

**PROTECTION OF JUVENILE RIGHTS DURING DETENTION
IN UGANDA**

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DECLARATION

I hereby declare that this dissertation is my own work towards the award of the Bachelor of Laws Degree of Kampala international University, to the best of my knowledge, it contains no material previously published by another person nor material which has been accepted for the award of any other degree of the University, except where due acknowledgement has been made in the text.

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APPROVAL

I do hereby certify that the research report of Wungeya Stella has been submitted for university examination in partial fulfillment for the requirements of a Bachelor of laws Degree of Kampala International University, with my approval as a supervisor.

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DEDICATION

I dedicate my research report to my parents , father Mr. Gizamba James and mother Mrs. Wokidaka Rose for their effort and struggle that has been important towards my life especially education and completion of my study.

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During the process of carrying out my research and through the production of this report, many people have assisted me. I therefore wish to express my sincere gratitude to all those who helped me materially and morally.

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

This chapter presents the background of the study, problem statement, objectives of the study, research questions, scope of the study, significance of the study, justification, literature review methodology and chapterisation.

1.1 Back ground of the study

In the context of detention, rights of children during detention can take many forms including rights from torture; avoid beatings, avoiding isolation, restraints, free from rape, free from harassment, self-harm and humiliation. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that „Violence in places of detention, including special institutions for children, is manifest in several ways, mainly through physical and sexual violence, as well as through verbal abuse. In addition, children are also subjected to violence as a result of conditions of detention, or as a form of discipline or punishment¹.

States that are parties to the UN Convention on the Rights of the Child (CRC) have a clear obligation to take all appropriate legislative, administrative and educational measures to protect children in detention from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse². Furthermore, under Article 40 (1) of the CRC states are obliged to recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society". In their General Comment on Children's Rights in Juvenile Justice (General Comment No. 10) the CRC Committee asserts that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented³. The right of children to

¹ Violence in Institutions, including in detention facilities, Statement by Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2010.

² Convention on the Rights of the Child (CRC), Article 19.

³ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children's rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 hereafter General Comment No.10.

freedom from violence is also found in the International covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under Article 24 of the ICCPR, children enjoy the right „to such measures of protection as are required by their statuses as minors. Penal reform international (PRI) with the assistance of the Foundation for Human Rights initiative (FHRI) has carried out a review that aims to increase our understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention in Uganda..

Uganda performs well internationally in terms of its approach to children in conflict with the law. It has ratified the main international treaties, enshrining their key principles in the Uganda Children Act cap.59⁴, which includes a comprehensive outline of the rights of such children. Juvenile detention centers, in Uganda, children in conflict with the law are principally the responsibility of the Ministry of Gender, Labor and Social Development. However, the Uganda Police Force and the Judiciary of the Republic of Uganda are also important partners. Detained children are placed in one of the four remand homes in Fort Portal, Gulu, Naguru, or Mbale.

The justice system in Uganda is premised on the rights of citizens. Where infractions occur, the justice system provides a remedy for the aggrieved person. However, the Justice Law and Order Sector (JLOS) institutions, which are charged with ensuring that the ordinary person as well as the vulnerable access justice in meaningful terms, have faced severe constraints in fulfilling their mandate in regard to child protection and justice⁵. Children have been further marginalized by the limited application of a child rights based approach by relevant institutions charged with child justice and inadequate systems and procedures for justice for children in conflict with the law and those who are in need of care and protection as victims or potential victims and witnesses.

At the national level, the Constitution of Uganda sets out the rights of children, including the rights of children in conflict or contact with the law. Under the Constitution, a „child offender“ who is kept in lawful custody or detention shall be kept separately from adult offenders⁶. It also

⁴ Children Act, chapter 59

Moore (2010) Juvenile Detention in Uganda: A Review of Uganda Remand Homes and the National Rehabilitation Centre. at [http://www.justicestudio.org/reports/Juvenile detention in%20Uganda_October_2010.pdf](http://www.justicestudio.org/reports/Juvenile%20detention%20in%20Uganda_October_2010.pdf)

⁶ Article 34 (7) of 1995 Uganda Constitution

states under Article 34 (7) that special protection is to be accorded to orphans and other vulnerable children, who happen to be children at risk. However, Uganda signed, ratified and domesticated the CRC which means that the standards elaborated in the CRC are applicable in Uganda and can supplement the existing Constitutional provisions.

