THE CHALLENGES OF EQUAL ACCESS TO JUSTICE SYSTEM AND THE PROTECTION OF JUVENILES DELINQUENT IN SOUTHERN SUDAN

A CASE STUDY OF JUBA, THE CAPITAL OF SOUTHERN SUDAN

BY

OKWERA MAURICE FORTELO OKOT

LLB/16483/71/DF

A DISSERTATION SUBMITTED
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF
KAMPALA INTERNATIONAL UNIVERSITY

MAY-2011
DECLARATION

I declare that this thesis is the work of OKWERA MAURICE FORTELO alone, except where due acknowledgment is made in the text. It does not include materials for which any other University degree or diploma has been awarded.

Signature: [Signature]

Date: 28/05/2011
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Signature: ______________________________

Date: 28/05/2011
APPROVAL

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University

Name of Supervisor: Kusanye Mary

Signature: 

Date: 28/7/2011
DEDICATION

I therefore, dedicate this dissertation in memory of my late Mother, Pierina Achola and my Dad Fortelo Olung and my beloved one Caroline.
ACKNOWLEDGMENT

Indeed this is a long awaited moment after a lot of determination and perseverance as we strive pursue our educational endeavour. The time has come that one give thank to the giver of life for the protection and wisdom, and also to acknowledge the support and encouragement of various personalities who have assisted me financially and morally in this very struggle. First and foremost I am sincerely indebted with my supervisor MS. Mary Kisakye for her patience, tireless supervisions and excellent guidance, her major role resulted into the success of this very dissertation. Further, I would take this opportunity to thank my lecturers for instilling in me the knowledge and finally complete my studies.

Finally, I take this highest moment to thank some of the individuals for their support and encouragement as I endeavor to complete my studies and among them are Hon. Majok Mading Majok, Lina Lino Jada, Tobias Atede and Mr. William. And also many thanks goes to my family members, relatives and friends for their financial and moral support.

May the blessing of God the Almighty Father be upon each and every individual who have assisted me in one way or another.
ABSTRACT

Despite the continuity of the extensive international and regional theoretical literature written over the years shaping commendable treatments of juveniles in a number states, still juvenile justice system in Southern Sudan has not only been battling the violations of human rights as a result of the civil war but juvenile justice system faced the inadequacies of legal framework that was brutally uprooted.

Given the 2005 Comprehensive Peace Agreement signed in Kenya has ushered in a glimpse of relief to reconstruct and fill the legislative vacuum in general and juvenile related legislations in particular. Thus, the 2005 Interim Constitution of Southern Sudan has the child related provisions while the first ever Child Act, 2008 is premised exclusively on juvenile justice system. Therefore, the difficult task remaining is to be observed the implementation of these legislations that require concerted efforts for the re-orientation of the public attitudes in Southern Sudan towards realization, promotion and protection of the human and legal rights of the juveniles.

The result of this research will be useful in its attempt to analyze the relevant legislations and the practices of the institutions charged with the administration of juvenile justice system and hence giving insights as to what needs to be done to improve the juvenile justice system in Southern Sudan. The analysis in this research embraces different fields that have crucial bearings in the juvenile justice system including customary practices, the recent National Child Legislations and the International and Regional Instruments that Southern Sudan is a party to by virtue of ratification by the Republic of the Sudan.

In regards to this research under chapter one of this study are mainly topics that include: the Background of the Study which considered the introductory part of the research paper, the literature review and the Research Methodology. Chapter Two of this research deals with an overall
introduction to the juvenile justice system and explores definitions of relevant terms, principles and concepts in juvenile justice system. The explains why this research will be useful not only to the stakeholders in the administration of juvenile justice system but also to the general society affected not only by the juvenile delinquency but also by the treatment of juvenile offenders. Chapter Three appraises the Legislations and the Practices in light of the International and Regional Instruments on the rights and treatment of juvenile offenders; Chapter Three discusses different stakeholders and their roles, procedures and powers in the administration of Juvenile Justice System in Southern Sudan. These stakeholders include the police, the courts, the prisons services, social workers as well as the parents and the wider society. Chapter Four is about finding and the analyses the Challenges facing access to justice system and the weaknesses in the administration of the Juvenile Justice System. Under Chapter Five, a general Conclusion is made in light of what has or has not been done considering the fact that Southern Sudan after the long protracted civil war has now embarked on acquiring the resources that it would need for the reconstructions and development of its institutional and infrastructural facilities that are necessary for justice system in general and juvenile justice in particular. It ends with the recommendations that are believed to be appropriate for the desired standard juvenile justice system
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<td>GOSS:</td>
<td>Government of Southern Sudan</td>
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<td>GoS:</td>
<td>Government of Sudan</td>
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<td>ICC:</td>
<td>Independent Child Commission</td>
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<td>CA:</td>
<td>Child Act</td>
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<td>CPA:</td>
<td>Comprehensive Peace Agreement</td>
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<td>CEG:</td>
<td>Centre Equatoria Government</td>
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<td>JJC:</td>
<td>Juvenile Justice Committee</td>
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<td>ICSS:</td>
<td>Interim Constitution of Southern Sudan</td>
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<td>SPLM:</td>
<td>Sudan People Liberation Movement</td>
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<tr>
<td>SPLA:</td>
<td>Sudan People Liberation Army</td>
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<td>SSPS:</td>
<td>Southern Sudan Police Service</td>
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<td>SHRC:</td>
<td>Southern Sudan Human Rights Commission</td>
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<tr>
<td>SSPS:</td>
<td>Southern Sudan Police Services</td>
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<tr>
<td>JSC:</td>
<td>Judicial Service Council</td>
</tr>
<tr>
<td>JOSS:</td>
<td>Judiciary of Southern Sudan</td>
</tr>
<tr>
<td>MoLACD:</td>
<td>Ministry of Legal Affairs and Constitutional Development</td>
</tr>
<tr>
<td>MGCSWRA:</td>
<td>Ministry of Gender, Child and Social Welfare</td>
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<tr>
<td>SSLA:</td>
<td>Southern Sudan Legislative Assembly</td>
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### LIST OF INTERNATIONAL AND REGIONAL ACRONYMS AND INSTRUMENTS:

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<td>(UN)</td>
<td>United Nations 1945</td>
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<td>(UNMIS)</td>
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<td>(UNICEF)</td>
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Riyadh Convention on Judicial Cooperation between States of Arab League, 1983

United Nations Rules on Juveniles Deprived of their Liberty, 1990

UN Standard Minimum Rules for the Administration of Juvenile Justice, Beijing Rules 1985

Optional Protocol to the Convention on the Rights of the Child in the involvement of Children in Armed Conflict, 2000
LAW REPORTS

SLR: Sudan Law Reports
SLJR: Sudan Law Journal Report
E.A: East Africa
ULR: Uganda Law Report
K.B: King Bench
Q.B: Queen Bench
Q.B.D: Queen Bench Division
Ch. D: Chancery Division
KLR: Kenyan Law Report
LIST OF NATIONAL STATUTES

The Interim Constitution of Southern Sudan, 2005

The Evidence Act 2006

The Child Act 2008

The Penal Code Act 2008

The Criminal Procedure Act, 2008


The Judiciary Act 2008

The SPLA Act 2009

The Police Act 2009
CASES

T v. UK (2000) 30 EHRR 121

The King vs. William Groombride (1983) 173 ALLER 256


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In F. v. Padwick ( 1959) Crim. L.R. 439

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C v DPP (1995) 2 ALLER 43

R v Whitty (1993) 66 A Crim R 462


Darren Coulburn


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Sudan Government vs. Ragab Koko (1969) 178

Sudan Government vs. Gebra Hamad (1952) ACCP 10152, DP Maj. Court 41C1852, (Unreported)

The Sudan Government v. Mohamed Ahmed Abu Kahr (1967) SLJR 103

Turon V. R [1967] EA 789

R v. Chelsea justice ex parte DPP (1963) 3 ALLER 657
R. v. Rider (1954) 1 ALLER 5

S. (an infant) v. Manchester City & Recorder (1971) AC 481 (HL) (11969) 3 ALLER 1230

R v. Windle (1952) 2 QB 826

Re Gault 387 U.S. 1 (1962)

M.H. Hosket v. State of Maharashtra (1978) 3 Sec 544


DPP vs. Majewski (1977) AC 443


The people Vs Asanga Asongwe CFIBA/1128C/01-02
CHAPTER I

1.0 Introduction

1.1 The Background of the Study

Southern Sudan is a recently created Country out of the largest Country in Africa, Sudan after overwhelming voting in favour of secession in the referendum exercise in January, 9th 2011 which ended one of the most known and longest Civil War in Africa with the signing of the Comprehensive Peace Agreement (CPA) between the Sudan Peoples Liberation Movement/Army (SPLM/SPLA), and the National Congress Party in 2005. This Civil war was since 1955, meaning the country was at war for about 50 years and mainly concentrating in Southern part of the country.

The decades of civil war in Southern Sudan have not only resulted into the destruction of all forms of basic services and the government institutions, but also have negatively affected the capacity of families and communities to take care and protect Children. As a result of war and poverty and due to the limited basic services, thousands of children are still victims of all sorts of abuses, exploitation and violence. It is evident that, many of these Children are getting involved in issues concerning law either by being victims of violence, including sexual violence or as perpetrators of activities that are punishable by law. This is true from the fact that everything was centered in the central part of the government based in Khartoum. Therefore, these particular issues concern children grim due to the lack or inadequate Juvenile justice legislative and administrative frameworks and the weak capacity of the law enforcing agencies to protect and respect the rights of the children in conflict with the law.

The marginalization in Sudan, that is, Southern Sudan, have hardly left the South with anything which include, facilities in regard to justice system, adequate training in the legal fraternity /
practitioners and the law enforcement agencies/institutions in Southern Sudan. This is because; the entire administration system of Justice and Judiciary System was based in Khartoum. And as per our case of Study of Juba, the Capital city of South Sudan could not be an exceptional case in regards to what Southern Sudan had gone through before the achievement of the Comprehensive Peace Agreement (CPA) in 2005.

The whole Southern Sudan in the case has to start from scratch to establish a justice system in place, which finally requires that, all aspects needed in support of justice system be established. One of the crucial important issues of justice system in Southern Sudan is the very topic of this study “The Challenges of Equal Access to Justice System and the Protection of Juveniles delinquent in Southern Sudan” A case study of Juba, the Capital city of South Sudan. Juba is also the capital of the state of Central Equatoria. Juba is one of the fastest-growing cities in the world established in 1922; the indigenous tribe of Juba is the Bari, and a place of remarkable history. The British hopes to join the southern part of Sudan with Uganda which were dashed in 1947 by an agreement in Juba (known as the Juba Conference) to unify northern and southern Sudan. In 2005, Juba became the interim seat and the capital of the semi-autonomous Government of Southern Sudan (GoSS). The city is a river port and the southern terminus of traffic along the Nile and with the highways connecting it to Kenya, Uganda and the Democratic Republic of Congo.

1.2 Definition of key terms

Justice system: The Oxford Dictionary of Law defined Justice to mean ‘a moral ideal that the law seeks to uphold in the protection of rights and punishment of wrongs’. ¹ Therefore, the justice system meant in this study refers to system of fair treatment of people.

¹ Oxford Dictionary of Law
Juvenile: The definition is provided as to mean ‘a person who has not attained the age of 18. Juveniles are either children, who have not attained the age of 12, or young persons, who have attained the age of 12 but are not yet 18’. Rule 2.2 (a) provides that, “For the purposes of these rules ... A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”.

Juvenile Delinquent: In this case Juvenile Delinquent bears the same meaning as Juvenile Offender. Rule 2.2 (c) provides that, “A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence”.

Article 1 of the Convention it provides for the meaning of a child and it states: “For the purposes of the present convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. This is in conjunction with Section 5 of the Interpretation of the Child Act, 2008 of Southern Sudan.

Right: This is defined as to mean ‘any other interest or privilege recognized and protected by law’. It is further defined as “an interest recognized and protected by the law, respect for which is a duty and disregard of which is a wrong”.

Liberty is defined as freedom to live as you choose without too many restrictions from government or authority.

3 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) of November 1985
4 Ibid
1.3 Problem Statement

Southern Sudan since its independent in 1956 continues to be in a constant and devastating conflict in which lives, property as well as abuses of justice system have occurred. The conflict also has gradually worn away most traditional social systems with the greatest impact on the justice system and the status of juveniles (children). The conflicts in Southern Sudan continue to be the most cause of denial of justice towards juveniles more especially within justice systems in Southern Sudan. Therefore, the need for this research.

1.4 Objectives of the Study

Overall Objectives

The overall objective of this study is to establish how the laws and the justice systems in Southern Sudan guarantee protection on juveniles’ right to justice system and to recommend accurate procedure to ensure the protection of juveniles in administration of juvenile justice in Southern Sudan.

Specific Objectives of the Study

To establish whether Juveniles are protected by the existing laws in Southern Sudan with regards to the administration of justice.

To examine juvenile justice system and the protection of juveniles Delinquence in Southern Sudan.

To identify challenges of juvenile justice system in Southern Sudan.

8 OXFORD ADVANCED LEARNER'S DICTIONARY, 7th Edition.
1.5 Research Questions

The methodology that shall be explored in this research will be designed in such a way to enable desired readers to capture the full range of mechanisms and the actual practice of justice systems as experienced by juveniles' delinquent. The analysis will be guided by the following core questions:

- Are the juveniles protected under the law and the justice systems institutions in Southern Sudan?
- Are juveniles' rights respected in Southern Sudan?
- What are the principles and procedures that govern juvenile justice systems in Southern Sudan?

1.6 Scope of the Study

This research paper shall focus on all the laws of Southern Sudan which shall include Southern Interim Constitution of 2005, The Child Act of 2010, The Penal Code Act of 2003 and the Sudan Criminal Procedure 1991. The study shall also look at and present the findings and analysis for the six years after the formation of the Government of Southern Sudan with her structures and powers on the practices of juveniles' protection and the juvenile justice systems in Southern Sudan. This shall therefore, cover the period between 2005 to 2011.

This period is of importance in this study because it was within this particular moment that the conflict in South has ended and given some stability in the semi autonomous region of Southern Sudan in terms of self governance including the establishment of institutions and mechanisms for the administration of justice.
Geographically, the coverage of the study shall be centered in Juba, the capital of Southern Sudan, which will become the independent state of South Sudan on 9 July 2011. It is also the capital of the state of Central Equatoria. Juba is one of the fastest-growing cities in the world. In 2005, Juba became the interim seat and the capital of the semi-autonomous Government of Southern Sudan (GoSS). Juba is chosen as study case because this is where the greatest of population of Southern Sudan lives and it helps in getting information because there are some existing systems of justice.

1.7 Significance of the Study

The significance of the study is to put forward the following below mentioned impact:

To bring about a reform of the legal regime in Southern Sudan more specifically on protection of juveniles’ delinquent.

To build juveniles’ rights sensitivity in various institutions and mechanisms established in Southern Sudan to ensure respect on this fundamental rights accrue to the juveniles’ delinquent.

To establish much more information to the existing one pertaining the juveniles’ delinquent justice systems in Southern Sudan.

To enable other researchers benefit from this study by making use of this work as their point of reference in their research projects in the future to come.
1.8 Literature Review

Introduction

Therefore in consideration of the study, there is hardly any literature in regards to this very study as well as policies put on the challenges on equal access to justice system and the protection of Juveniles' right to liberty in Southern Sudan. With regards to study not even little attention has been put on the subject despite the fact that, Sudan has adhered to the Juveniles' related issues both internationally and locally in her own legislations before, during and after the long civil war.

CAMILLO ODWA H. OYA (2008)*, in his book “CRIMINAL LAW AND PSYCHOLOGY” he raised concern of criminal responsibility. The writing has clearly put forward the concept of the age of a person who may or may not be held liable in criminal matters. Therefore, the contribution of CAMILLO ODWA in this field/area is base on the psychological aspect because he was explaining the immaturity age; the period through which the mind is in the course of development he called this 'Child under seven years of age' and quoted: if a child of that age drop a stone on a sleeping baby sister or brother, that child will not be charged of causing injury. His action does not constitute an offence because his intellect is not adequately formed. Therefore, in this age the child is immature to understand and foresee the consequence of his action.

According to Camillo Odwa a child that has reached the age of seven and above but below 18 years is held responsible for his criminal actions. He therefore, discussed on the punishment and care of a juvenile offender, that the punishment is not equivalent to that of an adult offender but consists of the application of measures which are preventive, educative and reformative.

