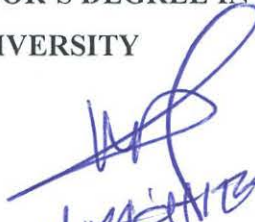


**CRITICAL APPRAISAL OF CRIMINAL JUVENILE JUSTICE
SYSTEM IN UGANDA**

BY

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**A RESEARCH DESERTATION SUBMITTED TO SCHOOL OF LAW AS A
PARTIAL FULLFILMENT FOR AWARD OF A BACHELOR'S DEGREE IN LAWS
KAMPALA INTERNATIONAL UNIVERSITY**


MARY
HOD LST
01/07/2015

JUNE, 2015.

DECLARATION

I declare that this research dissertation is from my own findings and has never been produced by anybody else for any award in any institutions

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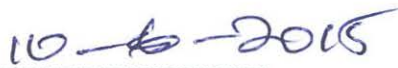
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APPROVAL

This is to satisfy that this proposal has been done under my supervision and submitted to the school of law for examination with my approval.

SUPERVISOR

DR. CHIMA MAGNUS

Signature..........Date..........

DEDICATION

I sincerely dedicate this book to my beloved wife Imalingat Margaret her overwhelming support both spiritually, financially and morally without which this course would still be a dream.

May the almighty God bless you and rewards you and provides you with long life so that you may continue helping me.

I also dedicate this book to my friends Ariong Steven, Ariong Richard, Ogune charles,Oumo Collins for their support which offered to me during the course.

I also dedicate this to my late father Aege Charles Joseph, my mother Abwaka Christine and my Brothers and Sisters for the love; ease and protection they have given to me for the period have gone through.

I also dedicate this book to my God the one who created me, the protection he had given me and good health that may he gives me more life and protection so that I fulfill the role he had given me.

May almighty God bless you all.

LIST OF INTERNATIONAL AND REGIONAL ACRONYMS AND

INSTRUMENTS:

(UN)	:	United Nations 1945
(UNMIS)	:	United Nations Mission in Uganda
(UNICEF)	:	United Nations Children Fund
(UNDP)	:	United Nations Development Programmes
(SCF- Sweden)	:	Save the Children Fund- Sweden
(WC)	:	War Child
(UDHR)	:	Universal Declaration of Human Rights 1948
(UNCRC)	:	United Nations Convention on the Rights of the Child 1989
(ICCPR)	:	International Covenant of Civil and Political Rights 1966
(ICESCR)	:	International Covenant on Economic, Social and Cultural Rights 1966
(ACRWC)	:	African Charter on the Rights and Welfare of the Child, 1990
(ACHPR)	:	African Charter on Human and Peoples' Rights, 1986
(ECHR)	:	European Commission on Human Rights, 1995
(ECHR)	:	European Convention on Human Rights 1950
(ACHR)	:	American Convention on Human Rights, 1969
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	:	Uganda Law Reports
SLJR	:	Uganda 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 Uganda, 2005
The Evidence Act 2006
The Children's Act statutory instrument 2008
The Penal Code Act 2008
The Criminal Procedure Act, 2008
The Ministry of Legal Affairs & Constitutional Development Organization Act 2008
The Judiciary Act 2008
The SPLA Act 2009
The Police Act 2009
Prisons Services Bill 2009 (draft- not yet passed)
Uganda Human Rights Commission Act, 2009
Judicial Service Council Act, 2008
The Local Government Act, 2008
The Interpretations Act, 2008

CASES:

T v. UK (2000) 30 EHRR 121
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Warden v. Hayden 387 U.S. 294, 87 S. Ct. 1642, 181. Ed. 2d. 782 (1967)
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C v DPP (1995) 2 ALLER 43
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(Unreported)
The Uganda Government v. Mohamed Ahmed Abu Kahr (1967) SLJR 103
Turon V. R [1967] EA 789
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S. (an infant) v. Manchester City & Recorder (1971) AC 481 (HL) (1969) 3 ALLER
1230
R v. Windle (1952) 2 QE 826
Re Gault 387 U.S. 1 (1962)
M.H. Hosket v. State of Maharashtra (1978) 3 Sec 544
Hussanarakhaton (iv) v. State of Bihar (1980) 1 SCC 98
DPP vs. Majewski (1977) AC 443
T. 3. Stephen V. Pane Bottling Co. (P) Ltd, (1988)
The people Vs Asanga Asongwe CFIBAJI 128C/01-02

ABSTRACT

Although extensive international and regional theoretical literature has developed over the years which have shaped commendable treatments of juveniles in most states, the situation of juvenile justice system in Uganda has not only been battling the violations of human rights as a result of the prolonged civil war but also had to face the inadequacies of legal framework that was brutally uprooted. 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 Uganda has the child related provisions while the first ever Children's Act statutory instrument is premised exclusively on juvenile justice system. What has remained to be observed is the implementation of these legislations as they require concerted efforts for the re-orientation of the public attitudes in Uganda towards realization, promotion and protection of the human and legal rights of the juveniles.

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 thereby giving insights as to what needs to be done to improve the juvenile justice system in Uganda. 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 Uganda is a party to by virtue of ratification by the Republic of the Uganda.

This research begins with Chapter One which deals with an overall introduction to the juvenile justice system. It also explores definitions of relevant terms, principles and concepts in juvenile justice system. It further 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 which is being affected not only by the juvenile delinquency but also by the treatment of juvenile offenders. The part of chapter one evaluates the position of the Traditions and Customary practices in comparison to the modern statutory Juvenile Justice System which is based on International and Regional values and principles. Chapter Two 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 Uganda. These stakeholders include the police, the courts, the prisons services, social workers as well as the parents and the wider society. Chapter Four analyses the Challenges facing the

stakeholders and their 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 Uganda 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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CHAPTER ONE:

CONCEPT OF JUVENILE JUSTICE SYSTEM

1.0 Introduction

Global quest for harmonious legal systems that embrace inherent values of human dignity as envisaged in the preamble to the Universal Declaration of Human Rights is not possible without established rules and principles that should safeguard and promote the realization of human security, peace and development¹. This means that any justice system aims at ensuring that laws are made for the good of human person, hence the realm of justice system must be adorned with necessary legislations which cater for different aspects of social strata. It is this reason that Principle 1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) provides for the fair and humane treatment of juveniles in conflict with the law which in essence means that, the aims of juvenile justice should be the protection, the promotion of the well-being of the juvenile and a proportionate reaction by the authorities to the nature of the offender as well as to the offence². The juvenile justice system should form an autonomous part of the general justice system in order to address the special rights and procedural treatments of children who come into conflict with the law.

In order to achieve justice for young offenders, the juvenile justice system should not only be autonomous but should also be sufficient and effectively child-centered in accordance with principle 1.4 of the Beijing Rules. This Rule is to the effect 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 all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society”³.

¹ Universal Declaration of Human Rights(UDHRA) 1948

² U'N Standard Minimum Rules for the Administration of Juvenile Justice, Beijing Rules 1985

³ Ibid

This means that every national justice system is obligated to have an adequate and appropriate juvenile justice system in which children are treated with humanity. If this is lacking, the nation will be no better than what the Secretary of Home Affairs of Great Britain said in 1997 that the youth justice system in England and Wales is in disarray that it can be scarcely called a system at all because it lacks coherent objective. That it satisfies neither those whose principal concern is crime control nor those whose principal priority is the welfare of the young offender⁴.

According to the commentary on the UN Beijing Rules, 'juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society'⁵.

Uganda had never had its own national legislations since the inception of the Uganda as an independent country on the 1st January 1965. This is attributed to the fact that it had been part of the whole Uganda which has been ruled by a mixture of secular and theocratic legislations. Such lack of a unified justice system has impacted negatively on the general populace in general and on the juveniles in particular.

On the signing of the Uganda Comprehensive Peace Agreement in the Kenyan Town of Naivasha on the 9th of January, 2005, Uganda was granted an autonomous Government with the powers to legislate necessary laws that would address the needs of its inhabitants. With the powers to legislate necessary laws, the Government of Uganda in an endeavor to establish its own justice system as a nation, had exerted some commendable efforts to set up juvenile justice system alongside the general justice system. This is evidenced in its legislations that specifically provide for the establishment of the institutions, departments and appointment of officials that are charged with the administration of the juvenile justice system.

Some of the institutions and departments dealing with the administration of juvenile justice system in Uganda include:

- The Ministry of Gender, Child, Social Welfare and Religious Affairs which has separate directorate for the welfare of children;

⁴ Quoted from Lode Walgrave, *Restorative Justice for Juveniles, Potentialities, Risks and Problems* (1998 Leuven University Press)

⁵ Geraldine Van Bueren & Anne-Marie Tootell, 1993

- The Judiciary of Uganda (JOSS) which is tasked to create the family courts for adjudication of cases involving children;
- The Ministry of Legal Affairs and Constitutional Development whose Directorate of Public Prosecutions had a Department of Women and Juvenile Justice which initiated the legislation and eventual passing into law

Application by petition⁶.

(1) When the petitioner or petitioners and the child are all Uganda citizens, the application for an adoption order shall be made by petition to the chief magistrate's court, in Form A in the Schedule to these Rules.

(2) When a petitioner or the child is a non-Uganda citizen, the application for an adoption order shall be made to the High Court in Form B in the Schedule to these Rules.

(3) The petitioner or petitioners shall present the petition ex parte in

- The envisaged establishment of an independent Child Commission under section 193 (1) of the Children's Act statutory instrument⁷ is another institution to take lead in the juvenile justice system:
- The Uganda Police Services whose department conducts the arrests and investigations of juvenile offenders; and
- The Uganda Prison Service whose administration runs the juveniles' detention and reformatory facilities.

The question now is whether the juvenile justice system which is deemed to have been set up in Uganda is. Adequate to match the international standards expected of a nation having a juvenile justice system or is lagging behind the expectations.

1.1. Who is a Juvenile?

There are many varying definitions as to who exactly is a juvenile; or in other words, it is not yet universally settled at what stage a person is considered to be a juvenile: However, since the available definitions of juvenile are not different from the definitions of a child as a person who has not reached the age of 18 years, it is prudent to infer that a juvenile fall within the definition of a child.

The word 'juvenile' refers to a young person who has not reached the age of 18 years at which one should be treated as an adult by the criminal justice system⁸.

⁶ Children's Act Statutory instrument No 59 laws of Uganda.

⁷ laws of uagnda,2008

⁸ Black law Dictionary

Age of child.⁹

(1) The age of the child shall be proved to the satisfaction of the court which may admit documentary or other evidence to determine the age.

(2) A certified copy of an entry in a births register book issued in Uganda by a registrar appointed under the Births and Deaths Registration Act in respect of the child shall be prima facie evidence of the facts contained in it.

(3) The court may itself inquire into the age of the child and may make an order for the medical examination of the child in Form E in the Schedule to these Rules, in accordance with section 107 of the Act.

(4) A certificate signed by a medical officer as to the age of the child shall be evidence of that age.

A juvenile under the criminal Justice System of the Uganda, is a person who has not yet reached eighteen years of age at which he/she should be treated as an adult. While the courts or judges are entitled to impose sentences authorized by law on adult offenders, juvenile offenders are entitled to receive special treatment under section 24 of the Criminal Procedure Act, 2003 (now section 284 of the Criminal Procedure Act, 2008)¹⁰.

This is in consonant with the general legal. Parliament that considers juveniles as young persons who are not yet adults. Usually, juvenile offenders are tried in a separate court known as juvenile courts which are courts that deal with young people who are not yet adults¹¹.

Therefore, for the purpose of this dissertation, reliance shall be had to the regional and international instruments that define who a child is. Thus Article 2 of the African Charter on the Rights and Welfare of the Child, 1990 defines a child as every human being below the age of 18 years. This definition is the same under Article 1 of the 1989 United Nations Convention on the Right of the Child (UNCRC).

What should be noted in article 1 of the UNCRC is that the definition of a child is not conclusive but depending on the law applicable in the country or state in which the child hails. Thus the question as to who is a child depends entirely on the definition provided in a particular national law. Because of the variability in the definition of a child, this dissertation will adopt the provision of Article 1 of the UNCRC 1989.

⁹ Children's Act Statutory instrument No 59 laws of Uganda.

¹⁰ Judicial Circular Number 4 of 2007

¹¹ Advanced Oxford Learner's Dictionary, 11th Edition

1.1.1 Age of Criminal Responsibility

The age of criminal responsibility is not universally agreed and therefore, it is at the state's discretion to fix the age of criminal responsibility. It follows also that the age of criminal responsibility should not be unreasonable or in other words, the age of criminal responsibility should not be too low. According to Principal 4.1 of the Beijing Rules it is provided that: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity"¹² This international position is contradicted by Muga's definition of juvenile as seen above which sets the starting age of criminal responsibility at seven. The researcher's view is that Muga's definition of the juvenile is too low and therefore, for the purposes of this dissertation, Uganda's position under Section 138 (1) of the Children's Act statutory instrument which set the age of criminal responsibility at twelve years is considered as of much more of an international standard and therefore, will be adopted. The age of criminal responsibility was considered by the European Court of Human Rights in the case of *T Vs K*,¹³ where the court considered whether the attribution of criminal responsibility to the applicant in respect of acts committed at the age of ten could in itself amount to inhuman or degrading treatment, contrary to European Convention on Human Rights Art. 3. In its judgment, the court did not find that there was any clear common standard among the member states of the council of Europe as to the minimum age of criminal responsibility. Therefore, Uganda being an accession state to the UNCRC by virtue of the Uganda having ratified it echoes the same definition of the child under Article 21(4) of the interim Constitution of Uganda (ICSS) and section 5 of the Children's Act statutory instrument 2008, as every human being under the age of eighteen years. The minimum age of criminal responsibility in Uganda is set under section 138 (1) of the Children's Act statutory instrument 2008. It is to the effect that no child under the age of twelve years shall be prosecuted for a criminal offence as it shall be conclusively presumed that he or she is incapable of committing an offence.

In *Kabatere Steve v Uganda*¹⁴, it was held that age was to be considered at the time of sentencing and not at the time of committing of offence

¹² UN Standard Minimum Rules for the Administration of Juvenile Justice, Beijing Rules 1985

¹³ (200030 EHRR 121

¹⁴ Court of appeal N0.23/2001

1.1.2 Juvenile Delinquency

Juvenile delinquency is defined as an antisocial behaviour by a minor; especially behaviour that would be criminally punishable if the actor or actors were an adult; but instead is usually punished by special law pertaining to a minor¹⁵.

In the words of Erasto Muga, the phrase 'Juvenile Delinquency' refers to criminal acts or omissions performed by juveniles. It is the broad-based term given to juveniles who commit crimes¹⁶. Thus a juvenile delinquent means a young person who has the tendency or who commits criminal acts or omissions. As to who exactly is a juvenile delinquent, a juvenile delinquent is a young person who is not yet an adult and who is guilty of committing a crime¹⁷. Erasto Muga in his book refers to a juvenile delinquent thus "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 person beyond this statutory juvenile court age would be punishable as a crime or as an act injurious to other individuals or public, that is the state or government¹⁸".

In Uganda, juvenile delinquent is not defined but an analogy may be drawn from section 138 of the Children's Act statutory instrument which provides for minimum age of criminal responsibility to mean a child who commits or attempts to commit any crime and who is not between the ages of twelve and fourteen years.

1.1.3 Juvenile Justice System

The juvenile justice system means the ways in which juvenile offenders are brought to justice; it includes the procedure of instituting criminal prosecution of juvenile offenders, the methods of arrest as well as treatment while in detention and subsequently, the nature of orders and punishment which can be made and imposed by courts against juveniles who come into conflict with the law. In the international arena, the juvenile justice system should be that system which upholds the rights, safety and promote the physical and mental well-being of juveniles and take into account the desirability of rehabilitating the young person¹⁹.

Unlike the general criminal justice system which consists of the three main agencies of the police, the courts and correctional services, the juvenile justice system is a unique system that

¹⁵ Black Law Dictionary

¹⁶ Erasto Muga, Crime and Delinquency in Kenya, 1975

¹⁷ Advance Oxford Learner's Dictionary, 11th Edition

¹⁸ Ibid

¹⁹ Art. 14(4) of the ICCPR, and UN Rules for the Protection of Juveniles Deprived of their Liberty

involves social workers who are experienced personnel for the well-being of juveniles while preserving the interests of the community.

It is on this basis that most legal systems prescribe specific procedures for dealing with juvenile offenders as well as establishing mechanism for treatment at the beginning of the institution of juvenile prosecution, during pre-trial detention period and eventually after any decision had been passed by the juvenile court against the offending juvenile. Uganda's juvenile justice system as explained in this dissertation has of recent enacted the Children's Act statutory instrument which lays down specific guiding principles and procedures for the treatment of juvenile offenders.

1.1.4 Importance of Juvenile Justice System

The importance of a juvenile justice system is that it provides avenues and ways in which many societies tackle the problem of juvenile delinquency²⁰. These avenues and ways afford the creation of necessary legal and social restorative programs that help prevent children from committing crimes or becoming delinquents.

S. 10 Reports.²¹

(1) The court shall require the probation and social welfare officer to prepare a report for the court to help determine whether the adoption order will be for the welfare and best interests of the child.

(2) Reports under subrule (1) of this rule shall cover the period of the fostering and shall include the following, among other matters

(a) the child's relationships with—

(i) the foster parent or parents and details of any guidance or correction required;

(ii) other members of the foster family;

(iii) neighbours and other persons outside the child's foster family; and

(iv) any other person who is not a parent of the child who may have rights or obligations under any order of the court or agreement or under customary law or otherwise;

(b) the medical record and current state of health of the child and the foster family;

(c) the educational standard of the child with details of schools attended and progress made during the fostering;

(d) the views and wishes of the child if ascertainable;

(e) the nature and type of the residential home or homes lived in during the fostering;

²⁰ David McClean and Kisch Beevers. The Conflict of Laws, 6th Edition. 2005

²¹ Children's Act statutory instrument no 59

- (f) the past, current and likely future economic status of the foster family;
- (g) the character of the foster family including any criminal proceedings taken against members of that family during the fostering and the officer's opinion as to whether that should prevent the adoption;
- (h) a summary of the involvement of the probation and social welfare officer during the fostering, and the assessment of the discharge of their duties by the foster parents, during the statutory period, and the verification of the statements made by the applicant in the adoption application concerning the character of the applicant and the position of his or her country of origin relating to the adoption;
- (i) a summary of the involvement of the secretary for children's affairs of the local council committee (if any); and
- (j) a recommendation to the court of the course or courses of action most likely to advance the best interests and welfare of the child.

The main objectives of juvenile justice system are (a) reformation, social rehabilitation and reintegration of the child, while emphasizing individual accountability for crimes committed; and (b) the restoration of harmonious relationships between the child offender and the victim through reconciliation, restitution and compensation.

In the words of Mark Fenwick and Keith Hayward, "a good juvenile justice system must always encourage social reformatory programs which focus mainly on restorative as well as rehabilitative mechanisms which afford the juveniles affected by the criminal law opportunities to once again lead a normal life. Both legal treatment and social rehabilitation of the juveniles should aim at discouraging and eradicating causes of juvenile delinquency"²² "

The researcher's observation is that the level of juvenile delinquency vis-à-vis the established juvenile justice systems in developing countries such as Uganda is wanting in the sense that young people are not only lured into delinquency by the changing social strata but by the deliberate involvement into horrible activities that expose them to heinous crimes. A good example is the recruitment of young person's into armed forces, a hard job which does not only constitute child labour but also a good stepladder of becoming a delinquent gangster.

²² Quoted from Youth Justice: Theory and Practice edited by Jane Pickford

It should be noted that recruitment of young person's into a non-conventional armed forces which had been the practice of the Government of Uganda and its alliance Militias are acts which defy the quest for rehabilitative juvenile justice system.

This practice inevitably exposes the young recruits into what Mark Fenwick and Keith Hayward called "an addictive harmful activity that makes young person's hardened criminals who fantasize at criminal acts or omissions"²³.

In a situation like the one just exemplified, it is clear that "young persons who are trained in the art of militarism could consider themselves of being able to do hard things like robberies because they have the requisite physical abilities that can withstand an adult and therefore may enjoy the fantasies of horrible crimes"²⁴.

The question now is that how does the juvenile justice system deal with those juveniles who have been lured and involved deliberately into activities that make it easy for them to commit offences.

The importance of juvenile justice system according to the provisions of Article 27 of the Beijing Rules, is that children accused of having infringed the penal law are entitled to all the fair trial guarantees and rights which apply to adults, and for some additional special protection.

As such, the importance of juvenile justice system is that it focuses on both sides i.e. the rehabilitation of the juvenile offender while finding adequate remedial measures for the compensation of the victim of the juvenile offence.

1.1.5 Why Do Children Commit Offences?

The reasons why children commit offences may not be uniformly explained but in general, the tendency to commit offences varies from place to place; from time to time and from culture to culture. Criminologists say that crimes may be committed because of "poverty as a result of low family income, large family size, or due to environmental influences on the children for example peer pressure, poor child rearing and experience of criminal parent"²⁵. The political organization of the country may also expose child to the commission of offences.

²³ Ibid

²⁴ Supra

²⁵ John E. Conklin, *Criminology*, 6th Edition, 1998

In the words of **Mark Fenwick and Keith Hayward**²⁶, “The establishment of the juvenile court in 1908 indicated a certain understanding that the reasons why children and young people commit crime and the needs of children who come before the courts may not be the same as adults. Why? Because of the vulnerability to temptation to commit crime and inadequate capacity to form necessary intention are lacking in a young person²⁷.” Thus, “a well established juvenile justice system helps in preventing juvenile delinquency through appropriate legal intervention, social and restorative juvenile rehabilitation which is better than applying pure retributive and punitive mechanism of criminal justice system. The central idea of rehabilitation is to reform the offender, who can then be socially reestablished in the situation he was in prior to the offence. It involves changing an offender’s behaviour to prevent recidivism”²⁸. Moi Kibaki, the then Vice President of the Republic of Kenya (now the President) once said “no child is born delinquent but the substances have made him delinquent”.