In response to International Law, the Children's Act Cap 59 has progressive and enabling provisions on the care and protection of children at risk and in conflict with the law. It states clearly that its guiding principle-the welfare principle -is paramount. It makes specific provision on the processes of arrest and charging, pre trial detention and hearings, adopting the child rights based approach. The Children Act puts in place crucial guarantees and mechanisms for child care and protection, including Family and Children's Courts, approved homes, a national rehabilitation centre and the Local Council Courts. It also activates the jurisdiction of Probation Services in matters involving children at risk. Several laws, regulations and statutory instruments have also been made to guide the implementing institutions in the Administration of Children Justice.

1.2 Problem Statement

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 children protection is undertaken under the Children's Act that provides guidance on how Juveniles have to be treated with equal and due diligence even when they are in conflict with the law and under detention. The Juveniles under detention are entitled to a series of requisite requirements or rights in the manner that can provide values for the extension of the appropriate human rights to children. Despite Uganda being a signatory to the United nations provisions and regional laws on the issues of human rights for juveniles under detention, human rights abuses of torture and violence of all sorts that prohibit the juveniles from effective attainment of their rights to education, health, education among others (UNICEF, 2016). The Juveniles in some detention centers have reported the issues of torture and other human abuses of insignificant shelter, dressing and food that has limited the juvenile rights contrary to provisions of the UN convention on rights of the child 1989.

1.3 Objectives of the study

1.3.1 General Objective

The purpose of the study was to assess the effectiveness of legal framework on protecting Juveniles in Uganda.

1.3.2 Specific Objectives

- 1) To conduct an analysis of the legal rights of Juveniles during detention in Uganda.
- 2) To discuss the level of enjoyment of rights by Juveniles in detention in Uganda.
- 3) To Make a comparative study on other jurisdictions.
- 4) To establish the gaps in the legal framework on Juvenile rights and make recommendations for the study.

1.4 Research Questions

- 1) What are the legal rights of Juveniles during detention in Uganda?
- 2) What is the level of enjoyment of rights by Juveniles in detention in Uganda?
- 3) What is the comparison of Juvenile rights protection in Uganda with other jurisdiction?
- 4) What are the gaps in the legal framework on Juvenile rights and make recommendations for the study?

1.5 Scope of the study

1.5.1 Subject

The study was conducted on the existing legal framework on the rights of Juvenile during detention in Uganda.

1.5.2 Geographical Scope

The study was conducted in Uganda on the legal and institutional framework in Uganda. The assessment conducted focusing on the state of the country survey under the assessments provided undertaken to the provisions that are taken from the legal framework in the environment of Uganda on the documents in Kampala city.

1.5.3 Time Scope

The study focused on the between 2010 to 2016.

1.6 Significance of the study

The study findings provide mechanisms through which the government can employ mechanisms that can enhance protection of children under detention in the organization.

The research findings are helpful to scholars doing research in the same field.

The findings of the research will help the legal framework department to enact laws enhancing the regulation of Juvenile rights during the detention children live appropriately in the society. The gaps found in the literature will be a basis for the enactment of new laws or amendment of the existing laws.

1.7 Justification

The study is justified by the need for ensuring that the children rights under detention are taken care off given the understanding that the legal system has not undertaken much emphasis on the rights,⁷ of the Juveniles under detention⁸.