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* Camillo Odwa H. Oya; CAMILLO LAW AND PSYCHOLOGY; Sudan currency Printing Press, Sudan, 2008
ERASTO MUZA (1975)\textsuperscript{10}, in his book discussed what Juvenile Delinquent is all about. He stated that, "a juvenile delinquent is a child between the statutory juvenile court age of seven and sixteen years who commits an act which when committed by persons beyond this statutory court age would be punishable as a crime, or as an act injurious to other individuals or the public, that is, the state or the government. According to the Erasto Muza, in the case of Juveniles their offences are not considered crimes and their treatment is not punitive as it is in the case of adults..."\textsuperscript{11}

He further considers the difference in the concept of juvenile delinquency, according to him the age limit of the children as to differ from one society or country to other. Therefore, he stated that, in Kenya children who commit offences of a delinquent nature, after necessary court procedures, the government admits them first to remand homes and later take them in correctional or approved schools. These institutions are there not to punish but to teach them to be useful citizens.

JOHN SPRACK (1997)\textsuperscript{12}, have put more insights in regards to the nature of criminal procedure in his book when the case involved juvenile delinquent. In according to him, a juvenile is normally tried by magistrates in a special form of magistrates' court, known as the youth court. He described the circumstances under which the trial of juveniles could take form.

That it is either obligatory or possible for him to be tried on indictment or in the adult magistrate court. In all other cases juvenile must stay in the youth court, even if the offence charged is one which, if he were an adult, either could or would have to be tried on indictment.

\textsuperscript{10} Erasto Muza, CRIME AND DELINQUENT IN KENYA, East Africa Literature Bureau, Dar Es Salaam, 1975
\textsuperscript{11} Ibid
\textsuperscript{12} John Sprack, EMMINS ON CRIMINAL PROCEDURE, Great Britain, Blackstone Press Limited 7th Edition, 1997
GORDON E. MISNER discussed the concept of correctional treatment and coercion. According to Gordon the objections to correctional treatment take two grounds that is, it is unethical because it is no evidence and it is ineffective in reducing the crimes. He states that, treatment of juvenile should take the following forms such as community psychology, primary and secondary prevention of juvenile offenders rather than correctional courts as a means of reduction of crimes in the society. This contributes to study of what method is proper to treat a juvenile in case their acts become a wrongful act prohibited by the law of the state.

ABEL ALIER in his book 'too many Agreements Dishonoured in Southern Sudan' give a lot of emphasis on why and how the question of justice systems in Southern Sudan is yet not appreciated, the situation narrated in this book tells us why and how Southern Sudan fails to be among those Countries that enjoy the protection of justice systems and the rule of law. In pages 25 to 38 Abel Alier described the history of wars fought in Sudan and more specifically in the Southern Sudan resulting to the destructions of all the infrastructures that could handle the administration of justice including the traditional systems.

JULIA SLOTH-NIELSEN (2007) in her report she focused on Children's rights in Africa and further discusses indicators of good practice in various areas, including the Africanization of child laws. In the Africanization of child laws section, for instance she cited examples of good practice from Ghana, Eritrea, Malawi, Uganda and South Africa.

13 Gordon E. Misner,
14 Abel Alier, TOO MANY AGREEMENTS DISHONOURED IN SOUTHERN SUDAN at pages 25-38
15 Justice Aleu, A STUDY OF CUSTOMARY LAW IN CONTEMPORARY SOUTHERN SUDAN, 2004
THOKO KAIME (2005)\footnote{16 Julia Sloth-Nielsen, REPORT ON CHILD FRIENDLY LAWS IN AFRICAN CONTEXT: GOOD AND PROMISING INDICATORS AND PRACTICES, 2007} wrote on the convention on the rights of the child and the cultural legitimacy of children’s rights in Africa. Some of the reflections include: discussions on the implementation in Africa of the convention on the Rights of the Child. The argument is that, the principles behind the convention can come into conflict with African cultural practices and that to resolve this, the reasons for the cultural practices must be understood, solutions must be found in consultation with communities that use these practices, and adequate social support must be given to those who choose to abandon the cultural practices.

Sewanyana L. a Ugandan writer states that “a comprehensive juvenile justice system should foster the well-being of the child offender and ensure that a proportionate reaction by the authorities to the nature and character of the offender as well as to the offence should be encouraged. This can only be guaranteed by ensuring that juvenile justice standards are established and upheld\footnote{17 Juvenile Justice system in Uganda, January- July 2009}.” Sewanyana’s work would be relevant to Southern Sudan since it is believed to have established its juvenile justice system that can only be applauded if the practices show that standard principles for protection of the juveniles’ rights are upheld.

The Declaration of the Rights of the Child, commonly known as the ‘Geneva Declaration’, provides that “men and women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed that the delinquent child must be reclaimed, regain and reestablished and to be given the means requisite for their normal development, both materially and spiritually”\footnote{18 John Kanyia, A Compilation of International and Regional and Uganda’s Legal and Human Rights Instruments}. 

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\footnote{16 Julia Sloth-Nielsen, REPORT ON CHILD FRIENDLY LAWS IN AFRICAN CONTEXT: GOOD AND PROMISING INDICATORS AND PRACTICES, 2007} \footnote{17 Juvenile Justice system in Uganda, January- July 2009} \footnote{18 John Kanyia, A Compilation of International and Regional and Uganda’s Legal and Human Rights Instruments} 
\end{flushleft}
The work which is also relevant for this research is a report of JJPL on Louisiana which stated that “locking children away in juvenile prisons steals a piece of humanity from all of us. That when we condone putting young people behind bars, violent institutions far from their homes and communities, we are complicit in the destruction of their childhood”\textsuperscript{19}.

This report is consistent since most of the juvenile offenders languish in prison in Southern Sudan as illustrated by Alphaxard K. Chabari that “it is the common practice of putting children in custody on behalf of their relatives”\textsuperscript{20} despite the fact that criminal act is a personal responsibility. Therefore, putting children in custody on behalf of their relatives is not only a violation of the provisions of the Child Act, but also defiance to the principles of criminal law in general.

Since this study looks at the challenges of equal access to justice system and the protection of juvenile delinquent in Southern Sudan, it considers such acts as violation of section 136 (3) of the Child Act, 2008 which provides that no child accused of infringing the law shall be removed from parental supervision, either partly or entirely, unless the circumstances of a case make it absolutely necessary. The foregoing work has a crucial bearing in the plight of juveniles under the fragmented legal system in Southern Sudan. It is indeed an abhorrent, degrading or inhuman treatment for the young person to be incarcerated in a flimsy detention without his/her parents being informed\textsuperscript{21}.

The United Nations Mission in Sudan (UNMIS) has also produced a report on the Juvenile Justice System in Southern Sudan and in its Biannual Report\textsuperscript{22}, two common themes run through the various categories of child rights violations. First, the police and other authorities appear to use

\textsuperscript{19} JJPL, 1998 Report

\textsuperscript{20} Alphaxard K. Chabari, Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan, November 2008

\textsuperscript{21} Ibid

\textsuperscript{22} UNMIS Report: Biannual Report on Juvenile Justice in Southern Sudan, November 2007
arrest and detention as a first response to reports of child offenders. This leads both to overly harsh treatment of children. Moreover, arrest and detention should be the last resort where children are concerned, not a reflexive first response as provided under section 150 (1) of the Child Act which provides that detention of a child in police custody, whether in a police cell, police vehicle, lock-up or any other place shall be used as a measure of last resort and for a period not exceeding twenty four hours.

Second, child protective laws that do exist are not always properly applied in Southern Sudan... corporal punishment, for instance, was illegally imposed in a number of cases23 in violation of Article 21 (1) (f) of IC:SS that clearly prohibits corporal punishment against children. This report is relevant since it shows how the practices in Juvenile justice system contradict the legislations in Southern Sudan.

Hirschi and Travis in their work ‘Causes and Delinquency’24 suggested that deserved punishments for juveniles should be scaled well below those applicable to adults for three reasons: (1) juveniles’ lesser culpability, (2) punishments’ greater bite when applied to adolescents, and (3) a principle of greater tolerance in the application of penal censure to juveniles. The juvenile justice system has evolved over the years based on the premise that juveniles are different from adults and juveniles who commit criminal acts generally should be treated differently from adults. Separate courts, detention facilities, rules, procedures, and laws were created for juveniles with intent to protect their welfare and rehabilitate them, while protecting public safety25. This is relevant because if these

23 Ibid
24 Hirschi, Travis, Causes and Delinquency, University of California, 1969
25 Ibid
suggestions are observed in Southern Sudan, the plights of juveniles under the hands of stakeholders are likely to improve.

According to case law report of *The King vs. William Groombride* 26 is a persuasive illustration. In that case, the prisoner was indicted of rape upon an infant under the age of ten. The defendant was under 14 years and was therefore not criminally responsible for rape. Court held that an infant under the age of 14 is unable to commit rape. Therefore, it could be borne in mind that adultery could not be committed by children of tender years for their incapacities to have carnal knowledge. It could also be an insolent contravention of Article 16 of the Interim Constitution of Southern Sudan (ICSS) which prohibits the detention or arrest of any person “except for specified reasons and in accordance with procedures described by law”.

Save the Children-Sweden reports on children in conflict with the law in Southern Sudan have no legal aid or official sources of psychological support. Their main source of support is the family" 27. Stating that, there are no special pre-trial remand homes and that in all states, the police put children (and adults) in prison as they wait to be produced in court" 28. Some are confined for many days and even months without any contact with outside world and without their relatives knowing. The report went on to say that many criminal suspects in Southern Sudan spend long periods in pre-trial detention- sometimes up to a week or more- and juvenile detections are not exceptions. A lack of resources, infrastructure, investigative efficiency, and trained legal professionals all contribute to this problem.

26 (1983) 173 ALLER 256

27 Alphazon K. Chabani, Adopting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan, November 2008

28 Ibid
According to the United Nations Mission in Sudan (UNMIS), the final deficit in Southern Sudan's juvenile justice system that deserves mention is the lack of trained personnel to attend to children's real psychological and emotional needs. Many of the difficulties noted could have been remedied by a skilled social worker. Social workers should be well placed to sensitively guide children through an unfamiliar, and often frightening legal environment. In addition, social workers can evaluate a child's family situation and the unique pressures that he or she may face. The report found that most of the crimes of which children are arrested and detained in Southern Sudan include adultery and that children are generally arrested for adultery when they are suspected of engaging in pre-marital sexual relations.

The commentary on the UN Standard Minimum Rules for the Administration of juvenile Justice is such a useful proclamation on which standard juvenile justice system must be molded for it provides "broad perspectives which refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the rules".

29 Ibid
30 Beijing Rules 1985
1.9 Research Methodology

1.9.1 Introduction

This particular chapter is mainly concerns the method and process that shall be employed in carrying out the research. It highlights the designs that shall be used during the study. The chapter further describes the methods by which data collection shall be considered to enable the study accurately obtained.

1.9.2 Research design

The design and methods for the field study component of this research shall comprise of several distinctive features that relate directly to its objectives of producing a robust empirical understanding of how justice system is administered on juvenile delinquent throughout Juba, the Capital of Southern Sudan. And this will include: A design to capture the full range of justice system mechanisms and institutions. This approach shall focus on particular types of institutions as the point of entry in order to capture a picture of the whole institutional geography and the practice of justice systems on juvenile delinquent in its entirety throughout Juba.

1.9.3 Area of study

As the study is concern, the area on which focus is Juba. Juba is the capital of Southern Sudan, which will become the independent state of South Sudan on 9 July 2011. It is also the capital of the state of Central Equatoria. Juba is one of the fastest-growing cities in the world.

Juba was established in 1922, by a small number of Greek traders and the indigenous tribe of Juba is the Bari. From 1899 to 1956, Juba was in the Anglo-Egyptian Sudan which was jointly administered by the United Kingdom and Egypt. British hopes to join the southern part of Sudan with Uganda were dashed in 1947 by an agreement in Juba, also known as the Juba Conference, to
unify northern and southern Sudan. In 1955, a mutiny of southern soldiers in Torit town sparked the First Sudanese Civil War, which did not end until 1972. During the Second Sudanese Civil War, Juba was a strategic location that was the focus of much fighting. In 2005, Juba became the interim seat and the capital of the semi-autonomous Government of Southern Sudan (GoSS). The city is a river port and the southern terminus of traffic along the Nile and with the highways connecting it to Kenya, Uganda and the Democratic Republic of Congo.

1.9.4 Data Collection Procedure

The data collection in this research shall be carried out by the use of both primary and secondary data collection methods. Concerning secondary data collection this shall include review of the available literature, published and the unpublished data. Hence, the primary data collection shall be done through unstructured interviews ‘one on one’ interviews with individuals such as the juvenile’s victims, the parents of the juvenile victims, the institutions concern of juveniles affairs. The importance of this unstructured interviews is that, it enable the researcher be flexible in terms of structure, contents, and questions. The method is selected on the basis of its effectiveness and convenience to the researcher since he/she has complete freedom to formulate questions as they come to mind around the issue being investigated.

The nature of the interviews is that, it shall be carried out at the homes of the respondents who are fluent in English, or Arabic or local (tribal) languages. The most important information to be obtained during the interviews shall be entirely in regards to the violation of juveniles’ liberty at the expense of juvenile Delinquent justice system and noting the respondents’ recommendations in respect to possible intervention for further redress and the law reform if any.
one could possibly meet and interview a number of respondents within the same day minimizing cost for traveling from place to place looking for the respondents which takes a lot of time.

**Refusal to open up by the respondents**

The behaviours may include the unwillingness to release information by some of the respondents. This shall be the role of the researcher to make sure that he/she gathers information from the respondents by assisting the respondents to understand the context of the study itself.
CHAPTER II

THE CONCEPT OF CRIMINAL AND JUVENILE JUSTICE SYSTEM

2.1 Introduction

This chapter is concerned with a broader area in which the concept of juvenile justice system can be comprehensive appreciated by the readers in the future. The most important aspect one can note is the definition of criminal justice system from which the understanding juvenile justice can then be easily. This chapter looks at the development of the concept of juvenile justice which at the end becomes a separate concept of justice system across the world today. To fully understand the concept, the chapter analyzed all the International and Regional Instruments in the related field of juvenile justice system of which Sudan is signatory by this virtue Southern Sudan become a party to the member states.

The Definition of Criminal Justice System

The general definition of criminal justice system is said to be the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, and sanctioning those who violate laws with criminal penalties and rehabilitations effect. Those accused of crime have protections against abuse of investigatory and prosecution powers. Under the United States, criminal justice policy has been guided by the 1969 president’s commission on law enforcement and Administration of justice. The commission defined the criminal justice system as the means for society to “enforce the standards of conduct necessary to protection individuals and the community”.

31 en.wiki.pedia.org/wiki/criminal justice system
Aims of Criminal Justice across the legal systems.

i. To reduce crime by bringing more offenses to justice, and to raise public confidence that the system is fair and will deliver for the law-abiding citizen.

ii. To balance the goals of crime control and prevention, and justice (equity, fairness, protection of individuals rights).

iii. To reduce crime and increase the security of the people.

The criminal justice system consist of three main parts, this includes:

i. The law enforcement that is, the police.

ii. The adjudication that is, the courts, and

iii. The corrections, this includes Jails, Prisons, Probation and parole.

Therefore, the most important thing to consider is that under criminal justice system, these distinct agencies operate together both under the rule of law as a principal means of maintaining the rule of law within society.

2.2 The Development of the Concept of Juvenile Justice System

The Juvenile justice system is said to be a network of agencies that deal with juveniles whose conduct has come in conflict with the law. These agencies include police, prosecutor, detention, court, probation, and the Department of Juvenile Corrections.

The Definition of Juvenile Justice is provided for under Rule 1.4. "Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive
framework of social justice for Juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society”\textsuperscript{32}.

Before looking further into the details as to what amounts to Juvenile Justice System it is important to define who a juvenile is? Rule 2.2 (a) provides that, “For the purposes of these rules ... A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”\textsuperscript{33}.

Another word is “a child”, under Article 1 of the Convention\textsuperscript{34} it provides for the meaning of a child and it states: “For the purposes of the present convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

The concept of Juvenile Justice System as any other concept developed as early as in 1800s. The introduction of this type of justice system has been established under American legal system. Before the establishment of the Juvenile Justice System, Courts and Judges usually treat juveniles as adults and, in many instances; juvenile offenders received the same punishment as adults. There was only one system of justice, and all offenders were processed through it without regard to age. Under Common Law doctrine the legal system the American Colonists brought from England, a juvenile age 7 or older could receive the same punishment as an adult. Juvenile were housed in prisons with adults and sometimes received the death penalty; however, evidence shows that the most severe punishments were rarely given to juveniles. The establishment of separate institutions to confine juvenile offenders separately from adults occurred in the early 1800s. In 1899, the first juvenile court was founded in Cook County; Illinois.

\textsuperscript{32} United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) of November 1985

\textsuperscript{33} Ibid

\textsuperscript{34} The Convention on the Rights of the Child, 1990
Therefore, the main reasons surrounding the concept of juvenile justice system as to why should there be separate system of justice for juvenile offenders. The reasons are:-

- The Treatment of juveniles in the adult system is that because juveniles are less mature than adults and have not developed the same level of intent as adults.

- Because of juvenile immaturity, juvenile are incapable of the same level of intent as adults, and more easily rehabilitated.

