).

⁵ The Committee is a body of experts responsible for monitoring the implementation of the CRC by the state parties.

⁶ Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Ethiopia, adopted by the CRC Committee at its sixty-ninth session (18 May-5 June 2015) available at http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ETH/INT_CRC_COC_ETH_20797_E.pdf accessed on September 30/2015.

alternatives to detention, including education, rehabilitation and reintegration (CRC 2015: para. 72(d)).

To redress the situation; *Save the Children Sweden* and its local Ethiopian partner *Forum for Sustainable Child Empowerment-Ethiopia (FSCE)*, a local NGO, run a Child Protection Program (CPP), with the objective of improving the aspects raised in the CRC Committee's recommendations and especially promoting diversionary measures in Addis Ababa. In 2004 a Community – Based Correction Program (CBCP) was established in order to divert CICL from the formal justice system (Save the Children 2012b:4).

As an alternative correction service based on a non-incarcerating correctional measure, the CBCP was established to reintegrate juvenile offenders who committed petty offence for the first time and aged between 9 and 15 years old (Defa 2011:61). Through this program, CICL are thus corrected while attending their schools and living with their parents. As a result of the intervention made by the program, reportedly, most participating CICL are able to reintegrate into society and avoid the negative consequences of being in prison (FSCE 2014:19). According to the annual report of 2014 (FSCE 2014:18), during the year 2014, 667 CICL have received child friendly services under the CBCP. The activities and services of the CBCP specifically target children who committed petty offences for the first time and are aged between 9 and 15 years old.

The CBCP runs in Addis Ababa and other major cities of the country including Adama, Dire Dawa, Bahir Dar and Dessie (Save the Children 2011). These major cities have operational Child Protection Units (CPUs)⁷ that are supported by the FSCE (ibid: 62). There is no other justification which explains why Community –

⁷CPUs are centers in police stations specifically responsible for child related matters-concerning admission, treatment, facilitation, referral, etc. Currently, CPUs are operating in ten sub-city police departments of Addis Ababa.

Based Correction Centers are only established in these major cities of the country and not in others.

Insufficient emphasis on diversion, both in legislation and in practice, and the lack of efforts on the part of the State to change the custodial nature of Ethiopia's juvenile justice system has been referred to as elements of non-compliance of the juvenile justice system of Ethiopia with relevant international norms and standards (Save the Children 2005a:8; CRC 2006: para. 77; CRC 2015: para. 71-72). The lack of both CBCP and correctional institutions suitable for children (currently only Addis Ababa Remand Home) illustrates the negligible development of the juvenile justice system in Ethiopia (GoE 2007:56). In general, there is a failure to treat CICL as a specific group in need of special measures of protection, and in particular the need for diversion measures.

1.3 Research Objectives and Questions

1.3.1 General Objective

The general objective of my research was to explore the contents and implications of taking a CRBA to juvenile justice, and diversion in particular, in Addis Ababa, Ethiopia.

1.3.2 Specific Objectives

The specific objectives of my research have been:

- To investigate how the CBCP in Addis Ababa, Ethiopia, adequately represents a CRBA to diversion.
- To identify the major challenges that the CBCP in Addis Ababa has experienced so far.

- To generate recommendations on how a CRBA to diversion might strengthen diversion and reintegration practices for CICL in Addis Ababa.

1.3.3 The Research Questions

The following set of main research questions were formulated for my research:

- How does the CBCP contribute to the realization of a child rights-based juvenile diversion system in Addis Ababa?
- What measures should be taken, and by whom, to achieve a more child rights-based CBCP in Addis Ababa?

In order to generate answers to the main research questions, a longer set up sub-questions was pursued:

- What constitutes a CRBA to juvenile justice in general and diversion in particular?
- How is the CBCP in Addis Ababa to be assessed, from a child rights perspective?
- What are the main challenges of the CBCP in Addis Ababa?
- What has been the role of the government of Ethiopia, NGOs and other child rights actors in the development of the CBCP?

1.4 Justification of the Study

Even though Ethiopia has ratified the CRC and ACRWC, which contain important provisions on the application of diversion measures so as to channel CICL away from judicial proceedings, the practice so far has remained poor (Save the Children 2014). The absence of a comprehensive diversion system and lack of commitment by the

government for community diversion programs in Ethiopia is a serious obstacle for protections for CICL.

There is hardly any literature at all as regards child friendly juvenile justice and diversion in particular in Ethiopia. This motivated me to engage in this study. I regard channeling CICL away from judicial proceedings as their fundamental rights and take the position that the Ethiopia's national juvenile system needs to be strengthened in this regard. My experience and observation both as a prosecutor and human rights trainer made me interested in addressing the issue of lack of treating juveniles as a specific group in need of special measures of protection in particular the need for diversion measures.

While working as a prosecutor in Addis Ababa, from the year 2012 to 2014, I have seen many CICL facing the adult criminal justice system and jail confinement. According to FSCE (2008:4) one of the main reason for this is the absence of a separate criminal justice system that deals with CICL at the community level. My work experience and observations, both as a prosecutor and human rights trainer, drew me towards addressing the lack of special measures of protection for CICL in Ethiopia, and in particular to emphasizing the need for diversion measures.

Various studies (ACPF 2007, Doek 2013, Save the Children 2005a, Tesfay 1998, Messele 2011, Save the Children 2014) have shown that treatment of CICL outside of the formal criminal justice system through community based programs promotes the best interests of CICL. As Hylton (1982) noted, the adoption of community –based programs is likely to benefit the criminal justice system effectively by rehabilitating offenders. To my knowledge, there is no other study yet that presents a CRBA on juvenile justice that focuses on a particular form of diversion: the CBCP- in Addis Ababa.

1.5 Justifications for Using a CRBA as a Theoretical Framework

Rights imply an obligation for someone (i.e. the state) to provide them and rights-holders can demand rights. Thus rights-holders can claim their rights not on the basis of someone's interests or willingness, but rather on the basis of their entitlement to claim these rights. Unlike that of the 'needs framework', a 'rights framework' is more focused on human dignity and human agency (UNICEF 2009b).

A CRBA integrates the international human rights principles and standards in the process of designing any plan or program relating to children (Ghimire 2008:21). In identifying and addressing children's needs, in a CRBA due emphasis is given to their rights under international legal instruments including the CRC. The approach further recognizes children as vulnerable by their very nature and therefore in need of special protection, but also as active agents with participatory rights. Under the CRC state parties are obliged to take all the necessary measures—including legislative, administrative and judicial—at the national level to ensure the realization of all children's rights (Save the Children 2005b:36). Besides all this, adopting a CRBA is believed to be a morally right approach and brings a number of practical benefits (ibid: 24). For this and other reasons which I will discuss in detail in chapter two of this research paper, I am interested in applying a CRBA as the theoretical framework in this study.

1.6 Limitations of the Study

One of the challenges encountered during the field work for this study was the lack of disaggregated data on CICL in Addis Ababa, in fact in Ethiopia at large. For instance, there are no organized databases in the Addis Ababa Police Commission, Child Justice Project Office and CBCCs that shows the number of CICLs in the CBCP.

This was an obstacle in knowing the exact number of children who are referred to the program by the Police, Court and the Community. As Arts (2014:299) clearly noted there is lack of disaggregated data on many child rights problems all over the world.

Another challenge was the time available for conducting this research. My schedule was so tight that it created some difficulties in contacting the relevant persons involved in the juvenile justice system in Addis Ababa. Furthermore, finding CICL who previously went through the CBCP was a difficult task due to the lack of proper address administration and the distance of their residences from the CBCCs. Despite the challenges encountered during the field work in the course of collecting data with the concerned bodies, nevertheless sufficient data were collected.

Chapter Two: Conceptual and Theoretical Framework

In chapter one of this study I presented a rather- crude definition of a CRBA. This chapter will discuss in depth CRBA as a theoretical framework and how diversion in general and the CBCP in particular, can be seen within the lens of a CRBA. Furthermore, the chapter will define what exactly is meant by CBCP/community – based diversion in this paper. It will also present national as well as international grounds for the adoption of community based diversion.

2.1 What is CRBA?

CRBA is an approach that recognizes that children – next to being human beings as all other people – have their own special needs and vulnerabilities (Save the Children 2005b:25). Due to this fact the special international convention on the human rights of children (the CRC) provides a particular framework for states parties accountable to give attention to the special situation of children (ibid:26).

Thus, a CRBA is an approach that supports children to claim their rights and make duty bearers – the state, the private sector, the media and individuals with direct contact with children – accountable for promoting, protecting and fulfilling children rights (Save the Children 2005b). In other words, CRBA stands for the realization of all children’s rights which are set out in the CRC including diversion by supporting duty-bearers to fulfill the rights of rights holders taking into account the basic principles of the UNCRC (UNICEF 2009b).

2.2 What is Community-Based Diversion?

Community-based corrections includes all non-incarcerating correctional sanctions imposed up on offenders for the primary purpose of reintegrating that offender into the community. The primary function of community correction is the reintegration/rehabilitation of the offender. The criminal justice system has found that community-based programs works better than incarceration in rehabilitating and reintegrating offenders into society (Abramson 2004; Tesfaye 1998).

Thus, as stated in chapter one already, a CRBA promotes diversion of CICL away from the formal justice system into community-based social education and reintegration programs (International NGO Council on Violence Against Children 2013:12). According to UNICEF (2009b), diversion is:

The conditional channeling of CICL away from judicial proceedings through the development and implementation of procedures, structures and programs that enables many- possibly most- to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.

Scholars in the field of juvenile justice also defined diversion as:

The removal of an offender from the criminal justice system by channeling him/her into a social casework, mental health, or other type of agency. The term has also been used to describe the handling of juveniles in a system separate from the adult criminal justice system and sentencing offenders to community-based correctional facilities rather than prison (Vetter and Silverman as cited in Tesfaye 1998:20).

The diversion process can be instigated from the time of apprehension (before or at the time of arrest) to any stage of the juvenile justice process. One of the aims of diversion is to avoid the potential negative effects of formal judicial proceedings

such as the stigma of conviction and sentence and being labeled as a criminal (Muntingh and Sharpino 1993:7). It also used as a way to provide young offenders with the opportunity to rethink their lives without getting a criminal record (ibid: 6). Some scholars in the field of juvenile justice argue that diversion, if properly implemented through personalized services helps to understand the underlying causes for the undesirable behavior of young offenders (Tesfaye 1998:21).