1.8 Literature Review

Despite the lowest youth crime rates in 20 years, hundreds of thousands of young people are locked away every year in the nation's 591 secure detention centers Holman, Barry and Ziedenberg (2011). Detention centers are intended to temporarily house youth who pose a high risk of re-offending before their trial, or who are deemed likely to not appear for their trial. But the nation's use of detention is steadily rising, and facilities are packed with young people who do not meet those high-risk criteria about 70 percent are detained for nonviolent offenses.⁹

The increased and unnecessary use of secure detention exposes troubled young people to an environment that more closely resembles adult prisons and jails than the kinds of community and family-based interventions proven to be most effective (Ellen, 2010). Detention centers, said a former Deputy Mayor of New York of that city's infamous Spofford facility, are "indistinguishable from a prison."¹⁰ Commenting on New York's detention centers, one Supreme

⁷ Foundation for Human Rights Initiative (2009). Juvenile Justice in Uganda

⁸ Uganda Police Force (2009) Annual Report

⁹ Holman, Barry and Ziedenberg, Jason (2011) The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Congregate Facilities (forthcoming). Baltimore, Maryland: Annie E. Casey Foundation

¹⁰ Herbert Sterz, New York City's Deputy Mayor for Criminal Justice, 1984.

Court Justice said that, "fairly viewed, pretrial detention of a juvenile gives rise to injuries comparable to those associated with the imprisonment of an adult."¹¹

Detained youth, who are frequently pre-adjudication and awaiting their court date, or sometimes waiting for their placement in another facility or community-based program, can spend anywhere from a few days to a few months in locked custody. At best, detained youth are physically and emotionally separated from the families and communities who are the most invested in their recovery and success. Often, detained youth are housed in overcrowded, understaffed facilities an environment that conspires to breed neglect and violence (Saneul and Lynne, 2010).

A recent literature review of youth corrections shows that detention has a profoundly negative impact on young people's mental and physical well-being, their education, and their employment. Sickmund, Sladky and Kang (2004) One psychologist found that for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration¹² and another suggests that poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm. Economists have shown that the process of incarcerating youth will reduce their future earnings and their ability to remain in the workforce, and could change formerly detained youth into less stable employees (Edwards, 2011). Educational researchers have found that upwards of 40 percent of incarcerated youth have a learning disability, and they will face significant challenges returning to school after they leave detention. Mace, Rohde and Gnau, 2007) Most importantly, for a variety of reasons to be explored, there is credible and significant research that suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety (Schiraldi and Ziedenberg, 2003).

¹¹ Ellen Schall (2010) Commission of New York City Department of Juvenile Justice v. Gregory Martin et al. Robert Abrams, Attorney General of New York. No. 82-1248, 82-1278. (Decided, June 4.

¹² Sickmund, M., Sladky, T.J., and Kang, W. (2004) Census of Juveniles in residential placement databook. Online.Avaliable: <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/>

Detention centers do serve a role by temporarily supervising the most at-risk youth. However, with 70 percent being held for nonviolent offenses, it is not clear whether the mass detention of youth is necessary or being borne equally. While youth of color represent about a third of the youth population, the latest figures show that they represent 61 percent of detained youth.¹³ Youth of color are disproportionately detained at higher rates than whites, even when they engage in delinquent behavior at similar rates as white youth (Fundamental Rights Agency (2010).

The consequences of detention on young people, their families, and communities. This policy brief shows that, given the new findings that detaining youth may not make communities safer, the costs of needlessly detaining young people who do not need to be there are simply too high. Sickmund, Sladky and Kang (2004) argued policymakers, instead, should look to detention reform as a means to reduce the number of young people needlessly detained, and reinvest the savings in juvenile interventions proven to reduce recidivism and crime, and that can help build healthy and safe communities¹⁴.

Juvenile detention interrupts young people's education, and once incarcerated, some youth have a hard time returning to school (United nation, 2007). A Department of Education study showed that 43 percent of incarcerated youth receiving remedial education services in detention did not return to school after release, and another 16 percent enrolled in school but dropped out after only five months. Another researcher found that most incarcerated 9th graders return to school after incarceration but within a year of re-enrolling two-thirds to three-fourths withdraw or drop out of school: After four years, less than 15 percent of these incarcerated 9th graders had completed their secondary education.¹⁵

¹³ Sickmund, M., Sladky, T.J., and Kang, W. (2004) Census of Juveniles in residential placement databook" <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/>. In regards to the estimate of the number of youth moving through detention each year, the most recent data available from surveys administered by the National Council on Juvenile Justice (NCJJ) estimate that 350,000 youth were detained in 1999 (OJJDP, 2001b). This figure, however, does not include youth detained while they are awaiting a court-ordered out-of-home placement. Further, according to Dr. Barry Krisberg, "The NCJJ data covers court hearings for detention many youths come into detention via law enforcement agencies, schools, parents, social service agencies etc, and are released before a court hearing is held this might also include probation and parole violators in some jurisdictions." Personal correspondence (2003).