- Another reason is that, juvenile justice system was founded on the belief of “parens patriae” roughly translated into “state as parent”.

The most important elements under juvenile justice system can be summarized as follows: the immaturity of juvenile, intention of juvenile, the rehabilitation process and state as parent.

2.3 The International and Regional Legal concepts of juvenile Justice System

The understanding of juvenile justice system considering international and regional position on juvenile, strongly put all the members’ state to respect and adheres to implement the instruments provided thereunder. The discussion draws an insight from the concepts and principles which are recognized and emphasized in these international and regional instruments. These instruments are very important in the sense that if they are accepted and implemented, they would be of great effect in respect of juvenile justice not only to the individual juvenile offenders but also to the victims.

2.3.1 The International Instruments

Under the international concept, juvenile justice systems have effectively addressed the whole standards and systems of administration of juvenile justice as enshrined in a number of its instruments which includes the following, the United Nations Charter, the Convention on the

The most appropriate instruments dealing with the administration juvenile justice is the Beijing Rules of 1985. The instruments put down a number of considerations on procedure when dealing with juvenile offenders.

Under Rule 1.4 of the Beijing Rules it is stated that, juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for Juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

Rule 1.6 of the Beijing Rules is to the effect that juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Rule 11 of the same Rules provides for Diversion and it is to the effect that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. That the police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules. Rule 12 of Beijing Rules goes further for specialization within the police the rule stated that “in order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engage in the
prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Given as to detention before trial, rule 13 of the Beijing Rules, that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. That the danger to juveniles of 'criminal condemnation' while in detention pending trial must not be underestimated. That it is therefore important to stress the need for alternative measures.

In accordance to UN safeguards, states that are party to the international Covenant on Civil and Political Rights (ICCPR) Article 5 and American Covenant on Human Rights Article 4 (5) are prohibited from imposing capital punishment for offences committed by persons below 18 years of age, unless of course they add a reservation to this effect- as the United States of America have done36.

Southern Sudan is a party to these instruments by virtue of the ratification by the Republic of Sudan to which it is still attached legally. As such, section 9 of the Penal Code provides that capital shall not be passed on the person who in opinion of the court is under sixteen years of age.

2.3.2 Regional Instruments on Juvenile Justice System

In the Regional context, Juvenile justice Southern Sudan being part of African Continent, the African Charter on the Rights and Welfare of the Child is applied. This is guaranteed by Article 17 (1)37 as it provides for the Administration of Juvenile Justice. This article therefore, is to the effect that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces

the child’s respect for human rights and fundamental freedoms of others. State parties to the Charter shall particularly: (a) ensure that no child who is detained or imprisoned or otherwise deprived of his liberty is subjected to torture, inhuman or degrading treatment or punishment (b) ensure that children are separated from adults in their place of detention or imprisonment (c) ensure that every child accused of infringing the penal law: (i) shall be presumed innocent until duly recognized guilty (ii) shall be informed promptly in a language that he or she understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used; (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence; (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal; (d) prohibit the press and the public from attending the trial.

Further emphasis is provided for in Article 17 (3) of the African Charter on the Rights and Welfare of the Child (ACRWC) that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his or her family and social rehabilitation. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Southern Sudan has specifically put its position to respect the African Charter by enacting a provision envisaged in Interim Constitution of 2005 and Chapter X and XI Child Act, 2008. This will be discussed thoroughly in the next chapter of this research.

2.3.3 Conclusion

Therefore, as it is already noted above in this very chapter, the concept of juvenile justice like any other concept developed as a result of trying to get an adequate means of addressing the criminal justice system of both a juvenile and an adult. The question then is; can a child or juvenile make an
intention to commit crime? If so who is a child or juvenile? And if a child or juvenile commit an
offence or crime what is the appropriate means of treatment and the protection of those juveniles’
offenders. The answers are therefore provided for under international and regional legislations as
discussed above. These legislations lay mechanism for the enforcement of juvenile justice universally
where all the members states are mandated to enact laws and legislation that safeguards and protects
juvenile justice system.
CHAPTER III

JUVENILE JUSTICE SYSTEM AGENCIES

The chapter discusses the duties of each agencies or stakeholders in the administration of juvenile justice in Southern Sudan. These are therefore, enshrined under the provisions of the Interim Constitution of Southern Sudan, 2005 and the Child Act, 2008. They include statutory institutions, customary authorities and Non Government Organizations.

3.1 The Police

This is one of agencies established by law. The term 'police' refer to the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime\textsuperscript{38}. The Southern Sudan Police Act under section 7 (b) provides for functions and powers of the police services personnel which are to ensure security of Southern Sudan and protecting people’s lives and property\textsuperscript{39}.

The UK Police Act of 1861 defines the police force as an instrument for prevention and detection of the crimes. The police are primarily concerned with keeping the peace and enforcing criminal laws based on their particular mission and jurisdiction\textsuperscript{40}.

In Southern Sudan, the constitutional mission of the police service is to prevent, combat and investigate crime, maintain law and public order, protect the people in Southern Sudan and their

\textsuperscript{38} Brayan A. Gamez (Editor-in-Chief), Black Law Dictionary, 8th Edition at page 1195

\textsuperscript{39} Section 9 of the Southern Sudan Police Act, 2009

properties. This mission is further expanded in the southern Sudan Police Act, 2009 under section 15 which provides for the Community Policing and it is to the effect that without prejudice to the generality of the Act, the community police shall endeavour to achieve inter alia, enhance respect of human rights, study the nature of the problems and factors in connection with crime and delinquency and to provide assistance to crime victims. It is because of these preventive measures that the police Act embraces the involvement of the community through the unit called community police.

i. Procedure for Arrest of a juvenile offender by the police

The term arrest is not defined in the relevant laws of Southern Sudan. The Code of Criminal Procedure Act, 2008 under section 30 (2) (g) only provides that the police shall have the power to arrest, in accordance with provisions of this Act and any other applicable law; and that the police shall execute summons, warrants of arrest and search, in accordance with the provisions of this Act. The Police Act, 2009 on the other hand had not also been helpful for the definition of the term arrest either i.e. the manner in which arrest can be effected or in other words, what amount to an arrest? The duties of the police service under the Act are to pursue and arrest offenders.

In the words of Francis Ayume, arresting a person, means interfering with his personal liberty and therefore cannot move about as he likes. In making an arrest the arresting person shall actually

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41 Article 162 (1) of the Interim Constitution
42 The Southern Sudan Police Act, 2009
43 Laws of Southern Sudan
44 The Southern Sudan Police Act, 2009
45 Francis J. Ayume, Criminal Procedure and Law in Uganda, 1986
touch or confine the body of the person being arrested unless that person submits to custody either by word or conduct.\textsuperscript{46}

In \textit{Warden v. Hayden},\textsuperscript{47} the Supreme Court held that felony arrests in places not open to the public generally do require a warrant, unless the officer is in hot pursuit of a fleeing felon. Under the English law, the police constable may reprimand and/or give a warning to the juvenile. The position is that where a constable has evidence that an offence in respect of which there is a realistic prospect of conviction has been committed by a child or young person who has not been previously convicted of an offence, the offence is admitted, and the constable is satisfied that it is not in the public interest to prosecute that child or young person the provision of CDA 1998, section 55 relating to reprimand and warning apply.\textsuperscript{48}

In regard to the position in Southern Sudan, special attention has been paid under the Child Act for the procedure and manner in which a juvenile offender can be arrested. According to the Act, the arrest of a juvenile offender under section 139 (1) of the Child Act\textsuperscript{49} is that the police shall arrest a child only if there is reasonable suspicion that the child has committed a serious crime and there is no alternative to arrest can be found. Subsection 4 of the same section is to the effect that an arrest of a juvenile shall be made with due regard to the dignity, well-being and special status of the child.

However, when the arrest of the child is effected as provided under section 139 (1) above, the arresting officer must comply with the provision of section 145 (1) of the Child Act, 2008 which provides that the police officer must inform social worker in whose area of jurisdiction the arrest of

\textsuperscript{46} Ibid

\textsuperscript{47} 387 U.S. 294, 87 S. Ct. 1642, 181 Ed. 2d. 782 (1967)

\textsuperscript{48} Jack English and Richard Card, \textit{Police Law}, Tenth Edition at page 656

\textsuperscript{49} Laws of Southern Sudan, 2008
a person under the age of eighteen but above the minimum age of prosecution has taken place, of such arrest within 12 hours.

It is further required that, “where a child has been arrested, the police officer who has arrested the child, must notify the child’s parents, guardian or a family member of the arrest within twelve hours, and give relevant person or persons a written notice requiring such person to attend an assessment at a specified time and place”\(^{50}\).

This provision is compatible with rule 10 of the Beijing Rules that “upon the apprehension of a juvenile, his or her parents or guardian shall be immediately notified of such apprehension, and where such immediate notification is not possible, the parents or guardian shall be notified within shortest time thereafter”. The Child Act also provides that if a police officer is uncertain about the exact age of the person suspected of having committed an offence, but believe that the age render that person protection under this Act, he or she shall take such person to social worker for age assessment within 24 hours\(^ {51}\).

The juvenile offenders like adults should be free from torture in all processes of criminal proceedings as per Article 22 of the Interim Constitution of Southern Sudan which provides that:

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This means that the police and the prison service which are entrusted with custody of juvenile offenders should refrain and desist from any act which may torture the juvenile both physically and mentally”.

\(^{50}\) section 146 (1) of the Child Act, 2008

\(^{51}\) Section 162 of the Child Act, 2008
It should be noted that arrest of the child should only be resorted to where there is no alternative to arrest. This is made clear under section 141 which provides for alternative to arrest of a child and it is to the effect that an alternative to arrest shall include the followings:

i. requesting a child in a language he or she understands to accompany the policeman or policewoman to the place where an assessment be made

ii. Written notification to the child and, if available, the parents, guardian or family of that child to appear for an assessment

iii. Accompany the child to his or her home, where a written notice can be given to the child and parents, guardian or family.

Failure to inform the person arrested of the reason for his/her arrest in other jurisdictions results into a civil action for wrongful arrest and false imprisonment52.

In Southern Sudan, arbitrary arrest without informing the arrested person of the reason for his/her arrest is a common practice. In an interview with the juvenile detainees in Juba main prison, the researcher confirmed the practice of arbitrary arrest and unlawful detention. For the purposes of example, one of the juvenile convicts Martin53, a 17 years old accused under section 305 and 231 of SPC 2008 of stealing motor bike, a crime of which he was sentenced to serve one month under the supervision of the social workers; and the motor bike was surrendered to the owner, during the interview narrated the process of his prosecution which was smeared with a lot of irregularities starting from arrest, investigation and during the trial. He emphasized the cruelty of his arrest by the

52 Cherie v. Leachinsky (1947) AC 573; (1946) KB 124
53 Real name withheld
police who neither informed him of the reason for his arrest nor informed his parents or relatives as required by law.

ii Investigation of juvenile by the police

The Criminal investigation is actually a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. As such, investigation is said to be “a probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry”\(^{54}\). In general, an investigation is an official examination of the facts about a crime\(^{55}\). Useful definition of the term investigation is provided under section 5 (1) of the Criminal Procedure Act, 2008 that, investigation means the act of or process of finding out relevant facts that concern a crime, and includes all proceedings by the police acting pursuant to the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be, for the collection of evidence.

The law As for the investigation of juvenile offender, is enshrined under section 144 of the Child Act, 2008 which provides for the procedure after arrest of a child above the minimum age of prosecution and it is to the effect that: “Where an arrest of a child above the age of twelve years, being the minimum age of prosecution, has taken place, the policeman or policewoman must observe the following procedures: if the child is in custody, bring such child to social worker in the area of jurisdiction for assessment. Notify the child in a language the child understands of the allegation against him or her. Notify the child in a language he or she understands of the followings: (i) The right to remain silent (ii) The right to have the child’s parents, guardian, chief or any appropriate adult contacted (iii) The right to choose and to be represented by a legal representative


\(^{55}\) Oxford Advanced Learner’s Dictionary
on his or her cost; and (iv) The right to be provided with a legal representative by the state in serious
offences’.

The police investigators should ensure that juvenile offenders are investigated in present of their
parents or in present of social workers or legal representative in serious crimes. The importance of
investigation in present of the parents or the right for notification of the charge was discussed in the
case of Re Gault56, where a child was arrested in absence of his parents, was not legally represented
and was not notified of the charge against him. In its decision, court stated that a juvenile has the
right to notice of charge, assistance of legal counsel, confrontation and cross-examination of
witnesses, and the protection of the privilege against self-incrimination.

In Southern Sudan, the researcher had the chance to see several juveniles incarnated in the police
detention centres when their parents or relatives were not aware of their detention. In a
conventional criminal justice system, investigations are conducted by trained police personnel. This
was not found to be the case in Southern Sudan where most institutions lack skilled personnel.
Hence, the investigations are sometimes conducted by any police officer. The Department of
investigation is supposed to be manned with specialized trained personnel.

iii Detention of juvenile in the police station

Detention is the state of being kept in a place, especially a prison, and prevented from leaving57. It is
one of the police powers to arrest and detain a person accused of any crime either through directive
in the warrant or without a warrant in which case the police must report the arrest and detention to
the public prosecution attorney or to the court as soon as possible. A detention may also be as a

56 387 U.S. 1 (1962).
57 Oxford Advanced Learner’s Dictionary, 7th Edition
result of remand in custody for the purpose of investigation. This is explicitly provided under section 64 of the Criminal Procedure Act\textsuperscript{58}, that:

“A person arrested by the police as part of the investigation, may be held in detention, for a period not exceeding twenty-four hours for the purpose of investigation. The public prosecution attorney, or in his absence the magistrate as the case may be, where the matter requires the same, may renew detention of the arrested person, for a period not exceeding one week, for the purpose of investigation. The magistrate upon the recommendation of the public prosecution attorney may order detention of the arrested person, for the purposes of investigation, every week, for a period not exceeding in total two weeks, and he or she shall record the renewal in the case diary. The magistrate, in the case of an arrested person who is charged, may order renewal of his or her detention for the purposes of investigation every week, provided that the period of detention shall not in total exceed three months except upon the approval of the competent President of the Court of Appeal”.

Such tedious procedures and prolonged detention can be of a grave injustice to an accused child. Hence, the juvenile justice system requires special treatment of child offenders. This is recognized under the Child Act\textsuperscript{59}, that detention of a child in police custody, whether in a police cell, police vehicle, lock-up or any other place shall be used as a measure of last resort and for a period not exceeding twenty four hours.

For the detention of juvenile offenders, detention must be in separate centre specifically designed for young offenders. The Child Act is very explicit about the detention of children and for that

\textsuperscript{58} The Criminal Procedure Act, 2008, Laws of Southern Sudan

\textsuperscript{59} Section 150 (1) of the Child Act, 2008
matter, it provides that any police officer in charge of police station shall cause a separate cell to be kept, in which details regarding the detention in police cells of all persons under the age of eighteen years must be recorded and that no child shall be held in detention in police custody for a period exceeding 48 hours prior to appearing before a Public Attorney or Judge. A child shall be remanded in police custody for a period of 48 hours and for one further period of a maximum of twenty four hours where no alternative action can be taken. As to the procedure after arrest of a child above the minimum age of prosecution, section 144 (1) of the Child Act, provides that where an arrest of a child above the age of twelve years, being the minimum age of prosecution, has taken place, the policeman or policewoman must observe the following procedures-

(a) if the child is in detention in police custody, bring such child to the social worker in whose area of jurisdiction the arrest of the child has taken place promptly for assessment, but not later than 24 hours after arrest; provided that, if by the expiry of this period a social worker cannot practically be traced, the police officer must request the prosecutor to set the matter down for holding of a preliminary inquiry as soon as possible. This must be done with unnecessary delay. The police under Criminal Procedure Act are empowered to conduct prosecution if the Public Prosecution Attorney is absent. It is yet to be seen whether this provision is observed by the Southern Sudan Police Administration. Section 184 of the Child Act provides for limitation on detention of a child.

60 Section 150 (2) (supra)
61 Section 150 (5) of the Child Act, 2008
62 Section 150 (6) (Supra
63 Ibid
64 The Criminal Procedure Act, 2008, Laws of Southern Sudan
Detention of a child pending trial shall take place only in exceptional circumstances, for most serious cases, as measure of last resort and for the shortest possible period\textsuperscript{65}.

It should also be reiterated that the detention of a child shall take place in a reformatory, where possible, which shall be administered by an authorized person; and that the detention of a child shall be undertaken in a manner suitable to the child's legal status and age in conditions and circumstances which ensure respect for the right of the child\textsuperscript{66}.

It should also be noted that the child in detention is entitled to all the rights that are appropriate for his stage in life. These rights include the right to adequate and nourishing food and clean drinking water, regular and adequate medical care; adequate clothing, bedding, basic sanitation, education, vocational training, reading materials and to be detained as close as possible to family and to have regular contact with family and guardians\textsuperscript{67}. It is provided also under the Child Act that all disciplinary measures in places of detention constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including chaining, whipping, placement in a dark cell, closed or solitary confinement or other treatment or punishment that may compromise the physical or mental health of the child\textsuperscript{68}.