Diversion may take different forms in the implementation process, depending on the particular case being dealt with. States are free to decide on the nature and content of diversionary measures, provided they protects the human rights of CICL (Doek 2013:4). A variety of community–based programs have been developed including fines, probation, restitution and community service as alternative forms of diversion (Tesfaye 1998:22).

For the purpose of this study, community-based correction is defined as a form of diversion that uses a non-custodial approach which emphasis on developing a non-formal system of care, rehabilitation and reintegration for CICL who are between 9 to 15 years old and are first time⁸ and petty offenders⁹ (Save the Children 2005a:9).

The FSCE manual on juvenile diversion defines the CBCP as a form of diversion where the police or court, or the community, while there is enough evidence to prosecute divert cases of juvenile offenders to the community–based correction system prior or post to charging (FSCE 2008:5).

⁸ This means that the child was reported to the police for the first time (Save the Children 2005:9).

⁹ The seriousness of the offence is determined by factors such as the intent of the child, impact brought about by the offence, the child’s potential to be easily corrected and the prior experience of the child (ibid).

From the above definition, the CBCP in Addis Ababa implies the formal removing or suspending of criminal proceedings against juveniles who have violated the criminal law, in favor of -'processing'- them through non-criminal disposition or means. As a program of diversion, the CBCP is believed to allow for early intervention so as to avoid the development of full-fledged criminal careers, and to re-enforces the offender's chances of reintegration into the community (Tsfaye 1998:20).

Due to the simple or minor nature of the offenses committed by the juveniles involved, diverting them to community correction rather than processing them through the court system is beneficial both to the juveniles and the community at large (ibid:21). Sending juveniles to correctional institutions will not help them to outgrow their deviant behaviors. It will simply re-enforce their alienation from the society. At this very susceptible age juveniles can easily be influenced to adopt more socially acceptable behaviors through non-punitive methods. Furthermore, imprisonment or detention of juveniles in police stations will have very damaging effects. These institutions, being overcrowded with undesirable characters, would lead these young minds to being influenced by more hardened offenders (ibid).

2.3 A CRBA to Diversion

As far as a CRBA to diversion is concerned, diversion should comply with the rights set out in the CRC and other relevant international, regional and national human rights instruments. "The child should be seen as a complete human being, not just as a juvenile delinquent" (UNICEF 2009b). If prevention is not possible and children have unfortunately come in conflict with the law, efforts should be made to as much as possible reduce the negative impact this will have on their development.

The four pillars of the CRC and the ACRWC: non-discrimination; best interests of the child; right to life, survival and development; right to be heard; must be considered throughout the process of diversion (ibid).

The adoption of a CRBA in diversion does not only guarantee the protection and respect of children's rights, but may contribute to increased reintegration and reduced recidivism and therefore to the objectives of the criminal justice system and crime prevention as a whole (Messele 2011:25). The adoption of a CRBA requires a basic understanding of child development and psychology to ensure that the administration of juvenile justice takes into account the child's age, promote the child's reintegration and the child's assuming a constructive role in society (ibid).

2.4 International Legal Standards on Diversion

Due to their level of physical and mental development as well as their vulnerability, children passing through the criminal justice system require special treatment and protection (Hamilton 2011). This special treatment of children in the criminal justice system is recognized as one of the fundamental rights of children in various international legal instruments¹⁰.

The use of diversion from formal hearing and detention of juvenile only as a measure of last resort and for the shortest possible period of time is one of the basic principles and standards enshrined in the relevant international standards. Children should be deprived of their liberty only after careful consideration and only for serious offences (Save the Children 2006a:12). Furthermore, deprivation of liberty

¹⁰ International normative standards on the administration of juvenile justice include the UN CRC; the African Charter on the Rights and Welfare of the Child (ACRWC), the UN Guidelines for the Prevention of Juvenile Delinquency (PJD, 1990); the United Nations Minimum Rules for the Administration of Juvenile Justice (AJJ, 1985) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL, 1990).

shall only be where there is a proper facilities that guarantee the meaningful activities and programs that promotes CICAL health, self-respect, and sense of responsibility (ibid).

Article 40 (1) of the CRC, which is a core principle for the treatment of CICAL, provide that the treatment of any child accused of a criminal act should be in a manner that:

[...] is [...] consistent with the promotion of the child's sense of dignity and worth, ... reinforces the child's respect for human rights and fundamental freedoms of others and [...] 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.

In line with the above principle of the administration of juvenile justice States are required to establish laws, procedures, authorities and institutions specifically applicable to CICAL (CRC 1989 art.40 (3)) and take necessary *measures for dealing with CICAL without resorting to judicial proceedings* (CRC 1989 art.40 (3) (b) emphasis added).

The other key point regarding the treatment of children is that a child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment – including capital punishment or life imprisonment (CRC 1989 art.37). Other special procedural rights as protection measures are also available for CICAL in the CRC, such as the right to maintain contact with his or her family through correspondence and visits save in exceptional circumstances and have access to legal and other appropriate assistance (CRC 1989 art. 40(2)).

The ACRWC, which Ethiopia is a state party¹¹ too, contains a specific provision on juvenile justice. However, its article 17 does not refer to diversion of CICAL from

¹¹ Ethiopia ratified the ACRWC on 2 October 2002 through proclamation No. 283/2002.

the formal criminal justice system and has been criticized for lacking such key protection¹². It failed to provide for the possibility of dealing with a child without resorting to judicial proceedings. However, the Charter obliges states to treat every CICL in a manner consistent with their sense of dignity and worth in a way that enables the child's respect for human rights (Article 17(1)). The charter, which draws up on the CRC, (Alemu and Birmeta 2012:7) is based on the four key principles of the CRC.

Unlike article 37 (b) of the CRC, however, the ACRWC does not say anything about arrest, detention or imprisonment of a child to be used only as a last resort and for the shortest appropriate period of time. This has raised the issue of the credibility of the Charter as a child rights instrument (Gose 2002:68).

2.5 National Laws and Policy Frameworks for Diversion

The UN Committee on the Rights of the Child in its recent concluding observation has appreciated the significant legislative and policy measures taken by the FDRE government (CRC 2015: para 71). The Committee mentioned that efforts have been made to ensure the compatibility of national laws and policies with provisions of international human rights instruments. For instance, the adoption of the national the criminal justice policy was recognized as a good effort in the administration of juvenile justice (ibid). The following laws and policies informs the legal grounds for taking diversionary measures to protect the rights of CICL in Ethiopia.

¹² For details see the Penal Reform International briefing on the juvenile justice work of the African Committee of Experts on the Rights and Welfare of the Child, available on <http://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-1-v6.pdf> accessed on September 25/09/2015.

2.5.1 The FDRE Constitution

As stated earlier, Ethiopia has ratified the CRC and the ACRWC. The FDRE Constitution declares in article 9 (4) that all international instruments ratified by Ethiopia an integral part of the law of the land. Consequently, the constitution makes the CRC and other human rights instruments part and parcel of the Ethiopian law and hence there is no doubt as to their application in the juvenile justice system of Ethiopia.

As party to the international instruments Ethiopia has an obligation to promote diversion to CICL. The instruments exhort the Ethiopian Government to establish a child justice system that recognizes the reintegration, reformation and rehabilitation of juvenile offenders. The enshrining of children's rights in the FDRE Constitution and the ratification of the CRC and the ACRWC oblige the government of Ethiopia to develop diversionary option to ensure the protection of children's rights (FSCE 2008:14).

Above all, article 36 (2) of the Constitution provides for the primary consideration of the best interest of the child and states that "in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies". This provision lays the foundation for the promotion of diversion programs which are in most cases and in various respects to the best interest of the child as compared to the formal justice system (ibid).

2.5.2 The 2005 Criminal Code of Ethiopia

The 2005 Criminal Code of Ethiopia does not contain clear provisions that allows for application of diversion measures to channel CICL away from judicial proceedings.

However, the Criminal Code, does grants discretionary power to the court to decide on a case-by-case basis and impose alternative measures for CICL between the age of 9 and 15 who are being formally processed through the criminal justice system. Article 53 (2) of the Code specifically states that these measures shall not apply unless the criminal is convicted, making them only available at the sentencing and punishment stage.

Various options are provided in the Criminal Code. They are: admission to a curative institution (article 158); supervised education (article 159); reprimand or censure (article 160); school or home arrest (article161); admission to corrective institution (article 162); fines (article 167); and conditional release/ probation (article 168(3)). In cases where the measures under article 158-162 have failed to bring about the intended outcomes, the court may sentence the young offender to one of the penalties set under article 167 and 168 (i.e. fines, imprisonment in a correction institution). Thus, deprivation of liberty and fines should only be used as measure of last resort (Messele 2011:11).

2.5.3 The National Criminal Justice Policy

The National Criminal Justice Policy of Ethiopia, which was adopted in 2011, provides that alternatives to deprivation of liberty should be given priority, that deprivation of liberty should only be used as a measure of last resort. Section six (6.4.4) of the policy stipulates that a special institution to implement alternative measures will be established at the federal and regional level however their applicability remained poor.

According to the policy, any decision making, enactment of laws, development of guidelines, programs or other relevant working modalities involving CICL should consider the principles of the CRC and ACRWC. It further states that the objective of

the juvenile justice and the treatment of CICL should be to promote education, recovery and reintegration, and prevent any further offending (Messele 2011:10).

2.6 CRBA as a Theoretical Framework

A CRBA focuses on human rights and child rights principles for improving the condition of children and fully enjoy their rights and live in a society that respects children's rights (Save the Children 2007:5). This approach recognizes a child as an equally valuable human being whose right to life, survival and development has to meet (ibid). It is based on international human rights standards that primarily focus on promoting and protecting human rights of children including CICL (UNOHCHR 2006:15).