¹⁴ New York City Department of Juvenile Justice (2001), as cited by the Correctional Association of New York, Position Paper: www.correctionalassociation.org/JJP_Juvenile_Detention_factsheet.htm

¹⁵ http://www.dropoutprevention.org/stats/quick-facts/econ_impact.htm

Young people who leave detention and who do not reattach to schools face collateral risks: High school dropouts face higher unemployment, poorer health (and a shorter life), and earn substantially less than youth who do successfully return and complete school. The failure of detained youth to return to school also affects public safety (Van, 1995). The U.S. Department of Education reports that dropouts are 3.5 times more likely than high school graduates to be arrested.¹⁶ The National Longitudinal Transition Study reveals that approximately 20 percent of all adolescents with disabilities had been arrested after being out of school for two years.¹⁷

According to article 37 of international convention on the rights of the child State Parties ensure that children 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 period of time (37b CRC). Article 40 CRC provides children with due process rights. According to this article State Parties recognize the rights of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and value and taking into account the age of a child and the right to reintegration. This article gives the child several guarantees, which are, inter alia, that a child has the right to have the matter determined without delay by a competent, independent and impartial authority in the presence of legal or other appropriate assistance, to not be compelled to give testimony or to confess guilt. According to article 40 section 4 CRC, State parties need to develop a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care. The CRC is legally binding and State parties are obliged to report on the implementation of and compliance with the CRC to the Committee on the Rights of the Child (CRC Committee). The CRC Committee to provide recommendations to improve the implementation of the CRC. However, these recommendations are not legally binding¹⁸.

¹⁶ U.S. Department of Education (1994), Mini-digest of Education Statistics. Washington, DC: National Center for Education Statistics

¹⁷ Schiraldi, V. and Ziedenberg, J. (2003). *The Multnomah Experiment: Reducing Disproportionate Minority Confinement.* Washington, D.C.: The Justice Policy Institute.

¹⁸ UN Document CRC/C/NLD/CO/3, par. 77

1.8.2 Level of enjoyment of rights by Juveniles in detention in Uganda

Cases of prolonged and arbitrary detention were documented by the UHRC during inspection. There were 34 documented cases of long and arbitrary detention in 2012 compared to the 99 cases in 2011 and 89 in 2010. The cases of long and arbitrary detention were found both in police cells and prisons.¹⁹ UHRC noted the continued existence of cases of alleged torture or cruel or degrading treatment or punishment in both police cells and prisons. Despite efforts by the UPS to address torture, inmates continued to allege torture from both fellow inmates and prison warders.

Incarceration of children with adults is prohibited by law because it among other things it makes children vulnerable to violence, abuse and mistreatment.²⁰ In spite of this, detention of children with adults was noted by the UHRC at police stations and police posts. At Kagadi Police Station, were 9 juveniles were found detained with adults due to congestion in the adult male cell. Out of the 9 juveniles 4 had been remanded back to Kagadi Police Station from court since Kibaale District lacked a remand home for juveniles. At Kitgum Government Prison, 10 juveniles including a 14 year old, with a mental impairment were remanded together with Adults.

The law prohibits forced or compulsory labor, including by children, but does not expressly prohibit prison labor. The law states that prison labor becomes forced only if a worker is "hired out to or placed at the disposal of a private individual, company, or association. The penalty violating the law against forced or compulsory labor is imprisonment. The 1975 community farm settlement decree provides that any unemployed able-bodied person may be settled on any farm settlement and required to render service and that violation of the decree is punishable with a fine and imprisonment. The government did not enforce the law (UN, 2015).