Despite this legislated framework, the practice is hardly near to the acceptable standards. This was evidenced that juveniles in most part of Southern Sudan are arrested and detained in an adult police cell especially in Juba Police stations for one week or more “the conditions inside the cell are filthy and not good for human living”. This means that the practice of the police of detaining juveniles in

\textsuperscript{65} Section 184 (1) of the Child Act, 2008

\textsuperscript{66} Section 184 (4) (Supra)

\textsuperscript{67} Section 187 (1) of the Child Act, 2008

\textsuperscript{68} Section 190 (5) (supra)
deplorable cells is contrary to the principle that juveniles should be detained in suitable condition in accordance to their stage in life.

3.2 The Directorate of Public Prosecutions and State Attorneys

This specific area discusses the functions and powers of the Directorate of the Public Prosecution and State Attorneys in the administration of juvenile justice system in Southern Sudan.

i Nature of prosecutions

The term prosecution refers to setting of the criminal law into motion against a person. There are two types of prosecutions allowed by law. These include prosecution by the Public Prosecution Attorney which are initiated by or on behalf of the state; and the prosecution by private person⁶⁹.

The uniqueness of the juvenile justice system requires special procedure for the prosecution of juvenile offenders. This is provided under section 152 of the Child Act, 2008 that a child is not charged until the preliminary investigation is completed. This section goes on to provide that for the purposes of judicial proceedings under this Act, a child is deemed not to be charged until, the preliminary investigation has been finalized and the public attorney submits the case to the court under the provisions of this Act and the charges are read and explained to the child.

ii Investigation of a Child

The term investigation as mentioned earlier is defined under section 5 (1) of the Criminal Procedure Act, 2008 to mean the act of or process of finding out relevant facts that concern a crime, and includes all proceedings by the police acting pursuant to the directives of the Public Prosecution Attorney, Magistrate or Court, as the case may be, for the collection of evidence. It is on this basis

that section 173 of the Child Act provides for a mechanism for investigation of an accused child. Further, every case involving a child shall be determined in an individualized manner with due investigation into the background and circumstances in which the child is living, the intellectual, emotional, psychological and social development of a child, the material situation of his or her family, and the conditions under which an offence was committed.

This is compatible with rule 10.3 of the Beijing Rules which is to the effect that contacts between the law enforcement agencies and juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to him or her, with due regard to the circumstances of the case.

The prosecuting agency is required under the Child Act to make preliminary investigation within 24 hours and under section 167 thereof, it is provided as follows:

(1) A preliminary investigation shall be conducted into any case involving a child within twenty four hours of his or her arrest by the police officer under the directives and supervision of the public attorney.

(2) The purpose of a preliminary investigation is to establish whether a matter can be diverted before charges are instituted before the court, and assess whether there is sufficient evidence to warrant a prosecution

At the conclusion of the investigation, the Public Prosecution Attorneys may release the juvenile after having considered the nature of the offence or direct special procedure or action to be taken for solving the case. It should also be noted that after the investigation, the Public Prosecution Attorney should ensure that criminal proceedings against the juvenile are as expeditious as possible. This is not the case in Southern Sudan where juvenile justice faces a lot of challenges.
It should also be noted that juveniles are charged without considering the fact that they lack criminal responsibility. As Lord Simon in DPP vs. Majewski\textsuperscript{70} put it clearly that ... the state of mind stigmatized as wrongful by the criminal law which, when compounded with the prohibited conduct, constitute a particular offence.

3.3 The Social Workers in the Juvenile Justice System

The term social work is not defined under the Child Act, 2008 but according to Mwene Mushanga, defined it as “a branch of sociology which is used to describe the variety of organized methods of helping people with needs they can not satisfy unaided\textsuperscript{71}”. In other words, social work is a paid work that involves giving help and advice to people living in the community who have financial or family problems\textsuperscript{72}. Social work is done by trained skilled persons who are known as social workers. The term social worker is defined under section 5 of the Child Act\textsuperscript{73} to mean a person who holds a qualification recognized by an authorized person to conduct social work. In general, social workers tend to be concern among others with the ... delinquents who need assistance and support\textsuperscript{74}.

The role play by the Social Workers

Social workers in Southern Sudan are employed by the Public Service like any other civil servants to serve under the Ministry of Gender, Child, Social Welfare and Religious Affairs. It is on this basis that a Directorate of Social Welfare which deals with general social problems including those of children is established in the Ministry of Gender, Child, Social-Welfare and Religious Affairs.

\textsuperscript{70} (1977)AC 443

\textsuperscript{71} Dictionary of Criminology

\textsuperscript{72} Oxford Advanced learner Dictionary 11th Edition

\textsuperscript{73} Laws of Southern Sudan, 2008

\textsuperscript{74} Mwene Mushanga, Dictionary of Criminology, (Fountain Series in Law and Business Studies). First published, 2008 at page 168
Within this Directorate, a Department of Child Welfare which specifically deals with children's welfare affairs in Southern Sudan is established.

This is a partial fulfillment of the international requirement that "states are required to pass specific laws, regulations at the national level... and to promote the establishment of procedures and institutions specifically applicable to children alleged as accused of, or recognized as having infringed the penal law". It is on this basis that, the Child Act under section 194 provides that the Minister of GCSWRA shall issue rules and regulations for the proper implementation of the provisions of this Act. The said rules are yet to be formulated for proper implementation of juvenile justice system in Southern Sudan. When such rules are formulated, they are expected to fulfill the aspirations envisaged under the Child Act for the promotion and protection of children including juveniles' rights which will be sped up as oppose to the current slow trend that has cursed the implementation of the Child Act. The MGCSWRA is "expected to be able to afford to the juvenile offenders, an access to child-friendly justice systems".

ii The Role before and During the Arrest of Juvenile Offenders

The role of social workers in the administration of juvenile justice system like their police counterparts starts immediately before and after a child is arrested and continues through investigations, court proceedings and during the detention/imprisonment of a child.

The duties of social workers are provided under section 175 of the Child Act to the effect that; a social worker has a duty of conducting age assessment to all children who have been arrested and who remain in detention in police custody, within forty eight hours of such arrest subject to the

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75 Article 40 (3) of the Convention on the Rights of the Child

proviso set forth in subsection 2. This involves the duty that, the social worker shall make every effort to locate a parent or a guardian for the purposes of concluding assessment process of the child; provided that, where all reasonable efforts to locate a parent have failed, the social worker may conclude the assessment in absence of such a person.

iii The Role of a Social Worker During the Investigations

Besides assisting in an age assessment of the accused child, the Social Worker is required under Section 175 (3) of the Child Act to explain to the child in the language that he or she understands the purposes of the assessment. The child has the right (i) to contradict or challenge any information against the child; (ii) remain silent; (iii) to have the parent or guardian contacted and (iv) be provided with legal representation by the Ministry of Legal Affairs and Constitutional Development. Unless the child is below the minimum age of prosecution, the social worker shall make a report with the following recommendations: (a) the prospects of diversion; (b) the possible release of the child into the care of a parent or guardian; or (c) the placement ‘where applicable’ of the child in a place of safety.

The term diversion as provided under section 175 (6) (a) of the Child Act above is explicitly explained in the commentary to Rule 11 of the Beijing Rules to mean “removal from criminal justice processing and, frequently, redirection to community support services” and “is commonly practiced on a formal and informal basis in many legal systems”. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration. For example, diversion is effective against the stigma of conviction and sentence.

77 Section 175 (3) of the Child Act, 2008
78 Section 175 (6) (Supra)
It is also during the investigation that transfer or conversion of a matter to the court may be considered by the social worker\textsuperscript{79}. If the Social Worker recommends that the matter be referred to the court the report shall reflect his or her recommendation and reasons as well as recommendations as to the temporary placement of the child pending the opening of the court inquiry\textsuperscript{80}.

The foregoing position of the social worker in the administration of juvenile justice system is very important and Southern Sudan’s Juvenile justice system, however, requires empowerment of social workers in different fields so that they can play their role efficiently and effectively. Part V. 81 of the UN Rules provides that personnel involved in the administration of juvenile justice should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists\textsuperscript{81}.

iv The Role of a Social Worker After Court Sentence and During Imprisonment of a Juvenile

In Southern Sudan, none of the child legislations provides for the role of the social worker after the sentence or suspended sentence against the juvenile. The general practice is that “after the juvenile case is heard, the social worker still has a role to play whether the juvenile is sentenced or given a suspended sentence. If incarcerated, the social worker continues with his supervision and counseling\textsuperscript{82}.” The Social Worker also sees to it that the juvenile continues his or her education; and writing of reports on the juvenile and submitting the same to the head office as to the rehabilitation

\textsuperscript{79} Section 175 (7) of the Child Act, 2008

\textsuperscript{80} Section 175 (8) of the Child Act, 2008

\textsuperscript{81} UN Rules for the Protection of Juveniles Deprived of their Liberty. (GA Res. 45/113, Annex 45 UN GAOR Supp. (No. 49 A) at 205, UN Doc. A/45/49 (Dec. 1990)

of the juvenile\textsuperscript{83}. It should be remembered that a social worker may recommend for the suspension of a sentence or penalty by the court. According to section 183 (2) of the Child Act, it is provided that request for the suspension of sentence shall be considered before the enforcement of a penalty on medical, vocational or scholastic grounds. As such, a social worker would be useful to the juvenile as well as to the court for the monitoring of the impact of the sentence against the juveniles.

\textbf{v \quad The Tripartite Role of the Social Worker in Juvenile Justice}

When a juvenile is accused of contravening the penal law, the social worker is required to coordinate the assessment of the child's age between the prosecuting statutory body and the parents or guardian of the child. This intermediary role is important for any lawful dispensation of juvenile justice system. This is provided under section 179 of the Child Act which provides for the assessment of the age of the child accused of committing an offence. This section also provides that after an assessment, the probation officer may recommend: the diversion of the child to a specified process programme or appropriate alternative order; or that no further action be taken in respect of the alleged offence. In lieu of parent or guardian for information relevant to the child, section 175 (5) of the Child Act provides that Social Worker may contact or consult with any other person who has any information relevant to the assessment of the child.

It should be noted that assessment of age enables both the prosecution and the social worker as to the course of action to be taken against the juvenile and the appropriate order that may be passed against the juvenile respectively. In \textbf{F. v. Padwick}\textsuperscript{84}, it was stated that in order to ascertain the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{83} Ibid
\item \textsuperscript{84} (1959) Qms. L.R. 439
\end{itemize}
\end{footnotesize}
child's ability to determine right from wrong the court should hear evidence of his background and not rely on his demeanor in court.

It is also the duty of the social worker to coordinate the family conference where parents of the children concerned should be present. It is this reason that section 155 of the Child Act provides for convening of the family conference which involves the juvenile, all the families of the children concerned and the public prosecuting authority. The salient feature of this section is to the effect that “a family group conference shall be convened by the Chair Person of the Child Justice Committee in consultation with the families of the children concerned. Under subsection 4 of this section, a social worker, where the conference is convened on the basis of a report from him or her, shall be the chair person of the Child Justice Committee in that area.

The neutral role of the social worker between the child, the parents and the judicial authority should be encouraged so that a juvenile does not suffer in the complicated legal environment as well as the adversarial formal legal procedures.

3.4 Jurisdictions of Courts and Judicial Treatments of Juvenile Delinquent

This section discusses the establishment, structures, powers, competence, jurisdiction and procedure of the courts in Southern Sudan. It also appraises the judicial mechanism of dealing with juvenile offenders in Southern Sudan since 2005 following the promulgation of the Interim Constitution of Southern Sudan and the Child Act, 2008.

The source of judicial power in Southern Sudan is provided under Article 126 (1) of the ICSS which provides that judicial power in Southern Sudan is derived from the people and shall be exercised by the courts in accordance with the customs, values, norms and aspirations of the people and in conformity with this Constitution and the law. The Independence of the Judiciary in Southern Sudan
Sudan is provided under Article 128 (1) of the ICSS which is to the effect that the judiciary of Southern Sudan shall be independent of the executive and legislature. Article 127 of the ICSS provides for the establishment and structure of the judiciary of Southern Sudan which ranges from the Supreme Court as the Highest Court in Southern Sudan followed by the Court of Appeal, the High Court as the Highest Court at the State level, the county court at the County level and the Payam Court as the lowest and the last in the hierarchy of the courts.

The Constitution requires that all cases shall be disposed of expeditiously; and that “in adjudicating cases of both civil and criminal nature, the courts shall, subject to the law, apply, inter alia, the principle that justice shall not be delayed; and that substantive justice shall be administered without undue regard to technicalities”\textsuperscript{85}.

In Southern Sudan, all languages are national languages and therefore there is no single official language recognized as the language of the court in Southern Sudan but the Constitution under Article 6 (2) provides that English, as a major language in Southern Sudan, and Arabic, shall be the official working languages of the Governments of Southern Sudan, and the states and the languages of instruction for higher education. The implication of this provision is that English and Arabic are the languages of the court with exception of customary courts where local languages are used.

The Constitution also provides that judges are to be appointed on merit for independent and impartial judicial work. This is consonant with what Keith Evan said as the essence of a meritorious judge that “to appear in court before a wise and impartial judge who regards impartiality as his duty and who understands what the legal system was really intended to be about to appear before such a case.”

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\textsuperscript{85} Article 126 (5) (a) and (e) of the Interim Constitution of Southern Sudan
judge is a true privilege and exhilarating experience\textsuperscript{86}. According to him, judges as “decision-makers should be faithful both to laws as a whole, and also to the principles contain in them”\textsuperscript{87}.

While the English juvenile justice system requires certain qualification and training of juvenile court justices; when appointing members of the juvenile court justices, or in the case of metropolitan area, the Lord Chancellor, are required to choose justices who are specially qualified for dealing with juvenile cases\textsuperscript{88}. This later training is designed to enable juvenile court justices: understand the place of the juvenile court in the judicial system and certain special aspects of procedure in that court; appreciate the social and educational background of juvenile before court; know the services available to them, particularly the educational, medical and psychiatric services; and learn the various courses which may be taken in dealing with juveniles who are brought before the court because they are in need of care or control so that they understand the nature and purpose of the methods of treatment which they may use and their effects.

In Southern Sudan, the Child Act is silent on the issue of prior qualification of judges who are to serve in juvenile courts. What is provided under section 192 (7) of the Child Act is that judges serving in juvenile courts shall receive in-service training and other appropriate methods of instruction on children's rights. Thus, prior qualification to serve in juvenile court is not a pre-condition in Southern Sudan.

It is clearly until this current moment that the judges are yet to be trained in the judicial administration of juvenile justice system. This situation provides no dispute to the fact that

\begin{itemize}
\item \textsuperscript{86} Keith Evans p. 85
\item \textsuperscript{87} Ibid
\item \textsuperscript{88} Juvenile Court Constitution Rules 1954 r. 1 (f)
\end{itemize}
“ignorance in any person at all is a formidable tyrant. It deprives an open eye of vision so that the ignorant looks but cannot see. Listens but cannot hear. When ignorant rules the eye of a judge, it results into pathetic drama accruing in his court day in and day out. The judge out of sheer lack of intellectual capability fails to grasp any of it”\textsuperscript{89}. For the effective functioning of the criminal courts, it is important that Judges and Magistrates be persons having adequate qualifications, ability and wisdom\textsuperscript{90}. So lack of adequate and appropriate training for judges in juvenile matters contributes to detrimental decisions against juvenile delinquents.

In the case by the parent against S. Lomoro\textsuperscript{91}, a 16 year old female charged under section 315 and 250 of the SPC 2008 brought by the mother, it was alleged that the daughter at night had fought her and taken the family clothes and burnt them. The accused admitted the action. The court found that she was developing delinquent behaviours and sent her to reformatory centre for counseling for 3 months.

\textbf{Jurisdiction in Matters of Juvenile Delinquent}

Generally, a criminal jurisdiction is the power which the Sovereign Authority of the State has vested in a court and other tribunals established by law to take cognizance of and determine questions which arise out of crimes committed in that state\textsuperscript{92}. The criminal jurisdiction of the court may be territorial or depends on the gravity of offence in which case, the court must be mandated by law to try specific offences. It is a legal requirement that the court must have jurisdiction to try a particular

\textsuperscript{89} Manual on professional skills, 2nd Edition Produced by RCN, Justice & Democracy 2008

\textsuperscript{90} R. V. Kelkar, Criminal Procedure, 5th Edition, 2008

\textsuperscript{91} Criminal Case NO 88/2010

\textsuperscript{92} Francis J. Ayume, Criminal Procedure and Law in Uganda, 1986 p. 15
case otherwise, any decision it arrives at will be a nullity. This is expressed in Latinized phraseology as “Actus judiciaries comn non judicæ irritus hakeitru” which means that “a judicial act before one not a judge (or without jurisdiction) is void”\textsuperscript{93}.