In Uganda, many factors lead juveniles to delinquent lives according to a social worker interviewed by the researcher during the field work for this research in Kampala main prison, “most of the juveniles who commit heinous crimes such as murder come from the cattle keeping communities who possess guns initially meant to guard their cattle. She attributed such behaviours not to the natural tendency but to the deliberate exposure of the young by the parents or guardian. The other reason why children commit crimes in the words of this social worker is that some of juveniles are used by the adults to commit crimes such as in the sale of drugs like hashish or cannabis. Minor crimes such as the crime of theft are mostly committed by orphans and children of poor families because they lack parental care and therefore the harshness of poor families’ conditions force them to commit crimes²⁹”

In another interview on juvenile justice system in Uganda, the reason why children commit crimes was revealed to the effect that “some children are used for the commission of crime by the adult and he gave an example in a case where an adult sent a child to steal a cow which the adult wanted to benefit from the proceeds of theft. This adult was held responsible for compensation because he enjoys the proceeds of the crime. He said that where a juvenile is

²⁶ Quoted from *Youth Justice: Theory and Practice* edited by Jane Pickford

²⁷ Ibid

²⁸ Supra

²⁹ Betty Paul, a social worker in Juba main prison

proved to have committed the crime, the parents are compelled to pay compensation to the victim of juvenile crime³⁰

1.2 Statement of the Problem

Before colonialism children were under the hands of their parents or family members. The parent or clan had role to proper bringing of those children in the right way in what they are supposed be in order to fit the society. However, during colonialism children's administration was changed. new laws were wrote and introduced in schools, where by children grew up with that knowledge of their rights and needs. During independence in 1962 some changes came up whereby children were subjected or were forced to do certain act of crimes in order to survive with their lives. In 1986 children were recruited into rebelism the so called "Kadogos" were seen on the road, on the bushes, staging ambushes or fights. In 1989 Joseph Kony also adopted that method of recruiting children into rebelism up to date children are indulging into crimes , children are on the street today committing several acts for their survival even children have been sent by parents to commit crimes in order to earn the living. Today children are in Mbale are the high professional people who are good at breaking , entering, pick pocketing , stealing in the district which has caused alarm from the pubic for government intervention to prevent, prosecute, execute , rehabilitate and reformation. The government has come up with a lot of measures and guidelines for the protection of high crime rates committed by children.

Therefore many indications suggest that the level of juvenile delinquency in Uganda could be high. It would therefore be beneficial if a work of this nature is conducted to find out how effective the newly established juvenile justice system operates in an emerging new nation like Uganda and how sufficient and effective it is for the administration and control of juvenile delinquency.

1.3. Objectives/Rationale for the Research

The aims of this research are to critically examine and analyze the existing juvenile justice system in Uganda in order to find out:-

- a. How adequate or inadequate the juvenile justice system in Uganda is;
- b) Whether the practices comply with the legal provisions;
- c. Whether there exist any lacunae/gaps to be filled.

³⁰ Judge Awan, currently county judge of Aweil South County court

- d. The sufficiency and effectiveness of the institutions/stakeholders responsible for juvenile justice system;
- e. The challenges facing the stakeholders in the administration of juvenile justice system; and
- f. Suggest recommendations for improving the existing juvenile justice system.

1.4. Significance of the study.

Uganda with a new legal system which has not yet stood the test of time possible to infer from the above that the Government of Uganda is still striving to meet the required international standards of justice system in general and juvenile justice system in particular as a nation.

As such, a research of this kind will contribute significantly in understanding the nature of the juvenile justice system that Uganda has established by analyzing it in light of the international and regional instruments that set standards of handling juvenile offenders.

This research will also examine the compatibility of the legislations for juvenile justice that exists in Uganda with international and regional juvenile legal regimes.

The extent of which the international and regional juvenile legal instruments have been incorporated in the domestic legislations in Uganda will also be examined with a view to the required standards if it is filled.

It is believed that the findings of this research will serve as a litmus exposition upon which necessary suggestions and recommendations will be usefully made for further legal improvements of all those mechanisms that constitute a juvenile justice system in Uganda .

1.5. Scope and Limitations of the Research

This research covers the juvenile justice system in Uganda since the promulgation of the 1962, 1966, 1995 constitutions. It is limited to Mbale district, Uganda. Some of the various national customary laws will also be examined in order to find out how best juvenile crimes are being addressed traditionally and customarily. The compatibility of the customary laws with the legislated national and international legal instruments which concern the treatment of juvenile offenders will also be examined.

1.6. Research Methodology

The research methods used to produce this dissertation included library researches conducted in various libraries in Kampala. Among them was internet, text books, Acts, Case law in Kampala. Face to face field interviews were also conducted with the juvenile offenders both in Maluku prisons and in the three police stations of Mbale district as well as with the victims,

parents/guardian, social workers and the main institutions charged with the juvenile justice system in Uganda. These institutions include the Public Prosecutions rehabilitation centers and different organizations. Some of the judges of the county the Courts who handle juvenile cases were also interviewed. Several heads of the Police Departments, investigators, as well as women police officers in charge of the departments of women and child centers and police personnel that guard the juvenile detention cells were interviewed. Interviews were also conducted with some of the senior prison officers as well as with the Prison Warders responsible for the pre-trial detainees and convicted juvenile offenders and the social workers in the prisons services. Some of the information were also collected from the available Government institutional research centers as well as research centers under NGOs operating in Uganda such as UNICEF, SCF-Sweden, War Child and UNMIS' Child Protection Department that were visited during the field work for this research. Relevant books and academic articles via internet had also been resourceful references o this research.

1.7. Hypothesis

This research is a critique on the juvenile justice system in Uganda and therefore, it would be based on many assumptions. For the purpose of this dissertation, the working hypotheses are:

- Uganda has just established its juvenile justice system after a long absence of the rule of law, thus the new juvenile justice system may be so harsh in controlling juvenile delinquency;
- The new juvenile justice system may be too inadequate to control a long time deep rooted high level of juvenile delinquency.
- The concept of juvenile justice is a new concept in Uganda justice system and therefore, its application may pose challenges to the stakeholders as the entrenched customs and traditions may not be easily surmount or the valuable customs may by faced out unreasonably by the new juvenile justice system.

1.8. Literature Review

The Republic of the Uganda to which Uganda is still legally attached in matters of sovereignty, ratified the Convention on the Rights of the Child in late 1990. Despite this, insufficient literature is available on the juvenile justice system. This is partly because of instability that had engulfed Uganda during the civil war or partly due to the unwilling attitude of the Northern and eastern civil wars that kept Uganda underdeveloped in all aspects including lack of funds for legal research development.

This explains why much of the work relied on in this dissertation for the purposes of comparative analysis is foreign and may not adequately reflect the realities of the Uganda juvenile justice system. It is noted by the researcher that most of the researches done on this subject fail to address juvenile legal matters in Uganda. Further, it is noted that the available literatures is the result of the work of NGOs largely based on humanitarian aspects rather than on a comprehensive legal analysis of the existing juvenile legislations.

Another reason is that, most of the available literatures dates to the time before the promulgation of the Children's Act, Statutory Instruments Act No 59 which is the primary legislation concerned, concerned with juvenile justice system, making it more of an international analysis than of a Uganda standard.

This dissertation avers that although the necessary legal frameworks for a juvenile justice system has been promulgated and enacted, there still exist impeding hurdles to the implementation of the same. There is a need to revisit all those customs and traditions whose force of law embattles not only the juvenile justice system but also the prevalence of the rule of law as a whole. This dissertation acknowledges the recognition accorded to customs and traditional authorities by the 1995 Constitution of Uganda. This has had the effect of strengthening resistant attitudes of the stakeholders who still cling to old practices when there was no law and making compliance with the new law an uphill task.

Several principles on juvenile justice have been developed both by individual writers as well as international bodies in form of Conventions, Protocols and Declarations; however these instruments could only be persuasive in Uganda because it is acknowledged that "a home grown legal system is preferable since it would embody the belief and spirits of the people".

Sewanyana L. asserted 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 upheld³¹". Sewanyana's work would be relevant to Uganda since it is believed to have established its juvenile justice system that can only be applauded if the practices show that standard

³¹ Juvenile Justice System in Uganda, January- July 2009

principles for protection of the juveniles' rights are upheld. The situation of juvenile justice system in Uganda is no different from the IRIN report on Liberia which revealed that "four years after the end of Liberian's brutal 14-year war, the juvenile justice system is barely functional. Its problems mirror the breakdown of the judicial system as a whole "a source of deep concern ". The report went on to say that rebuilding the juvenile justice system will be a daunting challenge³²". The IRIN report on Liberia is relevant to the juvenile justice system in Uganda which is barely functional despite the fact that standard Children's Act statutory instrument has been enacted, however, the practices still defies description due to lack of trained personnel in the administration of juvenile justice system.

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, regained and reestablished and to be given the means requisite for their normal development, both materially and spiritually"³³

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"³⁴

This report is relevant since most of the juvenile offenders languish in prison in Uganda as illustrated by Aiphaxard K. Chabari that "it is the common practice of putting children in custody on behalf of their relatives"³⁵ 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 Children's Act statutory instrument, but also defiance to the principles of criminal law in general.

Since this present research is a critique on juvenile justice system in Uganda, it considers such acts as violation of the Children's Act statutory instrument which provides that no child

³² MONROVIA. 10 September 2007 (IRIN)

³³ John Kanya. A Compilation of International and Regional and Uganda's Legal and Human Rights Instruments

³⁴ JJPL. 1998 Report

³⁵ Aiphaxard K. Chabari. Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan. November 2008

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 Uganda. 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 informed³⁶.

The United Nations Mission in Uganda (UNMIU) has also produced a report on the Juvenile Justice System in Uganda and in its Biannual Report³⁷, two common themes run through the various categories of child rights violations. First, the police and other authorities appear to use 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 of the Children's Act statutory instrument 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 Uganda ... corporal punishment, for instance, was illegally imposed in a number of cases³⁸ in violation of Article 21(1) (f) of ICSS 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 Uganda.

Hirschi and Travis in their work 'Causes and Delinquency'³⁹ suggested that deserved punishment 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

³⁶ Ibid

³⁷ UNMIS Report: Biannual Report on Juvenile Justice in Southern Sudan, November 2007

³⁸ Ibid

³⁹ Hirschi, Travis, Causes and Delinquency, University of California, 1969

protecting public safety⁴⁰. This is relevant because if these suggestions are observed in Uganda, the plights of juveniles under the hands of stakeholders are likely to improve.

Hirschi and Travis believe in the adage that “prevention works better and is cheaper than treatment”. Since there are factors which allure young person’s into delinquency in Uganda, it will be beneficial if the authorities devise ways and means that prevent inadvertent criminality of juveniles. That delinquency is seen as a function of the surroundings or environment that a juvenile lives in. The saying that, “society made me do it” could help to better understand this perspective⁴¹. Hirschi and Travis’ work underscores the fact that the juvenile justice system is a complex web of people and agencies and to understand the system requires baseline knowledge of the statistical trends during the past decade that have shaped the system’s ability to function and the roles played by the various components of the system⁴².

Since there is lack of case law reporting in Uganda, it is difficult to find judicial authority. For this reason, a foreign case such as *The King vs. William Groombride*⁴³ 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 Uganda (ICSS) which prohibits the detention or arrest of any person “except for specified reasons and in accordance with procedures described by law”.

The Report of Save the Children-Sweden finds that children in conflict with the law in Uganda have no legal aid or official sources of psychological support. Their main source of support is the family⁴⁴. That in most states, there are no special pre-trial remand homes. For instance, in all states, the police put children (and adults) in prison as they wait to be produced in court⁴⁵. Some of the children are confined for many days and even months without any contact with outside world and without their relatives knowing. The report gives example that

⁴⁰ Ibid

⁴¹ Supra

⁴² supra

⁴³ (1983) ALLER 173 at 256

⁴⁴ Aiphaxard K. Chabari, *Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan*, November 2008

⁴⁵ Ibid

some of the children in Maluku prison claimed that they had been arrested while going to school⁴⁶.

The report went on to say that many criminal suspects in Uganda spend long periods in pre-trial detention- sometimes up to a week or more- and juvenile detentions are not exceptions. A lack of resources, infrastructure, investigative efficiency, and trained legal professionals all contribute to this problem.

The researcher of this work .had the opportunity to visit both police custodies and prisons in Kampala and found out at first hand juveniles who spent more than a year without trial as the investigation could not have been finished earlier for the juveniles to be produced in court. Other juveniles were in prison without their parents being aware of their incarcerations. This is a staunch contravention of the Children's Act statutory instrument which provides that every child in detention has the right to be detained as close as possible to family and to have regular contact with family and guardians.

Several impediments that have bogged down the implementation of juvenile justice system in Uganda are being observed as ranging from institutional incapacities to poor facilities. According to the United Nations Mission in Uganda (UNMIU), the final deficit in Uganda'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 face⁴⁷. The report found that most of the crimes of which children are arrested and detained in Uganda 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 Justice⁴⁸ 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

⁴⁶ supra

⁴⁷ Supra

⁴⁸ Beijing Rules 1985

the onset of delinquency. are basic policy requisites designed to obviate the need for the application of the rules “.

Uganda could be a better place for juvenile offenders if due process is accorded to the spirit of the legislated laws.

CHAPTER TWO

2.0 INTERNATIONAL, REGIONAL INSTRUMENTS AND TRADITIONS ON JUVENILE JUSTICE SYSTEM

This chapter discusses two sections of which the first section explores the international and regional instruments that recognize specific norms and principles to be observed in the administration of juvenile justice system by the state parties to them. International and regional instruments are expected to be incorporated into the states' legal machinery. They maybe in form of soft law premised principally on the international customary practices, or they may have a binding force of law which does not require deviance by the states. When a state ratifies them, the state has promised to be bound by them. The second section of this chapter discusses the traditions and customary notion of juvenile justice.

2.1 Applicable International Human Rights Instruments

This chapter analyses the applicable international human rights instruments relevant in the field of juvenile justice system. Attention is focused on international human rights instruments that Tanzania has ratified. This also includes the regional human rights instruments such as the African Charter on the Rights and Welfare of the Child. Tanzania has undertaken several obligations at the international level by ratifying human rights instruments that have a close bearing on the rights of children in conflict with the law⁴⁹.

2.2 Convention on the Rights of the Child, 1989

The UN Convention on the Rights of the Child was unanimously adopted by the United Nations General Assembly on 20th November 1989⁵⁰. The Convention has become in a relatively short period of the time; the single most important international instrument on the rights of the child. Partly by its widespread ratification⁵¹, it has been made the primary international legal instrument on the rights of the child⁵².

⁴⁹ International Covenant on Civil and Political Rights (acceded on 11th June 1976), Convention on the Rights Child (Acceded in 1990), African Charter on Human and Peoples' Rights, African Charter on Rights and Welfare of the Child signed in 1998 and ratified in 2003, see www.achpr.org

⁵⁰ General Assembly Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990

⁵¹ As of March 2003, it had been ratified by all countries in the world except the two: the United States of America which has signed but not ratified ; and Somalia which does not have recognized government able to ratify it.

⁵² Authors share the same opinion; see: Leblanc L.J., "the Convention on the Rights of the Child". Leiden Journal of International Law, Vol.4, No.2 1991, P.283; McGadrick D; "the United Nations Convention on the Rights of the Child": International Journal of the Law and Family 5 (1991), P.133; Ruiz-Gimenez J, "the Human Rights of the Child", in International Commission of Jurists....

The standards of the Convention are binding upon states, which have signed and ratified it. This legal obligation on the part of state parties of CRC shall take actions to implement the provisions of the Convention. Each state party is expected to send a report after two years and then every five years to the Committee on the Rights of the Child, which acts as an international monitoring body on the Convention. This pressure of the UN scrutiny has galvanized many state parties to enact legislations and adopt legal measures.

The CRC stipulated basic minimum standards, benchmarks, against which national laws, policies, programmes, measures must be tested. If national implementation is lower than the standards of the CRC, they need to be improved. For example may imply the need to review and reform laws, policies, programmes, measures, practices and related mechanisms. Thus, state parties are responsible for bringing their domestic law in practice into conformity with the obligations under them to protect human rights.

2.3 The African Charter on the Rights and Welfare of the Child, 1990

The African Charter on the Rights of the Child was adopted by the Organization of African Union in 1990 and entered into force in 1999. It is a first regional binding instrument that identifies the child as possessor of certain rights and makes it possible for the child to assert those rights in domestic, judicial or administrative proceedings.

The obligation of states parties created under the Charter are two- fold., namely to “recognize the rights, freedom and duties enshrined in this Charter” and to “ undertake the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may necessary to give effect to the provisions of this charter”⁵³. Due to the ratification of the Charter recently by Tanzania, it is the obligation of the government to promote and protect such rights.

*Children must be granted the same rights as adults at all relevant stages of the criminal procedure*⁵⁴ -Anonymous-

2.3.1 Some Fundamental Procedural Rights

There are various international human rights instruments as discussed in chapter three that contain a number of human rights entitlements that are applicable whenever the process of

⁵³ Article 1 of the ACRWC

⁵⁴ Available at http://www.bayefsky.com/pdf/nicaragua_t4_crc.pdf

administration of juvenile justice is carried out. Every individual be an accused juvenile affected by this process is entitled to these rights provided under the law. It is the obligation of the states to ensure that these rights are respected, fulfilled and protected. Hence, the rights of juvenile offenders or delinquents are essential throughout this process and law enforcement officials must act according to the stipulated standards. Because of the peculiarities of juvenile justice, the procedural safeguards take an additional importance since they must, *inter alia*, protect the best interest of the child and ensure respect for its rights to be heard and promote social reintegration.

In this chapter some of the most fundamental rights of the accused juvenile will be discussed. Emphasis will be laid on those rules that are derived from the specific needs of the accused juvenile. Every child alleged as, or accused of, having infringed the penal law shall have, as a very minimum, the guarantees enumerated in the Convention on the Rights of the Child. While some of these guarantees are principles generally established in international human rights treaties, others are designed to meet the specific needs and interests of the child. At the same time it must be borne in mind that, whenever relevant, the procedural rights contained in other international instruments must also be ensured during the administration of juvenile justice.

2.3.2 Right to Prompt Notification of Arrest

The right to prompt notification is embodied in various international human rights instruments. Article 40(2) (b)(ii) of CRC proclaims the right of the child to be informed promptly and directly of the charges against him or her, and if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of her or his defense. This right is also stipulated in the International Covenant on Civil and Political rights⁵⁵ and the African Charter on the Rights and Welfare of the Child⁵⁶. It has been noted that, the Human Rights Committee that monitors the implementation of ICCPR has emphasized this principle in its concluding observation of the Sierra Leone that “ the arrested person, including juvenile, shall have an opportunity immediately to inform a family member about the arrest and place of detention⁵⁷”.

⁵⁵ Article 9(2) of the ICCPR

⁵⁶ Article 17(2)(3) of the ACRWC

⁵⁷ <http://www.essex.ac.uk/armedcon/story-id/00013.htm>

It is important to mention in this juncture that, neither the primary law governing juvenile justice in the country contains such right, nor the law enforcement officials in some cases observe provision of notification provided in the Criminal Procedure Act, 1985.

2.3.3 Deprivation of Liberty

Deprivation of the liberty⁵⁸ of a juvenile poses a special problem in that the juvenile, who is at a very sensitive stage of development, may suffer serious and even irreversible adverse psychological effects if removed from his or her family for purposes of detention. For this reason, international human rights instruments try to reduce the deprivation of children to a minimum. In order to mitigate the negative effects of the deprivation of liberty when it occurs, international instruments likewise provide special rules based on the best interest of the child concerned⁵⁹.

It is provided under International Covenant on Civil and Political Rights that any one who is deprived of his or her liberty shall be produced before a court of law without due delay⁶⁰. This right is also emphasised by the Human Rights Committee that “in criminal cases any person arrested or detained has to be brought ‘promptly’ before a judge or other officer authorised by law to exercise judicial power. The Human Rights Committee goes on to state that the pre-trial detention should be an exception and as short as possible. Likewise article 37

(b) of the Convention on the Rights of the Child requires that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate of time.

Perhaps the most stricken feature of the African Charter on the Rights and Welfare of the Child in the field of juvenile justice is the omission of a guarantee for the child’s liberty⁶¹. However, article 6 of African Charter on Human and Peoples’ Rights provides that no one may be deprived of his or her freedom or arbitrary detained except in accordance with the law and be tried within a reasonable time by an impartial court.⁶²

⁵⁸ According to Rule 11 (b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”; the rules are “applicable to all forms of deprivation of liberty in whatever type of institution the deprivation of liberty occurs”.

⁵⁹ Human Rights in the Administration of Justice; A manual on Human Rights For Judges, Prosecutors and lawyers, available at <http://www.ohchr.org/english/about/publications/docs/titlepage.pdf>

⁶⁰ Paragraph 4 of article 9 of the ICCPR

⁶¹ Gose, M; The African Charter on the Rights and Welfare of the Child; An Assessment of the Legal Value of its Substantive provisions by Means of a Direct Comparison to the Convention on the Rights of the Child. Community Law Centre, South Africa. 2002 p 67

⁶² Article 7 of the African Charter on Human and Peoples’ Rights, 1981

Furthermore, article 37(c) of CRC provides that every child deprived of liberty shall be separated from adults is qualified that is, unless it is considered in the child's best interest not to do so. Whereas in the ICCPR, article 10(2)(b) requires that accused juvenile person shall be separated from adults and brought as speedily as possible for adjudication.” Similarly phrased like CRC and ICCPR, the ACWRC reiterated that children under detention should be separated from detained adults⁶³.