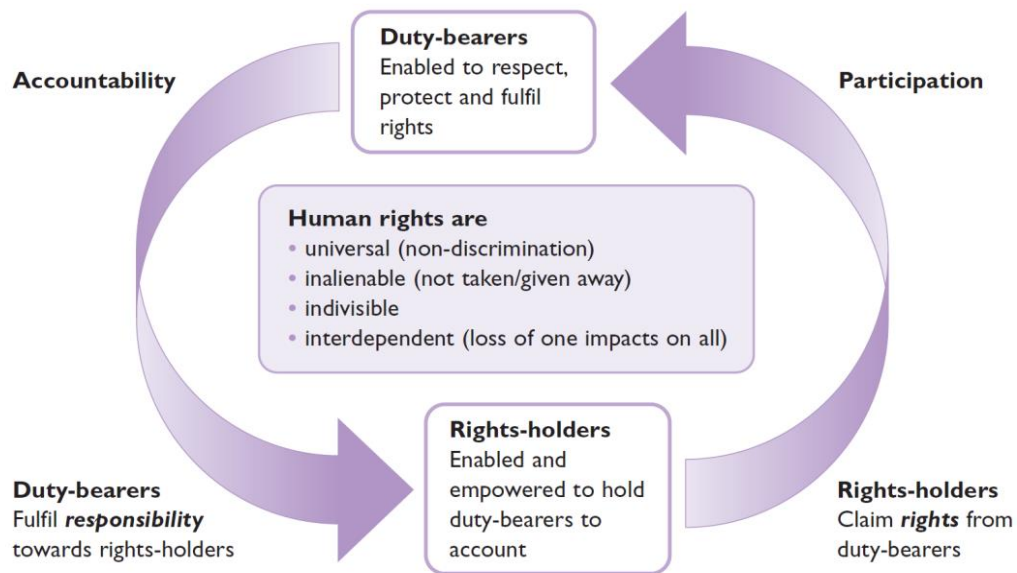
Thus, the principles and standards that are derived from international human rights treaties, in particular the CRC, should guide the treatment of CICL including the diversion programs. In other words, the diversion programs must comply with the four fundamental principles of the CRC (which will be elaborated later in this section) and the treatment of CICL should safeguard their human rights.

2.6.1 A Duty-bearers and Rights-holders Relationship

The central idea of a CRBA is the creation of a relationship between a duty-bearer and a rights-holder. The CRC creates a relationship between a rights holder (the child) and the duty bearers (government, institutions and individuals). This relationship obligates duty bearers to respect, protect and fulfill the rights of the children enshrined under CRC and other international and regional human rights instruments. This relationship also enables children as rights holders to demand their own rights from duty bearers.

The state as a primary duty bearer is responsible to create the necessary conditions for the full exercise of child rights stipulated under the CRC and other international human rights instruments (Save the Children 2007). These, among others, require the state to adopt appropriate legislative, administrative and other measures that can help to realize children’s rights (ibid: 10). The CRC and other international human rights instruments put the state as the first and the main duty bearer to protect respect and fulfill children’s rights. Thus, through adopting CRBA, children as of right can claim their rights from the duty bearers so as to bring a positive change in their life (ibid).

Diagram 1: The relationship between a duty- bearer and a rights-holder

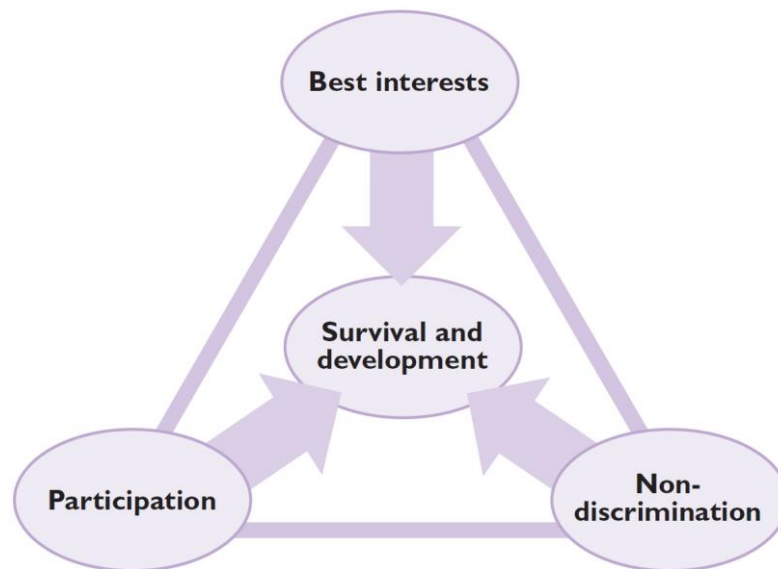


Source: Save the Children 2007:9

2.6.2 The Four General Principles of the UNCRC

The four fundamental CRC principles relating to children’s rights are the corner stone for a CRBA. These are: the best interests of the child, survival and development, non-discrimination and child participation. Every state party to the CRC as well as to the ACWRC is duty bound to follow all the four principles in respecting and promoting children’s rights. In other words, in realizing all the rights of children enshrined under the CRC and ACRWC the underpinning principles or ‘heart of the treaty’ according to Sloth-Nielsen (2013:36) should be taken into account at all times.

Diagram 2: The four general principles of the UNCRC



Source: Save the Children 2007:11

2.6.2.1 Survival and Development of the Child

This principle imposes the primary duty to ensure the survival and development of the child on the state as a primary duty bearer. The survival and development of the

child means that children have the right to life and to develop in a good and healthy way, both physically and psychologically. This requires the state to provide access to economic and social rights including access to food, health and education. Furthermore, the state is obliged to protect children from harm, abuse and exploitation. The State has to enact policies and legislation that contribute to the fulfillment of children's survival and development rights (Save the Children 2007:12, CRC 1989 art. 6 and 4; art. 5 of the ACRWC).

As all children, CICL too have the right to life, survive and develop as a child. This inherent right to life shall not be taken away by the state. From the wording of article 37(a) of the CRC, capital punishment and life imprisonment are thus totally denied for the sake of protecting the right to life, survival and development of the child.

A child-rights –based juvenile justice system should thus promote the survival and development of CICL by rehabilitating and reintegrating them to ensure their normal growth and development of the child (Hamilton 2011:28). It also entails that CICL must live in an appropriate and safe environment so as to realize their potential (ibid). For example, article 37(b) of CRC states that “deprivation of liberty should be used only as a measure of last resort and for the shortest period of time, so that the child's right to development is fully respected and ensured” (CRC General Comment 2007:11).

2.6.2. 2 Non-Discrimination

State parties to the CRC and ACRWC have to take all necessary measures to ensure that all children are treated equally. There are particular children who are exposed to discrimination such as CICL, street children, girls or children with disabilities. For example, children who have been in conflict with the law are often discriminated in

access to education and the labor market (ibid: 7; art. 2 CRC and art. 3 of the ACRWC). The state should always recognize this fundamental element of a CRBA in treating this kind of vulnerable children.

Apart from providing general provisions on non-discrimination of children in a given country, the state has to enact separate legislation that addresses the special needs of CICL (Hamilton 2011:25). The special legislation has to recognize what factors led the child to the commission of a certain crime and his/her socio-economic status should not be a ground for discrimination. For example, the inability of the child/parent/guardian to pay a fine should not be a ground for discriminatory treatment of the children (ibid: 26). In other words a positive discrimination may be there for those children who face problems based on their socio-economic status (Penal Reform International 2013:14).

2.6.2.3 Child Participation

Article 12 of the CRC stipulates that a child has the right to express his/her views freely in all matters affecting his/her interest. This cardinal principle is also affirmed under article 4(2) and 7 of the ACRWC. This right gives children a chance to express their views freely in all matters, including in the juvenile justice system, and to articulate their problems in their own words. The child's view must be given weight in accordance with the age and maturity of the child (Penal Reform International 2013:14).

A CRBA obliges duty bearers to create the space and opportunity for children's voices to be heard within their families, communities and other relevant institutions and procedures (Save the Children 2007:13). This right recognizes the fact that children are active subject of rights and that expressing their views and feelings is a fundamental human right they have as an individual (UNICEF 2002:149).

Like the other principles of the CRC, child participation also has to be reflected in the juvenile justice system. CIGL have the right to express their views freely regarding the juvenile justice system, for improvements and reform of the system. For example, they have the right to know and participate in any project which concerns them and works for the betterment of their treatment. The juvenile justice system has to enable them to express themselves without any form of coercion and pressure from anyone else involved in the justice system (Hamilton 2011:30). For example, police officers and social workers have to enable CIGL to express themselves freely to ensure child participation.

2.6.2.4 Best Interests of the Child

Article 3 of the CRC stipulates that all actions concerning children should accord primary consideration to the best interests of the child. This fundamental principle is also stipulated under art 4 of the ACRWC. The CRC does not give a definition of what constitutes the “best interests” of a child. The principle follows a holistic approach to children and their development (Ghimire 2008:21). According to Save the Children (2007:14), this principle touches on every aspect of the life of the child and whenever decisions are taken that affect children’s lives, one has to critically examine how to protect the best interests of the child. A CRBA thus also entails that in any circumstances the decision taken by any one, either public or private institutions should consider the child’s best interests (Arts 2006:12).

From the point of view of juvenile justice, the best interests of CIGL have to be given primary consideration. Whenever decision are taken, thought must be given to how the decision will impact on a child, to ensure the best interests of the child is met (Penal Reform International 2013:14). For instance, unlike the traditional objectives of the criminal justice system, the juvenile justice system should avoid using repressive measures and focus mainly on how to rehabilitate CIGL (CRC General Comment

No.10, 2007). In other words, the juvenile justice system has to be designed in such a way that rehabilitation and reintegration of CICL in the society are promoted.

Chapter Three: Research Methodology

3.1 Approach

Using a CRBA to juvenile justice I wanted to evaluate and explain how CIGL as rights-holders and governments and others as a duty-bearers are fulfilling CIGL's rights in the juvenile diversion program in Addis Ababa. In doing so, I evaluated and verified the activities of the CBCP in Addis Ababa, based on the four fundamental principles relating to children's rights in the juvenile justice system: survival and development; non-discrimination; child participation and the best interests of the child (i.e. the general principles of the CRC and the ACRWC). According to CRBA, the general principles of the CRC and ACRWC have to be implemented at every stage of the CBCP. More broadly, I examined how duty-bearers—particularly the State—meet their obligations and supported CIGL (as the right-holders) to claim their rights as human beings whose rights to life, survival and development have to be met (UNICEF 2009b).

Assessing the extent to which the above mentioned general principles and other child rights aspects have been realized in the CBCP required attention for the following:

1. **Survival and development:** How is the CBCP contributing for CIGL to live in an appropriate and safe environment so as to realize their full physical, psychological, emotional, social and spiritual development (Hamilton (2011:28, Save the Children 2007:11). What kind of financial, technical and logistical responses are available to support the CIGL's right to life and development? Is there any planned program by the State to contribute to the fulfillment of children's survival and development rights?

2. **Non-discrimination:** how is the CBCP working with the most vulnerable children (Save the Children 2007:8)? How is the program working to counter discrimination against CICL and other vulnerable children in the system? What kind of program has been implemented to empower and impact on children who face discrimination and is there any public awareness around issues of discrimination?