Institutions responsible for enforcing child labor laws and policies included the National Council of Children, the police force's Child and Family Protection Unit, the Industrial Court, and the Ministry of Gender, Labor, and Social Affairs (Bhabha, 2006). Financial constraints limited efforts. For example, the Industrial Court lacked judges, so the High Court or the magistrates' courts handled labor disputes. The ministry provided social services to children working in the

¹⁹ Uganda v Tibemanzi Deus (Criminal Revision No. HCT-00-CR-CV-CO-02-2006

²⁰ Section 91(6) of the Children's Act (Cap 59).

worst forms of child labor and other vulnerable groups and conducted training for staff, local leaders, and district labor inspectors. The Ministry of Gender, Labor, and Social Affairs employed approximately 40 district labor officers, who were responsible for reporting on child labor issues. Due to lack of funds and logistical support, district labor officials have not conducted any inspections exclusively for child labor since 2004. During the year officials from the ministry's Occupational, Safety, and Health.

Number of children detained in police and pre-trial detention: No accurate statistical information is available on the number of children who are detained in police detention although in its 14th annual report, the Uganda Human Rights Commission (UHRC) reported that they had found 64 children detained with adults during monitoring missions, most often at police stations and posts.²¹ Detained children who are awaiting trial are placed in one of four remand homes: Fort Portal Remand Home, Gulu Remand Home, Naguru Remand Home or Mbale Remand Home. During 2010, the African Prisons Project (APP) found a total of 316 children held in the four remand homes.²²

There is evidence that adult detainees experience torture and ill-treatment. In 2011, a report to the Universal Periodic Review process expressed concern that „cases of torture are frequently reported in Uganda...In police holding cells allegations of torture are particularly common and some complaints of summary execution whilst in custody have also been reported.²³ The UHRC refers to finding „cases of alleged torture or cruel, or degrading treatment or punishment in both the prison and police detention facilities.²⁴ Torture within the Special Investigation Unit, previously named the Rapid Response Unit (RRU), which is a section of the police created to combat armed crimes, is of particular concern. Human Rights Watch reports that this Unit „continues to arrest and in some instances torture criminal suspects....RRU officers routinely use unlawful force during arrests, including beating suspects, using torture during interrogations to extract confessions, and the alleged extrajudicial killings of at least six individuals in 2010 alone.²⁵

²¹ UHRC, 14th Annual Report, 2011, p27.

²² African Prisons Project, Juvenile Detention in Uganda, 2010, p13. Available at: <http://www.africanprisons.org/research/juvenile-detention-in-uganda/> (accessed 12, 06.2018)

²³ UN Country Team in Uganda, Submission To The Universal Periodic Review, 2011

²⁴ UHRC, 14th Annual Report, 2011, p26.

²⁵ Human Rights Watch, World Report, Uganda Country Summary, 2012.

1.9 Methodology

Data

This study is an entirely secondary data research based on review of the existing framework on the legal aspects of protection of the Juveniles under detention all provided in the secondary data and documentary review of the legal framework.

Design and analysis

The logic structure of this thesis took on a qualitative approach involving the analysis of the legal documents regarding the protection of Juvenile rights during detention. The data was analyzed by presenting the information available in the legal documents in country.

1.10 Chapterization

The research consisted of five chapters. The chapter one introduced the problem, background, problem statement, objectives, research questions, scope, significance of the study, justification, literature, methodology of the study and chapterisation. Chapter two included the general overview of the international instruments, continental, regional systems on Juvenile rights under detention. The third chapter provides an analysis of the legal and institutional framework on rights of juveniles under detention. Chapter four dealt with making a comparative analysis of the jurisdictions. The fifth chapter was on conclusions and recommendations.

CHAPTER TWO

INTERNATIONAL AND CONTINENTAL FRAMEWORKS ON JUVENILE RIGHTS UNDER DETENTION

2.1 International Mechanisms

At the international level, oversight and accountability mechanisms in relation to pre-trial detention include the United National Human Rights Committee (HRC), which monitors the implementation of the International Covenant on Civil and Political Rights, the United Nations Committee against torture and the committee on the rights of the child. Furthermore, there are special procedures such as the special rapporteur on torture and other cruel, Inhuman or degrading treatment or punishment. There are also various international organizations that are involved in visiting places of detention such as the International Committee of the Red Cross (ICRC).