In Southern Sudan, the issue of criminal jurisdiction poses confusion especially in offences committed by children. For instance, there was lack of jurisdiction in the case of an infant Santino\textsuperscript{94}, a 9 year old charged and convicted by the lay Magistrate of 3\textsuperscript{rd} Grade for having stoned another child of 7 years of age while they were playing with a bicycle tyre. He was sentenced to pay 300 SDG as court fine and in default to pay, to be imprisoned for three months and to pay 5,216 SDGs to the complainant through a civil suit action. This decision was appealed against not only on the grounds of an excessive sentence but on the ground that the Magistrate of 3\textsuperscript{rd} Grade did not have the jurisdiction to try juvenile cases. The attempt of the 3\textsuperscript{rd} magistrate judge in trying a juvenile case contravene section 192 (3) of the Child Act which provides that; pending the establishment of permanent juvenile courts, the county court of the First or Second Class shall try juvenile cases. In this case, the First Magistrate on appeal reversed the sentence of imprisonment and the fine.

In Southern Sudan, the only court that has unlimited jurisdiction is the High Court. According to Article 132 (1) of the ICSS, the High Court shall be the highest court in the level of the state in Southern Sudan and its establishment, competence, jurisdiction and procedure shall be determined by law. Under section 12 (a) of the Criminal Procedure Act, 2008, a High Court shall have the following powers and competence in the area of criminal law... serves as the exclusive tier of any offence punishable with death or life imprisonment. The High Court also has the competence to

\textsuperscript{93} (Black Law Dictionary)

\textsuperscript{94} Not real name, Summary Trial No TBC/3/78/2010
direct the release of an individual on probation. Other courts below the High court have specific jurisdictions conferred upon them both in term of local limits according to their establishment.

In Southern Sudan, section 42 of the Criminal Procedure Act, provides that criminal proceedings, orders and judgments of any court, shall not be deemed to be invalid by reason of the fact that such proceedings should have been taken by or before some other local jurisdiction, provided that, such actions were taken in good faith. It seems that judicial jurisdiction can be compromised in Southern Sudan if the decision did not cause miscarriage of justice.

As the importance of jurisdiction in criminal litigation requires, courts in Southern Sudan try cases to which they have conferred jurisdiction. As such, the jurisdiction of the courts in matters of juvenile cases is provided under section 192 of the Child Act and it is to the effect that juvenile courts shall be established to hear and determine:

a. all applications relating to criminal charges against children subject to the provisions of this Act,

b. all applications relating to child care and protection; and

c. Any other competence conferred upon them by this Act or any other written law.

A juvenile court is defined to mean a court of law that deals with young people below the age of eighteen years whereas the jurisdiction over it is provided under section 13 (1) (c) of the Criminal Procedure Act which confers jurisdiction of County Court to a Magistrate of First Class. It specifically states that in the case of an offender who, in the opinion of the magistrate, is under

95 Section 192 (5) of the Child Act, 2008
eighteen years of age, criminal resolved or tried case, shall be in accordance with the procedures applicable to the juveniles\textsuperscript{96}.

Although the jurisdiction of juvenile cases is exercised by the county court, it is to be noted that customary courts still have jurisdiction over certain juvenile cases. Under the Local Government Act, section 97 (2) which provides that a customary law courts shall not have the competence to adjudicate on criminal cases except those criminal cases with a customary interface referred to it by a competent statutory court\textsuperscript{97}.

Currently, juvenile courts have not yet been established in Southern Sudan and for that matter, the Child Act provides that pending the establishment of such courts, criminal cases involving children shall be determined in the county courts in accordance with the provisions of this Act\textsuperscript{98}.

The Act provides that the procedures of courts determining child matters pending the establishment of juvenile courts shall be subject to the procedural and other safeguards for children outline in this Act; the courts shall sit as often as necessary; proceedings shall be held in camera; and proceedings shall be as informal as possible and not of an adversarial nature\textsuperscript{99}.

The procedures in juvenile cases in the American Legal System were explained by the U.S. Supreme Court in \textit{Kent v. United States} where it was held that under a District of Columbia Statute, the informal process of determining whether a juvenile should be tried in juvenile or in adult court failed to provide sufficient due process protection for children. The court held that before a minor is

\textsuperscript{96} Section 13 of the Criminal Procedure Act, 2008

\textsuperscript{97} The Local Government Act, 2009

\textsuperscript{98} section 192 (3) of the Child Act, 2008

\textsuperscript{99} Ibid
transferred to adult court the child is entitled to an informal hearing where trial court must articulate the reasons for the transfer so that the child can have an adequate record for appellate review.

The reason for informal procedure in juvenile cases is to protect the child so that complicated proceedings do not prejudice the interest of the child and not to affect him psychologically. This was explained by Blackstone in C v DPP\textsuperscript{100}, that the capacity for doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent’s understanding and judgment.

Harpur J in R v Whitty\textsuperscript{101}, Supreme Court of Victoria, Australia, held that “no civilized society regards children as accountable for their actions to the same extent as adult... the wisdom of protecting young children against the full rigour of the criminal law is beyond argument. The difficulty lies in determining when and under what circumstances that protection should be removed.

In Southern Sudan, the Penal Code Act provides that: “A child under twelve years of age shall be deemed to lack criminal capacity and shall not be tried for or convicted of any offence, which he or she is alleged to have committed\textsuperscript{102}.

Thus the protection accorded to children can not be underestimated unless the child has attained the age of criminal responsibility at the time of the commission of the crime.

\textsuperscript{100} (1995) 2 ALLER 43

\textsuperscript{101} (1993) 66 A Crim R 462

\textsuperscript{102} Section 30 of The Penal Code Act
Conducting Juvenile Delinquent Cases

The normal procedures for conduct of a trial applies to the juvenile court save as to the extent that it is specifically excluded. A trial in the juvenile court begins with the substance of the charge being explained to the juvenile in a simple language. Unless the juvenile is legally represented, his parents or guardian must be allowed to assist in conducting his or her defence, including cross-examination of witnesses. In every criminal proceeding, the prosecution is given the first opportunity to present their case against the accused. It is required that the prosecution proves its case beyond reasonable doubt. The accused is also allowed to present his defence.

As for the hearing of a juvenile case, the position in the UK is that criminal proceedings must be brought before juvenile court except for the offence of homicide. In Southern Sudan, the legislated laws accord similar procedures in handling juveniles cases but the practices of the stakeholders is contrary to this unique procedure for instance, it is common place to find a juvenile before any court which may not be acquainted with procedures that are applicable to juvenile cases.

The legislations in Southern Sudan require that, juvenile cases should be presented before county court as provided under section 192 (3) of the Child Act, 2008 which provides that pending the establishment permanent courts, criminal cases involving children shall be determined in the county courts in accordance with the provisions of this Act.

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103 Clarke Hall & Morison on Children

104 Clarke Hall & Morison on Children
If the juvenile is unable to present his defence, reliance should be had as to the provision of section 184 of the Criminal Procedure Act which provides for the right to be defended by pleader. It is provided that: Every person accused before any court under this Act, may as of right, be defended by a pleader; provided that in the case of serious offence, if the accused, and if the accused is a pauper the Minister, on application by the accused, and if satisfied that it is necessary in the interest of justice, shall appoint an advocate to defend the accused and pay all or part of the cost. The Act does not define a pleader but in a legal parlance, a pleader is any person who defends another in court proceedings. It is not necessarily limited to trained lawyers.

It is clear that a juvenile may be unable to defend himself or herself. A good example was given in the case of Darren Coulburn where a 13 year old boy who fatally stabbed a fellow school boy was found guilty of murder by Manchester Crown Court. It was stated that the court is to have regard to the welfare of the child or young person but as this is not the only consideration, the court may find persuasive for example the need to deter certain kinds of criminal activity such as football hooliganism.

In Southern Sudan, the system of pleader exists since an analogy can be drawn from legislated instruments that require the presence of parents in the trial of a juvenile offender but the practice as found out in the case of one 9 year old boy who was tried in the absent of his father illustrates that authorities do not comply with the provision of the law.

105 Criminal Procedure Act, 2008

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In hearing juvenile cases, the legal requirement for a fair trial must be observed. The principle of fair hearing is provided under Article 23 (1) of the ICSS\textsuperscript{107} that an accused is presumed to be innocent until his or her guilt is proved according to law. It follows that in all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with the procedures prescribed by law\textsuperscript{108}. This includes the right for any accused person having the right to defend himself or herself in person or through a lawyer of his or her choice and to have legal aid assigned to him or her by the government where he or she is unable to defend himself or herself in serious offences\textsuperscript{109}.

In order to ensure the principle of fair hearing in juvenile cases, reasonable assistance must be availed to the juvenile in the proceedings and this assistance includes the presence of the parents of the child and a legal counsel. According to section 192 (5) of the Child Act, it is provided that, apart from members and officers of the court, only the following persons may, at the discretion of the judge, attend any sitting of a court. These persons include parties to the case before the court, their legal counsels, witnesses and other persons directly concerned with the case; parents of guardian of the child; and any other person whom the court authorizes to be present.

Courts are also empowered under subsection 6 of section 192 to appoint a guardian ad litem to any child for the purposes of the proceedings and to safeguard the interest of that child. Section 138 (4) of the Child Act provides that an inquiry to establish whether a child appreciates the difference between right and wrong and is able to act in accordance with that appreciation, must be conducted by a judge.

\textsuperscript{107} Interim Constitution of Southern Sudan, 2005

\textsuperscript{108} Article 23 (3) of the Interim Constitution of Southern Sudan, 2005

\textsuperscript{109} Article 23 (6) of the Interim Constitution of Southern Sudan, 2005
The Presumption of innocence is also applicable to juvenile offenders. This principle states that “the accused is presumed to be innocent unless his guilt is proved beyond reasonable doubt, and this is of cardinal importance in the administration of criminal justice”\(^{110}\). The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the court cannot record a finding of the guilt of the accused\(^{111}\).

iii Sentencing of Juvenile Delinquent

When a juvenile case is heard, the court shall make appropriate orders for the offence putting in mind that in sentencing a juvenile, the words ‘conviction’ and ‘sentence’ may not be used in relation to juvenile dealt with summarily\(^{112}\). It also follows that usually, the maximum penalty should not be imposed on a first offender except in exceptional circumstances\(^{113}\). This is because the condition of childhood exempts young children from accountability for actions; they are deemed not to be responsible actors and are excused or given leniency when sentencing. Where this state ends and responsibility begins is, in reality, a gradual process with the child becoming more and more aware of his place in the order of things\(^{114}\). The child must know that his or her act was gravely wrong, seriously wrong\(^{115}\).

Although the traditional view is that evil men deserved to be punished as the ultimate justification for imposing sentences of imprisonment, sentencing of juveniles is giving way to the more modern


\(^{111}\)(Kali Ram v. State of H.P., (1973) 2 SCC 808)

\(^{112}\)In Ex parte N, 1959 Crim. L.R. 523

\(^{113}\)R v. Yusefu Maria Mavuva, Crim. Rev. No. 36 of 1961 (unreported)


\(^{115}\)R v. Gorrie (1918), 83 J.P. 136
approach which views the punishing of criminals as having three main purposes, namely, the need to deter the criminal himself and those members of the society who might similarly be inclined to committing crimes; the desirability of rehabilitating him; and the necessity to restrain him by keeping him away from the law-abiding members of the society\textsuperscript{116}.

It is to be remembered that in imposing a sentence against a juvenile, considerations must be had as to the age of the child. The range of sentences available is considerable but is dependent upon the age of the offender, the facilities available locally and the policy of the particular government in power\textsuperscript{117}. The Interim Constitution of Southern Sudan 2005 provides restrictions on sentences that can be imposed on the juveniles. Among these restrictions is that no death penalty shall be imposed on a person under the age of eighteen...\textsuperscript{118}\textsuperscript{19}.

The same constitutional provision is echoed under section 11 of the Penal Code Act\textsuperscript{119} which provides that: when an accused person who is twelve and less than eighteen years of age is convicted by a High Court of any offence, or by the Court of a Magistrate of the First or Second Class of any offence not triable summarily, the court may in passing the sentence prescribed by law, sentence such accused person to be detained in a reformatory school or other establishment for the purpose for a term which shall not be less than two or more than five years. This provision can also be illustrated by the East African case of \textit{Turon V. R}\textsuperscript{120}, where Sir Charles Newbold P. held that a death sentence cannot be pronounced on a person who was below the age of 18 years at the time the offence was committed.

\textsuperscript{116} Francis J. Ayume, Criminal Procedure and Law in Uganda, 1986

\textsuperscript{117} Quoted from Jefferson, Criminal Law, 8th Edition

\textsuperscript{118} Article 25 (2) of the ICSS 2005

\textsuperscript{119} Laws of Southern Sudan, 2008

\textsuperscript{120} (1967) EA 789
In Southern Sudan, the appropriate possible sentences that may be imposed on a juvenile offender are enumerated by the Criminal Procedure Act\textsuperscript{121} which provides limitation on the court to impose sentences. The county court of a first class which tries juvenile cases is required under section 13 (2) (a) (iv) to impose compensation to the victim of the juvenile crime and a care order and/or reform measures for the juvenile offender\textsuperscript{122}. The same section empowers a Magistrate of Second Class to conduct a summary trial and to impose a sentence of: (i) imprisonment for a term no exceeding six months; (ii) fine not exceeding SDG 150 and (iii) compensation, care and reform measures.

It should be noted that although the laws are clear on the sentences that can be passed in juvenile cases, problems appear when dealing with young female offenders who get married during their adolescence. In a controversial case of Rebecca\textsuperscript{123}, a 17 years old girl who burnt her husband to death by petrol, it could be realized that early marriage is a disadvantage to the girls who marry before their 18\textsuperscript{th} birth day because they do not benefit from the treatment accorded to juvenile offenders. In this case the girl was married to a man who had two other young wives of her age. She was sentenced to 10 years imprisonment and not to reformatory centre. The question is whether the imprisonment conforms to the provision of the Child Act, 2008 which provides for a juvenile to be sent to reformatory centre. Does the fact that she is a married woman mean that she could be treated like any other adult? Marriages of young girls pose confusion in dealing with female juveniles.

In another case, Wani\textsuperscript{124} was charged under section 293 of SPC 2008. It was alleged that the accused took a phone and ran away. He denied committing the offence; however, the Magistrate sentenced

\textsuperscript{121} Laws of Southern Sudan, 2008
\textsuperscript{122} Section 13 (i) of the Criminal Procedure Act, 2008
\textsuperscript{123} Not real name
\textsuperscript{124} Criminal Case NO 107/2010 (Not real name)
him and the social workers to keep him in a reformatory center for one month and ordered his parents to pay 200 SDG to the owner of the phone through a civil suit.

It should be noted that the time of criminal responsibility for the purpose of sentencing is the time of the commission of the offence and not the time of the trial. If a juvenile attains the age of maturity after the commission of the offence but before commencement of proceedings, then his latest maturity age will not be considered. In R v. Chelsea Justice ex parte DPP125, a 16 year old boy was charged with wounding with intent. He appeared before juvenile court and was remanded, at first in custody, and then on July 3, 963 released on bail until July 31, with the view to being tried summarily for the indictable offence, on July 28. He attained the age of 17 immediately before the hearing on July 31 and the police preferred a further charge of attempted murder which was based on the same facts as the earlier charge. The justices knowing his age decided that they would at a later date hear both offences summarily. An order for prohibition was issued to prevent them from dealing with the charge of attempted murder. References in the judgment of ROSKILL J. to the fact that the charge was preferred after 17th birthday might suggest that that is the moment for determining whether criminal jurisdiction exists rather than the date of first appearance before the court. Further in R. v. Rider126 it was held that although there appears to be conflict between these views the date that is be considered is the date when the charge is preferred.

In Southern Sudan, the date of the commission of the crime is the date which the offender is deemed to have committed the crime and not any other date. Therefore, the date of the commission of the crime cannot be backdated or postdated and for this reason, Article 23 (4) of the ICSS

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125 (1963) 3 ALLER 657
126 (1954) 1 ALLER 5
provides that “No person shall be charged with any act or omission which did not constitute an offence at the time of its commission”.

iv The Right of Appeal in Juvenile Cases

An appeal is a formal request to a court of appellate jurisdiction by an aggrieved party for a judgment or a decision to be revisited. The general rule is that there is no automatic right of appeal from a judicial decision. The right of appeal is a creation of statute and no party, even the state, has such right unless it is clearly given. In Southern Sudan, section 186 (2) of the Child Act, 2008 provides for the right of juvenile to appeal against his or her case and it is to the effect that upon admission to a place of detention, every child shall have the right to appeal against his/her case and shall be assisted to do so by the prison authorities.

The right of a convict to have his/her case seen by an appellate court is considered to be important in every justice system. It is this reason that the Indian Supreme Court observed in M.H. Hosket v. State of Maharashtra, that “one component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where conviction is fraught with loss of liberty is basic to civilized jurisprudence...”