3. **Child Participation:** how are CICL involved in the CBCP program? Is there any opportunity for them to express their views, to influence decision-making and to achieve changes in areas that affect their lives (Save the Children 2007:13)? What measures have been taken place to achieve this (ibid)? What the programs are being implemented to build the children's confidence, knowledge of their rights and ability to protect themselves? Is there any training aimed at empowering CICL to learn and practice important life skills as active and responsible citizens?

4. **The best interests of the child:** Has there been any impact assessment of decision that affects the lives of the CICL to ensure that the best interests of children in the CBCP?

In this way a comprehensive effort has been made to gather information on whether the CBCP is sufficiently child rights-based.

In order to collect data that can answer the research questions, the research employed a qualitative research approach. The reason behind selecting a qualitative approach is because it will help to get the experiences of the research participants in their own words (Dawson 2007:15-16). Therefore, data was collected using a qualitative research methodology.

3.2 Data types and Sources

Primary data was collected from children attending the CBCP in the center and those children who have been in the center previously. Their participation gave a chance to be heard and to express their voice by themselves. Primary data was also collected from different bodies such as Save the Children -Ethiopia, FSCE, Federal Supreme Court Child Justice Project Office, the Police and the Ministry of Justice.

In order to strengthen the primary data obtained through the in-depth interview with the research participants and to gather information relevant to the research questions, secondary data from the above mentioned organizations were. Books, academic journal articles, NGO reports, research papers, and internet sources like Google Scholar were used. Relevant international and national legal instruments like the UN CRC, the ACRWC, and other relevant international human rights instruments and rules of juvenile justice and related secondary sources were also analyzed.

3.3 Process of data collection

So as to get the primary and secondary data, the researcher first visited the Community Based Correction Centers (CBCCs) located in different sub-cities¹³ of Addis Ababa. The offices of FSCE Addis Ababa, Save the Children Ethiopia, the Federal Supreme Court Child Justice Project office and Addis Ababa Rehabilitation and Remand Institute for Juvenile Delinquents were visited.

As a researcher I introduced myself and the purpose of the research, what I am looking for and what is expected from research participants. With the help of the

¹³ Currently in Addis Ababa, three sub cities namely Arada, Kolfe Keraniyo, and Akaki Kaliti sub-city CBCCs are working with diversion of CICL away from the formal justice system.

staffs in the CBCCs (Social worker and Community worker), I tried to get in contact with the CICAL. The personal relationship I had with some of the staffs in the above mentioned organizations, particularly the child justice project office helped me to get the data and make the interview possible. The already established (at the time of research design) contact with staffs of the CBCC's helped the researcher to make things easy and possible. However, the researcher encountered a problem regarding organized data about CICAL in each center.

In order to have trustworthy information and to make the data collection process effective the relationship that the researcher built with the research participants relied on collaboration, trust and friendship. Particularly, the researcher tried to make a cloth relationship before the actual in-depth interview was taking place in the CBCCs where CICAL were presented.

Due to the presence of few CICAL who were referred by the court and police in most of the CBCCs at the time of data collection, the researcher consulted the previous files of children who have been in the CBCCs and communicated them earlier before the actual interview took place with the help of the social workers in the CBCCs. In doing so, the researcher has paid the transportation cost for them to come to the centers. The selection of the interviewees will be addressed in section 3.6 of this chapter.

Conducting the in depth interview with CICAL was not a simple task. Choosing the right place for the interview (child friendly place) and motivating them to participate in the research was so difficult for the researcher. Particularly some of the research participants were suspicious when they saw someone who is a stranger in the center like me. However, using a child friendly talk and leaving the agenda for a while in order to make them feel free, the researcher played table tennis with them and used different techniques to make them feel friendly. After assuring and getting

their willingness to actively participate in the interview the researcher conducted the interview.

3.4 Data Collection Tools

Semi-structured in-depth interviews were used as a main data collection tool in this research. This is because semi structured interviews, by asking the same questions, give the researcher the chance to compare and contrast information obtained in other interviews (Dawson 2007:30) while still leave some space to probe a particular interviewee on certain particular issues, which perhaps would not come up in other interviews.

The interviews with CICL were very important for my research as it was important to find out how the child participants in the CBCP view the program. Knowing about their experiences is crucial for analyzing their treatment from CRBA. Questions related to their participation, best interests and the like were asked. Before doing so, permission from the FSCE CBCCs officers was asked and a separate and suitable place in the center had been selected to interview the CICL. A total of 15 children from the three CBCCs in Addis Ababa (2 Female and 13 Male) participated in the in-depth interviews. This number was not predetermined when I first design the research. Rather, it was determined based on the amount and adequacy of the data gathered for answering the research questions and the availability of CICL in the centers.

In addition I interviewed various other key informants: one Juvenile Court judge from the Federal First Instance Court in Addis Ababa; one representative each from Save the Children-Ethiopia and FSCE, one social worker from FSCE; one police officer from the child protection unit in Addis Ababa and one expert each from the Ministry of Justice, Child Justice Project Office and Addis Ababa Rehabilitation and Remand Institute for Juvenile Delinquents.

The Juvenile Court judge shared his experience in the juvenile justice system in Addis Ababa, in particular on how children are being diverted to the CBCCs. This enabled the researcher to know and assess the current existing practice of juvenile diversion in Addis Ababa from a child rights-based perspectives.

The interviews with the Save the Children-Ethiopia and FSCE staffs enabled me to briefly discuss the existing CBCP in Addis Ababa. Police officers who had experience in sending CICL to the CBCCs and social workers in the FSCE who are primary players in the diversion process in Addis Ababa, helped a lot by discussing the current situations of CICL and the potential of CBCCs in rehabilitating them. Since they are the first persons who have contact with the CICL, especially 'how' questions concerning the diversion of CICL and best interests of the child could be addressed.

The interviews I had with legal experts from the Child Justice Project Office and the Ministry of Justice helped to pinpoint the role of the state in addressing the issue of alternatives to imprisonment, and in particular diversion, of CICL in Addis Ababa. They also enabled the researcher to gather important information regarding the future plan of the government and other stakeholders in the area of diversion of juveniles.

The interviews enabled to analyze comprehensively the current situation regarding the treatment of CICL in the CBCCs and its challenges. The role of the community elders in the CBCP is very crucial aspect (Defa 2011:65) that could not be investigated by an interview with such elders. However, the interview with FSCE staffs enabled the researcher to hear about the experiences of community elders in handling cases of CICL and the challenges encountered in delivering the services of the CBCP.

3.5 Sampling Techniques

Since it will often be difficult to get data from all possible participants in a research, for example due to economic and time factors, taking a sample will often be a must (Jonker and Pennink 2010). Researching a sample can provide a basis for making inferences about some larger population (ibid: 30). Purposive/judgment and convenience sampling techniques were used to select the participants in my research.

3.5.1 Sampling CICL

The convenience sampling technique is used to collect data from samples of a population readily available (Singh 2006:90). This technique, which relies on available subjects who are easily accessible, is an excellent means of obtaining preliminary information about research questions quickly and inexpensively (Jonker and Pennink 2010:32).

Thus, for the sampling of the CICL, the convenience sampling technique was used. The researcher went to where these CICL were available and conducted the in-depth interviews based on their immediate availability, as well as their willingness to take part. In this way, CICL interviewees were found in Akaki Kaliti sub-city woreda 7 CBCC, in Arada sub-city woreda 8 CBCC and in Kolfe Keraniyo sub-city woreda 13 CBCC were covered. A total of 15 CICL (M=13, F=2) from these centers were identified as willing and available for being interviewed.

3.5.2 Sampling of Other key informants

Using a purposive sampling technique, the researcher selected key informants from the different organizations mentioned above. The basis for selecting them was the

attachment/knowledge they have regarding the CBCP in Addis Ababa. Purposive sampling is an appropriate sampling technique for a researcher who wants a specific expertise or knowledge from the research participants (Singh 2006:91). The selected key informants indeed provided the researcher with the necessary information regarding the juvenile justice system in general and the current practices of CBCP as form of diversion in Addis Ababa.

3.6 Data Analysis

Considering the substantive focus of the research and since the research was mainly qualitative, a thematic analysis has been employed for analyzing the data on the current practice of the CBCP in Addis Ababa in light of a CRBA.

A qualitative data analysis aims at creating a new understanding by exploring and interpreting the data collected (O'Leary 2014:299). The qualitative data was further analyzed by making use of secondary data concerning issues that were brought up by the interviewee. Interviews were translated from the local language (Amharic) into English in a way that respects the original version. Since the interviews were done in a local language (Amharic) that the researcher and the research participants were all familiar with, there was no need for a translator in transcribing the data gathered for the research.

3.7 Ethical Considerations

Involving children and exploring their experiences is very crucial to the quality of most research that concerns children. But their participation needs ethical consideration more than much other research, because children can be very sensitive and can easily be harmed due to their early development stage.

According to Save the Children (2004), a researcher has to take the necessary measures not to harm children whom he/she is going to interview in his/her study. Valuing children was my first obligation as a researcher and this entails in any case protecting them from any harm. It starts from obtaining informed consent in a manner that respects their dignity (ibid). CICL were asked whether they are interested to take part in the research or not.

The first task of the researcher in the actual interview is to refrain from any act that might increase the child's exposure to violence (Save the Children 2004:30). The researcher has to make sure to divert any distress that may happen as a result of the interview with the children. It is advisable to arrange and request for skilled support (like child psychologist, social worker) to minimize the risk (ibid). The support of the social and community workers in the CBCCs in Addis Ababa was very important in this regard.

Then, power differences between a researcher and children as research participants could be a challenge in a research that involves children (Graham et al 2014:41). Social factors such as social status have their own impact on the power dynamics between the researcher and the children (ibid). I acknowledged the unequal relationship of power between myself as a researcher and the children who participated in this research. I addressed this by engaging in a child-friendly free talk, before the actual interview, done in such a way that encouraged (but did not push for) their participation in the research. The research participants were told that they had the right to participate in the research without any undue influence. And had an equal right not to participate if they were not interested in doing so.

Adequate information regarding the proposed research topic, the purpose of the research, how the research participants can participate, the option to withdraw and where the research would take place were communicated to all research participants. This enabled them to be familiar with the overall objective of the research. Above all,

the researcher committed himself to respect the dignity, well-being and rights of the all research participants at any stage.