Contrary to the forgoing discussion, CAP 13 omits to provide specific safeguards for juveniles under detention while pending trial. Due to this omission, in most cases children are likely to stay longer in police detentions for lack of peoples' interest to pursue their cases, but only to have them detained. Moreover, despite the fact that laws⁶⁴ clearly stipulate that juveniles should not be mixed with adults, due to lack of facilities in some regions in the country, arrested juveniles continued to be locked up with adults in police detention and remand homes/ prisons. It is observed that juveniles above 16 but are below 18 years of age may be kept in normal prisons. As discussed in chapter two of this work that the Ordinance does not cover young persons who are between the age of 16 and 18 years. The Committee also expresses this concern on the Rights of the Child in its concluding observation on Tanzania about the holding of minor in adult detention facilities, the poor conditions in detention facilities and the lack of adequate facilities for children in conflict with law⁶⁵.

It is my submission that, it is extremely important for the wellbeing of juveniles in detention to be kept separate from adult's offenders, and this requires a policy decision to build and maintain more detention facilities. Failure to comply with article 37(c) of the CRC is an indicator that the practice is not in accordance with the spirit of the Convention.

2.3.4 The Right to Privacy

The accused juvenile has the right “to have his or her privacy fully respected at all stages of the proceedings”⁶⁶ The Beijing Rules expands this rights in its rule 8(1)(2) that “the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published”. As explained in the

⁶³ Article 17(2)(b) of ACWRC

⁶⁴ Section 5 of CAP 13 & section 33 Criminal Procedure Act, 1985

⁶⁵ Concluding Observation of the Committee on the Rights of the Child: Republic of Tanzania. see unhchr.ch/tbs/doc.nsf

⁶⁶ Article 40(2)(b)(vii) Of CRC and article 14(1) of the ICCPR

Commentary, this rule “stresses the importance of the protection of the juvenile’s rights to privacy. Young persons are particularly susceptible to stigmatisation.

Furthermore, for the purpose of a fair and just trial for juvenile offender the Beijing Rules provides that “all the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding which shall allow the juvenile to participate therein and express herself or himself freely. Article 17(2) (d) of the African Charter on the Rights and Welfare of the Child categorically affirms that the States parties “shall prohibit the press and the public from attending the trial of a child accused of having infringed the law”.

As discussed in chapter two, the right to privacy is not adequately implemented in Uganda. Despite the legal requirements that children’s cases be heard in juvenile courts i.e. in camera, some law enforcement officials commonly overlook or neglect to enforce this requirement. They fail to convert regular courts into juvenile courts; likewise this right is violated when a juvenile offender stands trial with an adult offender.⁶⁷

2.3.5 The Right to Free Assistance of an Interpreter

According to the Convention on the Rights of the Child every child has the right to have the free assistance of an interpreter if he or she cannot understand or speak the language used⁶⁸. The same rule is contained in article 17(2)(c)(ii) of the African Charter on the Rights and Welfare of the child. This is yet another rule that also exists in other international human right treaties, such as article 14(3) (f) of the International Covenant on Civil and Political Right. No doubt this rule is important for children who cannot speak language used by the court.

Commenting on article 14, the Human Rights Committee observed that the right to have an interpreter is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of language used by a court or difficulty in understanding may constitute a major obstacle to the right of defense. This principle is also affirmed in the case of *Guerdon v. France*⁶⁹ that “...if the accused or the defence witnesses have difficulties in understanding, or in expressing themselves in the court language, must the services of an interpreter be made available.

⁶⁷ Section 3 of CAP 13

⁶⁸ Article 40(2)(b)(vi) of CRC

⁶⁹ Communication No. 219/1986, UN Doc. CCPR/C/39/D/219/1986 (1990)

Having stated so, it is worthy to note that CAP 13 is silent on the right of juvenile to have free assistance of an interpreter if she or he does not understand the official language of the court. As explained in chapter two the official language of the court in Tanzania is either Kiswahili or English. Besides English and Kiswahili, there are other tribal languages spoken in the country. And it might happen in some cases children are not conversant with the official language of the court. In such cases it is imperative that CAP 13 to have a clear provision for free assistance of an interpreter. Lack of this provision in the Ordinance(i.e. failure to follow the court proceedings) amounts to violation of the best interest of the child which should be the primary consideration in all action concerning them including court proceedings.

2.3.6 The Right to Legal Assistance

Article 37(d) of the CRC specifically provides children with the right appropriate legal and other assistance⁷⁰ and to challenge any deprivation of liberty before a court or similar body. Similarly, the African Charter on the Rights and Welfare of the Child provides in this respect that every child accused of infringing penal law shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence⁷¹.

As discussed earlier that the right to legal aid assistance in Tanzania is provided in serious offences only⁷². On the other hand, most of the offences committed by the juveniles are tried by the primary courts, proceedings of which, bars lawyers to render their services⁷³. It is a cardinal principle that an accused juvenile should have legal representation at all stages of proceedings, lack of this service amounts to violation of the right to fair trial.

From the above discussion, it is my contention that for the best interest of the child the government needs to ensure respect for all juvenile justice standards including the rights of children during arrest, detention procedures, minimum condition of detention, to legal representation and free interpreter where needed and other relevant assistance .

⁷⁰ The reference to "other appropriate assistance" makes it possible for a child to have his or her defence assured by non lawyers, including parents or legal guardians. Article 40 of the CRC adds to the child's established right to legal and other appropriate assistance, the principle that the child's parent or legal guardians should be present ' unless it is considered not to be in the best interest of the child' the article implies that parents or legal guardians can be required to be present, and can be excluded in certain cases. This is also emphasised in rule 15(2) of the Beijing Rules.

⁷¹ Article 17(2)(ii) of ACRWC

⁷² The Constitution of the united Republic of Tanzania, 1977 and the Criminal Procedure Act, 1985 provide certain protection to any person accused of a criminal offence. They include the rights :to defend himself of herself in court through a legal representative of his or her choice, to examine in person or by legal counsel

⁷³ Act No.4 Of 1984

2.4 Adjudication of Juvenile Cases

International human rights standards provide basic guidelines on the adjudication and disposition of juvenile cases. The following discussion is focused on some of these guidelines.

2.4.1 Probation Orders

It is a fundamental requirement that in all cases involving criminal offence, before the competent authority renders a final disposition prior to sentencing, the background of a juvenile offender should be presented. This is in the form of social inquiry report in which the juvenile is living or the condition under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority⁷⁴. In other words, the magistrates should determine the sentence and its duration by following the recommendation of the welfare officer or probation officer in their investigation or pre-sentencing report.

Due to lack of enough probation officers in the country, few juvenile offenders enjoy this right. The committee on the Rights of the Child has expressed its concern about limited numbers of trained personnel in the country to work with children in the administration of juvenile justice⁷⁵.

2.4.2 Penal Sanctions

2.4.2.1 Imprisonment

International human rights instruments set certain limits on the kind of penal sanctions that can be imposed on a juvenile found guilty of having committed a criminal offence. Article 37(a) of the Convention on the Rights of the Child stipulates that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

With regard to the prohibition of life imprisonment without the possibility of release, article 37(b) of the Convention on the Rights of the Child provides that detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. A life imprisonment would ipso facto be contrary to this rule and also to the notion of the best interest of the child, which implies that a child shall be given a chance of

⁷⁴ Rule 16 of the Beijing Rules

⁷⁵ Concluding Observation of the Committee on the Rights of the Child of Tanzania 2001

psychological recovery for the purposes of social reintegration. Despite the fact that the laws in the country prohibit the life imprisonment to juvenile offenders, it is observed that life imprisonment is still imposed in some juvenile cases for example as it was in the case of **R v Mohamed Abdullah⁷⁶ and Republic versus Nguza Vicking@Babu Sea and 4 others⁷⁷**.

2.4.2.2 Corporal Punishment

It should be noted that, corporal punishment always violates the child's physical integrity, it demonstrates disrespect for his or her human dignity and it undermines self-esteem⁷⁸. In addition, corporal punishment often amounts to cruel, inhuman or degrading punishment, and in a significant number of cases it is the right cause of death⁷⁹.

CRC in its paragraph (a) of article 37 stipulates that no child shall be subjected to torture or other cruel or inhuman or degrading treatment or punishment. Likewise, African Charter on Human and Peoples' Rights⁸⁰ and African Charter on the Rights and Welfare of the Child⁸¹ prohibit any act which may lead to inhuman or degrading treatment or punishment. Furthermore, the United Nations Rules and Guidelines strictly prohibit any disciplinary measures constituting cruel, inhuman or degrading treatment including corporal punishment⁸².

Although international human rights instruments and the Constitution of the United Republic of Tanzania⁸³ prohibit any act that may amount to inhuman or statutes in the country contain provisions for corporal punishment for juveniles.

On the same line the Committee on the Rights of the Child notes with regret that the law does not prohibit the use of corporal punishment as a sentence for children and youth in the juvenile justice system, hence it recommends that the government must take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment within the juvenile justice system, schools and care institutions as well as families⁸⁴.

⁷⁶ Criminal Case No.116 of 1999

⁷⁷ Criminal Case No 555 of 2003

⁷⁸ Article 13 (5) (e) of the Constitution of the United Republic of Tanzania

⁷⁹ Fottrell Deirdre, Revisiting Children's Rights, Kluwer law International, The Hague, 2000, p114

⁸⁰ Article 5 of the Charter

⁸¹ Article 17(2)(a) of ACRWC

⁸² Rule 17.3 Of the Beijing Rules, Rule 67 of PJDL and paragraph 21 (h) and paragraph 54 of the Riyadh Guidelines

⁸³ Article 13 of the Constitution

⁸⁴ Concluding Observation of the Committee on the Rights of the Child: Republic of Tanzania 2001. see www.unhchr.ch/tbs/doc..nsf

2.5 Conditions of Institutions to which Children deprived of their Liberty are committed

Deprivation of liberty is defined as any form of detention or imprisonment or the placement of person in public custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or public authority. The approved school certainly falls into that category of deprivation of liberty and while it is an alternative to adult prisons, it should still only be used as a last resort and for the minimum period possible⁸⁵.

When a child or a young person is taken into state custody, the government is obligated to meet certain minimum requirement under international human rights standards. That means measures to promote physical and psychological recovery and social reintegration of a child should be taken into account.

In addition to the above discussion, the UN Rules for the Protection of Juveniles detail the parameters of the right to education, vocational training, and work for children deprived of their liberty⁸⁶. Children of compulsory school age have the right to education which should be designed to prepare him or her for return to society⁸⁷. Juveniles above compulsory school age who wish to continue their education should be permitted to do so, and every effort should be made to provide them with access to appropriate educational programmes⁸⁸.

According to the Beijing Rules, the objective of institutional treatment of children are to provide educational and vocational skills with a view to assisting them to assume socially constructive and productive roles in society⁸⁹ and to ensuring that they do not leave the institution at an educational disadvantage⁹⁰.

It is my submission that, the institutionalization of children in Tanzania fails on two counts. It fails to address the root problem that leads to deluge of children to engage in criminal acts. It also lacks remedial measure to provide children with the rehabilitation, support, and education required to enable children in custody to live in the outside world as responsible and capable members of society. Likewise there is insufficiency of facilities and programmes for the physical and psychological recovery and social reintegration for girl offenders. From the foregoing discussion one may conclude that, international human rights instruments promote

⁸⁵ Rule II (11)(b) of JDL

⁸⁶ Rules 38-46

⁸⁷ *ibid* Rule 38

⁸⁸ *ibid* Rule 39

⁸⁹ Rule 26.1 of the Beijing Rules

⁹⁰ *Ibid.* Rule 26.6

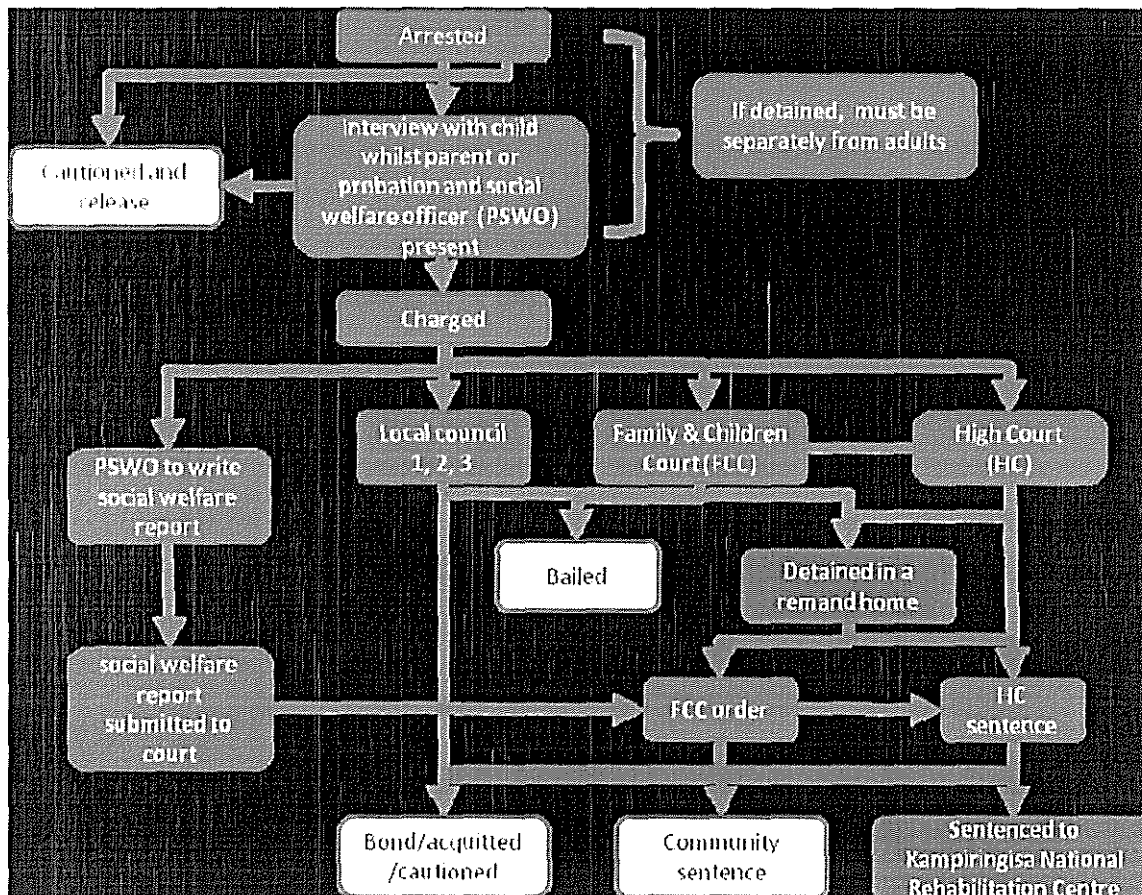
a number of rules and principles which constitute a basis of juvenile justice system and provide the accused juvenile with a large amount of protection and guarantees throughout the process of administration of juvenile justice. These principles should be observed, respected, fulfilled and protected by the law enforcement officials.

2.6 NATIONAL JUVENILE CRIMINAL JUSTICE SYSTEM IN UGANDA

2.6.1. Juvenile justice system

The system of juvenile justice in Uganda comprises three main departments: Ministry of Gender, Labor and Social Development; the Uganda Police Force; and the Judiciary of the Republic of Uganda. The overlapping jurisdictions of these departments are outlined in the diagram below:

Figure 5: The journey of a child in conflict with the law



2.6.2 Causes of criminal juvenile justice systems in Uganda.

Poverty this is the major cause of crimes among the juveniles in Uganda

Poverty has contribute this in such a way that parents are poor, they cannot cater for their children's needs like education food, shelter, medical care, clothing's and at the end of it these children end up into streets in order to find their own ways of living resulting in to indulging them in to committing crimes, such as prostitution, pick pocketing, drug addict in order to find their survival. This has been seen in several towns in Uganda most especially the urban developed such as Mbale where the case study is, Kampala, Jinja, Soroti, Mbarara among others.

Political instability. This is result of many wars in the country like Lord Resistance Army (LRA) Allied Democratic Forces (ADF) resulting in to displacement of the citizens whereby people are forced to migrate from one place to another and in the process of movement children get separated from their parents, others get abducted, recruited in to war, defiled and due to these changes they end up in to committing crimes in the streets because they have nowhere to go , their homes were burnt , parents were killed and if at all they are there they are helpless.

Peer groups:

Due to the influence of peer groups this children tend to adapt other bad behaviors such as smoking, drinking alcohol, playing cards, gambling which affects their normal ways of growth hence they end up copying with such bad characters which influences them to end up being criminals.

Biological factors.

This one the factors which have caused criminal juvenile justice system in Uganda in that heir are some parents who are thieves, so when the produce their children the also adapt the genes of the parents where by this children grow up criminals not simply because they wanted but it's the genetically factor.

Parental care.

This has also led the criminal juvenile justice system in Uganda due to the fact that there some parents who give their children everything the child asked in that if the child wants money they give, clothes and others items which children may need. However this makes the children to grow up while knowing that getting such things is simple yet in reality it's very difficult so when their parents either die, lose their jobs and they fail to give this children what

they got used to they end up stealing basically because they had gotten used to such things hence they end up committing crimes

2.6.3 Arrest

When a child is arrested, the police have the discretion to caution and release the child or dispose of the case without recourse to formal court.⁹¹ However, they do not often take advantage of these powers. Instead, children are detained in remand homes and subsequently acquitted when they reach trial⁹² or are given court orders for petty crimes.⁹³

As soon as possible after arrest, the police are obliged to inform the child's parent or guardian and the Secretary for Children's Affairs of the local government council in the area in which the child resides. Then, either the children's parent and guardian or a probation and social welfare officer should attend the police interview. Unfortunately, this does not appear to be happening.⁹⁴ Even when they are informed, FHRI explained that parents or guardians are often scared to accompany their children to police stations in case they themselves are arrested.⁹⁵ As a consequence, children appear in court unaccompanied and the magistrate is forced to deny them bail and remand them.

If a child cannot be immediately be taken to court then the police may give them a release bond⁹⁶ or they may be detained in police custody for a maximum of 24 hours or until they are taken to court. During this time the Children Act 1997 stipulates that „no child shall be detained with an adult person.“⁹⁷ Nevertheless, the FHRI have shown that some children appear to be being detained with adults in police cells.⁹⁸

2.6.4. Bail and remand

The Children Act stipulates that „unless there is a serious danger to the child“ they should be released on bail⁹⁹. If they are bailed they get a bail remand form and are required to report to court. If bail is not granted, the court may remand them to custody in a remand home, either in the same area as the court making the order or within a reasonable distance of the court. The Children Act sets out that remand in custody:

⁹¹ 55 Government of Uganda (1997) The Children Act Cap 59

⁹² 56 Interview with Commissioner for Youth and Children 30th July 2010

⁹³ 57 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010, and Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

⁹⁴ 58 *ibid*

⁹⁵ *ibid*

⁹⁶ 60 Government of Uganda (1997) The Children Act Cap 59

⁹⁷ 61 *ibid*

⁹⁸ 62 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

⁹⁹ 63 Government of Uganda (1997) The Children Act Cap 59

should not exceed 6 months in the case of an offence punishable by death (if they were an adult)

Should not exceed 3 months in the case of any other offence

that no child should be remanded in custody in an adult prison.¹⁰⁰

Defense for Children International noted that in practice this provision is sometimes not adhered to due to delays in court.¹⁰¹ However it was reported that in 2005 there had been a reduction in the number of persons staying on remand beyond the stipulated period from 39% to 1% for serious offences and 23% to 10% for petty offences¹⁰² and this seems to have been echoed in the remand homes for children. The majority of children are not remanded beyond the stipulated time. However a minority, mostly charged with capital offences, are being remanded for a period that exceeds the limits. For example in Fort Portal the children were presented in court after 14 days or earlier if they had a production warrant, however the warden stated that there „there are problems with high court cases – the kids don’t get priority. We have had some children that have been here for 1 year and nothing is going on. The registrar says that adults are getting priority“. ¹⁰³

In Naguru it was reported that most of the capital cases take the right amount of time. However, they have had some cases where children were waiting for a year and one case of a child being remanded for 2 years. Like Fort Portal, they observed that „children don’t have their own court so they don’t take priority“. ¹⁰⁴ In Mbale it was reported that for both capital and minor cases timescales were being met. ¹⁰⁵

2.7 The Courts

2.7.1. Village Local Council Court

Local councils are meant to play a central role in the administration of juvenile justice legislation.¹⁰⁶ The reasoning for this is that communities can handle children’s issues more quickly, without recourse to more formal courts. Indeed the Children Act stipulates that all matters of a civil and criminal nature concerning children should be dealt with by the Village

¹⁰⁰ 64 *ibid*

¹⁰¹ Defence for Children International (2007) *“Form Legislation to Action? Trends in Juvenile Justice Systems across 15 countries”*

¹⁰² *Justice Law and Order Sector: Uganda (2005) Sector wide approach in justice law and order: the Ugandan experience* By Evelyn B. Edroma, Senior Technical advisor, JLOS

¹⁰³ 67 Fort Portal Remand Home interview and site visit - 11th August 2010

¹⁰⁴ 68 Gulu Remand Home interview and site visit - 3rd August 2010

¹⁰⁵ 69 Mbale Remand Home interview and site visit - 7th August 2010

¹⁰⁶ 70 The Local Council system was formalized in the 1995 Uganda constitution to function at: Village (LC1); Parish (LC2); Sub-county (LC3); County or municipality (LC4); and District (LC5) level

local council Court (Local Council level 1). They have the power to make an order for: reconciliation, compensation, restitution, apology, or caution. They can also make a Guidance Order for a maximum of six months „under which the child shall be required to submit himself or herself to the guidance, supervision, advice and assistance of a person designated by the court“.¹⁰⁷

The local councils are not supposed to make an order remanding a child into custody. Unfortunately, however, the local councils have been „constrained by their lack of training on the law and on juvenile justice issues in particular.“¹⁰⁸ Indeed the Commissioner for Youth and Children noted that „if a child has committed a minor offence they should be dealt with in the community by the Local Councils levels 1, 2 and 3. Nevertheless, instead of these councils being the last port of call for a young person, they often refer the children on to the remand homes.“¹⁰⁹

2.7.2 Family and Children Courts

Family and Children Courts for every district in the country were established by the Children Act 1997. This is in line with the UN Convention for the Rights of the Child, which calls for state parties to establish „laws, procedures, authorities and institutions specifically applicable to children in conflict with penal law,“¹¹⁰ and in addition, the General Comment No. 10, which recommends that state parties „establish juvenile courts either as separate units or as part of existing regional/district courts.“¹¹¹

The Family and Children Court have the jurisdiction to hear and determine all criminal charges against a child except offences punishable by death or offences for which a child is jointly charged with a person over 18 years of age. The maximum order period for a petty offence is six months. It is stated that „detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order.“¹¹²

In 2003, the government acknowledged that the Family and Children Court could not function properly due to inadequate funding, poor transportation facilities and understaffing. For

¹⁰⁷ 71 Government of Uganda (1997) The Children Act Cap 59

¹⁰⁸ 72 Defence for Children International (2007) *“Form Legislation to Action? Trends in Juvenile Justice Systems across 15 countries”*.