For juvenile cases, the English position is that any party or any person aggrieved by the order of a magistrates’ court may ask the justices to state a case for the opinion of the High Court on the ground that the justices were wrong in law or were in excess of jurisdiction. The reference to “a

127 Oxford Advanced Learner’s Dictionary, 11th Edition

128 R v. Dunn (1965) EA 567

129 (1978) 3 Sec 544

130 Ibid P. 24
person aggrieved may be wide enough to include the parent\(^{131}\). A juvenile may, in the same way as an adult who has been convicted and sentenced by a magistrates' court appeal against his/her conviction or sentence or both or where he pleaded guilty against his sentence\(^{132}\). This is an acknowledgement that human judgment is not infallible; and that despite all the provisions for ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. Therefore, the English code provided for an appeal and revisions and thereby enabled the superior courts to review and correct the decisions of the lower courts\(^{133}\).

In Southern Sudan, cases of persons serving sentences of wrong decisions may not be ruled out since there are no proper judicial recordings. It is to be noted that non-observance of the right of juveniles to appeal against their sentence is an impediment that defies the provision of Article 24 of ICSS that the right to litigation shall be guaranteed for all persons, no person shall be denied the right to resort to courts of law to redress grievances whether against government or against any individual or organization.

The case of Francis R\(^{134}\) who was charged and sentenced under section 383 (2) (b) of the Penal Code Act, 2008 for involvement in drugs dealing serves to illustrate the difficulty for making an appeal by the juvenile. In this case, the judge told the convict that he had the right of appeal but it was not possible for him to appeal because he could not afford the fees for legal representation. This means detention because of his inability to afford legal representation is inconsistent with the provision of section 187 (1) (l) of the Child Act which provides that every child in detention has the

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\(^{132}\) Ibid

\(^{133}\) R.V. Kelkar's, Criminal Procedure at page 24

\(^{134}\) Not real name
right of access to legal counsel. This right includes the right to be assisted in making an appeal. The Ministry of Legal Affairs and Constitutional Development as stated earlier under section 175 (3) (VI) is also required to provide legal representation to juveniles who can not afford legal fees. Therefore, juveniles who are not satisfied with their sentences should be assisted to appeal against their sentences.

3.5 Parents/Guardian of both Juvenile Offender and the Victim of Juvenile Offence

This section discusses the parents or guardian of both the juvenile offender and of the victim of juvenile offence. It defines who a parent or guardian is and the role they play when offence is committed by juvenile or parents or guardian of the victim of juvenile offence.

i Parents/Guardian

A parent is defined under section 5 of the Child Act to mean the mother or father of a child and includes any guardian or person who is liable by law to maintain a child or is entitled to his or her custody. Parental liability on the other hand is defined under section 5 of the Child Act as meaning all the duties, responsibilities, rights, powers, and authority which, in accordance with law, a parent of a child has in relation to the child and the property of the child to enable him or her fulfill those responsibilities in a manner consistent with the evolving capacities of the child. The term guardian is also defined under section 60 of the Child Act to mean a person appointed by will or deed or customarily by a parent of a child, or by order of a court to assume parental responsibility for a child upon the death of a parent, either alone or in collaboration with a surviving parent of the child.

ii The Role of Parents/Guardians

When a juvenile appears in court, accused of a crime, it is understandable that his/her parents may want to be present to support their child. This is not always the attitude of parents, however, and the
trial courts possess the power to compel parents to attend court. The common practice is that “if a juvenile is aged 15 or under, the court must order a parent to attend, unless it would be unreasonable to do so”135.

The parents or guardian of juvenile offender play a big role during the arrest, investigation, during trials and when a juvenile is convicted or sentenced by court for any offence. These roles range from social and economic role. For instance, a parent or guardian is bound to compensation, pat fine and other pecuniary payments.

In Southern Sudan, section 33 of the Criminal Procedure Act, 2008 provides that: no relief from criminal liability; and it is to the effect that the provisions regarding criminal responsibility as they apply to children, shall not, however, affect any civil claim by the aggrieved party against the parents or guardian of the child. In essence, it means that parents or guardian of juvenile offender bear the consequences of juvenile delinquency. This is also the position in UK where section 55 of the 1933 Child Act provides that the parents or guardian of a young person may and or a child must be ordered to pay any fine, costs, or compensation instead of the juvenile unless the parent or guardian cannot be found or the court is satisfied that he has not conduced to the commission of the offence by neglecting to exercise due care and control136.

According to Clarke Keating, “a juvenile may be ordered to pay a fine, damages for injury, compensation for loss and costs, but the power of the court to make any of these orders in respect of him differs in two respects (1) there are limits for magistrate court to order the juvenile’s

135 Criminal Litigation and Sentencing by Mr. Justice Elias, Chairman of the Advisory Board of the Institute of Law, City University, London August 2002 P. 114

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guardian/parents compensation instead of juvenile. But where the property has been stolen an order for restitution may be made.\textsuperscript{111}

iii Adopted Juvenile Offender

In Southern Sudan, foster care exist but not adoption in western sense, this is because a parentless child is taken care of by the closest relative mostly maternal relative but this care ends when the child reaches the maturity age.

The adoption is relevant in juvenile justice because a person who legally adopts the child would be bound for any delinquent wrong doing of the juveniles. It was observed during the field work for this research that the majority of juvenile offenders were children without parental care of child under the care of relatives. It was also revealed that most of the guardians of the delinquent children do not attend to them when they are incarcerated for fear that they would be made to pay the victims of the juvenile offences. It would be important for the juvenile justice system that those who assume responsibility for children should be held responsible for wrongdoing the child if it results from negligent care of the child.

The effects of an adoption order under section 88 are that upon adoption order having been made: the parental responsibility of natural parents of a child, or of any other person connected with the child ceases. The adoptive parents assume the parental responsibility for the child; and the adopted child becomes a member of the adoptive parents' tribe, clan lineage or other group, and as such shall has all the rights to the family rituals in accordance with customary law. It is my observation that the law of adoption in Southern Sudan is not very clear in case of an adopted child committing an offence.


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One would suggest that although placing legal conditions on foster care would be caused more harm to parentless children, it would force foster parents to take good care of the child who they may voluntarily accept to foster. This would strengthen the implication of the fact that upon adoption order, an adopter takes all the responsibilities pertaining to the child including legal representation.

3.6 The Reintegration of Juveniles into Community

Reintegration of juvenile into community is a process of receiving back the juvenile offender after having completed the period of detention in the reformatory centre. In order to protect the interest of the juvenile, it is advisable that a parent or guardian must be ready to receive back the juvenile after a release from a reformatory centre. This should be done with the assistance of social workers to ensure the interest of juvenile are not prejudiced. The social worker should continue the supervision of juvenile after release from detention. Where the juvenile had acquired skills during detention, the juvenile is also to be helped to get a job to sustain his or her live in the community.

It should be noted that since Southern Sudan lacks reformatory facilities, reintegration of juvenile into the community without having skills that would be useful to the juvenile future life poses a threat to the community. The fear is that a released juvenile who has no parents or has no ability to sustain his livelihood outside detention centres may revert to the former conditions that lured him or her to delinquent behaviours. It follows also that when a child is released from the detention centres, the authorities must ensure before reintegration of juvenile into the community that necessary reconciliatory processes have been initiated between the child and the person who was the victim of juvenile crime. Section 153 (c) of the Child Act provides for restorative justice and it is to the effect that: crimes committed by a child shall be dealt with in accordance with the principle of restorative justice which aims to promote reconciliation between a child and the person (s) or
community affected by the harm caused. The researcher did not come across any legislation that provides for the procedures during and after the release of juvenile from the detention centre.

The significance of a due reintegration of juvenile into the community is that juveniles who once caused harm due to delinquent behaviours may reiterate the same antisocial wrong-doings when they come back to the same environment. Social reintegration according to one supervisor of Juba Orphanage School who talked to the researcher during the field “is paramount for the survival for a delinquent child because if a child is released into hostile community, the life would be very harsh lest the child return to the centre”. It should be noted that lack of the provision in the Child Act which provides for reintegration of juvenile into the community may be a loophole in the implementation of the provisions of section 135 (b) of the Child Act which provides inter alia “that the main objectives of the juvenile justice is the restoration of harmonious relationships between the child offender and the victim through reconciliation, restitution and compensation”.

3.7 The Prison Services

This section discusses the Prison Services, its purpose and the importance it plays in the juvenile justice system.

Prison is defined as a state or federal facility of confinement for convicted criminals, especially felons. It is also termed as penitentiary, penal institution or adult correctional institution. In Southern Sudan, “Prison Institution” is defined to include any whole or part of a building, place or vehicle, but excludes military detention facilities.

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138 Brayan A. Gamer (Editor-in-Chief), Black Law Dictionary, 8th Edition at page 1232

139 Section 5 of the Prison service Bill, 2009, Laws of Southern Sudan
Conventionally, every criminal justice system needs dedicated facilities in which to house persons held in pre-trial detentions, suspects and the accused persons and persons convicted of criminal offences\textsuperscript{140}. Although juveniles can also be put in prisons, the law requires that putting juveniles in prison should be for their protection and not as punishment but for their reform. Otherwise, concurrence could be had to the view that “Locking children away in juvenile prisons steals a piece of humanity from all of us. That when we condone putting young people behind bars in desolate, violent institutions far from their homes and communities, we are complicit in the destruction of their childhood”\textsuperscript{141}.

According to section 185 (1) of the Child Act\textsuperscript{142}, it is provided that no child shall be received in any detention facility without a valid order from the Public Prosecution Attorney or judicial order from the court. Subsection 2 of the same section went further by providing that, before making a judicial order on detention, a court shall be satisfied that a suitable place is readily available. There must also be juvenile confinement centers, in other words, prisons cells specifically designed for children who commit serious crimes. These are often called juvenile detention centers.

A prison system must be capable of providing for the housing, care and security of prisoners, of respecting international standards for prisoner’s rights, and of catering to the special needs of juvenile ... in detention. Prisons in principle should not serve as places for torture and inhuman or cruel treatment but should be a place of corrective and reformatory services.

\textsuperscript{140} Clarke Hill & Morrison on Children

\textsuperscript{141} JJPL Report, Louisiana 1998

\textsuperscript{142} Laws of Southern Sudan, 2008
Therefore, juveniles in detention should be treated humanly and as such, section 190 (5) of the Child Act, provides that all disciplinary measures in places of detention constituting cruel, inhuman or degrading treatment shall be prohibited, including chaining, whipping, placement in a dark cell, closed or solitary confinement or any other treatment or punishment that may compromise the physical or mental health of the child. Section 190 (1) of the Child Act\textsuperscript{143}, provides that no child shall be disciplinarily sentenced more than once for the same infraction except in accordance with the law; he or she shall be fully informed of the alleged infraction and given a proper opportunity to present his or her defence, including the right of appeal to a competent authority of the prison.

Southern Sudan has not yet enacted its Prison Service Act, but it has the Prison Services Bill, 2008 which is to be passed by Southern Sudan Legislative Assembly (SSLA). Under this Bill, clause 3 thereof provides for the purpose of the Prison Services; and it is to the effect that the purpose of this Bill is to establish an open, transparent, responsive, decentralized, professional prison services in Southern Sudan. Its mission shall be correctional, reformative and rehabilitative. It shall respect the will of the people, rule of law, order, civilian Government, democracy and human rights. Under its clause 5, the Bill defines “Juvenile Prisoner” to mean a Prisoner who is under eighteen years of age\textsuperscript{144}. The Bill further states that prison service shall administer the safe custody, health and welfare of Prisoners.

The more explicit provision in regard to juvenile is clause 66 of the Bill which went further to provide for the juvenile prisoners and it is to the effect that: (1) Every Juvenile Prisoner (a) shall be subject to compulsory education, where available, and shall attend and have access to educational programmes of the same quality and nature to other education programmes available outside the

\textsuperscript{143} ibid

\textsuperscript{144} The Prison Service Bill, 2008 (Laws of Southern Sudan)
Prison Institution; (b) shall have access to social work services, religious care, recreational programmes and psychological services, where available; and (c) shall be permitted to remain in contact with their families through additional visits and by other means; and that (2) The regulations shall provide for any other requirements to ensure the welfare of Juvenile Prisoners.

3.8 The Facilities Required for Juvenile Detainees

Juvenile justice system requires that children who come into conflict with the law should be detained in places that take into account their status in life. For this reason, clause 64 (1) (c) of the Prison Service Bill provides for the separation of prisoners and it is to the effect that Juvenile Prisoners shall be kept separate from adult prisoners and shall be provided with the necessary requirements for their care and treatment. Clause 63 (1) of the Prison Service Bill provides for the Accommodation of prisoners and it is to the effect that; each Prisoner shall be placed in accommodation that- (a) is of such size, and is equipped with adequate lighting, ventilation, sanitary installations, bedding, clothing and other equipment, as is necessary for the preservation of the Prisoner’s physical and mental health; (b) is organized in a way that is culturally appropriate; and (c) meets all other requirements provided for in the regulations.

Clause 77 of the Prison service provides for the Prisoner Rights and it is to the effect that Every Prisoner has a right to (a) adequate and nourishing food and clean drinking water; (b) regular and adequate medical care; (c) privacy; (d) adequate clothing; (e) bedding; (f) keep personal effects; (g) basic sanitation; (h) education, vocational training and reading materials; (i) all necessary individual assistance that is required in view of a Prisoner’s age, sex and personality; (j) regular recreation and exercise; (k) practice any religion; (l) where possible, be detained as close as possible to family and to have regular contact with family and guardians; (m) defend him or herself if
accused of an infringement of a disciplinary offence in the Prison Institution; (n) appeal; (o) make requests or complaints; (p) access legal counsel; and (q) receive visitors.

In Southern Sudan, one would not be exaggerating to say that although the laws exist for the treatment of juveniles, the reality is that juveniles that come into contact with the law face the wrath of a broken justice system. For this reason, one would conclude that having the written laws is one thing and the implementation of those laws to cure the intended mischief is another. Hence, the right of juvenile to reformatory facilities is well entrenched in the legal books but difficult to benefit the intended beneficiaries (the juveniles).

3.9 The personnel

In southern Sudan, the war has not only caused the destruction of prison facilities but also caused lack of trained prison personnel for the administration of prisons in general and juvenile detention facilities in particular. This has resulted into a new recruitment of which the current cadres in charge of prisons were drawn from the former SPLA soldiers who are not only unskilled in prison services but also comprised mostly with majority of illiterate men and women who could not even read the laws or understand that the prisoners have the rights to be treated humanely. These lack of facilities and trained personnel run contrary to the spirit of Article 163 (1) of the ICSS which provides for the establishment of prisons service whose mission shall be correctional, reformative and rehabilitative; and the provision of section 135 of the Child Act which is to the effect that the main objectives of the juvenile justice system are (a) reformation, social rehabilitation and reintegration of the child, while emphasizing individual accountability for crimes committed and (b) restoration of harmonious relationships between the child and the victim through reconciliation, restitution and compensation.

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145 Laws of Southern Sudan, 2008
The management of juvenile facilities requires skilled personnel and for that reason, "the administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as suitability for the work." 146. This is ambiguously mentioned under section 13 of the Prison Service Bill, 2009 which provides that the President shall appoint Officers to the Prisons Service following completion of the required training and on recommendation by the Minister.

The general rule for the prison administration where juveniles are detained is that weapons such as guns should not be carried in the facilities. This is stipulated under section 190 (4) of the Child Act which provides that the carrying and use of weapons shall be prohibited in facility where children are detained. It is also a requirement under section 185 (4) of the Child Act that a police or prison officer of a sex different from that of a detained child shall not have any physical contact with such a child, except in the presence of a police or prison officer of the same sex as that of the child.

The personnel in the administration of prison service should also facilitate the right of appeal by the prisoners. This is the spirit of section 81 of the Prison Service Bill that the Prison Director shall ensure that Convicted Prisoners are given every opportunity and assistance to appeal against their sentences.

Clause 73 (1) of the Prison Service Bill provides for Access to Legal Services and it is to the effect that each Prisoner shall be entitled to consult on any legal matter with a legal practitioner of his or her choice and in a manner which preserves legal confidentiality between the Prisoner and his or her legal representative.

146 UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990
3.10 Reformatory Programmes

Every prison is expected to have reformatory programmes not only for juveniles but also for adult prisoners. According to the Gladstone Committee\textsuperscript{147}, “Prison treatment should be effectually designed to maintain, stimulate, or awaken the higher susceptibility of prisoners... whenever possible and turn them out of prison better men and women, both physically and morally than when they came in”. Therefore, since juveniles are supposed to be sent to reformatory centres by the courts in Southern Sudan, it should always be the first consideration for the court before sentencing a juvenile offender to prison to ensure that the Reformatory programmes or also known as diversion programmes are available and are in compliance with provisions of section 159 (1) of the Child Act which provides that such programmes should meet the following standards:

a. promote the dignity and wellbeing of the child and the development of his or her sense of self-worth and ability to contribute to society;
b. not be exploitative, harmful or hazardous to the child’s physical or mental health
c. be appropriate to the age and maturity of the child
d. not interfere with the child’s schooling
e. where possible impart useful skills
f. be reasonably accessible in term of transport and means.