For the purpose of securing confidentiality, especially on the exchanges of information with the children, the interview setting should allow for information to flow privately and freely (Graham et al 2014:75). Therefore, I selected a setting which is most suitable for the research participants to talk freely and express their views. As a result, the offices of the social workers and community workers became the location for interviewing the children. Any information that may cause harm to the child participants in the research was not disclosed e.g. the names of the child participants as indicated in the findings are false names. During the interview, research participants were asked about their feelings in the course of the interview i.e. whether they felt ok or not. I kept a close eye on these aspects throughout.

Chapter Four: A CRBA Analysis of the CBCP in Addis Ababa

4.1 Introduction

This chapter analyzes the current practices of the CBCP in the capital city of Ethiopia, Addis Ababa, from a child-rights perspective. This will be done on the basis of the framework explained earlier in this paper, including the basic principles of the CRC and ACRWC related to juvenile justice system.

Interventions to divert children from the formal justice system were implemented through the CBCC¹⁴ in Addis Ababa in 2004 (Save the Children 2006:15). The community-based correction is based on the alternative concept and principles of diverting petty and first time young offenders - to CBCPs instead of prosecuting them in the formal criminal justice system (FSCE 2010:12).

The major objectives of the program are to help young people avoid the trauma and stigma associated with involvement in the formal justice process, keep young offenders at home and not in reformatory institutions, individualized rehabilitation, and increased communities participation in crime prevention for children (Save the Children 2012b:6).

The CBCC's are operated by the local NGO FSCE, but their organization is shared by families, schools, police and the community. So far, three CBCCs have

¹⁴ CBCCs are diversion centres, established by the FSCE in collaboration with the community and local authority, whose primary function is to provide appropriate psychosocial interventions and other necessary assistance to diverted children (FSCE 2008:6). The activities and services of the CBCP are implemented through this specialized system.

been established and are operational in three sub-cities of Addis Ababa: Akaki Kaliti, Arada and Kolfe Keraniyo. At the time of this study, I found that most of the children who attend the CBCP have been referred by parents and schools. However, they may also be referred by the court or police as the following table shows.

Table 1. Measures taken in relation to children suspected of having been in conflict with the law in Addis Ababa (2014/15).

SN	Measures taken	Number of children		
		Male	Female	Total
	Total number of reported children	652	97	749
1	Children sent to the remand home up on the decision of the court	139	16	155
2	Children suspected of different criminal activities whose ages have been ascertained in hospital	32	22	54
3	Children suspected of different criminal activities and sent to hospitals for age determination	36	32	80
4	Children suspected of petty and minor offenses and referred to the CBCP	41	4	45
5	Children suspected of committing criminal activities and released on bail by court order	86	23	109
6	Children suspected of committing criminal and released on bail by surety of their parents	20	36	271
7	Children suspected of committing criminal activities and referred to court immediately after apprehension	644	84	728

Source: Addis Ababa Police Commission (2015)

As can be observed from the above table, in the year 2014/2015, a total of 749 (M=652, F= 97) were reported to the CPU as suspected perpetrators of crimes. A total of 45 (M= 41, F= 4) cases were referred to CBCP, whereas 155 (M= 139, F= 16) CICL were sent to the remand home. This showed that deprivation of liberty remains a common form of punishment for CICL in Addis Ababa. Only 6% of the total number of CICL were sent to the CBCCs. This shows that most of the CICL in Addis Ababa are not getting the community based correction service and deprived of their liberty.

4.1.1 The Diversion Process

The 2008 FSCE Juvenile Diversion Manual was used as a standard of selecting CICL admitted to the CBCCs. Section three of the manual list out certain admission requirements to the CBCP. Among the requirements are the child has to be between the age of 9 to 15 years, there has to be sufficient evidence to convict, the child has to admit or give his free consent as to the CBCP and the child has to have parents or guardians who are going to be responsible for his/her attendance in the program (FSCE 2008:21).

If the child fulfills the above mentioned requirements he/she will be referred by the police or even by the community to the CBCC. The police may release the child accused of committing minor offences after providing oral advice and warning (FSCE 2008:26). Guided by the principle of the best interests of the child the police send the CICL to the CBCCs to discuss the rehabilitation program with the social worker at the FSCE provided that the child give his/her consent. This gives the chance for the child to actively participates and knows about the advantage of the program and the problem he/she may face if his/her case is referred to the court (FSCE 2008:29). Most of the interviewed children disclosed that the meeting with the social workers was useful to assess their individual needs. According to the (FSCE 2008:31) Juvenile

Diversion Program Manual an individual treatment plan¹⁵ is drawn to assess the character of the child and the nature of the crime as well as the circumstances surrounding it.

4.1.2 Stakeholders Involvement in the CBCP

It is apparent that, protection of children calls for multi-disciplinary activities that require involvement of various public and private organizations. In addition to governmental and non-governmental organizations working that are working towards the same or related purpose, the respective community is another important stakeholder and potential collaborator.

The level of success in achieving the ultimate objective of child protection endeavors in general depends a lot on the level and quality of integrated efforts of all the involved parties (FSCE 2010:35). Establishing and maintaining effective networks and collaborations with all of the concerned external agencies is one of the most important factors for the success in child protection endeavors.

My research revealed that various stakeholders (collaborators) have been involved in the implementation of the CBCP. The major agencies which have been commonly involved in the implementation of the program are Elders and community leaders (e.g. to advise young offenders and liaise between CBCCs and the communities), schools (for behavioral modification of children in the diversion process, awareness raising through different clubs, giving feedback on the school performance of children who are in diversion program etc.) , community structures and associations like Kebelles (local administration) and Idirs (to provide infrastructure and resources and facilitate information on children and families etc.).

¹⁵ See appendix I

In the operation of the diversion program the role of volunteers is crucial (FSCE 2008:27). Volunteers are those who respected in their community and have a good moral character as well as ability to certain basic psychological intervention—guidance and counseling skills. They are responsible to monitor the status of the diverted children and ensure the effective implementation of the diversion program (ibid). All the three CBCCs in Addis Ababa have at least one volunteer in the center.

CPU officers are also another actor in the diversion program in Addis Ababa. The police officer conduct interview process with the child and his parents for the diversion options, releasing the child with informal caution and ensuring the compliance of the child and his parents with the treatment plan (FSCE 2008:28).

Schools and courts are the other key players in the administration of diversion of diversion program. CBCC have working relationship with schools. Teachers play important role in ensuring children attending diversion program. Social workers in the CBCCs assist the schools in providing guidelines as to the reference of CICL to the center. Beside this, social workers are involved in assessing the appropriateness of a diversion program for CICL. They are involved in counseling, psychological intervention, monitoring services to the CICL including facilitating coordination between the police and the CBCCs (FSCE 2008:28).

The other stake holders in the diversion program are community elders locally called 'Mekari Shimagiles' who participate in giving advice to children and sharing their wisdom and life experience (Save the Children 2014:18). Each of the CBCCs in Addis Ababa has a group of this people (at least three people) who show up twice in a week for the purpose of handling the cases of the CICL.

4.2 The Three CBCC's in Addis Ababa

4.2.1 Akaki Kaliti Sub-City Woreda 7 CBCC

According to the FSCE, a total of 57 children (M=54, F= 3) who were in conflict with the law and aged 13 to 15 years were reported from different sectors of woreda 3 and woreda 7 of Akaki Kaliti sub-city. Out of this total number 53 (M=51, F= 2) were referred by different primary schools located in the sub-city.

Only one male child was referred by the police. The remaining three CIICL (M= 2, F=1) were referred by their family or by the Women, Child and Youth Affairs Office respectively.

4.2.2 Arada Sub-City Woreda 8 CBCC

According to the FSCE, a total of 37 children (M=30, F=7) who were in conflict with the law and aged between 11 and 15 were referred to the CBCC by different sectors of woreda 8 of Arada sub-city. Accordingly, 3 male children were referred to the center by the court, 13 children (M= 8, F= 5) were referred by school and the remaining 21 (M=19, F= 2) were referred by the community and parents of the sub-city.

Currently, a total of 37 (M=30, F= 7) CIICL are getting child protection services from the center. These children are getting various kinds of support such as indoor and outdoor games, tutorial services, music training, counseling (group and individually) as part of the rehabilitative aspect of the center.

4.2.3 Kolfe Keraniyo Sub-city Woreda 13 CBCC

According to FSCE, during the year 2013/2014 a total of 28 (M=25, F= 3) CICAL aged between 11 and 14 were referred by different stake holders including the Federal Supreme Court Child Justice Project Office. Out of the total number of children referred to the CBCC, 10 (M=9, F= 1) were referred by the court through the Child Justice Project Office of the Federal Supreme Court.

Only one female CICAL was referred to the center by the court during the year 2014. Not any CICAL was referred to the center by the police or the community during the year 2015. A total of 65 (M=55, F= 5) children who are in vulnerable situation joined the center by themselves.

In the centers, various measures took place to rehabilitate the children, including activities and services such as child assessment, setting standards for and development of treatment plan, guidance and counseling, play and recreation (sport, music, drama, games etc.), continuous monitoring and follow-up, as well as periodic assessment (FSCE 2010:12).

As can be observed from the number of CICAL in each of the above three CBCC in Addis Ababa, very few numbers of CICAL were referred from the main actors in the administration of juvenile justice- the police and the court. This shows there is no organized structure within Addis Ababa to handle the cases of CICAL to the diversion programs. The limited number of CICAL sent to the CBCCs was due to the effort of the Child Justice Project Office of the Federal Supreme Court.

4.3 The General Background of the Interviewed CIGL

The interviewed CIGL¹⁶ were CIGL were accused of committing petty offences and referred to the above three CBCCs in Addis Ababa. They aged between 11 and 15 years. They were referred to the CBCC by different bodies for the purpose of rehabilitation and reintegration into society. At the time of the study, five participants were still taking part in the CBCP, while ten had been discharged after completing the rehabilitation program. Nine of the participants were between 11 and 14 years old, while the remaining six children were 15. A total of fifteen CIGL participated in the study: 2 girls and 13 boys. As explained earlier they were asked questions related to their participation in the implementation and decision making process of the CBCP, to what extent the CBCP was inclusive, how they rated the services they were getting for rehabilitating and satisfying their best interests and the like.

As will be substantiated in the next section of this chapter, the in-depth interviews disclosed that the CBCC's are serving the best interests of CIGL and are keen for their survival and child development by protecting them from the various adverse influences that detention could have on them such as loss of liberty, separation from their usual social environment at an early stage of their development—, stigmatization and labeling. However, the CBCC's were also found to be full of many challenges. These will be discussed later in a separate section of this chapter.