¹⁰⁹ 73 Interview with Commissioner for Youth and Children 30th July 2010

¹¹⁰ 74 United Nations (1989) *Convention on the Rights of the Child, article 40*

¹¹¹ 75 United Nations (2007) *Convention on the Rights of the Child General Comment 10: Children's rights in juvenile justice*

¹¹² 76 Government of Uganda (1997) The Children Act Cap 59

example in 1999, 44% of Family and Children Courts were not functioning at all due to the unavailability of magistrates.¹¹³ Children charged with lesser offences are mainly defended by a probation and social welfare officer, however it has been reported that they are rarely trained for courtroom litigation. Moreover, because there is often only one per court, there are often considerable delays of case hearings as well as many children facing trials without representation.¹¹⁴ This discrepancy between areas was apparent in the site visits. For example, while in Fort Portal the children have access to lawyers,¹¹⁵ in Gulu the staff of the Remand Home act as the children's advocates.¹¹⁶ In Naguru NGOs have been offering legal representation for children who have committed petty and non capital offences through the Legal Aid Clinic (LAC) of the Law Development Centre¹¹⁷ and *Justice for Children, Christian Lawyer Fraternity*.¹¹⁸ In Mbale they said that the staffs work hand in hand with paralegals who come and assist them.¹¹⁹ In addition the Justice Law and Order Sector (JLOS) Programme is working on improving the capacity of the Family and Children's Court and ensuring that Local Council Courts members have legal training or sufficient knowledge of the law.¹²⁰

2.7.3 High Court

According to legislation, only children charged with capital offences or those who are being tried jointly with adults should be sent to High Court. These children are provided with lawyers and legal aid by the government. Those who are tried jointly with adults should be remitted to the Family and Children Court for an appropriate order.¹²¹ However this rarely appears to be the case.¹²² As these children are tried in the same courts as adults with no priority, there is a backlog of children waiting for their cases to be heard at court. The maximum sentence for those who have committed capital offences is three years.

¹¹³ 77 Defence for Children International (2009) *Juvenile Justice Newsletter No. 13*

¹¹⁴ 78 Government of Uganda (1997) The Children Act Cap 59

¹¹⁵ 79 Fort Portal Remand Home interview and site visit - 11th August 2010

¹¹⁶ 80 Gulu Remand Home interview and site visit - 3rd August 2010

¹¹⁷ 81 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

¹¹⁸ 82 Naguru Remand Home interview and site visit - 10th August 2010

¹¹⁹ 83 Mbale Remand Home interview and site visit - 7th August 2010

¹²⁰ 84 Justice Law and Order Sector Uganda (2005) *Sector wide approach in justice law and order: the Ugandan experience* By Evelyn B. Edroma, Senior Technical advisor, JLOS

¹²¹ 85 Government of Uganda (1997) The Children Act Cap 59

¹²² 86 Defence for Children International (2007) *"From Legislation to Action? Trends in Juvenile Justice Systems across 15 countries"*

2.8 Comparison between the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child Regarding provisions on Juvenile Justice

The African Charter was concluded and adopted after the Convention on the Rights of the Child. First and foremost regarding to the enforcement, the Charter entrusts the functions of promotion and protection of its provisions to the Committee of Experts on the Rights and Welfare of the Child¹²³. This Committee has wider powers than CRC's. Not only does it have power to examine state reports, it also has power to receive individual and inter-state communications¹²⁴, and to conduct investigations¹²⁵. In case of violation of those rights, any person, group or non-governmental organization recognized by AU may lodge the communication to the Committee.

In contrast, the only mandatory monitoring procedure provided for the implementation of the rights provided in the Convention is state reporting¹²⁶.

Nonetheless, this mechanism is far from being effective, because of the failure of states to regularly report to the Committee. It is unfortunate that the Committee on the Rights of the Child can not deal with individual complaints of violation of protected rights – a procedure that would have given the Committee better opportunity to develop and further elaborate the relevant articles dealing with the administration of juvenile justice and other provisions through its case law¹²⁷.

Further, the definition of the concept of childhood, and therefore the persons to whom the rights of African Charter apply, is contained in article 2. It is one of the most advanced features of the Charter that this definition, which is crucial for the proper application of the Charter's provisions, is very clear and does not allow for any limitations. Every person under the age of 18 is regarded as child falling within the scope of the Charter. The Charter protection is therefore more comprehensive and inclusive. Whereas the Convention restricts its application by including the phrase "unless majority is attained earlier" unlike the Convention, the Charter therefore applies to every person below the age of 18.

¹²³ Article 32 of ACRWC

¹²⁴ *ibid* article 44

¹²⁵ *ibid* 45

¹²⁶ Article 44 of the CRC

¹²⁷ Articles 37,39 and 40 of the CRC

With regards to the best interest's principle which is a fundamental principle that governs disputes affecting children. The human rights of children are underpinned by this principle, and must be interpreted in conjunction with this principle. Article 4 of the Charter provides that in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be primary consideration. The Charter follows the CRC in codifying this principle. It, however, goes a step ahead of the CRC by stating that the best interest of the child must be "the primary consideration" in all actions concerning the child. This offers better protection for children since the best interest principle under the Charter is the overriding consideration. In contrast, the CRC regards the principle as "a primary consideration" meaning that other considerations are equally determined.

The most striking feature of the Charter in the field of juvenile justice is the omission of a guarantee for the child's liberty, the Charter does not guarantee for the child's liberty. The Convention proclaims in its article 37(b) that "no child shall be deprived of his or her liberty unlawfully or arbitrarily". The Charter is absolutely silent on this point and does not repeat the provision or its substantive content in any of its articles. One may argue that the omission of such right in the Charter creates chances of a child being deprived of his or her liberty unlawfully or arbitrarily.

Moreover, article 37(a) and (b) of the Convention provide that the arrest, detention or imprisonment of a child shall be used only as a last resort and for the shortest appropriate period of time and life imprisonment without the possibility of release is prohibited with regard to children. In contrast, the provision that the arrest, detention or imprisonment of a child shall be used as a last resort and for the shortest period is missing. This is retrogressive considering that other international human rights instruments expressly contain these provisions¹²⁸, and importance of protecting children from the adverse effects of criminal proceedings and sanctions.

Moreover, the Charter does not provide for alternative measures of dealing with children to criminal proceedings. Unlike the convention under article 40(3)(b) which relates to the possibility of dealing with a child without resorting to judicial proceedings, and article 40(4) that provides for a range of possible actions to be taken to ensure that children are being dealt

¹²⁸ For example article 37(b) and 40(3)(b) of the CRC, article 11 of the Beijing Rules

with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.

Despite the omission of certain rights in the Charter, it still breaks new ground for the protection of children's rights in many aspects. First, the Charter requires that a criminal case against a child must be determined as "speedily as possible" which is much stronger than the phrase used in the CRC "without delay". This entails a pace that is over and above that applicable to adults. Secondly, the Charter expressly provides that rehabilitation of the child must be the essential aim of treatment of the child during trial and after conviction. This provision does not come out clearly in the CRC.

Besides the difference between the Convention and the Charter, there are however, similarities in guaranteeing certain rights of children. Notably, the right to have legal and other appropriate assistance in the preparation and presentation of his or her defense. The formulation of this right in the Charter is not qualified in any way and finds no comparison in any other human rights instruments. African states will implement this right then they will have developed it a standard to be emulated by other legal instruments. Another similarity is the right to have free assistance of an interpreter if he or she cannot understand the language of the court and right to privacy.

Like the Convention, the Charter is predicated on four cardinal principles which are meant to help with the interpretation of the Charter as a whole and thereby guide national programmes of implementation. These principles are nondiscrimination, best interest of the child, right to life, survival and development and the views of the child.

In addition to the above rights, both the Convention and the Charter provide the right of children to be separated from adults in detention or imprisonment. Article 17(2) (b) provides for the separation of imprisoned or detained children from imprisoned or detained adults. Unlike Article 37(c) of the Convention, it does not allow for exceptions where it would be in the best interest of the child to remain with adults. This could be interpreted in a way that, even in cases where a child has been imprisoned and has family members serving a sentence in the same prison, it would not be allowed to house them together.

Furthermore, both instruments prohibit absolutely inhuman or degrading treatment or punishment of children. It is important to note that, no justification or extenuating circumstances may be invoked to excuse a violation of this right for any reason.

In conclusion, it should be noted that the specific provisions that the Charter contains in relation to juvenile justice as concerned (Article 17) one notes that the Charter's text is largely based on blueprint of the Convention.

CHAPTER THREE

3.0 STAKEHOLDERS IN JUVENILE JUSTICE IN UGANDA

This chapter discusses the roles of the institutions and/or stakeholders in the administration of juvenile justice in Uganda. The institutions responsible for the juvenile justice system in Uganda were identified through the provisions of the Interim Constitution of Uganda, 2005 and the Children's Act statutory instrument they include statutory institutions, customary authorities and Non Government Organizations (Both CBOs and INGOs).

3.1. The' Police

This section defines the police, the powers and procedures that the police follow in the administration of juvenile justice system and the units designated within the police that deal with the juvenile offenders.

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 crime¹²⁹. The Uganda Police Act under section 7 (b) provides for functions and powers of the police services personnel which are to ensure security of Uganda and protecting people's lives and property¹³⁰.

The UK Police Act of 1861 defines the police force as an instrument for prevention and detection of the crimes. It said that "since the first contact an offender has with criminal justice is usually with the police or law enforcement agency that investigates a suspected wrong-doing and makes an arrest, policing has included an array of activities in different contexts, but the predominant ones are concerned with order maintenance and the provision of services.¹³¹ The police are primarily concerned with keeping the peace and enforcing criminal laws based on their particular mission and jurisdiction"¹³². In Uganda, the constitutional mission of the police service is to prevent, combat and investigate crime, maintain law and public order, protect the people in Uganda and their properties¹³³. This, mission is further expanded in the Uganda 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

¹²⁹ Brayan A. Garner(Editor-in Chief), Black Law Dictionary, 8Lh Edition at page 1195

¹³⁰ Section 9 of the Southern Sudan Police Act, 2009

¹³¹ Ibid

¹³² Neocleous Mark, *Fabricating Social Order: A critical History of Police Power* (2004) London: Pluto Press. Pp. 93-94. ISBN

¹³³ Article 162 (1) of the Interim Constitution

community police shall endeavor 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 victims¹³⁴. It is because of these preventive measures that the police Act embraces the involvement of the community through the unit called community police.

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

The term arrest is not defined in the relevant laws of Uganda. 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 either¹³⁵ 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 offenders¹³⁶.

According to Gerald N. Hill and Kathleen T. Hill, “an arrest may occur (1) by the touching or putting hands on the arrestee, (2) by any act that indicates an intention to take the arrestee into custody and that subjects the arrestee to the actual control and will of the person making the arrest, or (3) by the consent of the person to be arrested. There is no arrest where there is no restraint, and the restraint must be under real or pretended legal authority¹³⁷”. Precisely, arrest means a seizure or forcible restraint, the taking or keeping of a person in custody by legal authority, especially in response for criminal charge; and specifically, the apprehension of someone for the purpose of securing the administration of the law, especially of bringing that person before a court¹³⁸.

In the words of Francis Ayume, arresting a person, therefore, means interfering with his personal liberty and therefore cannot move about as he likes¹³⁹. In making an arrest the arresting person shall actually touch or confine the body of the person being arrested unless that person submits to custody either by word or conduct¹⁴⁰.

¹³⁴ The Southern Sudan Police Act, 2009

¹³⁵ Laws of Southern Sudan

¹³⁶ The Southern Sudan Police Act, 2009

¹³⁷ Gerald N. Hill and Kathleen T. Hill, *Burton's Legal Thesaurus*, 2007

¹³⁸ Bryan A. Garner (editor-in-Chief, *Black Law Dictionary* at P. 116

¹³⁹ Francis J. Ayume, *Criminal Procedure and Law in Uganda*, 1986

¹⁴⁰ *Ibid*

The purpose of arrest is that “an arrest serves the function of notifying the community that an individual has been accused of a crime and also may admonish and deter the arrested person from committing other crimes. When warranted, the police officers are empowered to use force and other forms of legal coercion and means to effect public and social order”¹⁴¹

An arrested person should not be subjected to more restraint than is necessary. For example if a police officer comes across a young lady trying to steal a tyre from a motor vehicle and asks the lad to follow him to the police station and the lad willingly agrees without any danger of his escaping, there is no need to handcuff him and push him around.

It is to be noted that normal arrest requires a written warrant¹⁴², and every warrant of arrest issued by a Public Prosecution Attorney, Magistrate or Court shall be in writing, signed or sealed by the Public Prosecution Attorney, Magistrate or Court as the case may be. It is provided under the Criminal Procedure Act that:

- (a) Any police ... may arrest any person for whose arrest he or she has a warrant, or whom he or she is directed by a Public Prosecution Attorney, Magistrate or Court; or
- (b) Who has been involved in an offence for which pursuant to this Act, or any other law, the police may arrest without a warrant¹⁴³.

This means that an arrest may be effected with or without a warrant; but in most cases warrant of arrest must be obtained.

In the US case of **Warden v. Hayden**¹⁴⁴, the Supreme 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 apply¹⁴⁵.

In Uganda, special attention has been paid under the Children’s Act statutory instrument for the procedure and manner in which a juvenile offender can be arrested. According to the Act,

¹⁴¹ Harper, Douglas, Police: online Etymology Dictionary. [h://www.met.etymonline.com](http://www.met.etymonline.com)

¹⁴² Section 78 (1) of the Code of Criminal Procedure Act

¹⁴³ Section 76 of the Criminal Procedure Act, 2008

¹⁴⁴ 387 U.S. 294, 87 S. Ct. 1642, 181. Ed. 2d. 782 (1967)

¹⁴⁵ Jack English and Richard Card, Police Law, Tenth Edition at page 656

the arrest of a juvenile offender under section 139 (1) of the Children's Act statutory instrument¹⁴⁶ 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.

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 Children's Act statutory instrument which provides that the police officer must inform social worker in whose area of jurisdiction the arrest of 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 also required under section 146 (1) of the Children's Act statutory instrument 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.

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 Children's Act statutory instrument 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 hours¹⁴⁷.

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 Uganda 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".

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:

¹⁴⁶ Laws of Southern Sudan, 2008

¹⁴⁷ Section 162 of the Child Act, 2008

- 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 imprisonment¹⁴⁸

In Uganda, 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 Kampala main prison, the researcher confirmed the practice of arbitrary arrest and unlawful detention. For the purposes of example, one of the juvenile convicts Martin¹⁴⁹, 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 police who neither informed him of the reason for his arrest nor informed his parents or relatives as required by law.

3.1.2. Investigation of juvenile by the police

Criminal investigation is 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 inequality”¹⁵⁰. In general, an investigation is an official examination of the facts about a crime¹⁵¹. 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.

¹⁴⁸ Christie v. Leachinsky (1947) AC 573; (1946) KB 124

¹⁴⁹ Real name withheld

¹⁵⁰ B. Weston & Kenneth M. Wells, Criminal Investigation: Basic Perspectives, 7th Edition, 1997

¹⁵¹ Oxford Advanced Learner's Dictionary

The authority to conduct investigation is provided under section 52 of the Code of Criminal Procedure Act, and it is to the effect that investigations shall be conducted by the police under the supervision and directive of the Public Prosecution Attorney, or the Magistrate, as the case may be, in accordance with the provisions of this Act. It follows also that the Public Prosecution Attorney or Magistrate may exercise the powers of investigation, or complete the investigation of himself or herself, where necessity requires¹⁵². This is also echoed under section 8 (c) of the Police Act which provides that the police shall carry out criminal investigation under the directives of public prosecution Attorneys¹⁵³

As for the investigation of juvenile offender, section 144 of the Children's Act statutory instrument 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 on his or her cost; and (iv) The right to be provided with a legal representative by the state in serious offences “.

Although the law is clear on the procedures to be followed in the investigation of juvenile offenders, practices had revealed that such procedures are not followed by the police investigators in Uganda. A case in point is that of *Re Lokukulo*¹⁵⁴, a 16 year boy who narrated to the researcher that when he was arrested, the police did not caution him, among others, of his right to remain silent if he so wishes before extracting information from him which was later used against him. He was arrested by the police and investigation was conducted in absence of his parents and no social worker was present either despite the fact

¹⁵² Section 52 (1) Laws of Southern Sudan, 2008

¹⁵³ Southern Sudan Police Act, 2009

¹⁵⁴ Not real name

that he was legally unrepresented. Lokukulo was eventually convicted on his admission of guilt and sentenced to 3 years imprisonment for having stolen a motor bike.

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 Gault*¹⁵⁵, 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 Uganda, the researcher had the chance to see several juveniles incarnated in the police detention centers 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 Uganda 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. This was confirmed by one of the police officer interviewed at Munuki Police Station in Kampala who told the researcher that “although there are departments within the police, what had happened is a mere restructuring of the police”¹⁵⁶. According to him, “a successful police reform requires more than simply tinkering with policing organizations; it requires transforming the relationship between police institutions and society”¹⁵⁷

3.1.3. Detention of juvenile in the police station

Detention is the state of being kept in a place, especially a prison, and prevented from leaving¹⁵⁸. 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 result of remand in custody for the purpose of investigation. This is explicitly provided under section 64 of the Criminal Procedure Act¹⁵⁹, that:

¹⁵⁵ 387 U.S. 1(1962),

¹⁵⁶ Interview with Col. Izakaho Lado, officer in charge of Munuki Police Station, Juba West

¹⁵⁷ Charles T. Call, *Constructing Justice and Security After the War*, 2007

¹⁵⁸ Oxford Advanced Learner's Dictionary, 7 Edition

¹⁵⁹ The Criminal Procedure Act, 2008. Laws of Southern Sudan

“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 Children’s Act statutory instrument¹⁶⁰, 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 Children’s Act statutory instrument is very explicit about the detention of children and for that 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 recorded¹⁶¹ 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 Judge¹⁶². 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 taken¹⁶³. As to the procedure after arrest of a child above the minimum age of prosecution, section 144 (1) of the Children’s Act statutory instrument¹⁶⁴, provides that where an arrest of a child above the age of twelve years, being the minimum age

¹⁶⁰ Section 150 (1) of the Child Act, 2008

¹⁶¹ Section 150 (2) (supra)

¹⁶² Section 150 (5) of the Child Act, 2008

¹⁶³ Section 150 (6) (Supra)

¹⁶⁴ Ibid

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 absent¹⁶⁵. It is yet to be seen whether this provision is observed by the Uganda Police Administration. Section 184 of the Children's Act statutory instrument provides for limitation on detention of a child. 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 period¹⁶⁶.

In Uganda, it was found that juvenile offenders are detained even for very minor offences. For instant, in a visit to Hai Malakia police station in Kampala by the researcher of this work, one Elizabeth¹⁶⁷, a 15 year old girl in primary 7, was detained without charge allegedly on the suspicion by her step father for pre-marital sexual intercourse. It should be remembered that in Uganda, there is no law prohibiting unmarried woman or girl from having pre-marital sexual intercourse. The point here to note is that detention of this kind could not be justified because it is unlawful to detain a person for a crime that does not exist.

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 child¹⁶⁸.

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 guardians¹⁶⁹. It is provided also under the Children's Act statutory instrument that all disciplinary measures in places of

¹⁶⁵ The Criminal Procedure Act, 2008, Laws of Southern Sudan

¹⁶⁶ Section 184 (1) of the Child Act, 2008

¹⁶⁷ Not real name

¹⁶⁸ Section 184 (4) (Supra)

¹⁶⁹ Section 187 (1) of the Child Act, 2008

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 child¹⁷⁰.

Despite this legislated framework, the practice is hardly near to the acceptable standards. This was evidenced by the testimonies of some juveniles whom the researcher had the opportunity to interview. According to one 16 year old juvenile¹⁷¹, who was arrested and detained in an adult police cell in Kampala North Police station for one week “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 deplorable cells is contrary to the principle that juveniles should be detained in suitable condition in accordance to their’ stage in life.

3.1.4 The Directorate of Public Prosecutions and State Attorneys

This section discusses the functions and powers of the Directorate of the Public Prosecution and State Attorneys in the administration of juvenile justice system in Uganda.