The sole aim should be rehabilitation rather than punishment. It is widely acknowledged and Southern Sudan is of no exception that “to punish with aim of reforming or rehabilitating the offender has constituted one of the most ambitious development in penal theory”\textsuperscript{148}. It is for this

\textsuperscript{147} (1895) C. 7702, para! 25
reason that the Prison Service Bill, 2009 provides under clause 70 for a right to exercise and recreation. This section provides that each Prisoner shall be allowed at least one hour each day of walking or other suitable exercise in the open air; and that the Prisons Service shall provide means for physical education, including cultural and recreational activities. Clause 72 (1) of the Prison Service Bill provides for Education and Vocational Training and it is to the effect that each Prisoner shall enjoy the right to education and vocational training.

The Comprehensive Peace Agreement (CPA) provides that before the enactment of relevant laws in both Southern and Northern Sudan, the current laws (meaning the laws that were prevailing before the CPA) will continue having force of laws until duly repealed. Because of this, the Prison Services in Southern Sudan had been using some of the relevant provisions in the 2004 Sudanese Child Act which was drafted in Arabic and had some elements of Sharia Law which are not applicable in Southern Sudan. The reality is that, in Southern Sudan, it is not lack of legislated laws that impede the adherence to the rule of law but the systematic institutional incapacities and lack of adequate facilities are the cause of ill-functioning of the system. Therefore, although the laws provide for the rights of juvenile to be sent to reformatory facilities, this right cannot be enjoyed by the juveniles because reformatory facilities are not in existence.
CHAPTER IV

THE FINDINGS AND ANALYSIS

4.0 Introduction

The chapter is to the effect of assessing the findings got after thorough analysis of the legal frame governing the entire criminal justice system and the administration of juvenile justice as provided under the international, regional and the main laws governing juvenile justice which the Interim National Constitution of the Republic of the Sudan 2005, the Criminal Code 1991 and the Child Act 2008. These laws apply throughout the country. Southern Sudan is also governed by the Interim Constitution of Southern Sudan 2005, the Child Act 2008 and the Penal Code Act 2008. Southern Sudan also relies extensively on customary law.

4.1 The conflicts in the legislation on juvenile justice system

(a) The Legality of Corporal Punishment

As already introduced earlier on what the legal system in Sudan and Southern Sudan at large is based on, one of the issues of challenges which is faced by these legal regime is the legality of capital punishment of child offenders (defined as under 18 at the time of the offence) is unclear in Northern and Southern Sudan. Corporal punishment is unlawful as a sentence in Southern Sudan except possibly under customary law; it appears to be lawful under Islamic law in Northern Sudan. Life imprisonment of persons under 18 is unlawful but this appears to relate to age at the time of sentencing rather than at the time of the offence.

The legal system in Sudan is based on British common law, Islamic law and customary law. The supreme law throughout the country is the Interim National Constitution of the Republic of Sudan.
Southern Sudan has its own legal system but the laws, including the Interim Constitution of Southern Sudan, must comply with the federal Constitution. \(^{149}\)

The Child Act 2008 defines a child as under 18 and sets the minimum age of criminal responsibility at 12. \(^{150}\) This contrasts with the Criminal Act 1991 which defines an adult as “a person whose puberty has been established by definite natural features and who has completed 15 years of age” and sets the minimum age of responsibility at seven. \(^{151}\) The Child Act states that it prevails over any other law where there is inconsistency, \(^{152}\) but it is not clear that this applies to hudud offences.

In Southern Sudan, the Child Act 2008 defines a child as under 18 and sets the minimum age of criminal responsibility at 12, as does the Penal Code Act 2008. \(^{153}\)

(b) Legality of inhuman sentencing

(i) Death penalty

As provided in Southern Sudan legislation, the Interim Constitution of Southern Sudan states in Article 25(2): “No death penalty shall be imposed on a person under the age of eighteen...” section 21 (a) of the Child Act 2008 states that “no child shall be sentenced to capital punishment”. The Penal Code Act 2008 states in Section 9: “The Court shall not pass (b) the death penalty on any person who in the opinion of the Court is under eighteen years of age.” The prohibition appears to apply to age at the time of sentencing rather than at the time of the offence. It is in conflict with

\(^{149}\) Interim National Constitution of the Republic of the Sudan 2005, article 3

\(^{150}\) Section 5 and 138

\(^{151}\) Articles 3 and 9

\(^{152}\) Article 3

\(^{153}\) Child Act 2008, articles 5 and 138; Penal Code Act 2008, article 30

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Article 36(2) of the federal Constitution, which states: “The death penalty shall not be imposed on a person under the age of eighteen ... except in cases of retribution or hudud.”

Children in Southern Sudan are sentenced to capital punishment under customary law.154

In Northern Sudan under Article 27(2) of the Criminal Act states that, “With the exception of hudud and retribution (qisas) offences, death sentences shall not be passed against any person who has not attained the age of eighteen....” Article 36(2) of the Constitution also applies as provided above. Death may be by hanging, stoning, crucifixion, or in the same manner as the victim of the crime died.155 Under the Criminal Act, hudud offences punishable with death include apostasy, murder, adultery and armed robbery.156 With regard to capital punishment for non-hudud offences, it appears that the restrictions in the Constitution and the Criminal Act apply to age at the time of sentencing rather than at the time of the offence.

The effect of the Child Act 2008 on the legality of capital punishment for child offenders is unclear. The Act makes no reference to hudud offences. It states that all children must be sentenced by a child court,157 does not provide for the death penalty as a sentence of the court,158 and states that in sentencing the child the court must “give due regard” to the principle that the “death sentence is not inflicted on the child”.159 It is not clear that giving “due regard” amounts to prohibition of the death

154 24 February 2010, CRC/C/SDN/3-4, Third/c Pyongyang report to the Committee on the Rights of the Child, paras. 323 and 324
155 Criminal Act, Section 27(1)
156 Sections 3, 27(1), 126, 130, 146 and 168
157 Sections 62 and 67
158 Section 69
159 Section 77
penalty, whether in relation to hudud or other crimes.\textsuperscript{160} It also appears that the restriction of the death penalty applies to age at the time of sentencing rather than at the time of the offence.

(ii) Corporal punishment

Under the legal framework in Southern Sudan Corporal punishment is unlawful as a sentence for crime in Southern Sudan. Article 21 of the Interim Constitution of Southern Sudan protects the child’s right “to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions”. This protection is also given in the Child Act 2008.\textsuperscript{161} There is no provision for judicial whipping in the Penal Code Act 2008. However, children are sentenced to flogging under customary law.\textsuperscript{162}

In Northern Sudan the effect of the Child Act 2010 on the legality of corporal punishment is unclear. In sentencing a child the court must “give due regard” to the principle that “the sentence of whipping is not inflicted on the child”,\textsuperscript{163} but it is not clear that giving “due regard” amounts to prohibition of judicial whipping in all cases, including as hudud. The Act does not prohibit other forms of corporal punishment, such as amputation and wounding as retribution, which may be imposed for hudud offences under the Criminal Act.\textsuperscript{164}


\textsuperscript{161} Article 21 and 181

\textsuperscript{162} 24 February 2010, CRC/C/SDN/3-4, Third/fourth state party report to the Committee on the Rights of the Child, paras. 323 and 324

\textsuperscript{163} Section 77

\textsuperscript{164} For example, see articles 28, 29, 30, 31, 32 and 168

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(iii) Life imprisonment

Under Section 21 of the Child Act 2008 of Southern Sudan it clearly states that “no child shall be sentenced to ... life imprisonment”. This appears to relate to age at the time of sentencing. Section 9 provide that, Court shall not pass- (a) a sentence of imprisonment on any person who in the opinion of the Court is under sixteen years of age. When looking at the case of Northern Sudan the Criminal Act 1991 states that, persons under 18 may not be sentenced to imprisonment except for the offence of armed robbery. \(^{165}\) The Act provides for punishing armed robbery with life imprisonment when it involves rape and only in Southern states\(^ {166}\), whereas there is no prohibition of life imprisonment in the Child Act 2010.

(iv) Inhuman sentencing in practice

According to Amnesty International, two child offenders were executed in 2005.\(^ {167}\) In September 2008, Human Rights Watch reported at least six other persons sentenced to death between 2003 and 2008 for alleged offences committed when under 18.\(^ {168}\) In 2009, Sudan executed Abdulrahman Zakaria Mohammed who was 17 at the time of his trial in 2007.\(^ {169}\) In October 2010, four children were sentenced to death.\(^ {170}\) Therefore, in regards to statistics relating to corporal punishment or life imprisonment for child offenders is much greater than that is seen in the death sentences.

\(^{165}\) Section 33(1)

\(^{166}\) Section 168


\(^{168}\) Human Rights Watch (2008), The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen, New York: Human Rights Watch


\(^{170}\) IPS News, 9 November 2010, accessed 11 November 2010; Amnesty USA, 2 November 2010, accessed 11 November 2010

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4.2 The incapacity and challenges within agencies of administration of juvenile justice

The agencies under the law entrusted with responsibility of administration of juvenile justice system include the following among others, the police, the court, the prison, the Prosecutions, and the Social Workers.

(i) The Southern Sudan Prison Service

The Prison Services in Southern Sudan in the administration of juvenile justice as institutions is faced with lack of trained personnel, poor or inadequate facilities and budget deficit. Generally as Southern Sudan is still gradually establishing its infrastructures all are not yet put in place in regards to juvenile justice hence, among the problems facing juvenile department in the Prison Service include inadequate accommodation for juveniles, lack of reformatory facilities and lack of trained personnel.

The few infrastructures for the accommodation of juveniles were destroyed during the war and no renovation has ever been undertaken because of budgetary problem. It should be noted that this has resulted into the fact that, “prisoners are held under conditions that violate basic human dignity and threaten prisoner’s health and physical integrity”171.

In regard to the few reformatory facilities that were established before the war such as Logolo Reformatory Centre and Maridi Reformatory School are not functioning. This has resulted into juveniles being released after their sentences without skills in their future lives.

In term of personnel, the current prison cadres were drawn from the former (Sudan Peoples Liberation Army) SPLA personnel who turned prison warders after the war with hardly skills in

171 Charles T. Call, Constructing Justice and Security After the War, 2007
prison services. This makes prison conditions more appalling, cruel, inhuman and degrading thereby making the prisoners in general and juveniles in particular stay at fear. The prison is also overcrowded due to rampant arrest by the police of the law breakers coupling with the judicial delays in disposal of cases.\textsuperscript{172}

Further, the circumstances of poor keeping of juvenile registers in the detention centres. It is evidenced that “the creation of a unified system of prison registers should be an unprecedented improvement in the monitoring of the legality of detention to help end the formerly common place phenomenon of the forgotten prisoners. The treatment of pre-trial detainees and sentenced prisoners has been a difficult matter in post-conflict reconstruction around the world,\textsuperscript{173} and Southern Sudan is of no exception. The circumstances of imprisonment should not therefore be used as an additional punishment and any adverse effect of imprisonment must be minimized. Although life in prison can never be normal, conditions in prison should be as close to normal life as possible, apart from the loss of liberty.\textsuperscript{174}\textsuperscript{179}

Another problem faced by the prison service is that, there is Institutional inefficiency in Southern Sudan and juveniles in prisons run the risk of the violations of their human rights. For instance, according to the Southern Sudan Human Rights Commission report it is stated that, prison is “extremely poor across Southern Sudan, with many facilities lacking the most basic infrastructure which exhibit poor sanitation, lack of ventilation, lack of beds, the failure to separate children from adults, and lack of remedial care and food”\textsuperscript{175}.
Therefore, the common believe is that, the predicament of detainees is compounded by overcrowding and poor sanitary condition of the prisons. Some of the cells are infested with parasites and communicable diseases. Consequently, the prison harbor serious health hazards such as tuberculosis, pneumonia, and scabies which not only put the lives of the detainees in great peril but also pose a serious health risk to the wider community.\textsuperscript{176} It can be concluded that the main challenges facing prison services in Southern Sudan include lack of appropriate staffing of prison with trained personnel and poor facilities for detention and reformatory facilities for sentenced juveniles.

(ii) The Role of the Police Services in Juvenile Justice

The major concern is that, the lack of capacity of police to handle juvenile issues in conflict with the law. Police in southern Sudan needs tremendous reforms considering the statement made that the “policing stands at the intersection of human rights, justice and security. Police reform is one of the most important components in post conflict societies and for this to happen, there is a need for "institutional modifications of police organizations, including merit-based selection criteria, more professional training, the inclusion of important ethnic and religious groups and women and restructuring are quite feasible and important in the post war settings\textsuperscript{177}.

In recent conducted research study by Save the Children Sweden found that investigation of crimes allegedly committed by children is usually conducted while the children are already in custody; and that persons dealing with juvenile cases are not aware of the concept of child abuse, restorative justice, child rights and juvenile justice\textsuperscript{178}. It is clearly evidenced that, in Southern Sudan there is a

\textsuperscript{176} Nuchunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal justice in Cameroon

\textsuperscript{177} Charles T. Call, Constructing Justice and Security After the War, 2007, P. 387

\textsuperscript{178} Alphazard K. Chabari, Adapting Restorative Justice Principles to Reform Coronaary Courts in Dealing with Gender-Based Violence in Southern Sudan, November 2008
wide gap between the police practices and legislations and it requires regular sensitization and dissemination of the Child Act to the police force who deal with juvenile delinquents. It is only when the police force can read and write (he/she has gone to school) and educated on the general principles enshrined in the Child Act concerning the administration of juvenile justice and its values that a conducive environment for juvenile human and legal rights can be realized. The rationale is that, because “the initial experience at the police station is the decisive first stage of the criminal justice chain”\(^{179}\); this is equally true that for juvenile justice system in Southern Sudan to be implemented, the police force needs to be sensitized, trained and restructured to include effective juvenile departments in every police station.

According to the report by UNMIS on the Southern Sudan Police revealed that “police practices and lack of capacity violates human rights of detainees”\(^{180}\). The report goes on to indicate that “while some are held inappropriately, some inmates spend more time in pre-trial detention than the maximum imprisonment period fixed by the law for the alleged offence. Consequently, it is not uncommon for detainees to get lost in the system and spend months or years in jail. Among these suffering masses are vulnerable groups to which the category of juvenile offender falls”\(^{181}\). One may perceive that institutions in Southern Sudan, are created by legislations but the presence and practices of those institutions on the ground is a different history to ponder. The police in Southern Sudan currently faced several challenges which include lack of properly trained personnel such as investigators, charge officer, administrative police officers as well as poor and insufficient infrastructures for the detention of juveniles. The researcher found that juvenile detainees were not being separated from the adults.

\(^{179}\) The Lilongwe Declaration: Accessing Legal in the Criminal Justice System in Africa

\(^{180}\) UNMIS- Human Rights Bulletin, issue 13 August 2009 at page 6

\(^{181}\) Nuchunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal Justice in Cameroon
(iii) The Courts in Southern Sudan

The problems that characterize the Judiciary of Southern Sudan in the administration of justice in general and juvenile justice system in particular is the absence of trained judicial personnel. The other challenges facing judicial administration of juvenile justice system range from the fact that institutions envisaged under the Child Act have not yet been established. These include the juvenile courts; the Independent Child Commission and the Child Justice Committee. It follows also that although the County Courts are empowered under section 192 (3) of the Child Act to handle juvenile cases, the judges have no prior training nor in-service training as provided under section 192 (7) of the Child Act which requires that judges serving in juvenile courts shall receive in-service training and/or other appropriate methods of instruction on child’s rights. The conclusion would be that “judicial reforms have generally accomplished less than security reforms in Southern Sudan. They have tended to be less ambitious, less strategically planned, less coordinated, less swift, and less publicly understood and supported than security reforms”182. There could be no dispute that “legal reforms are insufficient without institutions that can guarantee rights protection to citizens and enforce laws. It is said that “institution building of police, prosecutor, courts, bar associations, and relevant civil society actors is crucial to the perception and existence of justice”183.