4.4 Positive Changes in the Lives of the Children Involved

According to each interviewed child, the CBCCs has made a meaningful contribution to shifting his/her life in to a positive direction. Every child who was protected from

¹⁶ For details see appendix III

abuse, reintegrated in to his/her family, rehabilitated from unacceptable behavior, or provided with learning support is likely to gain towards the betterment of his/her life.

All of the interviewed children who- who were in the community correction process, confirmed that the treatment they received in the center brought positive effects for their behavior and future. The specific examples of the positive effects they mentioned mainly include: improvement of performance result in education, dropping of bad behaviors and bad friends, establishing and maintaining good family relationship, etc. As was noted earlier article, under 40 of the CRC and article 17 (3) of the ACRWC the very objective of a juvenile justice system is to ensure that CICL are able to reintegrate in to society and assume a constructive role. In this regard the role of the CBCCs is invaluable. These elements seem to be met in the practice of the CBCCs.

4.5 Exploring the CBCCs Experiences from a CRBA Perspectives

The fundamental principles and standards enshrined in the CRC and other international instruments such as the ACRWC have been used as the framework for this study. This section will examine whether the CBCP in Addis Ababa was designed and implemented using these principles and international norms. A CRBA to juvenile justice recognizes CICL as rights- holders. This creates obligations for duty-bearers to act to enable rights-holders to exercise their rights.

4.5.1 The Rights to Life, Survival and Development

Deprivation of liberty has very negative consequences for a child's harmonious development and seriously hampers his/her reintegration in society (UNICEF 2009:21). Accordingly, CRC article 37(b) explicitly provides that:

Deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (CRC General Comment No.10/2007:5).

In line with what is noted above, some of the key informants affirmed that detention of children is the worst form of correction. According to them, it has never been a viable option for correcting CICL and it is against a child's development. Miss Fasika Hailu, Children's Legal Protection coordinator at the Child Justice Project Office, disclosed that:

In a Remand Home some members of the organization particularly the guards, punish CICL through beating and physical exercise. This is beyond their capacity and endangers the health of the children. A Remand Home is the worst place for CICL. I have never heard of a child who has been rehabilitated and reintegrated in to the society after his/her stay in the Remand Home.

Diversion of CICL to alternatives to institutional care like the CBCP helps to tackle the root causes of the child's behavior and to identify the needs of the child (ibid: 54). For example, the life skill training program which is given by the CBCCs in Addis Ababa helped CICL to build self-esteem and self-awareness and enables them to develop ability and skills to make wise decision.

According to Mr. Andualem Tarkeng, Head of Addis Ababa Rehabilitation and Remand Institute for Juvenile Delinquents, CBCP has to be encouraged by the concerned organ in order to rehabilitate and reintegrate CICL in a manner that protects their rights and dignity. He explained that due to lack of attention and available budget to CICL the remand home is not giving the necessary services for

the children which has its own negative consequences on the survival and development and rehabilitation of these children.

Thus, it can be concluded that the CBCP in Addis Ababa is playing a great role in contributing for the survival and development of CIGL. However, the State as a duty bearer has an obligation to support both financially and technically to enable the program effectively render its services which are crucial for the development of the child in a manner where his/her dignity is protected.

4.5.2 Non-Discrimination

The states parties to the CRC have to take all the necessary measures to ensure that all CIGL are treated equally (CRC General Comment 10, 2007:4). In particular, states have to pay attention to tackle any discrimination against vulnerable children such as street children, girl children, children with disabilities etc. According to CRC General Comment 10, 2007:

It is necessary that measures are taken to prevent such discrimination, *inter alia*, by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society.

The protection against discrimination is also affirmed under article 3 of the ACRWC. One of the pillars of the FDRE constitution is the right to equal treatment of all human beings and the prohibition of discrimination (Article 25). However, the CBCP in Addis Ababa excludes children who do not have parents or guardians nearby, and discriminates children who are most vulnerable such as street children (FSCE 2008:21).

The CBCCs mainly focus on children between the ages of 9 and 15 and on those who commit petty offences. This has been raised by some as one of the challenges for effective implementation of the CBCP in Addis Ababa. Arts (2014:273) argued that to the extent that children fall within 18 years old, every children shall enjoy the rights enshrined under the CRC. Thus, those children who are excluded from the CBCP due to their age (children between the age of 16 and 18) should not be discriminated.

Most of the interviewed children in the CBCP expressed that they did not feel being discriminated. In particular the elder community advises and approach them in very friendly ways. They were also asked what they felt when they came to the center. Some replied it was good that no one knew necessarily whether they were CICL or not because other people also come to get different services in the center. One female research CICL stated that:

I don't feel discriminated since all children in the center are treated equally. There is no form of discrimination based on different grounds. For instance I can talk to the social worker if I need a service because she can understand me as a she is also female. We have one community worker (male) and one social worker (female) in our center (a 15 year's old girl child in Akaki Kaliti sub-city CBCC).

However, I did observe one discriminatory during my field work. Out of the 10 sub-cities located in Addis Ababa only CICL who are found in the three sub-cities (Akaki, Arada and Kolfe), and those who are nearby, can benefit from the diversion program. Those CICL who are found in other sub-cities (where there is no CBCP), are left with one option: being sent to a remand home which seriously jeopardizes their rehabilitation and reintegration into the society.

From a CRBA perspective, there has to be a program to encounter discrimination against the vulnerable group of people such as street children. The children who do

not have parents or guardians should be admitted to the CBCP when they found committing a criminal act.

4.5.3 Children's Participation

According, to the CRC (Article 12 amongst others), the right to express his/her views freely in all matters affecting him/her. Duty bearers should fully respect and implement this right throughout the process of juvenile justice (CRC General Comment 10/2007:5). In CBCCs CICL are usually consulted at the stage of designing intervention plans for their rehabilitation and reintegration. They are also consulted on the types of recreational services offered and may choose the clubs they want to join¹⁷.

Majority of the children who participated in the research mentioned that their participation in the program contributes to their empowerment and their sense of feeling heard. According to them, the participation enables them to build self-esteem, self-expression and self-confidence. One of the interviewed children stated that:

We participate in different meetings and the staffs of the CBCP take feedback from us in order to improve the program. I remember that I was asked how I found the life skills training that was given to us once up on a time (a 14 year's old child in Arada sub-city CBCC).

A majority of the interviewed children mentioned that their participation in the center helped them a lot in their interaction with their family and the community. However, some children mentioned that their opinions and suggestions regarding the program were insufficiently acted up on:

¹⁷ Interview with a 15 year old child in Kolfe Keraniyo sub-city CBCC, July 28/2015.

Sometimes our suggestions are not implemented. As a result we are frustrate about to participating in the meetings and not interested to give our suggestions and ideas in the program. (a 15 year old child in Akaki Kaliti sub-city CBCC).

The research participants contacted in this study also confirmed that the treatment plan provided them with opportunities to express their views freely and the assessment provided them with the necessary information regarding the appropriateness of the CBCP.

I have been asked about the root causes leading me to the commission of the crime. The free talk I had with the social worker enabled me to know what the program is all about. The meeting enabled me to forward comments and suggestion on the CBCP (A 15 years old CICL in Kolfe Keraniyo sub-city CBCC).

Children are represented in the multi stakeholder child protection council¹⁸ which rules and guides the day to day activities of the CBCP. The council is responsible for planning, follow up, monitoring and directing of the child protection program in the community (Save the Children 2012a:5).

As a concluding remark it can be said that children in the CBCCs had the chance to speak freely in any stage and make decision that affects them. However, the research revealed that a due weight has not been given to their say.

¹⁸ The council has an executive committee made of different stakeholders including representatives from local administration; representatives of the Police and Woreda Women, Children and Youth Affairs Office; elderly members of the community; and representatives of non-governmental and community based organizations (Save the Children 2014:17).

4.5.4 Best Interests of the Child

The material fact that children differ from adults in their physical and psychological development, and in their emotional needs (CRC General Comment 10, 2007:5). Article 36 (2) of the FDRE constitution particularly deals with the best interests of the child:

In all actions concerning children undertaken by private and public institutions, courts of law, administrative authorities or legislative bodies, *the primary consideration* shall be the best interests of the child (emphasis added).

Due to their physical and psychological development, and their emotional needs children needs a special treatment that satisfy their best interest in every affairs of their life including juvenile justice (CRC General Comment No.10/2007:5). The Committee on the Rights of Child has defined the best interests of the child in the context of the juvenile justice system as follows:

The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders (ibid).

As noted above, the issue for children should be rehabilitation rather than punishment when they have been in conflict with the law. According to Mr. Leulesilassie Liben¹⁹, Juvenile Court Judge in Addis Ababa, the CBCP saves the CICL from stigma and labeling. Since all the CICL who are in the same center are in

¹⁹ Interview held on August 11/2015.

the same situation, there will not be a problem of labeling. Besides, the community workers/social workers are well educated and experienced and help the CICL by counseling and guidance²⁰. According to Mr. Liben, this may help the children to better face issues such as the absence of role models and lack of parental supervision which are the major causes of the children's behavior. The research done by Save the Children also confirmed that children in Addis Ababa get in trouble due to lack of parental control and lack of awareness of the consequences of their actions (SC 2006b:22). Thus, the service given at the CBCCs is key in protecting their best interests by way of avoiding harsh physical punishments and deprivation of their liberty and focusing on the root causes of the children engagement in the criminal acts.

Many children who were assisted by the CBCCs found that the centers friendly and felt able to integrate easily with centers' staff. According to stigmatization, humiliation and family disintegration are avoided as a result of the CBCP. Particularly two CICL who had experienced detention in a police station and went through the long court procedure, felt that the formal justice system is scary and the worst for children. By recalling their experiences these interviewed children highlighted the negative memories they had during the procedures such as questioning and court appearance. The facilities of the CBCCs created a child-friendly atmosphere for them. Above all, the support they got from the center and the treatment they got which they believe is in accordance with their age and developmental stage, ensured their best interests by respecting their rights.

The CBCP benefits children a lot as such might be seen as in their best interests. This has also been confirmed by Miss Fasika Hailu, Children's Legal Protection Center Coordinator at the Child Justice Project Office:

²⁰ *ibid*

CICL by themselves are victims. They are the result of neglect and any other abuse. We have to consider them as a victim rather than as offenders. CBCP will assure this. It will enable them in addressing the root causes of the child offender.