The Directorate of Public Prosecutions and State Attorneys are constitutionally created under Article 138 (3) of the Interim Constitution of Uganda which provides inter alia that; the public attorneys shall give legal advice to all levels of Government in Uganda, and in parriicular represent them in public prosecutions, litigation and adjudications, and conduct pre-trial proceedings. This is also echoed under the Ministry of Legal Affairs and Constitutional Development (MOLACD) Organization Act, 2008 which provides for the establishment of the Directorate of Public Prosecution. Under section 8 (b) of this Act, it is provided that the function of the directorate of Public prosecution shall be the supervision of investigations, taking cognizance of and prosecuting criminal cases at the GOSS and state level in accordance with applicable law. Section 42 (2) (c) of the same Act provides for functions and duties of public prosecution. Attorneys and legal advisors and it to the effect that they shall conduct pre-trial proceedings.

The provision of legal aid is given to the Directorate of Contracts, Conventions and Treaties, Human Rights and Legal Aid of the MOLACD and as such, section 10 (2) (c) and (d)¹⁷² provides that the Directorate shall exercise all powers necessary to fulfill the following

¹⁷⁰ Section 190 (5) (supra)

¹⁷¹ Charged under section 48/293 of SPC, 2008 (Not real name)

¹⁷² MOLACD (Organization) Act, 2008

functions of the Ministry..., and in particular provides legal aid for persons in need and overseeing the implementation of conventions and treaties and human rights in Uganda .

In relation to juvenile cases, section 22 (1) of the Code of Criminal Procedure Act¹⁷³, provides that the Minister of the Ministry of Legal Affairs may identify specialized Public Prosecution Attorneys to handle specific types of cases. This implies that juvenile cases are some of the types of specific cases that require specialized Public Prosecution Attorneys. This provision remains in the legal book but not in practice because when the researcher endeavored to know the presence of specialized Public Prosecutions Attorneys especially in juvenile department, there were no such personnel in the department.

3.2 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 person¹⁷⁴. On the issue of private prosecution it is said that usually, the victims of the crime or the person feeling offended or aggrieved by the crime, would be most likely to be interested in setting the criminal law in motion; and that justice and reason would suggest that persons should not be allowed but also be given all the facilities to move the machinery of law against the alleged culprit¹⁷⁵. This justifies prosecution by private person.

The purposes of conducting criminal proceedings are, mainly “to give the prosecution an opportunity to prove their case against the accused, to enable the accused to exercise the fundamental right to defend himself/herself if he or she wishes; to ensure that the accused is tried by an independent and impartial court; and to punish the accused if found guilty of the charge laid against him or her”¹⁷⁶.

The uniqueness of the juvenile justice system requires special procedure for the prosecution of juvenile offenders. This is provided under section 152 of the Children’s Act statutory instrument 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

¹⁷³ Laws of Southern Sudan, 2008

¹⁷⁴ B.J. Odoki, A Guide to Criminal Procedure in Uganda, 3d Edition, 2006

¹⁷⁵ R. V. Kelkar, Criminal Procedure, 5th Edition at Page 31

¹⁷⁶ B.J. Odoki, A Guide o Criminal Procedure in Uganda, 3rd Edition, 2006

public attorney submits the case to the court under the provisions of this Act and the charges are read and explained to the child.

3.3 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 Children's Act statutory instrument 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 Children's Act statutory instrument 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

The accused should also not be denied bail because of the delay in police investigation. In spite of diligent investigations, inquiries cannot be completed within a reasonable time and it is not fair to expect the police to do miracles to get evidence. The researcher's opinion is that it would be unfair for the court to summarily dismiss such argument as being unworthy of credence. In **Kamulegeya vs. Uganda**¹⁷⁷, Phake, Ag. 3. (as he then was), "the investigation of

¹⁷⁷ M.B. 155 of 1969

a charge of murder and the preparation of the summary evidence, especially in a complex case, necessarily involve a great deal of work for the prosecution who are engaged in dealing with numerous cases of crime. I do not wish to be understood as saying that the prosecution may complete their part of the work at their sweet will and may ignore the provision of the Constitution, but I do think that they should be given reasonable sufficient time and not to be expected to perform in the manner of a machine set to time “.

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. According to one of the Legal Counsel in charge of Kampala North State Prosecution Department, “the State Attorney sometimes reconciles

The parties involved in juvenile cases or may set the child free when the offence is a minor offence and advises appropriate measures concerning the case”.¹⁷⁸

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 Uganda where juvenile justice faces a lot of challenges. For example, a 10 year male juvenile was remanded for the charge of murder¹⁷⁹ of a 12 year old killed by a gun carelessly put in the cattle camp where the accused found it. While he was playing with the gun, he shot and killed the victim from a distance. He was taken to court but the complainants/relatives of the deceased were not present for the hearing. At the moment, he was being detained pending trial because the relatives of the deceased child demanded that this juvenile offender must either be killed or they revenge by killing the juvenile or his relative.

This case illustrates that the delay of juvenile proceedings may not be caused by the prosecuting public authority but by the victim or their relatives.

It should also be noted that juveniles are charged without considering the fact that they lack criminal responsibility. For example, the accused in the above case, a 10 year old was charged despite the fact that he lacks mental element (mens Rea) of the crime. Mens Rea was defined by Lord Simon in **DPP vs. Majewski**¹⁸⁰ as... the state of mind stigmatized as wrongful by the

¹⁷⁸ Interview with William Jada, Legal Counsel in charge of Juba North State Attorney Office

¹⁷⁹ Under section 206 of the Penal Code Act, 2008

¹⁸⁰ (1977) AC 443

criminal law which, when compounded with the prohibited conduct, constitute a particular offence.

It is observed in this case that there was unnecessary delay in the trial meaning that “justice delayed is justice denied”. A delay in judicial proceedings violates the right of the accused person to have an expeditious trial. The court said in **T.J. Stephen v Pane Bottling Co. (P) Ltd**¹⁸¹ that a criminal trial which drags on for unreasonably long time is not a fair trial and the court may drop proceedings on account of long delay even in a case where the delay was caused due to the mala fide moves by the accused; and further that “the concept of speedy trial is an essential part of the fundamental right to life and liberty guaranteed and preserved under the Constitution which provides that: “the right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration, and continues at &l stages, namely, the stage of investigation, inquiry, trial, appeal; and revision so that any possible prejudice that may result from impressible and available delay from the lime of the commission of the offence till it consummates into a finality, can be averted”¹⁸².

3.4 The Social Workers in the Juvenile Justice System

The term social work is not defined under the Children’s Act statutory instrument but according to Mwene Mushanga, social work is “a branch of sociology which is used to describe the variety of organized methods of helping people with needs they cannot satisfy unaided¹⁸³”. 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’⁴⁶¹⁸⁴. 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 Children’s Act statutory instrument⁴⁷¹⁸⁵ 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’⁴⁸¹⁸⁶.

¹⁸¹ (1988)

¹⁸² T. J. Stephen V. Pane Bottling Co. (P) Ltd, (1988)

¹⁸³ Dictionary of Criminology

¹⁸⁴ Oxford Advanced learner Dictionary 11th Edition

¹⁸⁵ Laws of Southern Sudan, 2008

¹⁸⁶ Mwene Mushanga, Dictionary of Criminology, (Fountain Series in Law and Business Studies), First published, 2008 at page 168

3.4.1 The Function of Social Workers

Social workers in Uganda are employed by the Public Service like 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. Within this Directorate, a Department of Child Welfare which specifically deals with children's welfare affairs in Uganda 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 law¹⁴⁹¹⁸⁷. It is on this basis that, the Children's Act statutory instrument 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 Uganda. When such rules are formulated, they are expected to fulfill the aspirations envisaged under the Children's Act statutory instrument 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 Children's Act statutory instrument. The MGCSWRA is "expected to be able to afford to the juvenile offenders, an access to child-friendly justice systems" ⁵⁰¹⁸⁸. In order to do this, the Ministry should ensure that the institutions that play roles in the administration of juvenile justice system in Uganda adhere to the principles that protect, promote and safeguard against abuses of children in general and. juveniles in particular.

3.4.2 The Role of Social Workers 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 Children's Act statutory instrument 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 provisions 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

¹⁸⁷ Article 40 (3) of the Convention on the Rights of the Child

¹⁸⁸ MGCSWRA, Initial Report to the African Committee on the Rights and Welfare of the Child, 2008

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.

3.4.3 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 Children's Act statutory instrument 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'¹⁸⁹. 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'¹⁹⁰.

The term diversion as provided under section 175 (6) (a) of the Children's Act statutory instrument 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 (emphasis added).

It is also during the investigation that transfer or conversion of a matter to the court may be considered by the social worker'¹⁹¹. 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'¹⁹².

The foregoing position of the social worker in the administration of juvenile justice system is very important and Uganda 's Juvenile justice system. However, it 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

¹⁸⁹ Section 175 (3) of the Child Act, 2008

¹⁹⁰ Section 175 (6) (Supra)

¹⁹¹ Section 175 (7) of the Child Act, 2008

¹⁹² Section 175 (8) of the Child Act, 2008

justice should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists'¹⁹³.

3.4.4 The Role of a Social Worker after Court Sentence and During Imprisonment of a Juvenile.

In Uganda, 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 counseling¹⁹⁴ “. 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 of the juvenile¹⁹⁵. 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 Children’s Act statutory instrument, 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.

3.4.5. 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 Children’s Act statutory instrument 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 Children’s Act

¹⁹³ UN Rules for the Protection of Juveniles Deprived of their Liberty. (GA Res. 45/113. Annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (Dec. 1990)

¹⁹⁴ Joanna W. Mensah, The Role of Social Workers Concerning Juveniles in Court, (A Paper Presented at Seminar on Problem Areas in Juvenile Justice, Ghana) 19-20 July 2007

¹⁹⁵ Ibid

statutory instrument 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 **F. v. Padwick**¹⁹⁶, it was stated that in order to ascertain the child's ability to determine right from wrong the court should hear evidence of his back ground 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 Children's Act statutory instrument 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.

This role was explained by one of the social workers serving in the Kampala main prison who informed the researcher that: the main duty of social workers in prison is counseling the juveniles who are in detention¹⁹⁷ facilities. Contact and inform the parents on the conditions of the juvenile and make recommendation to the court on any measure that may be made depending on the condition of the juvenile which include recommendation to be released if the juvenile has improved his conduct.

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.

¹⁹⁶ 158 (1959) Crini. L.R. 439

¹⁹⁷ Betty Paul. Social Worker, Juba main prison

3.5 Jurisdictions of Courts and Judicial Treatments of Juvenile Offenders

This section discusses the establishment, structures, powers, competence, jurisdiction and procedure of the courts in Uganda. It also appraises the judicial mechanism of dealing with juvenile offenders in Uganda since 2005 following the promulgation of the Interim Constitution of Uganda and the Children's Act statutory instrument.

The source of judicial power in Uganda is provided under Article 126 (1) of the ICSS which provides that judicial power in Uganda 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 Uganda is provided under Article 128 (1) of the ICSS which is to the effect that the judiciary of Uganda shall be independent of the executive and legislature. Article 127 of the ICSS provides for the establishment and structure of the judiciary of Uganda which ranges from the Supreme Court as the Highest Court in Uganda 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"¹⁹⁸

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 judge is a true privilege and exhilarating experience"¹⁹⁹. According to him, judges as "decision-makers should be faithful both to laws as a whole, and also to the principles contain in them"²⁰⁰.

While the English juvenile justice system requires certain qualification and training of juvenile court justices; when appointing members of the juvenile court penal the justices, or in

¹⁹⁸ Article 126 (5) (a) and (e) of the ICSS provides that

¹⁹⁹ Keith Evans p. 85

²⁰⁰ Ibid

the case of metropolitan area, the Lord Chancellor, are required to choose justices who are specially qualified for dealing with juvenile cases²⁰¹. 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 Uganda, the Children's Act statutory instrument 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 Children's Act statutory instrument 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 Uganda.

It was found by the researcher 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 "ignorance in any person at all is of 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 fudge out of sheer lack of intellectual capability fails to grasp any of it"²⁰². For the effective functioning of the criminal courts, it is important that Judges and Magistrates be persons having adequate qualifications, ability and wisdom²⁰³. So lack of adequate and appropriate training for judges in juvenile matters contributes to detrimental decisions against juvenile delinquents.

In an interview with the Grade one, a satisfactory narrative of juvenile justice was given in that "a juvenile justice system is not appropriately applied in Uganda because the stakeholders are not aware of the new law" (Children's Act statutory instrument). She (the Magistrate) gave an example of the punishment by whipping or canning of the juveniles which was in the old law but is now abolished by the new law. That because of ignorance, the police still apply

²⁰¹ Juvenile Court Constitution Rules 1954 r. 1(1)

²⁰² Manual on professional skills, 2nd Edition Produced by RCN, Justice & Democratie 2008

²⁰³ R. V. Kelkar, Criminal Procedure, 5th Edition, 2008

whipping and this violates juvenile right of physical integrity. Whipping or canning also amounts to torture which is prohibited by the constitution and the Children's Act statutory instrument²⁰⁴. According to the judge, the juvenile justice system requires not just a degree from law school but also sufficient training to handle juvenile cases. In other words it requires experienced judicial officers. As one of the judges who got training in juvenile justice, the decisions she passed in juvenile cases were found commendable as reflected in the following cases decided by this judge”.

In the case by the parent against S. Lomoro²⁰⁵, 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.

3.5.1 Jurisdiction in Matters of Juvenile Offenders

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 state²⁰⁶. 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 case otherwise, any decision it arrives at will be a nullity. This is expressed in Latinized phraseology, as “Actus judicaries coram non iudice irritus habetur” which means that “a judicial act before one not a judge (or without jurisdiction) is void”²⁰⁷.

In Uganda, the issue of criminal jurisdiction poses confusion especially in offences committed by children. For instant, there was lack of jurisdiction in the case of an infant Santino²⁰⁸, a 9 year old charged and convicted by the lay Magistrate of 3rd 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

²⁰⁴ 2nd Grade Magistrate, Judge Dudu

²⁰⁵ Criminal Case NO 88/2010

²⁰⁶ Francis J. Ayume, Criminal Procedure and Law in Uganda, 1986 p. 15

²⁰⁷ (Black Law Dictionary)

²⁰⁸ Not real name. Summary Trial No TBC/S/78/2010

of 3 Grade did not have the jurisdiction to try juvenile cases. The attempt of the 3rd magistrate judge in trying a juvenile case contravene section 192 (3) of the Children's Act statutory instrument 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 Uganda, 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 Uganda 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 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.

The issue of jurisdiction is very important and therefore, even if an offence is committed within the local limits of jurisdiction, the magistrate still has to answer the question whether he or she has power to try the case²⁰⁹. In Uganda, 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 Uganda if the decision did not cause miscarriage of justice.

As the importance of jurisdiction in criminal litigation requires, courts in Uganda 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 Children's Act statutory instrument and it is to the effect that juvenile courts shall be established to hear and determine:

- all applications relating to criminal charges against children subject to the provisions of this Act
- all applications relating to child care and protection; and
- Any other competence conferred upon them by this Act or any other written law.

²⁰⁹ Francis J ayume, Criminal Procedure and Law in Uganda 1986 at page 16

A juvenile court is defined to mean a court of law that deals with young people below the age of eighteen years²¹⁰ 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 eighteen years of age, criminal resolved or tried case, shall be in accordance with the procedures applicable to the juveniles²¹¹.

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 court²¹².

In England, a juvenile court usually consists of three justices of the peace who are specially qualified to deal with cases concerning juveniles. A juvenile court panel must meet at least twice a year to make arrangements with regard to the holding of juvenile courts and to discuss questions concerning their working. Such arrangement is very important because it allows evaluation of policies and recommends new strategies. This is not the situation in Uganda where there is no law providing for a panel to hear juvenile cases. Currently, juvenile courts have not yet been established in Uganda and for that matter, the Children's Act statutory instrument 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 Act²¹³.

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 nature²¹⁴

The procedures in juvenile cases in the American Legal System were explained by the U.S. Supreme Court in *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 transferred to adult court the child is entitled to an informal

²¹⁰ Section 192 (5) of the Child Act, 2008

²¹¹ Section 13 of the Criminal Procedure Act, 2008

²¹² The Local Government Act, 2009

²¹³ section 192 (3) of the Child Act, 2008

²¹⁴ Ibid

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*²¹⁵, 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 3 in *R v Whitty*²¹⁶, 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 Uganda, 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"²¹⁷.

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

3.5.2 Conducting Juvenile Offender 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 defense, including cross-examination of witnesses²¹⁸. 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 defense.

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 homicide²¹⁹. In Uganda, the legislated laws accord similar procedures in handling juveniles cases but the practices of the

²¹⁵ (1995) 2 ALLER 43

²¹⁶ (1993) 66 A Crim R 462

²¹⁷ Section 30 of The Penal Code Act

²¹⁸ Clarke Hall & Morison on Children

²¹⁹ Clarke Hall & Morison on Children

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 Uganda require that, juvenile cases should be presented before county court as provided under section 192 (3) of the Children's Act statutory instrument 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.

If the juvenile is unable to present his defense, 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 pleader²²⁰. 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 him or herself. A good example was given in the case of **Darren Coulburn**²²¹ 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 Uganda, 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.

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 ICSS²²² 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

²²⁰ procedures Act, 2008

²²¹ (1988) 87 Crim. App. R. 309

²²² Interim Constitution of Southern Sudan, 2005

competent court of law in accordance with the procedures prescribed by law²²³. 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 offences²²⁴.

One principal object of criminal law is to protect society by punishing the offenders; however, “justice and fair play require that no one be punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might have been even caught red-handed and yet he is not to be punished unless and until he is tried and adjudged to be guilty by a competent court”²²⁵. In the administration of justice, it is of prime importance that justice should not only be done but must also appear to have been done. This principle is implicit in the administration of juvenile justice system where unique rights of the children must be protected. Uganda juvenile justice system must uphold the principle of fair hearing in juvenile cases because, “to stand trial, the accused must be... of sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defense, to challenge a juror to whom he might wish to object and comprehend the details of the evidence”²²⁶ In *R vs. Z*²²⁷, it was stated that, “there is not fixed age below which children are incompetent to give evidence. In criminal proceedings, a person of any age is competent to give evidence if he or she is able to (1) understand questions put him or her as a witness (2) gives answers to them which can be understood”.

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 Children’s Act statutory instrument, 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.

²²³ Article 23 (3) of the ICSS, 2005

²²⁴ Article 23 (6) of the ICSS, 2005

²²⁵ Jefferson. Criminal Law, 8th Edition

²²⁶ S. H. Kadish, quoted from Jefferson, Criminal Law, 8 Edition

²²⁷ (1990) 2 QB 355

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 Children's Act statutory instrument 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.

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."²²⁸ 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 accused²²⁹.

3.5.3 Hearing of a Case involving a Juvenile and an Adult Offender

In cases where a juvenile is charged jointly with an adult defendant, "the normal procedure is that, the juvenile and the adult will appear together as defendants in an adult magistrates' court. What will happen next is governed by the classification of the offence ". While in England, "the youth court is empowered to commit a juvenile defendant to the crown court for trial, where either: he/she is charged with homicide (in which case the defendants must be sent to crown court for trial; or if he/she is charged with a grave offence for which the sentence may be one of long-term detention"²³⁰ in Uganda cases have shown that juveniles who commit crimes with adults end up affected more severely than adults. This is because a co-accused who is an adult may defend himself while the juvenile who is legally unrepresented may be unable to defend himself. This happened in William's case where a 16 year old who was convicted under section 48/383 of the Penal Code Act, 2008 for two years to be served in a reformatory institution after being arrested with eight adult co-offenders. The adults were not convicted partly because some of them paid the money to the security personnel to release them before the trial while others who were sentenced with him paid money in order to be released.

It should be noted that child related legislations in Uganda hardly provide for the procedure of prosecuting, a juvenile jointly charged with an adult but in other jurisdictions, the position is

²²⁸ (Babu Singh v. State of Punjab (19810 1 Crim. U 566)

²²⁹ (Kali Ram v. State of H.P., (1973) 2 SCC 808

²³⁰ Hon. Mr. Justice Elias, Criminal Litigation and Sentencing, p. 127

that “where a juvenile is charged jointly with an adult and the offence charged is an indictable one, other than homicide, the magistrates’ court must, if it considers necessary in the interest of justice and there is sufficient evidence commit them but for trial”²³¹. What needs to be considered is whether such child possessed the ability of knowing whether the act he was participating in, was wrong and had acted in that belief (Emphasis).

In order to charge a child, evidence of the intellectual, emotional, psychological and social development of a child is relevant to any inquiry into whether such a child possesses the capacity to appreciate the difference between right and wrong and has the ability to act in accordance with that appreciation²³². In **R v. Windle**²³³, it was held that the child’s knowledge that his act was legally wrong, that it would excite the attention of a policeman is a sufficient rebuttal, even though there was no knowledge that the act was morally wrong. So a 10 year old boy who shoplifts while is looking over his shoulder for any shop-walker but who does because he believes that he is morally justified. in so acting in order to provide the necessities of life for his widowed mother will be held to be guilty.

3.5.4 Tearing of a case Involving Several Juvenile Offenders

The principle of criminal law is that those who commit criminal acts jointly are to be tried jointly provided the prosecution proves beyond reasonable doubt that there was common intention to commit the act in question. As such, the Uganda Penal Act provides under section 48 that persons who commit unlawful acts in furtherance of a common intention or who cooperate in the commission of several acts that constitutes the offence are jointly criminally responsible²³⁴.