2.1.1 The UN Convention on the Rights of the Child, 1989

The UN Convention on the Rights of the Child (1989) is a universally agreed set of non-negotiable standards and obligations, which provides protection and support for the rights of children (persons below the age of 18). It is a legally binding international instrument to incorporate the full range of human rights civil, cultural, economic, political and social. This provide that the children under detention should be protected and given all their rights as though they are not under detention.

Uganda is one of the 194 countries worldwide that are a signatory to the UN Convention. By ratifying this document, the government of Uganda has the responsibility to take all available measures to make sure children"s rights are protected, respected and fulfilled. All actions, decisions and policies shall be done in the light of the best interests of the child. The Convention spells out the basic human rights that all children regardless of their sex, race, religion, cultural or socio-economical background, language, ability everywhere have. The Ugandan government has established the family and children protection units to ensure that the protection of children under detention.

2.1.2 Two Optional Protocols to the UN Convention on the Rights of the Child

In 2000, the United Nations General Assembly adopted two Optional Protocols to the UN Convention on the Rights of the Child to increase the protection of children from involvement in armed conflicts and from sexual exploitation. These are guided by the principles of non-discrimination, best interests of the child, and child participation. The Optional Protocol on the involvement of children in armed conflict establishes 18 as the minimum age for compulsory recruitment and requires states to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities. The Optional Protocol on the sale of children, child prostitution and child pornography draws special attention to the criminalization of these serious violations of children's rights and emphasizes the importance of fostering increased public awareness and international cooperation in efforts to combat them.²⁶

Protection and promotion of the rights of the child, as all other human rights, is the primary responsibility of the State. States are generally obligated to ensure the progress of juveniles, including the fostering and ensuring of personal development and education as free from crime and delinquency as possible. The UNCRC and other international standards relating to juveniles in detention are clear on that children should only be detained as a means of last resort.²⁷ Protecting the best interests of the child entails that the traditional objectives of the criminal justice system, such as repression and retribution must give way to rehabilitation and restorative justice when dealing with juvenile offenders.²⁸ This means that receiving a sentence as a juvenile offender should not be a punishment; instead the deprivation of liberty should foster an environment that can support the child in reforming themselves, including enabling them to resume education or finding an apprenticeship or work²⁹. The substance of what constitutes rehabilitation and restoration will be further explained in the study.

²⁶ (www.unicef.org).

²⁷ UN Declaration of the Rights of the Child (1959), GA res. 1386 (XIV), UN Doc.A/4354, preamble

²⁸ 7UN convention on the rights article 37 and UN standard minimum rules for the administration of Juvenile Justice (The Beijing Rules).

²⁹ UNCRC general comment 10, para. 10 (CRC/C/GC/10, 25 April 2007)

2.1.3 United Nations Human Rights Committee

The Human Rights Committee (HRC), which is the monitoring mechanism for the implementation of the International Covenant on Civil and Political Rights (ICCPR), is one of the mechanisms for oversight and accountability. During its consideration of Uganda's initial report, the HRC noted various important human rights concerns that demonstrate Uganda's lack of compliance with the ICCPR. The committee noted the frequent lack of implementation by the government of UHRC recommendations and decisions concerning awards of compensation to victims of human rights violations and the prosecution of human rights offenders.³⁰ It further noted that state agents continue to arbitrarily deprive persons of their liberty, including in unacknowledged places of detention.³¹ It also noted the deplorable prison conditions such as overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The Committee was concerned about the treatment of prisoners, especially the use of corporal punishment, solitary confinement and food deprivation as disciplinary measures, and the fact that juveniles and women are often not kept separate from adults and males.