Correcting children who are involved in criminal acts is their best interests. What matters is which correction methods will best suit their best interests. CBCP if properly implemented will achieve the basic principles enshrined under the CRC and the ACRWC.

4.6 Challenges for the Effective Implementations of CBCP in Addis Ababa

According to Messele (2011:17), the CBCP lacked structural competence, was inadequately equipped, and lacked qualified and adequate numbers of staffs. Most of the staffs were community volunteers and their roles were not standardized or formalized. The offices of the CBCP are located in Kebele²¹ compound and are not well suited for carrying out the program activities. Furthermore the Kebele administration requests the center to vacate its premises for certain periods of time whenever it needs the hall for another event (ibid).

4.6.1 Inadequate infrastructure and resource

Some of the interviewed children who were served by the CBCC pointed out absence of sport field, absence of sufficient books in the library and lack of video games as some of the deficiencies of the centers. The other one is the center is too narrow and it needs upgrading. One of the child interviewees stated that the current situations of the CBCC is not child friendly:

²¹ The smallest administrative units in Addis Ababa.

Since the CBCC is located in the compound of Kebele we are always disturbed by the sound of others who come to get service from the Kebele administration. I recommend the concerned party to solve this problem (a 15 year old Child in Arada sub-city CBCC).

There is no infrastructure specifically set-up and dedicated to the activities of community based correction. Currently, public and local government holdings (such as halls, and play grounds) are being used for the activities. In other words, CBCCs operate in public facilities which are not specifically established for correction purposes.

The inadequacy of the facilities and resources was on the top of the list of problems identified by the children approached during the research, especially among those who are currently undergoing the correction process. This was also confirmed by the key informants²² who recommended to create more indoor and outdoor facilities that would enhance the child friendliness of the centers as well as better treatment of the children who come to the centers. Filling the critical gaps in the existing facilities and resources of the CBCCs and establishing new infrastructures specifically built and dedicated to the purpose of rehabilitate young offenders is important too.

According to Mr.Zebenay Atenaf, Senior Social Worker at Akaki Kaliti sub-city CBCC ²³, the attempt to expand different centers in other sub-cities became a difficult task due to the absence of commitment on the part of the Kebele administration. He further suggested that the Kebele administration has gone even to the extent of taking away the renovated halls for other purposes.

²² Interview with the Mr. Leulsilasie Liben, Judge at the Juvenile bench of Addis Ababa, August 11/2015.

²³ Interview held on August 20/2015.

Lack of CBCCs in every sub-cities of Addis Ababa is another challenge. The geographical coverage of the CBCP is limited to three sub-cities of Addis Ababa (Akaki, Arada and Kolfe). These three CBCCs are found in different parts of Addis Ababa on average 21 km away from each other. The distance of the CBCCs was mentioned by some key informants as a big problems for sending CICL to the centers²⁴.

4.6.2 Failure of the Government Bodies to Engage in the CBCP

The CBCP was first initiated by the Forum on Sustainable Child Empowerment (FSCE) and has been implemented in collaboration with the Addis Ababa Police Commission, with technical and financial support from Save the Children Sweden. FSCE, which was established at the end of 1989, is among the pioneering and prominent local NGO's working in the area of community based correction. It is the FSCE who is primarily handling the cases of CICL in particular the diversion program i.e. the CBCP.

The interviewees approached for this research disclosed that the government is not sufficiently participating in the implementation of the program. Tsion Tefera, who is Head of Child Protection at Save the Children-Ethiopia, stated that:

The government appreciates the program and values the establishment of the program and wants to scale up. However, when we come to the practice it is too different. I personally appreciate the involvement of the Child Justice Project Office of the Federal Supreme Court in referring CICL to the CBCP. But, due to lack of cooperation by different stake holders including the government, the current practice of CBCP in Addis Ababa is almost none.

²⁴ For example this came up in the interview with Mr. Leulsilasie Liben, Judge at the Juvenile Court of Addis Ababa, August 11/2015.

As noted above, except FSCE, other parties are hardly involved in the implementation of the program. The Child Justice Project Office refers very few CICL. The majority of the key informants who were contacted for this research disclosed that the concerned government organs like the Ministry of Labor and Social Affairs, the Ministry of Justice, and the Ministry of Women, Children and Youth Affairs are not giving due attention to the establishment and implementation of the CBCP in Addis Ababa.

There have been no effort to really engage with the diversion program by the government except the enactment of the criminal justice policy in 2011. The role of the Ministry of Labor and Social Affairs, which previously had the mandate for children's affairs, remained nil (Messele R, 2011:17). The interview with Mr. Leulsilassie Liben , Juvenile Court Judge at Addis Ababa, disclosed that the newly mandated Ministry of Women, Children and Youth Affairs is not actively involved either.

4.6.3 The New Ethiopian Civil Society Law

The new Ethiopian Civil Society Law, Proclamation No.621/2009, which was enacted in 2009, restricts activities on child rights solely based on their sources of funding (Abdi, A. G. 2012:145). Any organization who works on child rights are prohibited from participating in advocacy work due to source of funding²⁵ in violation of the best interests of the child (Mulat, Y.et al 2009). According to Hailegabriel²⁶ the Civil Society Law absolutely restricts CSOs from engaging "in sensitive areas such as

²⁵ Article 2(2) of Proclamation no 621/2009 states that "Ethiopian Charities" or "Ethiopian Societies" are deemed as Ethiopian Charities or Ethiopian Societies if they use not more than ten percent of their funds which is received from foreign sources".

²⁶Hailegabriel D. 'Restrictions on Foreign Funding of Civil Society', available at <http://chilot.files.wordpress.com/2011/08/restrictions-on-foreign-funding-of-civilsociety.pdf>. accessed on October 4/2015.

human rights, gender equality, children's rights, the rights of the disabled, and the efficiency of the justice sector".

The restriction on foreign funding has made NGO's to refrain from the advocacy works including child rights since majority of them are dependent up on the donor finance. FSCE is one of the victim of this law which is prohibited to work on child rights advocacy due to lack of resource. Research participants mentioned that the proclamation is against the establishment of the CBCP in Addis Ababa. According to Mr. Endale Demissie, Senior Social worker at the FSCE, NGO's become weak as a result of the CSO laws. Existing laws or policies or any decision/action should consider whether it affects the best interests of the child enshrined under article 36(2) of the FDRE constitution (Alemu and Bimerta 2012).

Miss Tsion Tefera, Head of Child Protection at Save the Children-Ethiopia, revealed that since the CBCP is almost entirely implemented by FSCE and Save the Children, without any budget from the government, the sustainability of the program cannot be ensured. It may in fact phase out because of the impact of the new Civil Society Organization legislation (CSO) on the work of FSCE.

4.6.4 Positive Perception about the CBCP but Lack of coordination

Stakeholders in the criminal justice system of Addis Ababa, who were interviewed, supports the introduction of CBCP. According to the respondents, most of the inmates are minor offenders and putting them in prison is inflicting more harm to the damage already done. By keeping these minor offenders in prison they will come in contact with hardened offenders. According to Commander Atsde Wordofa, Head of Addis Ababa Police Commission Child and Women Investigation and Protection Coordinate Office, this is like breeding new hardened criminals and a call for recidivism:

I remember a child who had been to the remand home for several days. After he finished his correction from the remand home, I found him in a place called “Bole” and he became a well know thief around that place. Had this child had a chance to be in the CBCCs, I am sure he would have been rehabilitated and reintegrated in to the society and becomes a responsible citizen.

According to the Mr. Endale Demisse, Senior Social worker at the FSCE, Addis Ababa, children in the CBCCs have been receiving counseling services, entertainment services, educational support and skill training such as music and computer operation. The recreational services, skill training and counseling and guidance services serve the best interests of the children. However, his ideas are not shared by the concerned stakeholders from the government side. Mr. Leulesilassie Liben, Juvenile Court Judge at Addis Ababa said that:

I can say that we are hardly referring CICL to CBCCs due to the lack of focus by the FSCE who is primarily running CBCCs in Addis Ababa. It is not well organized and they are focusing their attention to other works. I wonder whether the CICL are getting the necessary rehabilitation services. The CBCP is an important aspect of juvenile justice. The program has to be child-friendly and suitable both in time and area of location. If there is a sufficient program service, we will send CICL to the centers.

The low number of CICL referred to the CBCCs by the court, the new school program which clashes with the working hours of the CBCCs, the geographical location of the centers which is found to be too far away from the place where CICL are living are said to be the pitfalls of the program due to lack of coordination among the different stakeholders according to some of the interviewed key informants.

Chapter Five: Conclusions

International human rights instruments, particularly the CRC and ACRWC, obliges states to create a separate juvenile justice system that primarily focuses on rehabilitation and reintegration of CICL into their society. As a state party to both instruments, Ethiopia is under the obligation to undertake appropriate legislative, administrative and other steps necessary for the implementation of the rights of this group of people. As Sloth-Nielsen and Gallinetti (2004) clearly noted, States are obliged by their commitment to the CRC to ensure that legislative and other necessary measures are taken to protect the rights and interests of CICL including the use of diversion.

CBCP as form of diversion uses a non-custodial approach which emphasize on developing a non-formal system of care, rehabilitation and reintegration for CICL between 9-15 years and those who are first time and petty offenders (Save the Children 2005a:9). It is a formal removing or suspending of criminal proceedings against criminals who have violated the criminal law, in favor of processing them through non-criminal disposition or means.

Institutional measures remains a common form of punishment for juvenile offenders in most of the cities in Ethiopia. The enactment of the criminal justice policy which includes diversion could be seen as a landmark event to explore the potential of diversion in realizing rights of CICL. However, except in Addis Ababa and a few other regional cities in the country (like Adama, Dire Dawa, Bahir Dar and Dessie) there is no CBCP in Ethiopia. The 1995 FDRE Constitution enshrines the promotion and protection of children's rights. However, national laws protecting the rights of CICL, and in particular alternatives to prosecution and incarceration are limited. In other words, although Ethiopia is a party to both the CRC and ARWC which

encourages, there is a lack of laws and practices that operationalize diversion measures in Ethiopia.

This research paper has reviewed the existing limited practice of the CBCP in Addis Ababa from a child rights-based perspective. The experiences of the CBCCs were examined as regards child participation, the best interests of the child, survival and development of the child and non-discrimination. The research revealed that the problem of limited governmental engagement with the practice of CBCP in Addis Ababa is a major factor in the lack of achievements so far.