It is to be remembered that a joint trial which involve several juveniles must be handled with care because juvenile cases involve other parties who may influence the evidence. In **Uganda Government vs. Ragab Koko**²³⁵, it was held by Omer Hassan Ali Ahmed .1 that, the evidence of a child need not be corroborated as a matter of law, but jury should be warned, not that they must find, corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys and girls though they may do so if convinced that the witness is telling the truth. Great caution is required in accepting their evidence because, although

²³¹ Section 6 (1) of the Children and Young Persons Act (UK) 1969

²³² Section 138 (6) of the Child Act, 2008, Laws of Southern Sudan

²³³ (1952) 2 QB 826

²³⁴ section 48 and 50 of the Penal Code Act. 2008

²³⁵ Quoted with approval from Cross on Evidence (31d edition, 1969) p. 178

children may be less likely to be acting from improper motives than adults, they are more susceptible to the influence of third persons, and may allow their imaginations to run away with them.

It should be noted that children of tender years cannot be able to form a common intention to Commit crimes, hence; the application of Latin phraseology “Actus non facit reum nisi sit rea” which means that an act does not make a person guilty unless the mind is guilty; and act does not make the doer criminal unless his mind is criminal must be made use of in the joint juvenile cases.

The practice in Uganda is that children who commit criminal acts should be tried jointly. In the judgment of Lindsay CJ in **Uganda Government vs. Gebra Hamad**²³⁶, the evidence of the children was taken on oath, although at the magisterial inquiry, they were regarded as too young to take the oath. (Magisterial inquiry is also known as committal proceedings in other jurisdictions). The issue of corroboration in juvenile cases poses danger of self incrimination as was held in **The Uganda Government v. Mohamed Ahmed Abu Kaki**²³⁷, it was held that a child of tender years who may not be sworn because of incapacity to understand the meaning of oath cannot corroborate the evidence of another child.

3.5.5 Sentencing of Juvenile Offenders

‘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 summarily²³⁸. It also follows that usually, the maximum penalty should not be imposed on a first offender except in exceptional circumstances²³⁹. 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 things²⁴⁰. The child must know that his or her act was gravely wrong, seriously wrong²⁴¹.

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

²³⁶ (1952) ACCP 10152, DP Maj. Court 41C1852, Unreported

²³⁷ (1967) SLJR 103

²³⁸ In Ex parte N, 1959 Crim. L.R. 523

²³⁹ R v. Yozefu Maria Matovu, Crim. Rev. No. 36 of 1961 (unreported)

²⁴⁰ C.M.V Clarkson & H.M. Keating, Criminal Law: Text and Materials, 2nd Edition 1990 P. 397

²⁴¹ R v. Gorrie (1918), 83 J.P. 136

the more modern 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 society²⁴².

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 power²⁴³. The Interim Constitution of Uganda 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.²⁴⁴ The same constitutional provision is echoed under section 11 of the Penal Code Act²⁴⁵

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 **Turon V. R**²⁴⁶, 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.

In Uganda, the appropriate possible sentences that may be imposed on a juvenile offender are enumerated by the Criminal Procedure Act²⁴⁷ 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 offender²⁴⁸. 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 not exceeding six months; (ii) fine not exceeding SDG 150 and (iii) compensation, care and reform measures.

²⁴² Francis J. Ayume, *Criminal Procedure and Law in Uganda*, 1986

²⁴³ Quoted from Jefferson, *Criminal Law*, 8th Edition

²⁴⁴ Article 25 (2) of the ICSS 2005

²⁴⁵ Laws of Southern Sudan, 2008

²⁴⁶ [1967] EA 789

²⁴⁷ Laws of Southern Sudan, 2008

²⁴⁸ Section 13 (2) of the Criminal Procedure Act, 2008

On the issue of possible compensatory sentences that can be imposed on a juvenile, the researcher benefited from an interview with Judge Awan Maper who explained a case that happened in Yirol County of Lakes State where he once worked as a County Judge. According to the judge, “a child of 14 years jumped over an adult in the water pond while playing and the adult was drowned to death. He was arrested but the relatives were made to compensate the deceased with 16 head of cattle as half of normal 31 head of cattle for compensation in homicide cases²⁴⁹”.

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 Rebecca²⁵⁰, 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 18th 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 Children’s Act statutory instrument 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, Wani²⁵¹ 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 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 DPP**²⁵², 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, 1963 released on bail until July 31, with the view to being tried summarily for the indictable offence, on July 28. He attained the

²⁴⁹ Interviews with Judge Awan Maper on 20th July 2010

²⁵⁰ Not real name

²⁵¹ Criminal Case NO 107/20 10 (Not real name)

²⁵² (1963) 3 ALLER 657

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. Rider**²⁵³ it was held that although there appears to be conflict between these views the date that is to be considered is the date when the charge is preferred.

In Uganda, 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 provides that “No person shall be charged with any act or omission which did not constitute an offence at the time of its commission “.

3.5.6 Other Orders that can be made against a Juvenile Offender

The Children’s Act statutory instrument requires that sentencing of a child shall be reasonable and proportionate to the circumstances and gravity of the offence as well as the circumstances and needs of the child. It follows under this Act that sentencing shall be noncustodial where possible and may include orders for any of the following relieves in respect of a child against whom an offence is proved.

These reasonable and proportionate sentencing includes, reconciliation, compensation, restitution or fine, apology, caution; a probation order, or sending him or her to reformatory centre²⁵⁴

A release on probation is also provided under section 284 (1) of the Criminal Procedure Act, 2008 which is to the effect that: when any juvenile is convicted by any such court or by a Magistrate of First Class or of Second Class, of an offence.. . and if in either case no previous sentence of an imprisonment exceeding six months is proved against such a person during the period of five years preceding the present conviction. . . and taking into consideration the age, character and past story of the offender, and to the circumstances in which the offence was committed.

²⁵³ (1954) 1 ALLER 5)

²⁵⁴ Section 182 (1) of the Child Act, 2008

The reason for probation under the Criminal Procedure is that:

“it is expedient that the offender be released on probation, the court may instead of sentencing him at once to any punishment, direct that he or she be released on his or her entering into a bond with or without sureties to appear and receive sentence, when call upon during such period not exceeding three years, or as the court may direct, and in the mean time to keep peace and be of good behaviour, and the court may make it a condition of such bond that the victim be paid by or on behalf of the offender such damages for injury or compensation for loss caused by the offence, as the court deems reasonable “.

3.5.7 Orders against Several Juvenile Offenders

Where an offence is committed by several juveniles, there is usually a problem of establishing element of mens rea. For example, in **S. (an infant) v. Manchester City & Recorder**²⁵⁵, the juvenile court may then deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court, but apparently it may allow the juvenile to change a plea of guilty before the remitting court to one of not guilty.

Section 137 of the Children’s Act statutory instrument provides for the protection of child witnesses and the victims and it is to the effect that child witnesses and victims shall be afforded protection where necessary, including protection from intimidation.

Article 21(2) of the ICSS, states that in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.

3.5.8 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 revisited²⁵⁶. 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 given²⁵⁷. In Uganda , section 186 (2) of the Children’s Act statutory instrument 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

²⁵⁵ (1971) AC 481 (IIL) (11969)3 ALLER 1230

²⁵⁶ Oxford Advanced Learner’s Dictionary, 11th Edition

²⁵⁷ R v. Dunn (1965) EA 567

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*²⁵⁸, 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.”²⁵⁹.

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 person aggrieved may be wide enough to include the parent”²⁶⁰. 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 sentence²⁶¹. 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 courts²⁶².

The researcher did not come across a case that had been reviewed during a visit to the Judiciary of Uganda. This might partly be due to lack of proper case tracking system which makes it difficult in Uganda for higher courts to review ‘errors made by lower courts or due to axiomatic that even the victims of wrong decisions do not know that they have right to appeal for review and revision to the higher courts.

In Uganda, 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 nonobservance 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.

²⁵⁸ (1978)3 Sec 544

²⁵⁹ Ibid P.24

²⁶⁰ Clarke Hall and Morison, *Law Relating to Children and Young Persons*, 9th Edition, 1977

²⁶¹ Ibid

²⁶² R.V. Kelkar’s, *Criminal Procedure* at page 24

The case of Francis R²⁶³ 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) (1) of the Children's Act statutory instrument which provides that every child in detention has the 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 cannot afford legal fees. Therefore, juveniles who are not satisfied with their sentences should be assisted to appeal against their sentences.

3.6 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.

3.6.1 Parents/Guardian

A parent is defined under section 5 of the Children's Act statutory instrument 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 Children's Act statutory instrument 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 Children's Act statutory instrument 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.

3.6.2 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,

²⁶³ Not real name

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”²⁶⁴.

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, pay fine and other pecuniary payments.

In Uganda, 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 Children’s Act statutory instrument provides that the parents or guardian of a young person may and or a child must be ordered to pay any fine, cost, or compensation instead of the juvenile unless the parent or guardian cannot be found or the court is satisfied that he has not contributed to the commission of the offence by neglecting to exercise due care and control²⁶⁵.

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 guardian/parents compensation instead of juvenile. But where the property has been stolen an order for restitution may be made”²⁶⁶.

In Uganda, the parents of delinquent children mostly avoid their responsibility towards the children who commit crimes. The scenario in which parents would avoid their responsibility is where the child is the offender. According to the police crime investigator in Kampala North Police Station while admitting that children are not properly treated in line with the existing laws, said that “when children are the victims, a parent is always willing to come in order to claim compensation and the reverse is not true”²⁶⁷.

²⁶⁴ 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

²⁶⁵ Clarke Hall & Morrison, Law Relating to Children and Young Persons, Ninth Edition, 1977

²⁶⁶ C.M. V Clarkson & H.M. Keating, Criminal Law: Text and Materials, 2nd Edition 1990 at Page 116

²⁶⁷ Investigator SIM Joseph Nastory

3.6.3 Adopted Juvenile Offender

In Uganda , 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 have all the rights to the family rituals in accordance with customary law. It is my observation that the law of adoption in Uganda is not very clear in case of an adopted child committing an offence.

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.

3.6.4 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 Uganda 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 centers may revert to the former conditions that lured him or her to delinquent behaviors. It follows also that when a child is released from the detention centers, 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 Children's Act statutory instrument 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 Kampala 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 Children's Act statutory instrument 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 Children's Act statutory instrument 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.²⁶⁸ In Uganda, “Prison Institution” is defined to include any whole or part of a building, place or vehicle, but excludes military detention facilities²⁶⁹.

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 offences²⁷⁰. 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”²⁷¹.

According to section ‘185 (1) of the Children’s Act statutory instrument²⁷², 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. It is in this notion that the words of Dwight S. Eisenhower could be adored when he said that “if you want total security, go to prison. There you are fed, clothed, given medical care and so on. That the only thing lacking... is freedom “.

Therefore, juveniles in detention should be treated humanely and as such, section 190 (5) of the Children’s Act statutory instrument, 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.

²⁶⁸ Brayan A. Garner(Editor-in Chief), Black Law Dictionary, 8th Edition at page 1232

²⁶⁹ Section 5 of the Prison service Bill, 2009, Laws of Uganda

²⁷⁰ Clarke Hall & Morrison on Children

²⁷¹ JJPL Report, Louisiana 1998

²⁷² Laws of Uganda , 2008

Section 190 (1) of the Children's Act statutory instrument²⁷³, 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 defense, including the right of appeal to a competent authority of the prison.

Uganda has not yet enacted its Prison Service Act, but it has the Prison Services Bill, 2008 which is to be passed by Uganda 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 Uganda. Its mission shall be correctional, reformatory 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 age²⁷⁴. 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 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.

Whether this has been the practice in Uganda considering the impacts of the civil war that characterized it with abrogation of legal machinery and a pitiful destruction of infrastructures is to be found out in Chapter Five which discusses the challenges facing the stakeholders in the administration of juvenile justice system.

3.7.1 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

²⁷³ Ibid

²⁷⁴ The Prison Service Bill, 2008 (Laws of Uganda)

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 Uganda, 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. In an interview conducted with some of the juveniles in the Kampala main prison, one Malual²⁷⁵, a 16 year old boy charged with murder under Section 206 of the Penal Code Act, 2008 described the conditions in the prison thus: "the conditions of the prison are not good because two of us sleep on one mattress without bed sheet. That we are beaten 5-10 lashes when one makes mistake. That we eat once a day at 9pm and the water provided is not sufficient".

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).

²⁷⁵ Real name withheld

3.7.2 The personnel

in Uganda , 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, reformatory and rehabilitative; and the provision of section 135 of the Children's Act statutory instrument²⁷⁶ 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.

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"²⁷⁷. 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 Children's Act statutory instrument 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 Children's Act statutory instrument 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.

²⁷⁶ Laws of Uganda, 2008

²⁷⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990

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.

3.7.3. Reformatory Programmes

Every prison is expected to have reformatory programmes not only for juveniles but also for adult prisoners. According to the Gladstone Committee²⁷⁸, “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 centers by the courts in Uganda; 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 Children’s Act statutory instrument 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 Uganda 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”²⁷⁹. It is for this 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

²⁷⁸ (1895) C. 7702. para 25

²⁷⁹ C. M.V Clarkson & H. M. Keating, Criminal Law: Text and Materials, 2nd Edition 1990

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 and Northern Uganda, 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 Uganda had been using some of the relevant provisions in the 2004 Uganda Children's Act statutory instrument which was drafted in Arabic and had some elements of Sharia Law which are not applicable in Uganda. The reality is that, in Uganda, 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 FOUR

4.0 CHALLENGES AND ACHIVEMENTS OF JUVENILE SYSTEM IN UGANDA

The challenges facing the juvenile justice system in Uganda are too many to be enumerated, but in general, all the institutions face problems of institutional incapacities, inadequate facilities and negative attitudes towards the changes from the traditional old practices to new juvenile justice system embodied under the Children's Act statutory instrument.

Although the institutions charged with the administration of juvenile justice system in Uganda were found to be trying their best in improving the juvenile justice system, their efforts are faced with other variety of complex hurdles ranging from ignorance of the existing law to improper institutional staffing and lack of cooperation among the institutions. Ignorance of the existing law was observed during the field work.

The researcher found that most of the institutions do not make use of the principles embodied in the Children's Act statutory instrument simply because the majority of personnel in these institutions do not know its existence or do not know the English language in which the Children's Act statutory instrument is drafted. Since the challenges facing each institution will be explained herein below, it needs to be pointed out at the onset that in Uganda, there is also lack of cooperation within the institutions charged with the administration of juvenile justice system.

It should be noted that "for juvenile justice to be rendered accessible and enforceable there must be cooperation between institutions in administration of juvenile justice processes. Such cooperation will positively impact on the quality and effectiveness of juvenile justice system"²⁸⁰ In Uganda, the cooperation between the stakeholders in the juvenile justice system is lacking". For instance, police may arrest children without involvement of social workers in the process of arrest as well as during investigation.

The courts on the other hand may go ahead and try cases without correcting mistakes made by the police and without according the due process of juvenile trial such as the presence of social worker in the trial and holding of juvenile in camera. This is also true for prison services that receives and detains juveniles without lawful warrant to that effect.

²⁸⁰ Nuclunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal justice in Cameroon

4.1 The Challenges Facing Prison Service in Juvenile Justice:

The challenges facing the Prison Services in Uganda in the administration of juvenile justice like for the other institutions include lack of trained personnel, poor or inadequate facilities and budget deficit. In an interview with the Director of Probation and After-Care in the Uganda Prison Services, it was revealed that the problems facing juvenile department in the Prison Service include inadequate accommodation for juveniles, lack of reformatory facilities and lack of trained personnel²⁸¹.

According to the Director, the 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 integrity²⁸²”

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, according to the Director is that his directorate lacks trained personnel, hence plans were underway for the prison to have required trained personnel. There were only three personnel trained in juvenile care but out of these three, one got pensioned and the other died. The one that remained is now a director. So there are no trained personnel in the directorate of probation and because of this no trained personnel that care for juveniles in the prisons.

The current prison cadres were drawn from the former SPLA personnel who turned prison warders after the war with hardly skills in 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 cases²⁸³.

The other thing to note is poor keeping of juvenile registers in the detention centers. It is acknowledged 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 pretrial

²⁸¹ Brigadier Alex Manase Wani, Director of Probation and After Care, SPS- Kampala

²⁸² Charles T. Call, *Constructing Justice and Security After the War*, 2007

²⁸³ Charles T. Call, *Constructing Justice and Security After the War*, 2007

detainees and sentenced prisoners has been a difficult matter in post-conflict reconstruction around the world,²⁸⁴ and Uganda 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 liberty²⁸⁵.

Institutional inefficiency is a common problem in Uganda and juveniles in prisons run the risk of the violations of their human rights. For example, prison conditions according to the Uganda Human Rights Commission are “extremely poor across Uganda, 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”²⁸⁶. It can be unequivocally stated 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 community²⁸⁷. It can be concluded that the main challenges facing prison services in Uganda include lack of appropriate staffing of prison with trained personnel and poor facilities for detention and reformatory facilities for sentenced juveniles.

4.2 The Challenges Facing the Police Services in Juvenile Justice

The police in Uganda needs tremendous reforms because “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 settings²⁸⁸.

A research conducted 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

²⁸⁴ Ibid

²⁸⁵ Ibid

²⁸⁶ (SSH.RC- First Annual Report July 2006- Dec. 2007)

²⁸⁷ Nuchunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal justice in Cameroon

²⁸⁸ Charles T. Call, *Constructing Justice and Security After the War*, 2007, P. 387

abuse, restorative justice, child rights and juvenile justice²⁸⁹. There is a wide gap between the police practices and legislations and this requires regular sensitization and dissemination of the Children's Act statutory instrument to the police force who deal with juvenile delinquents. It is only when the police force is educated on the values for juvenile justice that a conducive environment for juvenile human and legal rights can be realized. This is important because "the initial experience at the police station is the decisive first stage of the criminal justice chain²⁹⁰"; it is equally true that for juvenile justice system in Uganda to be implemented, the police force needs to be sensitized, trained and restructured to include effective juvenile departments in every police station. The current state of police practices according to the report by UNMJS on the Uganda Police revealed that "police practices and lack of capacity violates human rights of detainees"²⁹¹. This report goes on to say 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.²⁹² It may be said that in Uganda, institutions are created by legislations but the presence and practices of those institutions on the ground is a different history to ponder. The police in Uganda 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.

4.3 Challenges Facing Courts in Uganda

Among all the problems that face the Judiciary of Uganda in the administration of justice in general and juvenile justice system in particular is lack of trained judicial officers which is attributed to the war. Unless judicial reform takes place, the plight of juveniles remains undesirable. The other challenges facing judicial administration of juvenile justice system range from the fact that institutions envisaged under the Children's Act statutory instrument have not yet been established. These include the juvenile courts are; 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 Children's Act statutory instrument to handle

²⁸⁹ Alphaxard K. Chabasi, *Adapting Restorative Justice Principles to Reform Customary*

²⁹⁰ Court in Dealing with Gender-Based Violence in Uganda, November 2008

²⁹¹ The Lilongwe Declaration: Accessing Legal in the Criminal Justice System in Africa

²⁹² UNIMIS- Human Rights Bulletin, issue 13 August 2009 at page 6

juvenile cases, the judges have no prior training nor in-service training as provided under section 192 (7) of the Children's Act statutory instrument 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 Uganda. They have tended to be less ambitious, less strategically planned, less coordinated, less swift, and less publicly understood and supported than security reforms²⁹³. 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 justice²⁹⁴ ".

Although there exist in Uganda legislations that match 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 Uganda. This is because the courts in Uganda continue to be badly managed, in part because of poor delineation of judicial functions. It is also an indisputable fact in Uganda that "judges vary tremendously in their qualifications, but the 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 law²⁹⁵". For example, Deng, a juvenile, was charged by the police under wrong section of The Penal Code Act and eventually sentenced by the 31st 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 persist²⁹⁶.

The other challenge facing the judiciary in Uganda is that most of the young judges serving at county courts which are the only courts empowered under the Children's Act statutory instrument; 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. When the CPA was signed in 2005 and Uganda was granted an autonomous

²⁹³ Charles T. Call, *Constructing Justice and Security After the War*, 2007

²⁹⁴ Ibid

²⁹⁵ Charles T. Call, *Constructing Justice and Security After the War*, 2007

²⁹⁶ Charles T. Call, *Constructing Justice and Security After the War*, 2007

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 Uganda 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.

As such, one Zaki Mustafa, the Attorney General once said in 1973 when judges in Uganda were to shift from English to Arabic language that “The Code is drafted in Arabic language which the vast majority of judges did not use for their law studies. And because of this abrupt shift, two major aspects have so far manifested themselves. The code has introduced a considerable body of legal terms and legal concepts which are new to all those lawyers who have had their training at Khartoum University with no prior training in Arabic, and that those terms are not easily understandable. That the majority of Uganda lawyers who were trained in the common law find it much easier to express themselves in English than in Arabic when discussing any legal issue. The judges do not feel as much at home with Arabic legal jargon as they do with English. Whenever judges referred to authorities, be they Uganda precedents, English precedents or American books, the part referred to had to be translated. Since this is a fairly tedious job, judges were discouraged from referring to foreign authorities,²⁹⁷ But apart from that, the language problem has another very important dimension via that Arabic could not be suddenly made the language of the entire legal profession when there is a Uganda who barely speak simple colloquial Arabic let alone read and understand a code drafted in Arabic, which the Arabic speaking lawyers found it difficult to understand,²⁹⁸

As this passage explains, now that the current laws are written in English and the judges were trained in Arabic, a shift from Arabic to English is not an easy task. It is also true that short courses which are being conducted for judicial officers in English language cannot be said to have solved judges’ language problem in Uganda. Therefore, juvenile justice system faces a problem of interpretation of the Children’s Act statutory instrument. It is said that “applying

²⁹⁷ Mustafa, Attorney General 1973, *Journal of African Law*, Vol. 17 at page 133

²⁹⁸ John Morison, *Judges, Transition and Human Rights*, 2007

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 interpretation²⁹⁹.

It should be remembered that for Uganda 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."³⁰⁰ Therefore the judge cannot administer justice with understanding to the provisions of the laws.