Despite the existence of Southern Sudan legislations that bears the elements of international standards, it is to be noted that “written guarantees have done little to protect human rights in most of the post-conflict countries such as Southern Sudan. This is because the courts in Southern Sudan continue to be badly managed, partly because of poor delineation of judicial functions. It is also an indisputable fact in Southern Sudan that “judges vary tremendously in their qualifications, but the

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182 Charles T. Call, Constructing Justice and Security After the War, 2007
183 Ibid
average skill level is poor like prosecutors, because judges typically show little ability to identify the most salient facts, to render decisions that are explicitly based on a combination of fact and applicable law. For example, Deng, a juvenile, was charged by the police under wrong section of The Penal Code Act and eventually sentenced by the 3rd Grade Judge who failed to correct the charge. The judge could not also realize that he had no jurisdiction to try juvenile offenders. This is a justification to the fact that “judges routinely accept arrest reports that are patently unlawful. Therefore lack of skills combined with intentional resistance to change usually prompt the police, the prosecutors and the court in allowing illegal procedures to persist

In another juncture, the judiciary in Southern Sudan most of the young judges serving at county courts which are the only courts empowered under the Child Act; pending the establishment of juvenile courts to deal with juvenile offenders is language problem and proper training. This is because these judges were trained in Arabic language. in 2005 CPA was signed and Southern Sudan was granted an autonomous government with its own judiciary, the laws were to be legislated and promulgated in English, a language which is not familiar to most of the junior judges who were trained in Arabic. The language problem in the judiciary of Southern Sudan persists tremendously in the sense that even the judicial judgments tend to be much shorter than were in Arabic because the judges could not think of precise and safe English terminologies equivalent with Arabic legal terms, hence a translation would be required from Arabic to English.

It is to be remembered that not only the codes are imposed upon a legal profession which has no formal training or instruction in English, but they were introduced without making available to the lawyers the essential and basic works annotating and explaining the new English version of the law.

184 Charles T. Call, Constructing Justice and Security After the War, 2007
185 Charles T. Call, Constructing Justice and Security After the War, 2007
Therefore, juvenile justice system faces a problem of interpretation of the Child Act. It is said that “applying the law always involves interpreting it. That any norm posed in an authoritative legal text has to be understood before it can be applied and accordingly, in a wide sense of the term ‘interpretation’ every application of law requires some act of interpretation, since one has to form an understanding of what the text says in order to apply it, and any act of apprehension of meaning can be said to involve interpretation”\textsuperscript{186}.

It should be remembered that for Southern Sudan to have a sound juvenile justice system, the judicial officers must be recruited to juvenile courts with prior qualification since it is believed that “the most indispensable condition for a fair criminal trial is to have an independent, impartial and competent judge to conduct the trial”\textsuperscript{187}. Therefore the judge cannot administer justice without the understanding to the provisions of the laws.

\textbf{(iv) The Public Prosecutions role in administration Juvenile Justice System}

Under the usually procedure as also the same in Southern Sudan, the role of the Directorate of Public Prosecutions and State Attorneys is to ensure that institution of criminal proceedings against any person are initiated in accordance with acceptable due process of criminal law, lest the routine functioning of the judicial system remain extremely deficient to protect the public.

In effecting this duty, the Directorate of Public Prosecutions and State Attorneys is faced with a number of challenges in regards to the administration of juvenile justice and these include lack of trained legal counsel.

\textsuperscript{186}Neil MacCormick, \textit{Rhetoric and the Rule of Law}, 2005

\textsuperscript{187}Kamal Hossain, Leonard F.M Besselink, \textit{Human Rights Commissions and Ombudsman}, 2000 P. 135
The challenges also include most of the legal counsels in the Ministry of Legal Affairs like their counterparts in the judiciary were trained in Arabic and therefore, it may be difficult for them to understand and appreciate the English drafted legal text such as the Child Act. It is true that one cannot change to something which he/she hardly understands.

It is said that “change requires transforming not just codes, but the very mind set of the legal profession and institutions themselves. Charles T. Call said that “without effective checks on state institutions, they are likely to continue to engage in discriminatory or incompetent corrupt behaviour, despite laws to the contrary.\(^88\)

Juvenile offender in Southern Sudan faces the wrath of legal machinery without legal representation. Although legislations such as the ICSS, the Criminal Procedure Act and the Child Act among others provide for Legal Aid to be provided by the Ministry of Legal Affairs and Constitutional Development, it is evidence that accessibility to legal aid is constrained in Southern Sudan for many reasons. Firstly; although “it is the objective of the law to extend legal aid to every pauper who is unable to pay an advocate’s costs, in practice the vast majority of Southern Sudanese litigants or accused persons do not benefit from the system for a variety of reasons”. This was confirmed by the Director in the Directorate of Contract, Conventions and Treaties, Legal Aid and Human Rights in the Ministry of Legal Affairs and Constitutional Development that his Directorate had never had any case for which legal aid could have been rendered.

From the nature of the function of the Public Prosecution Attorneys, they are not only responsible for investigations and prosecutions in juvenile justice system but also responsible for the provision of legal aid to those who may not afford legal representation by private lawyers. Juvenile offenders

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\(^{88}\) Charles T. Call, Constructing Justice and Security After the War, 2007, P. 397
because of their vulnerable status in society fall within those persons who would be entitled to legal representation on the expense of state. The provision of legal aid is recognized under section 175 (3) (b) (vi) of the Child Act which provides that it is the right of the child to be provided with legal representation by the Ministry of Legal Affairs and Constitutional Development. This will alleviate the fact that “where the accused is unrepresented in the court, it is often the case that he/she faces the double prospect of a hostile bench and a hostile prosecutor189”.

In Southern Sudan, it is not with prejudice to say that Public Prosecution Attorneys are rarely seen in courts conducting prosecutions but also leave the police to represent them even in serious criminal cases. The same practice applies when dealing with juvenile offenders. There is hardly a system of accountability for institutional roles in Southern Sudan and this hinders the fact that judicial authorities are responsible for ensuring respect for principle of equality in the courts and for procedural rules in prison and police stations. The Public Prosecution Attorneys like the police investigators, judges and prison personnel are also inefficient because they were trained in Arabic thereby making them unable to implement the English written law such as the Child Act effectively.

The Department of Women and Juvenile Justice created in the Ministry of Legal Affairs and Constitutional Development is ill-staffed to the extent that there are no records of juvenile cases. It is also true that the few legal counsels who are there do not even know the level of juvenile delinquency in Southern Sudan nor appears in juvenile cases.

In this state of affairs, juvenile offenders suffer as a result of inefficient public prosecution attorneys who control proceedings at every stage. This problem was clearly stated in the people Vs Asanga

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189 Nuchunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal justice in Cameroon
that “considering that the investigation and prosecution of criminal matters is substantially within the purview of the Legal Department, lawyers usually have very little to do with the lengthy delays”. Therefore, it is advisable that personnel in the institutions dealing with juvenile justice system should not only be qualified but also committed to their work.

(v) The Social Workers in the Administration of Juvenile Justice

The role of social workers in the administration of juvenile justice is to ensure the welfare of juvenile offenders. These include making assessment of juveniles who are arrested before court trials and to assist the juvenile during investigations. The social workers are also supposed to render counseling services to juvenile offenders.

The finding indicates that, social workers have no presence in the administration of juvenile justice system in Southern Sudan. Investigations are conducted by the police without social workers. The courts also decide juvenile cases without social workers.

From the facts revealed in most of the towns in Southern Sudan, social workers like the rest of their colleagues in other institutions dealing with juvenile justice system face similar problems of trained personnel shortage, inadequate mobility facilitation and poor financial motivation which is one of the most problems complained of both by the social workers and the Ministry responsible for social work whose budget is the least in the yearly budget of the Government of Southern Sudan.

In term of trained personnel, it is provided that “social workers should receive training to enhance efficiency in their work”. The Directorate of Child Welfare in the MGCSWRA acknowledges that

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190 CFIBA/1128/01-02

191 Section 140 (2) of the Child Act, 2008

192 Initial Report to the African Committee on the Rights and Welfare of the Child by MGCSWRA, 2009
social workers are not involved in the process of criminal proceedings against the juveniles and this can be partly attributed to the police and courts that do not recognize the role of social workers in juvenile justice system. In its report, the Directorate says that "in theory the laws for the protection of the rights of the children do exist which needs to be administered through the judiciary, police and prison services. The Director says that, lack of sensitization is a major problem in most institutions that deal with delinquent children. Because of poor skills for the social worker, the duty of social workers to carry out the surveillance for the conduct of the juvenile in the society is not being done.

It should be noted that there is lack of cooperation among the stakeholders and therefore, social workers are not involved because the importance of their role is not appreciated by the judges, the police and prisons authorities. These institutions have limited knowledge of the current statutory children laws specially the Child Act, international human rights laws and customary laws\textsuperscript{193a}.\footnote{\textsuperscript{193}\textsuperscript{a} ibid}
5.1 The Conclusions

The study has been on the challenges of equal access to justice system and the protection of juveniles' delinquent in Southern Sudan. The research overall objective is to establish how the laws and the justice systems in Southern Sudan guarantee protection on juveniles' right to justice system in order to recommend accurate procedure to ensure the protection of juveniles' delinquent in Southern Sudan. This research paper consists of Five Chapters.

Under chapter one of this study the following are the main topics that are discussed and this include: the Background of the Study which considered the introductory part of the research paper, Theoretical Standpoint, Problem Statement, the Purpose of the Study/General Objective, the Objectives of the Study, the Research Questions, the Scope of the Study and Significance of the Study. And it further deals with the literature review of the study basically looking into previous writings in this area of study other researchers in the related fields such as this. Finally, under this same chapter the Research Methodology is also considered, which mainly about the Research Design, Area of study, Respondent, Population and Sample Size Determination, Sampling Procedure, Research Instrument, Validity and Reliability, Data Collection Procedure, Data Analysis and the Limitations to the Study.

Therefore, Chapter Two deals with broad understanding of the concept of criminal and juvenile justice system. The area in which the concept of juvenile justice system can be comprehensive appreciated by the readers in the future, and these aspect includes, definition of criminal justice system from which the understanding of juvenile justice can then be easily, and the development of
the concept of juvenile justice which at the end becomes a separate concept of justice system across
the world today. To fully understand the concept, the chapter analyzed all the International and
Regional Instruments in the related field of juvenile justice system of which Sudan is signatory by
this virtue Southern Sudan become a party to the member states.

The research also discusses the duties and role of all and each agencies or stakeholders in the
administration of juvenile justice in Southern Sudan and these has covered under chapter three of
this study. Therefore, the chapter concentrated in the laws governing the administration of juvenile
justice systems and this includes provisions enshrined under the Interim Constitution of Southern
Sudan, 2005, the Child Act, 2008 and the international instruments dealing with juvenile justice
administration system.

The most important chapter is chapter four which is to the effect of assessing the finings got after
thorough analysis of the legal framework of the entire criminal justice system and the administration
of juvenile justice as provided under the international, regional and the main laws governing juvenile
justice which the Interim National Constitution of the Republic of the Sudan 2005, the Criminal
Code 1991 and the Child Act 2008. These laws apply throughout the country. Southern Sudan is
also governed by the Interim Constitution of Southern Sudan 2005, the Child Act 2008 and the
Penal Code Act 2008. Southern Sudan also relies extensively on customary law. Finally, it is being
concluded with chapter five which give brief summary of all that is discussed in this dissertation and
suggesting a number of the Recommendations on how the challenges of equal access to justice
system and the protection of juveniles in Southern Sudan can be address or solved.

5.2 The Recommendations

As earlier provided under Chapter one of this research paper that the overall objective of the study
is to establish how the laws and the justice systems in Southern Sudan guarantee protection on
juveniles’ right to justice system in order to recommend accurate procedure to ensure the protection of juveniles’ delinquent in Southern Sudan. Therefore, the Findings and the analysis of the study shows a number of challenges in regard to juvenile justice system and the protection of juveniles Delinquent in Southern Sudan. The below are therefore, some of the recommendations:

➢ For Southern Sudan to establish and minimize these challenges of equal access to justice system and the protection of juvenile’s delinquent in Southern Sudan, Progress towards prohibition and elimination of full range of mechanisms and the actual practice of justice system as experienced by juveniles’ delinquent should be put as a priority throughout the country being it at the Government level, community, and the administration of justice system at large. And this could be achievable if the following below recommendations are considered at those levels.

Therefore, the immediate progress needed includes:-

(i) The need to reform the Law in existence

All legal provisions authorizing the courts to sentence child offenders to capital punishment and corporal punishment should be repealed. Explicit prohibition should be enacted in legislation applicable throughout Sudan of capital punishment and corporal punishment as a sentence for child offenders, defined as persons under 18 at the time of the offence, including for qisas and hudud offences. Life imprisonment for persons under 18 at the time of the offence should be explicitly prohibited.

(ii) The importance of National campaigns

The question of awareness is an issue in the findings there are no indications of national campaigns focused exclusively on ending inhuman sentencing of child offenders but a number of organizations are promoting law reform more broadly in light of the Comprehensive Peace Agreement.
The Sudan-based African Centre for Justice and Peace Studies promotes law reform and monitors human rights in the country. It has called on the Ministry of Justice to review the cases of the children sentenced to death in October 2010. 194

The Khartoum Center for Human Rights and Environmental Development 195 and REDRESS has been engaged in a Project for Criminal Law Reform-Sudan (PQLRS) which aims to bring national law into conformity with the National Interim Constitution and international human rights standards. 196

➢ The need for Southern Sudan to be a signatory in the International human rights treaties and to rectify the existing National laws conflicting with inhuman sentencing, among these includes:-

(i) The Constitution

A number of provisions in the Interim National Constitution of the Republic of the Sudan potentially conflict with inhuman sentencing of children. Sudan has ratified or acceded to a number international treaties; But Sudan has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol on the ICCPR aiming at the abolition of the death penalty or the Convention on the Elimination of All Forms of Discrimination against Women. Article 27(3) of the Interim National Constitution of the Republic of the Sudan states: “All rights and freedoms enshrined in international human rights treaties; covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.”

194. Africa Centre for Justice and Peace Studies, 27 October 2010, Special Courts in Darfur Sentence Nine Individuals, including Four Children, to Death, accessed 11 November 2010

195. In 2009 this organization was reportedly closed down by the authorities; we have no further information, accessed 11 November 2010

196. REDRESS & Khartoum Center for Human Rights and Environmental Development (2008), Project for Criminal Law Reform-Sudan (PQLRS), accessed 11 November 2010. See also the briefing submitted by REDRESS and the Sudanese Human Rights Monitor for the UPR of Sudan in May 2011, accessed 11 November 2010
It is true from the findings in this research paper, despite the adoption of the Child Act (2010), which prohibits the passing of the death sentence on children, under article 36 of the Sudan Interim Constitution, the death penalty may be imposed on persons below the age of 18 years in cases of retribution or hudud. And also the recent reports that the death penalty continues to be carried out on children. And these therefore conflicts with the international instrument which reminds the State party that the application of the death penalty to children is a grave violation of articles 6 and 37 (a) of the Convention.

Therefore, Sudan and much more Southern Sudan being the State party must ensure that the death penalty is not carried out on children, including in cases of retribution or hudud, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.

The concern about corporal punishment, particularly caning and flogging, is widely practised in schools, in homes, in courts and in prisons. “Taking into account its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to take all the necessary measures to end the practice of corporal punishment, and in particular, to:

a) explicitly prohibit corporal punishment by law in all settings, ensure effective implementation of the law ad prosecute offenders......

Therefore, this could be dealt with by the enactment of appropriate laws concern juvenile justice system and adequate allocation of resources in order to fully support juvenile justice system in carrying it’s functional and does have separate courts and detention facilities for children.

Other questions to be address concerns the following:-

(a) The age of criminal responsibility is still determined according to apparent physical maturity (puberty and facies), rather than actual age; (b) Children are frequently brought before adult courts
and detained with adults in prisons and in police custody; (c) Juvenile justice is dispensed according to customary law in Southern Sudan, which is not in conformity with international standards in the field of juvenile justice.... In this regard, it is recommended that Sudan and Southern Sudan in particular should: (a) Apply the provisions of the Child Act concerning the age of criminal responsibility consistently throughout its territory;

(b) Accord all children in conflict with the law the full range of rights and judicial guarantees including the provision of prompt legal and other assistance at all stages of the investigative and judicial processes.

➢ The need to holistic approach in addressing the problem of juvenile crime, including respect to prevention, procedures and sanctions, has not been sufficiently taken into consideration by the Sudan. Among the problem are the age of criminal responsibility is too low as a child may be punishable by detention in a reformatory from the age of 7.

Therefore, to address the above mentioned problems surrounding juvenile crime the below concern must be taken into consideration. And they include:

(a) The need to raise the minimum age of criminal responsibility;

(b) The need to establish a system of juvenile justice that fully integrates into its legislation and practice the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System;

(c) The need ensure that all children under 18 years of age benefit from the protection of juvenile justice standards;
(d) The need to guarantee that sentences of capital punishment are not given for acts committed when the perpetrator was a child under 18 and that sentences of life imprisonment without possibility of release are likewise not handed down;

(e) The need to end the imposition of corporal punishment, including flogging, amputation and other forms of cruel, inhuman or degrading treatment or punishment, on persons who may have committed crimes while under 18.

 Having noted in the findings the system of administration of juvenile justice in the Sudan is not fully compatible with the international instruments standard. Therefore, it will be appropriate that the system of administration of juvenile justice be reviewed in order to ensure its compatibility with articles of the Convention and other relevant United Nations standards.
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