The experience of the CBCCs showed that the existing facilities are not child friendly and that insufficient resources and attention have been made available for the development of CBCCs in Addis Ababa. Beyond the FSCE, there is no commitment and support from the government (or other civil society organizations for that matter). FSCE is currently faced with legal as well as financial constraints in running the CBCP in Addis Ababa. This situation has arisen even though juvenile justice is the primary responsibilities of the government. Even the Federal Supreme Court Child Justice Project Office and Addis Ababa Police Commission, who are assisting the FSCE in the implementation of the CBCP, are not really engaged in shaping up a CRBA to diversion in Addis Ababa.

The research revealed that the principle of non-discrimination, which is one of the cardinal principles of a CRBA to juvenile justice, is not recognized since street children are denied their right to diversion into the CBCP because of the fact they do not have parents to monitor their participation in the diversion program. Besides this, the limited geographical coverage of the program has excluded many CICL from the CBCP since it is limited to three out of the ten sub-cities in Addis Ababa.

The experiences of the CBCCs in Addis Ababa confirmed that CICL in the CBCP are highly encouraged to participate in the decision-making that affects them. Research participants disclosed that they actively participated in different meetings

and life-skill trainings and expressed their views freely regarding the appropriateness of the CBCP. However, some of them disclosed that their ideas and suggestions about the program was not given due weight and attention. Children are also represented in the multi stakeholder child protection council which is responsible for planning, follow up, monitoring and directing of the child protection program in the community (Save the Children 2012a:5).

The CBCP saved the CICL from stigma and labeling. The counseling and guidance which is provided for the CICL in the CBCCs was found to be key in protecting their best interests by way of avoiding harsh physical punishments and deprivation of their liberty and instead focusing on the root causes of the children's engagement with criminal acts. These root causes may include the absence of role models, lack of parental supervision and economic problems. Research participants disclosed that the service provided by the CBCCs is crucial in avoiding stigmatization, humiliation and family disintegration. The facilities of the CBCCs, though limited, created a child friendly atmosphere for CICL which is also key for their right to life and survival. The research revealed that the recreational services, skill training and counseling and guidance services helps the CICL to achieve their best interests.

In relation to the challenges of the CBCP in Addis Ababa, there is no infrastructures specifically set-up and dedicated to the activities of the CBCP. This was confirmed by both the children and key informants interviewed. The research participants disclosed that establishing new infrastructures specifically dedicated for the purpose of rehabilitating young offenders is necessary. The lack of commitment of local administrators was also mentioned as one of the challenges encountered by the staff of the FSCE. The Ethiopian Civil Society Law also restricts the activities of the CBCP since it prohibits the FSCE from participating in child rights and advocacy work.

The respective roles of state agencies such as the Addis Ababa Police Commission and the Child Justice Project Office are not institutionalized. These agencies failed to assume primary responsibility and ownership over the CBCP activities. The role of volunteers and community elders was found to be necessary to strengthen the existing CBCP in Addis Ababa.

In general, the experience of the CBCCs confirms that there is a potential for realizing a CRBA to diversion in Addis Ababa by applying international child rights instruments such as the CRC. The limited good practice and lessons learned by the CBCP in Addis Ababa confirm that a CRBA to diversion has great potential but is still far from being realized.

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Appendix I: Interview Guidelines

1.1 Questionnaire for semi structured interviews with children in conflict with the law

Interview Guideline

1. How old are you? Tell me about your birthplace? How about your religion?
2. Since when did you join the Community Based Correction Center (CBCC)? How did you find the services?
3. Did you give your consent to be referred to the CBCC? How did the process gone?
4. How do you participate in the CBCC? Do you participate in the decision making regarding the service given in the center? If yes, how?
5. How do the officials in CBCC treat you? Do you think that every child gets equal treatment from the CBCC? Is there any priority given to a certain group of people?
6. Do you think the CBCC is serving your interests? How are your interests considered before the implementation of the program?
7. What do you think is the contribution of the services given by the CBCC in your future development as a child?
8. What changes do you think need to come in Community Based Correction Program?
9. Do you have other comments you would like to share?

1.2 Questionnaire for Semi structured interviews with the key informants

Name: (Optional)

Date / 2015

To which Sector do you belong? (Judge/Police/NGO/ Civil Society/other)

Organization.....

1. What are the main challenges in the delivery of the CBCP services?
 - Financial/Resources
 - Legal gap
 - Coordination with different actors
 - Attitudinal problems etc.
2. How did you come across the challenges? What do you suggest for the future to solve the challenges permanently?
3. How is the state involved in the CBCP? Which particular organ of the state is directly involved and in what manner? Is this helpful? How?
4. How are non-state actors involved in the CBCP?
 - Community based organizations
 - Civil society
 - Community and the parents of children in conflict with the law

5. How is the view of children in conflict with the law considered in the diversion process?
6. Do you think that the CBCP has brought any advantage to children in conflict with the law in Addis Ababa? If yes, how?
7. Has your organization played any role in the promotion of the CBCP in Addis Ababa?
8. How is the CBCP helping children in conflict with the law in protecting their rights and interests? Do you think the CBCP is in line with the general principles of the CRC?
9. What are your suggestions and recommendations for effective implementation of the CBCP in Addis Ababa?
10. Do you have other comments you would like to share?

Thank You for your response.

Appendix II: SAMPLE TREATMENT PLAN (Source: FSCE 2008:47-48)

Name of the community worker _____

Name of parent/guardian _____

Address _____ Sub city, _____ kebele _____ House No.

Tel. _____

Name of the Child _____

Age _____

Sex _____

Religion (of family) _____

Address _____ Sub city, _____ kebele _____ House No.

Education; Not yet Dropped out Attending school

Type of the offence _____

Major findings of the assessment on factors leading to the commission of the offence

Major findings of the assessment on the character of the child _____

Major findings of the assessment on the family relation _____

Targeted behavior of the child to be under treatment _____

Recommended specific programs to be provided for the child to address the targeted behavior

(Please specify for how long each program should be provided or attended)

Recommended general programs or services to be provided for the child

(Please specify for how long each program should be provided or attended)

Recommended duration of the treatment _____

Name and signature of the community worker _____

Appendix III: Background of Interviewed CICL

No.	Name of Children	Sex	Age	Place of origin	Educational level	Stay in the CBCC	Religion
1	Kaleb Ermias	M	15	Addis Ababa Arada sub-city	Grade 8	9 months in Arada CBCC	Ortodox
2	Abebaw Melaku	M	15	Addis Ababa Arada sub-city	Grade 9	6 months in Arada CBCC	Ortodox
3	Mesert Manaye	F	15	Addis Ababa Arada sub-city	Grade 8	4 months in Arada CBCC	Ortodox
4	Abubeker Kedir	M	15	Addis Ababa Arada sub-city	Grade 8	6 months in Arada CBCC	Ortodox
5	Michael Gizaw	M	15	Addis Ababa Kolfe Keraniyo sub-city	Grade 7	9 months in Arada CBCC	Ortodox
6	Samson Anteneh	M	12	Addis Ababa Kolfe Keraniyo sub-city	Grade 6	4 months in Arada CBCC	Ortodox
7	Abebe Alemayehu	M	13	Addis Ababa Kolfe Keraniyo sub-city	Grade 7	6 months in Arada CBCC	Ortodox
8	Mubarek Said	M	14	Addis Ababa Kolfe Keraniyo sub-city	Grade 6	3 months in Kolfe Keranio CBCC	Muslim
9	Abera Waleling	M	13	Addis Ababa Kolfe Keraniyo	Grade 5	4 months in Kolfe Keraniyo	Ortodox

				sub-city		CBCC	
10	Daniel Haftom	M	14	Addis Ababa Kolfe Keraniyo sub-city	Grade 6	6 months in Kolfe Keraniyo CBCC	Ortodox
11	Dawit Dangachew	M	11	Addis Ababa Kolfe Keraniyo	Grade 4	6 months in Kolfe Keraniyo CBCC	Ortodox
12	Yared Fikadu	M	14	Addis Ababa Akaki Kaliti sub- city	Grade 7	6 months in Akaki Kaliti CBCC	Ortodox
13	Amanuel Asmamaw	M	13	Addis Ababa Akaki Kaliti sub- city	Grade 6	6 months in Akaki Kaliti CBCC	Ortodox
14	Sofiya Muhe	F	15	Addis Ababa Akaki Kaliti sub- city	Grade 7	9 months in Akaki Kaliti CBCC	Muslim
15	Mohammed Temam	M	14	Addis Ababa Akaki Kaliti sub- city	Grade 7	4 months in Akaki Kaliti CBCC	Muslim

Note: The name of the research participants mentioned above is not their real name for the purpose of confidentiality. The researcher has changed their name in to a fictitious name.

Appendix IV: List of the Key Informants

S.N	Name	Position	Date Of Interview
1	Mr. Leulesilassie Liben	Juvenile Court Judge at Addis Ababa	August 11/2015
2	Mr. Endale Demisse	Senior Social Worker at FSCE	July 29/2015
3	Mr. Zebenay Atenaf	Senior Social Worker at FSCE	August 20/2015
4	Miss Wosenyelesh Admasu	Head of Women, Children and Youth Affairs Coordinating Office at the Ministry of Justice	August 27/2015
5	Commander Atsede Hordofa	Head of Addis Ababa Police Commission Child and Women Investigation and Protection Coordinate Office	July 31/2015
6	Miss Tsion Tefera	Head of Child Protection at Save the Children-Ethiopia	August 31/2015
7	Miss Fasika Hailu	Children's Legal Protection Center Coordinator at the Child Justice Project Office Addis Ababa	August 13/2015
8	Mr. Andualem Tarkeng	Head of Addis Ababa Rehabilitation and Remand Institute for Juvenile Delinquents	July 25/2015



Forum On Sustainable Child Empowerment Addis Ababa Area Program Office
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Ref no FSCG/AA/419/15
Date 19/09/2018

To whom it may concern

Forum on Sustainable Child Empowerment (FSCE) is an indigenous non-governmental ,non –profit child focused organization that works with a vision to see the wellbeing and protection needs of children fulfilled and a mission statement of striving for sustainable protection, growth and development of vulnerable children by designing different preventive and protective program with suitable and appropriate strategies .

This letter is to confirm that Mr. Kumineger Girma Geeso has collected data from our community based correction /Multi-purpose child friendly centers namely Kaliti,Arada and Kolefe center.

With best regards,


Meseret Bayou

Program Manger



Vision :- To see the wellbeing and protection needs of children fulfilled

Mission Striving for Sustainable Protection and development of Vulnerable children