4.4 Challenges Facing Public Prosecutions in Juvenile Justice System

In Uganda, it is the role of the Directorate of Public Prosecutions and State Attorneys 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.

The main challenges facing the Directorate of Public Prosecutions and State Attorneys in the administration of juvenile justice include lack of trained legal counsel. This justifies the fact that, the Public Prosecutions and State Attorneys in Uganda showed sign of systemic incompetence like the police who were reformed more in name (numbers) than in practice. The conclusion would be that "intelligence reform lagged, and resources are being wasted through a lack of coordination and failure to hold agencies responsible for effective use of resources for the end of justice"³⁰¹.

The other challenge is that 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 Children's Act statutory instrument. 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

²⁹⁹ Neil MacCormick, *Rhetoric and the Rule of Law*, 2005

³⁰⁰ Kamal Hossain, Leonard F.M Besselink, *Human Rights Commissions and Ombudsman*, 2000 P. 135

³⁰¹ Ibid

state institutions, they are likely to continue to engage in discriminatory or incompetent corrupt behavior, despite laws to the contrary³⁰².

It should also be noted that a juvenile offender in Uganda faces the wrath of legal machinery without legal representation. Although legislations such as the ICSS, the Criminal Procedure Act and the Children's Act statutory instrument 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 Uganda 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 Uganda 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. The attitude of the officials charged with responsibility of determining who is entitled to legal aid and who is not may lead to the rejection of genuine cases of indigency if there is no devised system of cross-checking.

The Public Prosecution Attorneys in Uganda 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 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 Children's Act statutory instrument 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 prosecutor³⁰³ ".

In Uganda, 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 Uganda and this hinders the fact that judicial authorities are responsible for ensuring respect for principle of equality in the

³⁰² Charles T. Call, *Constructing Justice and Security After the War*, 2007, P. 397

³⁰³ Nuchunu Justice Sama, Director of Lawyers for Human Rights and Environmental Protection providing Legal Aid in Criminal justice in Cameroon

courts and for procedural rules in prison and police stations. It is not uncommon to encounter a highly placed official in Uganda sitting in an office while doing nothing due to ignorance which he/she hardly admits. 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 Children's Act statutory instrument 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 Uganda leave alone their supposed appearance 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 Asongwe*³⁰⁴, 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.

4.5 Challenges Facing Social Workers in the Administration 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 investigations³⁰⁵. The social workers are also supposed to render counseling services to juvenile offenders.

It was found during the research that social workers have no presence in the administration of juvenile justice system in Uganda. Investigations are conducted by the police without social workers. The courts also decide juvenile cases without social workers.

It was revealed that 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

³⁰⁴ CFIBAJI 128C/O1-02

³⁰⁵ Section 140 (2) of the Children's Act statutory instrument

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 Uganda.

The other challenge is lack of trained personnel. In term of trained personnel, “social workers should receive training to enhance efficiency in their work”³⁰⁶. The Directorate of Child Welfare in the MGCSWRA acknowledges that 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 Children’s Act statutory instrument, international human rights laws and customary laws³⁰⁷.”

4.5.1 Conditions of detention

4.5.2. Staffing

4.5.3. Staffing levels

The Commissioner for Youth and Children noted that in terms of staffing, the youth detention system is operating below 50%. Understaffing was verified by the site visits which revealed: Fort Portal is operating with its full capacity of staff: 10 (1 warden, 4 guardians including a matron, 2 guards/watchmen, 2 kitchen attendants, and a driver).

Gulu is understaffed. There are just 3 staff (1 Warden, 2 guardians and two volunteers from a local university on an internship. There is no night staff at the moment)³⁰⁸

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³⁰⁸ 88 Mbale Remand Home interview and site visit - 7th August 2010

Naguru should have 19 members of staff but is currently operating with 16 (6 guardians/social workers, the remainder security and kitchen staff)

Mbale is understaffed. There are supposed to be 6 staff (1 warden who was absent during the site visit, 4 guardians/social workers, 1 nurse and a special visiting nurse from the main hospital)³⁰⁹

Kampiringisa was severely understaffed. There are supposed to be 40 staff in the centre, but only 18 were present (1 vocational teacher, 2 farm workers, 7 social workers, 2 domestics/cooks, 2 security, 1 principal, 2 deputies, 1 tractor operator)

The national rehabilitation centre is lacking teachers and vocational workers. They left, retired, were sacked, transferred, or died. There is also no longer a carpenter, tailor, mechanic, mason, or electrician so of the vocational programmes they advertise (carpentry, tailoring, mechanical building and brick laying) none were being held. Those who transferred or died have not been replaced. This was claimed to be government policy.

4.6 Staff training

There is generally a lack of specialist staff training in the facilities. The Commissioner for Youth and Children noted that there are no psychologists in any of the homes or any psychological based training given. Also, although the wardens of remand homes have had child protection training, this had not been disseminated to the guardians/social workers. They had been trained in social work, but have received no specific training on working with children in conflict with the law. The warden at Fort Portal noted that all the wardens of the homes meet periodically to share information, best practice and offer support to each other. In Gulu, the warden spoke of child protection training in Kampala delivered by UNICEF.³¹⁰ At Mbale Remand Home staff indicated that they would benefit from training in child law. They mentioned that „we are social workers but don“t understand much about the law.“ They also said that they would like to receive the child protection training that the wardens have, as well as an opportunity to visit and learn from practices in other remand homes.³¹¹

³⁰⁹ 87 Gulu Remand Home interview and site visit - 3rd August 2010

³¹⁰ 89 Gulu Remand Home interview and site visit - 3rd August 2010

³¹¹ 90 Mbale Remand Home interview and site visit - 7th August 2010

4.6.1. Accommodation, bedding and clothing

Fort Portal Remand Home stands out as a well maintained and ordered home. All of the rooms in the building were extremely clean. It was a good example of how a remand home should be run in Uganda and the children appeared to be well cared for and attended to by the warden.³¹² Gulu Remand Home also presented a well maintained and homely environment. One young person said that the staff „make us feel not like we are in prison but in a home.“³¹³ However, due to the fact that the district government had not paid the bills the home has no electricity or water.³¹⁴ Naguru Remand Home benefits from the interventions of many NGOs, meaning that the dormitories have facilities such as televisions. There appeared to be a bustling atmosphere in the dormitory with young people coming and going in good spirits.³¹⁵ Mbale Remand Home has well kept grounds, but the accommodation areas are sparse. At the time of the visit all 35 boys were congregated in one dormitory whose door had been locked.³¹⁶ This review expresses concerns about the welfare of the children in Mbale for this reason, and also for those in Kampiringisa National Rehabilitation Centre, where children appeared to be wandering around in poor conditions and very few members of staff were visible.]³¹⁷

4.6.2 Bedding and sleeping quarters

There was a wide variety in terms of the bedding and sleeping quarters of the remand homes and the national centre. The beds in Fort Portal were arranged in dormitory fashion, with one for girls and one for boys. The girls“ dormitory was the same size as the boys“, yet contained just one bed. This, although well kept, appeared to be isolating for the young woman.³¹⁸ Gulu Remand Home was ordered in a similar way to Fort Portal, although there were no girls currently occupying their dormitory, which contained several unfurnished beds. A number of surplus bed frames were also kept in the store room. The male dormitory contained 10 bunk beds with capacity for 20 boys. Because of the small room, the beds were in close proximity to each other making the conditions cramped. The light was sufficient for one young person to be reading from his bunk; however some of the beds“ blankets were threadbare.³¹⁹ The bedrooms in Naguru Remand Home were brightly lit with electric lighting. All the young

³¹² 91 Fort Portal Remand Home interview and site visit - 11th August 2010

³¹³ 92 Gulu Remand Home interview and site visit - 3rd August 2010

³¹⁴ 93 ibid

³¹⁵ 94 Naguru Remand Home interview and site visit – 10th August 2010

³¹⁶ 95 Mbale Remand Home interview and site visit - 7th August 2010

³¹⁷ 96 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³¹⁸ 97 Fort Portal Remand Home interview and site visit - 11th August 2010

³¹⁹ 98 Gulu Remand Home interview and site visit - 3rd August 2010

people appear to have a bed, one had been decorated with balloons on the date of the visit to celebrate a young person's birthday, others had the children's possessions stored around them. The majority of the bedding was in good condition, though some blankets were breaking or tatty.³²⁰

In Mbale Remand Home the children had no beds in either the boys' dormitories or the small room used for the girls to sleep in. There was also a lack of mattresses, and many of those present were broken. The two girls shared one mattress and the boys had a small number of mattresses between them. There did not appear to be clean sheets or enough sheets or blankets. There was no artificial lighting and the natural lighting was poor. The guardian/social worker informed us that there were shortages of equipment because of the bureaucracy at the Ministry of Gender.³²¹ In Kampiringisa National Rehabilitation Centre the boys' bedrooms were arranged according to the age of the children. Each bed slept two children due to overcrowding. The street children and the child offenders sleep in the same places. The rooms were dark but tidy. A night warden sleeps in each of the separate rooms, and the doors between the age groups are locked at night.³²²

4.6.3. Uniforms

Supplies of uniforms were mixed across the homes and the centre. All the children in Fort Portal Remand Home had uniforms in good condition.³²³ The children in Mbale Remand Home were also wearing adequate uniforms.³²⁴ However in Gulu Remand Home, although they were supplied with 15 uniforms by UNICEF when the Home opened, they had run out and the children were wearing their own clothes. The Warden stated that the young people frequently arrive „in clothes which are rags“ and the staff have no clothes to put them in.³²⁵ Similarly, there were not enough uniforms in Naguru or Kampiringisa and the majority of children did not wear them.³²⁶ The staff at Kampringisa removed the shirts of those who had just arrived to distinguish them from the rest of the population. It was also difficult to distinguish between street children and juvenile offenders as they all wore donated multicoloured clothes.³²⁷

³²⁰ 99 Naguru Remand Home interview and site visit – 10th August 2010

³²¹ 102 Fort Portal Remand Home interview and site visit - 11th August 2010

³²² 101 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³²³ 100 Mbale Remand Home interview and site visit - 7th August 2010

³²⁴ 103 Mbale Remand Home interview and site visit - 7th August 2010

³²⁵ 104 Gulu Remand Home interview and site visit - 3rd August 2010

³²⁶ 105 Naguru Remand Home interview and site visit – 10th August 2010

³²⁷ 106 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

4.6.4. Discipline

In Uganda, corporal punishment is prohibited in the youth detention system, although it is not prohibited in the home or school.³²⁸ This may account for the extremely mixed approach to discipline in the remand homes and the national centre. In Fort Portal there was hardly any recourse to discipline. The warden said „our children are not really wild – we do not punish them. They do try to escape, but if they do that, we talk to them and they admit it and then they calm down – there is no corporal punishment.“³²⁹ In Gulu, interviews with the young people indicates that they are treated well.³³⁰ In Naguru if there is an allegation of misbehavior they „first talk to them to see if it’s true, then we need to tell him he did wrong. If it’s a second offence, after a warning, we discipline him. We don’t administer corporal punishment but give him some work to do - like they must clean the room where they sleep for a week. Normally they do it on a rotational basis. Or we make them work in the compound or splitting firewood when others are playing.“³³¹

However, in both Mbale Remand Home and Kampiringisa National Rehabilitation Centre corporal punishment was routinely used for disciplinary reasons. In Mbale Remand Home the guardian/social worker stated that if the children misbehave then they talk to them and then punish them. One of the children explained that „they don’t cane us lying down on the floor just like that. They cane us if we misbehave just once.“ When asked what type of behaviour they would get the cane for he said „fighting or something like that“. ³³² The guardian said that they have leaders amongst the children who must attempt to prevent violence (such as slapping) and inform the staff.³³³ In Kamprisanga the FHRI found that while children alleged the use of corporal punishment the staff denied this.³³⁴ However this review found the staff to be open about the use of corporal punishment. The guardian said „if they misbehave we give them two strokes of the cane or they have to weed the compound. Some of the children are unruly – they misbehave – they continue with theft here – others abuse staff who are not social workers“. ³³⁵ FHRI also noted that a form of punishment was „detention in a „batanga cell” - a dark cell where children could be detained for up to a week and given one meal a day.“ ³³⁶ On the site visit this cell was still in use but was called an isolation cell. The child

³²⁸ 107 The African Child Policy Forum (2008) *The African Report on Child Wellbeing: Country Briefs Uganda*

³²⁹ 108 Fort Portal Remand Home interview and site visit - 11th August 2010

³³⁰ 109 Gulu Remand Home interview and site visit - 3rd August 2010

³³¹ 110 Naguru Remand Home interview and site visit – 10th August 2010

³³² 111 Mbale Remand Home interview and site visit - 7th August 2010

³³³ 112 *ibid*

³³⁴ 113 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

³³⁵ 114 *ibid*

³³⁶ 115 *ibid*

occupying it spoke through the grill above the door, explaining through the social worker that he had been placed there because he had sold his shirt for food. He had been in there for one day and was being given three meals a day.³³⁷ The use of this cell and administration of corporal punishment goes against article 66 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, which states that „all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned“.³³⁸

4.7 Healthcare

4.7.1. Nutrition and hygiene

The majority of remand homes and the national centre were providing the children with adequate food, however there are concerns regarding Mbale Remand Home. International guidelines suggest that „every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health.“³³⁹ The children at Fort Portal Remand Home get breakfast, lunch and dinner of posha and beans which is prepared by the cooks each day.³⁴⁰ In Gulu Remand Home there was a severe shortage of posha on the site visit, with only enough to last them for 4 days. They supplement their food with vegetables grown from the garden.³⁴¹ At Naguru Remand Home the children receive three meals a day.³⁴² At Mbale Remand Home we were informed by the guardian/social worker that the children also receive three meals a day: porridge for breakfast, lunch and an evening meal of matoke and rice, which they try and vary. However the children told us that they had not had breakfast that day, and there are severe concerns regarding the discrepancy between what we were told and what was happening at the home.³⁴³ In Kampiringisa we were informed that they get three

³³⁷ 116 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³³⁸ 117 United Nations (1990) *Rules for the Protection of Juveniles Deprived of their liberty* ("The Havana Rules")

³³⁹ 118 ibid

³⁴⁰ 119 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁴¹ 120 Gulu Remand Home interview and site visit - 3rd August 2010

³⁴² 121 Naguru Remand Home interview and site visit – 10th August 2010

³⁴³ 122 Mbale Remand Home interview and site visit - 7th August 2010

meals a day and that they are cultivating potatoes, casson, and maize to supplement the food from the government supply of beans and posha.³⁴⁴

Fort Portal Remand Home is the only home where all the meals are prepared for the young people by a cook. The kitchen area was also the cleanest and safest as the oven was purpose built and the opportunities for burns on the open flame were minimized.³⁴⁵ Due to the fact that Gulu Remand Home has had their water and electricity cut off, the hygiene standards are not as good as they could be. The boys have to collect water in jerry cans and store them in the home. This means there is a problem with hygiene as they are unable to flush the latrine and flies are collecting around the water supplies³⁴⁶. Although *Save the Children* provided the home with three cooking stoves, they are unfinished and cannot be used, meaning the children cook on a smaller cauldron which is more dangerous.³⁴⁷ The grounds of Naguru Remand Home are not as open as the other homes, but the standards of hygiene appeared sufficient.³⁴⁸ Kampiringisa National Rehabilitation Centre was not clean, and appeared unhygienic. The level of flies at the centre was larger than at any other place of detention. The kitchen area was outside and the children were washing the cauldrons after having lunch. This stove did not appear safe or hygienic: the fire was open and the cauldrons were too big for children to carry or clean safely. There was no adequate drainage around the food area or for cleaning the dining hall and many flies were congregated around the food and the dining room floor. Although we were told that they have two cooks, it appears that the children themselves play a large role in preparing food and in cleaning the food areas.³⁴⁹

4.7.2 Medical services

Neither the remand homes, nor the national centre had adequate on-site medical facilities. All of them use local medical facilities when necessary, either calling in a medical professional such as a nurse, or taking the young people to outside hospitals. The government provides free healthcare through its Ministry of Health facilities which exist in all parts of the country. However these tend to be under-staffed and rural facilities often experience delayed deliveries of drugs.³⁵⁰ In Fort Portal the most common diseases are „coughs“, scabies, and malaria. If the young people are ill then „we have a nearby health centre which we take them to“. However,

³⁴⁴ 123 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁴⁵ 124 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁴⁶ 125 Gulu Remand Home interview and site visit - 3rd August 2010

³⁴⁷ 126 ibid

³⁴⁸ 127 Naguru Remand Home interview and site visit – 10th August 2010

³⁴⁹ 128 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁵⁰ 129 Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda*. 2009. The Population Council Inc.

it was felt that ideally they would have a visiting health professional because the hospital „doesn’t really cater for them – it would be best to have a medical professional instead to dedicate their time to the young people.“³⁵¹ Gulu Remand Home also uses the local hospital if the young people are ill. However, they have a problem with transport, which can be difficult to arrange.³⁵² Naguru Remand Home appeared to have the best access to medical care. One of the social workers is acting as a nurse, and the children attend a health clinic once a week. The most common illnesses are coughs, malaria, headaches, and stomach problems. The children are also able to go to Mulago Hospital if necessary. They had the option of having mosquito nets, but the staff do not generally use them for fear that the young people might use the nets to commit suicide or set fire to them.³⁵³

In Mbale Remand Home and Kampiringisa National Rehabilitation Centre we encountered young people who appeared to be ill and without access to medical facilities or staff support. We were informed that in Mbale Remand Home a special nurse visits from the main hospital when necessary. The children suffer from malaria, headaches, coughs or flu there. One child was coughing acutely and appeared sick. However when we enquired about this boy his capital charge was used as an excuse as to why nothing had been done for him.³⁵⁴ In Kampiringisa, there are no medical facilities, and the medicine dispensary has anthrax in the roof.³⁵⁵ The most common diseases there are malaria, dysentery, and wounds. In addition, it was noted that the Karamajong street children tend to have skin diseases. There are insufficient drugs to treat the children and diseased children spend time with children who are not ill as there is no sick bay to isolate them in. On our visit three ill children were lying together on a small mattress in a room not much bigger. This was the makeshift sick room, and no-one appeared to be looking after them although we were informed that the NGO *Dwelling Place*, who undertake the treatment of diseases, visit once a month³⁵⁶

4.7.3 Psychological support and detoxification

There is no dedicated psychological support for children in detention in Uganda. The guardians/social workers in each home state that they provide counselling to the young people, however when this is described it does not appear to contain a psychological element. Nevertheless there are pockets of support from NGOs. For example the young people at Gulu

³⁵¹ 130 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁵² 131 Gulu Remand Home interview and site visit - 3rd August 2010

³⁵³ 132 Naguru Remand Home interview and site visit – 10th August 2010

³⁵⁴ 133 Mbale Remand Home interview and site visit - 7th August 2010

³⁵⁵ 134 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁵⁶ 135 *ibid*

Remand Home are receiving psycho-social support from an NGO called the *Acholi Community Empowerment Network* (ACEN). This NGO comes for two hours every week and undertakes group work and counselling through the ACEN psycho-social programme³⁵⁷. In addition, in Naguru Remand Home an NGO provides group counselling and one-to-one work with young people³⁵⁸.

The remand homes do not have any facilities for dealing with mental illness, and sufferers are transferred to hospital. Naguru Remand Home has a visiting nurse who makes mental health assessments. They state „we alert him to the mental health if we see a child acting abnormally“³⁵⁹ In Mbale, the guardian/social worker said that if a young person displayed mental illness „we either try and find somewhere or if it’s a minor offence then it is suggested they go back into the community. The probation officer should look after that young person“.³⁶⁰

There are no facilities for detoxification in any of the remand homes. In Kampiringisa National Rehabilitation Centre it was noted „we have drug addicted children, we tend to put them in the isolation rooms – they can become violent – we put them in the isolation rooms until they become sober.“³⁶¹ This is contrary to international guidelines which states „juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes“.³⁶²

4.8 Education and training

4.8.1. Sentence planning

There is limited planning of programmes in the detention facilities. There is no evidence of planning in any of the remand homes, however in the national centre, a process of planning was described: „the social workers talk to the children when they first arrive, then they hand them to the career guidance committee. This committee takes them to different areas – e.g. education, farming. If they are above school age then straight away it’s vocational.“³⁶³ All the child offenders have three months“ „social integration training“ when they arrive at the centre, then they are supposed to have access to one of the following:

Casework/counselling

³⁵⁷ 136 Gulu Remand Home interview and site visit - 3rd August 2010

³⁵⁸ 137 Naguru Remand Home interview and site visit – 10th August 2010

³⁵⁹ 138 *ibid*

³⁶⁰ 139 Mbale Remand Home interview and site visit - 7th August 2010

³⁶¹ 140 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁶² 141 United Nations (1990) *Rules for the Protection of Juveniles Deprived of their Liberty: "The Havana Rules"*

³⁶³ 142 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

tracing and resettlement

vocational skills training

formal education

farming hygiene and health management.³⁶⁴

Unfortunately there is no evidence that the majority of these programmes are taking place. Also, there is no evidence that they take the young person's background, risks and needs into account. Moreover, there appears to be an informal approach to transferring information. In Naguru they explained how „yesterday we took five to Kampiringisa – two weeks back we took nine. We give them the nature of the offence, family background, whether they have been at school etc. We don't give them the social welfare report.“³⁶⁵

4.8.2. Education

In January 1997 the Government of Uganda introduced universal primary education and in 2005 universal secondary education was introduced. However universal secondary education is still in its infancy and has not reached all parts of the country, and universal primary education still appears to be excluding vulnerable children due to a lack of resources needed for uniforms, stationary and exam fees.³⁶⁶ Education was originally provided in the remand homes and centre by the government as part of this scheme. However, as the Commissioner for Youth and Children pointed out, running education programmes in remand homes is difficult because residents come and go regularly and are all at different levels: „one person may have stopped in Primary [level] one, some may have never been to school, some know how to read and write and others don't know at all.“³⁶⁷

As a consequence, the majority of remand home children are provided with absolutely no education at school going age. Fort Portal Remand Home has no educational facilities and „most of them can't read or write.“³⁶⁸ Mbale Remand Home also had no educational provision: „we can't take them to a school and no schools come in to teach them.“³⁶⁹ Both Gulu Remand Home and Naguru Remand Home benefit from some support from NGOs, but this is limited in terms of what is available and to whom it is available. For example in Gulu they have some volunteers teaching literacy and numeracy each week, yet there is no secondary provision in the home. One young person told us that he was worried about his

³⁶⁴ 143 *ibid*

³⁶⁵ 144 Naguru Remand Home interview and site visit – 10th August 2010

³⁶⁶ 145 Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda. 2009*. The Population Council Inc.

³⁶⁷ 146 Interview with Commissioner for Youth and Children 30th July 2010

³⁶⁸ 147 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁶⁹ 148 Mbale Remand Home interview and site visit - 7th August 2010

education when he is released as he had missed exams while in the home. In Naguru, the *Companionship for Works Association*, an Italian NGO, provide primary education every morning for those who were at school before they arrived. For others at different levels, an NGO teaches them how to read and write so they do not get out of the habit. Those who have never experienced school do not receive education because „it is difficult to engage them.“³⁷⁰ In Kampiringisa no education is provided. Originally they had five teachers, but they have all retired and not been replaced. Instead, 85 children (whose parents are willing to pay their fees) are sent to local schools. This includes 66 boys and 4 girls at primary level and 19 boys and 3 girls at secondary level. They travel there each morning and return for meals and in the evening. They are monitored by prefects and staff to ensure they do not escape.³⁷¹ FHRI reported that the rest of the children, including the street children, do not have access to formal education, and noted that in certain exceptional circumstances members of staff assist some children by personally paying for their school fees.³⁷²

None of the remand homes had a library. There was a library in Kampiringisa, however it was locked and being used as an office and storeroom for the children's possessions. It did not appear to be accessed by the children.³⁷³ This is contrary to international guidelines which recommend „access to a library that is adequately stocked“ and that children are „encouraged and enabled to make full use of it“.³⁷⁴

4.8.3. Religious Education

All of the remand homes provided religious studies to some extent. In Fort Portal the warden and visiting Church groups held ceremonies on Sundays. In Gulu there is Bible teaching every Friday and Tuesday, though one child felt that he would like more access to a religious representative. In Naguru a spiritual and moral education programme was being run by a Christian organisation who came to teach the children on a daily basis.³⁷⁵ In Mbale they have Bible study,³⁷⁶ and in Kampiringisa there were four NGOs that offer „spiritual development“ to the young people: *An Open Door*; *Jesus Cares for All*; *Footstep*; and *Give Me a Chance*.³⁷⁷

8.3. Vocational training

³⁷⁰ 149 Naguru Remand Home interview and site visit – 10th August 2010

³⁷¹ 150 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁷² 151 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

³⁷³ 152 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁷⁴ 153 United Nations (1990) *Rules for the Protection of Juveniles Deprived of their Liberty: "The Havana Rules"*

³⁷⁵ 154 Naguru Remand Home interview and site visit – 10th August 2010

³⁷⁶ 155 Mbale Remand Home interview and site visit - 7th August 2010

³⁷⁷ 156 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

The majority of remand homes are unable to offer the young people any vocational training. Only Naguru and the national rehabilitation centre are able to offer courses due to the help of NGOs. In Fort Portal there is no capacity for any vocational training. In Gulu they have rooms which were originally intended to be vocational workshops for activities such as carpentry. However they decided that because the boys are not there for very long they do not have time to follow a proper programme. The sole vocational programme they offer is farming, in which the children grow maize, aubergine, sweet potato, and cabbage. One boy mentioned his pleasure at having learned farming skills. In Mbale, there was no vocational training at all. A single young person was labouring in the garden, but it was unclear why he was the only one doing this³⁷⁸

The vocational training provided in Naguru and Kampiringisa is extensive. In Naguru a number of NGOs were working with the home: *Give me a Chance* offers tailoring; *Sodi* offers computer studies; *Companionship for Works* teaches home economics, music, dance and drama as well as paying school fees for children from poor backgrounds. Further NGOs offer carpentry, hairdressing, art and craft. All the programmes are provided by NGOs but some posts are funded through the government. The children are assigned particular activities according to their interests.³⁷⁹ In Kampiringisa, owing to a shortage of staff, none of the vocational programmes they advertise as running (carpentry, tailoring, mechanical building and brick laying) are held except welding. Despite this, 26 boys and 4 girls are registered for these courses. This is a marked deterioration from a year prior when FHRI reported that the children could undertake carpentry and metalwork, and were sometimes remunerated for their labour.³⁸⁰ Some NGOs offer services however: *World Support Outreach* do football coaching; *Tigers Club* do sports training; *Footstep* provide educational materials. In addition, *Defence for Children International* pays for the children to become trained in carpentry, plumbing and electronics at Masulita Vocational Training Centre and Bira Vocational Training, both of which are boarding schools. Every two weeks the social worker visits the young people to see the progress they are making. They make fortnightly reports on each child – giving a copy to the funders and the principal of the centre.³⁸¹ It is unclear whether risk assessments have been carried out for these young people to ensure that they can live safely within a boarding school community.

³⁷⁸ 157 Mbale Remand Home interview and site visit - 7th August 2010

³⁷⁹ 158 Naguru Remand Home interview and site visit – 10th August 2010

³⁸⁰ 159 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

³⁸¹ 160 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

Unfortunately it seems that there are few children in detention accessing such opportunities in Uganda. This review verified FHRI's report that there are no programs designed for the youngest children in Kampiringisa. They are cared for by the older children or „just loiter around and eat.“³⁸² Nevertheless, international guidelines state that not only should every juvenile have the „right to receive vocational training in occupations likely to prepare him or her for future employment“, but that the juvenile should be able to choose the type of work they wish to perform, and „whenever possible, juveniles should be provided with the opportunity to perform remunerated labor.“³⁸³

5.8.4. Recreation

There are limited recreation activities available for children in the homes and in the centre. In Fort Portal they have small gardens, and play football and netball. They also have activities in the evenings such as listening to the radio and playing games.³⁸⁴ In Gulu the children can exercise when they want and play football. They have radios which they listen to „but they prefer to listen to music rather than the news!“ One boy also informed us that they have a fine art class.³⁸⁵ In Mbale there were no activities for the children and they reported that they were „very bored“. The guardians/wardens reported that they had ordered draughts and a football but these had not arrived yet.³⁸⁶ In Kampiringisia some of the children were listening to music through a TV.³⁸⁷

Community reintegration

4.9. Parental contact

The remand homes and national centre have an open policy on visits from family and parents, however they are not always able to visit. For example in Gulu parents are encouraged to visit at all times, and there are no visiting hours. However it was noted that they do not always come.³⁸⁸ In Mbale it was reported that „some boys will stay here and have not even seen their relatives.“³⁸⁹

³⁸² 161 Quoted in Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

³⁸³ 162 United Nations (1990) *Rules for the Protection of Juveniles Deprived of their Liberty: "The Havana Rules"*

³⁸⁴ 163 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁸⁵ 164 Mbale Remand Home interview and site visit - 7th August 2010

³⁸⁶ 165 Mbale Remand Home interview and site visit - 7th August 2010

³⁸⁷ 166 Kampiringisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁸⁸ 167 Gulu Remand Home interview and site visit - 3rd August 2010

³⁸⁹ 168 Mbale Remand Home interview and site visit - 7th August 2010

4.10. Resettlement

In some parts of Uganda, communities are tempted to take the law into their own hands and lynching of children charged with crimes can occur. It was reported that in the past where police investigations or court cases appeared slow then „the public often times took the law into their own hands by lynching suspects.“³⁹⁰ Equally, the warden in Gulu reported that it can be difficult to persuade a community that a remand home is an appropriate place for children: many people would rather administer punishment themselves.³⁹¹ In Mbale it was reported that if a boy commits murder in the community they can be hostile to his return. Therefore „if there is fear that the community may attack them then we talk to a relative in another area, we need to ensure he is in the right hands“.³⁹²

Resettlement is carried out with varying success by the remand homes and the centre. Where there are vehicles, for example in Fort Portal and Mbale, resettlement is easier, but where there is no easy access to transport the homes struggle. In Fort Portal they undertake community resettlement with support from the Justice Law and Order Sector (JLOS). The staff meet the probation and social welfare officer first, then talk to the local counsel, then find the parents. The warden reported that „some of the parents aren’t accepting“ so they undertake counselling with the family informing them of the child’s rights, until they accept them back home. This is facilitated by a vehicle donated by JLOS.³⁹³ This vehicle solves the problem identified by FHRI in 2009 when they reported that lack of transportation meant that children in Fort Portal could not access the court or leave the home³⁹⁴. In Gulu there is a lack of adequate transportation: they have a car which they share with community services – however it is frequently not there³⁹⁵. In Naguru they do not have their own transport, but told us that the „ministry take the child back into the community“ and „we also have a probation welfare officer in the areas where the children come from and local counsellors and church leaders to ensure the children are well received and stay in the community there“³⁹⁶. Mbale Remand Home has a vehicle and they described how they drive it to the children’s homes to see where the parents live and assess the environment. They explained that there is not always family to go to, however.³⁹⁷ In Kampiringisa there are no vehicles for resettlement. However

³⁹⁰ 169 Justice Law and Order Sector Uganda (2005) *Sector wide approach in justice law and order: the Ugandan experience* By Evelyn B. Edroma, Senior Technical advisor, JLOS

³⁹¹ 170 Gulu Remand Home interview and site visit - 3rd August 2010

³⁹² 171 Mbale Remand Home interview and site visit - 7th August 2010

³⁹³ 172 Fort Portal Remand Home interview and site visit - 11th August 2010

³⁹⁴ 173 FHRI (1990) *Juvenile Justice in Uganda*

³⁹⁵ 174 Gulu Remand Home interview and site visit - 3rd August 2010

³⁹⁶ 175 Naguru Remand Home interview and site visit – 10th August 2010

³⁹⁷ 176 Mbale Remand Home interview and site visit - 7th August 2010

Give Me a Chance does work in tracing and resettlement, and provides vehicles. There is a community reintegration worker who reintegrates the children when they have funds. However, funds are not always available, meaning that the children sometimes have to stay past their sentence. Moreover, the NGO does not resettle children who live in the North of Uganda. The guardian/social worker noted that „there are about eight upcountry children [children who live in the north of Uganda] whose sentences are finished but who have not been resettled.“³⁹⁸

The Children Act stipulates that before a child is released from detention, the probation and social welfare officer and the authorities in the detention centre shall discuss the period of aftercare with the child, but „in all circumstances it shall not exceed 12 months after the child’s release from detention“.³⁹⁹ We found no evidence of this taking place.

4.11. Resettlement of street children

Although street children are supposed to be resettled after three months, this period is often extended due to lack of resources. FHIR were told that „at times the release of money to resettle them came late so you find [the process] takes longer.“⁴⁰⁰ The NGO *Give Me a Chance* have helped to resettle some children, but do not have the capacity to resettle them all.⁴⁰¹ The majority of street children are from the Karamajong tribe in the north-east of Uganda. Ongoing conflict in the area leads many of them to travel to the streets of Kampala and Jinja as well as other major towns. Kangore Church of Uganda, in Karamoja, operates a centre which receives some of these children when they return from Kampala and elsewhere.⁴⁰²

³⁹⁸ 177 Kampirengisa National Rehabilitation Centre interview and site visit - 9th August 2010

³⁹⁹ 178 Government of Uganda (1997) The Children Act Cap 59

⁴⁰⁰ 179 Quoted in Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*. FHIR

⁴⁰¹ 180 Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda*

⁴⁰² 181 Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda, 2009*. The Population Council Inc.

CHAPTER FIVE

5.0 General Conclusion and Recommendations

This chapter summarizes the real problems that impede the implementation of the statutory juvenile justice system in Uganda in light of the legislated domestic laws and the ratified international and regional instruments. As revealed in the respective chapters, the recommendations advanced in this chapter are based largely on the adored concepts and principles that uphold the best treatment of juvenile offenders while maintaining the reactionary measures for the need to control juvenile delinquency. This chapter draws conclusion that although the hypotheses on which this research is based bear significant implication on juvenile justice system in Uganda, one hypothesis, the weaknesses in term of efficient staffing and sufficient facilities for the administration of juvenile justice system feature notably as the major challenges that need urgent attention. This research is a critique on juvenile justice system in Uganda with the aim of finding out how adequate or inadequate it is in controlling juvenile delinquency. It also makes critical analysis on the challenges facing the stakeholders as discussed in Chapter 4 and the traditional systems that were/are being used before and during the enactment of the Children's Act statutory instrument.

This research has drawn a clear picture of what the real problems facing juvenile justice system in Uganda are. It is upon this background that the recommendations that are deemed appropriate for the improvement of the practices that bolster the impediment of sound juvenile justice system in Uganda are made.

It is recommended that the need for good juvenile justice in Uganda requires not only the child legislations but also an adherence these legislations and good practices. It is said that "people believe in and orient their conduct towards a body of norms regarded as a system of law, this is one way of achieving a measure of order and security among themselves"⁴⁰³. The reforms that have been initiated only need change of attitudes by the stakeholders in the justice system in general and juvenile justice system in particular in Uganda so that legislations that are in place are implemented to the letter and spirits in which they were promulgated. **Neil MacCormick** said that "a legal system is not of course a tangible physical entity. It is an ideal constructed of thought object. A legal system belongs to the real social world a distinct from pure world of ideas, to the extent that a corresponding legal order exists,

⁴⁰³ Neil MacCormick, *Rhetoric and the Rule of Law*, 2005

however imperfectly”⁴⁰⁴. Therefore, juvenile related legislations in Uganda would be mere lip services if there is no will to enforce them. This is true as that saying goes “there cannot be a rule of law without rules of law.”⁴⁰⁵ Where the law is faithfully observed, the rule of law obtains; and the societies that live under the rule of law enjoy great benefits by comparison with those that do not⁴⁰⁶. Where the rule of law is observed, people can have reasonable certainty in advance concerning the rules and standards by which their conduct will be judged, and the requirements they must satisfy to give legal validity to their transactions⁴⁰⁷. Ronald Dworkin contends that “the most basic legal right of human beings is to be treated with equal concern and respect by agencies; and the citizenship rights and rights to fair administration of justice require institutions of democratic political participation, and well-organized and properly staffed tribunals, courts and legal professions”⁴⁰⁸.

Based on the discussions on the existing child legislations, the prevailing practices and challenges found during this research, this chapter makes the following recommendations to the respective stakeholders. This is because juvenile justice system involves several stakeholders and therefore, it is prudent that recommendations should be made based on the roles of each institution. Thus the following recommendations are proposed.

5.1 Recommendations to the Ministry of Legal Affairs and Constitutional Development:

The Ministry of Legal Affairs and Constitutional Development’s role in the administration of justice in general and juvenile justice in particular is very important for juvenile justice system can only achieve its purpose if the Ministry does the followings:

- i. Ensures that appropriate legal mechanisms that match international and regional standards are followed and where necessary, legislations be initiated in pursuant to the need of having a sound juvenile justice system in Uganda.
- ii. Trains specialized staff to man its women and juvenile justice department
- iii. Discourage the imprisonment of child offenders except as a matter of last resort.
- iv. Staffs all State Legal Administrations with state attorneys possessing necessary knowledge in juvenile justice system.
- v. As most of the stakeholders complain of insufficient dissemination of the Children’s Act statutory instrument, the Ministry needs to prioritize the dissemination of the Children’s Act

⁴⁰⁴

⁴⁰⁵ Ibid

⁴⁰⁶ Ibid

⁴⁰⁷ Neil MacCormick, *Rhetoric and the Rule of Law*, 2005

⁴⁰⁸ Ibid

statutory instrument not only to the institutions but also to the general public who still adhere to customary practices in juvenile matters.

vi. translates the Children's Act statutory instrument from English into Arabic and local languages so that the police, prison services personnel, social workers and judges who are literate in Arabic can make use of the law of the Children's Act statutory instrument. This will discourage judges who are still using 2004 Children's Act statutory instrument which is in Arabic language but not comprehensive.

vii. Makes regular assessment of implementation of the Children's Act statutory instrument and if need be, further sensitization and the dissemination to be done. Otherwise, involvement of NGOs with unfamiliar programmes may cause problem of unfamiliarity to the stakeholders.

viii. Organizes and promotes necessary research as a basis for effective planning and policy formulation for juvenile justice system.

5.2. Recommendations to the judiciary

Judicial decisions if improperly made affect the future of every person and juveniles are of no exception; hence the judges should be persons of upright professional characters and competence in the dispensation of justice. The rule of law cannot prevail without efficient and sufficient judicial establishments. It is upon this notion and in light of reflections gathered from the discussions on the prevailing improper juvenile trial procedures and treatments exhibit by the judicial officers that it is necessary to make the following recommendations for the judiciary in Uganda to be able render the required juvenile justice. The recommendations envisaged to improve the judicial effectiveness in the administration of juvenile justice include:

- i. Training of the judges serving in juvenile courts for proper adjudication of juvenile cases should be the top priority of the judiciary. This is because 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 trial⁴⁰⁹.
- ii. The establishment of the necessary juvenile courts as provided under section 192 of the Children's Act statutory instrument in all the ten States of Uganda
- iii. Judicial Service Council as mandated to ensure effective functioning of the judiciary should speed up establishment of independent Child Commission and Juvenile justice

⁴⁰⁹ Kamal Hossain, Leonard F.M Besselink, Human Rights Commissions and Ombudsman, 2000 P. 135

Committee in conjunction with the Ministry of Gender, Child, Social Welfare and Religious Affairs.

iv. Strengthen the cooperation and involvement of social workers in the judicial trial of juvenile cases.

5.3. Recommendations to the Ministry of Gender, Social Welfare and Religious Affairs

The success and implementation of juvenile justice system cannot be achieved if the Ministry of Gender, Child, Social-Welfare and Religious Affairs has no proper plans for the protection and promotion of the rights of children in general and juvenile offenders in particular. This means that it is only when the MGSWRA is championing a lead role in the promotion and administration of juvenile justice system that all stakeholders will do the same. As such, the Ministry should do the followings:

- i. Initiate programmes designed to decongest the facilities that combine street children with juvenile offenders;
- ii. Organize registration for children who are born in the rural areas to ease the determination of ages of juvenile which is necessary juvenile trials;
- iii. Strengthen the social workers' responsibilities and roles in the juvenile justice system;
- iv. Establish information centers for juvenile cases;
- v. Establish counseling centers for both the victims and juvenile offenders;
- vi. Liaise with the police, prisons and courts in any settlement of juvenile offences;
- vii. Promote the development of non-institutional alternatives to detention; and
- viii. In view of the types of juvenile offenders which mostly hail from poor families, the Ministry should initiate programmes that encourage NGOs to supplement its efforts in providing facilities and services such as community based rehabilitation and reformatory programmes.

5.4. Recommendations to the Police Services

As the police are the first point of contact with the juvenile justice offenders, it is more important that they carry out their functions in an informed and appropriate manner. This can only be done if they are skillful and sufficient police services with adequate facilities. As such, the followings recommendations are proposed:

- i. It is recommended that the police should strengthen the Gender and Children's Desks that are now established in all police stations by providing specialized training to those personnel to ensure proper custody of juveniles who come to police detention cells;

- ii. Ensure sufficient and adequate sensitization and dissemination of the Children's Act statutory instrument to all police personnel;
- iii. The police to have specialized units that deal with the arrest, detention and investigation of juvenile offenders;
- iv. Establishes child protection Units within all levels in Uganda Police stations;
- v. Ensure that the police apply the principles embodied in the Children's Act statutory instrument;
- vi. Respect the rights of Juveniles that are detained in the police cells; and

vii. Establish separate juvenile detention facilities in all police stations

It is a reality that reformations of prisoners in general and juvenile prisoners in particular lie in the hands of the institution whose custody they are placed. It is to ensure that

5.5. Recommendations to the Prison Services be remembered

that the Beijing Rules for the Administration of Juvenile Justice draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice to ensure that children when detained are not mistreated. This makes it imperatively important that the prison services should be well equipped both 'with trained personnel, adequate detention facilities and standard training programmes. In order to fulfill these, it is recommended that the prison services should do the followings:

- i. Promote specialized training of prison services officers in all areas including children law, administrative law to ensure proper administrative functions of the juvenile institutions or detention centers;
- ii. Make effort for the construction of separate remand homes for the detention of juvenile detainees;
- iii. Establish administrative guidelines which must prohibit the corporal punishment of detained juveniles;
- iv. Initiate renovation of reformatory centers for the training of juveniles and construct more reformatory facilities;
- v. Renovate and construct separate facilities for separation of juveniles from adult prisoners as well as separation of female juveniles from male juveniles;
- vi. Lobby SSJA for the passage of the Prison Services Bill of 2009 which is still before it;
- vii. Ensure that every detention facility has adequate food stuff which shall ensure that every juvenile receives food that is suitably prepared and presented at normal times and of a quality

and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements;

viii. Provide bore-wells to ensure safe and clean drinking water to every juvenile at any time; and

ix. Ensure that rehabilitative programmes are run for the training of juveniles.

As the foregoing recommendations explained, informed juvenile justice policy must be kept abreast of advances in knowledge and the continuing development and improvement of juvenile justice system both internationally and regionally. It is upon embracing and incorporating these recommendations into domestic legal systems that juvenile delinquency will be controlled in the bud before it gets sophisticated.

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