2.1.3 Universal Periodic Review

Uganda was considered under the Universal Periodic Review (UPR) in October 2011 & 2017 and states and other stakeholders raised a number of issues related to pre-trial detention.³² In particular concerns were expressed regarding torture by security agents, reports of the use of „safe houses“ or unofficial places of detention the regular use of torture as a method of interrogation by the police³³ the arbitrary arrest and torture of journalists and a penitentiary system plagued by the poor treatment of detainees, overcrowding, inadequate feeding, poor medical care and sanitary conditions, forced labour, and inadequate rehabilitation programs³⁴. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the

³⁰ Human Rights committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda.

³¹ Human Rights committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, concluding observations of the Human Rights Committee, Uganda.

³² Human rights committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human rights Committee, Uganda CCPR/CO/80/UGA at para. 21

³³ Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/19/16, 46

³⁴ Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, 31

Working group on Forced or Involuntary Disappearances and the Working Group on Arbitrary Detention were established by Resolutions of the United Nations Human Rights Commission. Their visits are occasional and based on prior agreement by the state concerned in order to assess the country situation. Their recommendations are issued on the basis of information communicated to the Rapporteur following visits carried out in the country being assessed. The recommendations are not binding, but provide guidance on how the situation can be improved. Public reports are presented at the session of the UN Human Rights Commission.

2.1.4 United Nations committee against torture

Article 20 of the UN Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (UNCAT) gives the mandate to the Committee against Torture to visit places of detention. However, the Committee can only visit States Parties to the Convention, who must authorize the visit. Visits are made only in the cases of „systematic torture“ and the proceedings are confidential. No visits by the Committee against Torture have been made to Uganda. Nevertheless, during the presentation of State Reports, the Committee has noted various human rights concerns which are still relevant. It should be however noted that the need for authorization of visits limits the effectiveness of the mechanism as non compliant members are unlikely to authorize any visits.

The Convention against Torture has been cited and referenced in a number of federal judicial proceedings to date, including, inter alia, the following decisions: *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995) (suit by expatriate Guatemalans against the former Minister of Defense of Guatemala under the Alien Tort Claims Act and Torture Victims Protection Act); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (suit by Bosnians against the self-proclaimed president of Bosnia-Herzegovina for torture, genocide and other crimes under TVPA and ATCA); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992) (suit by Argentinian family against the Government of Argentina for torture);

In Re Estate of Ferdinand E. Marcos, 25 F.3d 1467 (9th Cir. 1994), see also 94 F.3d 539 Cir. 1996) (suit under ACTA against former Philippine President Marcos alleging torture and other cruel, inhuman and degrading treatment); *Hilao v. Estate of Ferdinand Marcos*, 103 F.3d 767 (9th Cir. 1996) (also suit against former President Marcos under ATCA); *In Re Extradition of*

John Cheung, 968 F. Supp. 791 (D. Conn. 1997) (application of non-refoulement provision of the Convention against Torture to extradition request from Hong Kong). See also U.S. v. Ekwunoh, 888 F. Supp. 369 (E.D.N.Y. 1994).

The Committee was concerned about the lack of incorporation of the Convention into Uganda's legislation, such as the lack of a comprehensive definition of torture in domestic law, the lack of an absolute prohibition of torture, and the absence of universal jurisdiction for acts of torture in Ugandan law.³⁵ The Committee expressed concern over the widespread practice of torture and ill treatment of persons detained by the military as well as by other law enforcement officials.³⁶ Furthermore, it was concerned about the length of pre-trial detention, including detention beyond 48 hours as stipulated by the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail

2.2 Continental framework

At the regional level, oversight and accountability mechanisms in relation to pre-trial detention (amongst other issues) include the African Commission on Human and Peoples' Rights, the Special Rapporteur on Prisons and Conditions of Detention in Africa, the African court on human and peoples' rights, the committee of experts on the rights and welfare of the child, and the east African court of justice, among others.

The African Charter on the Rights and Welfare of the Child, 1999

Uganda is among the 53 African countries that signed the 1999 African Charter on the Rights and Welfare of the Child³⁷ (defined as human beings below the age of 18 years). This commits the country to protect children against the various forms of social, economic, cultural and political abuse and exploitation. State parties are obliged to undertake the necessary steps and adopt such legislative and other measures to give effect to the provisions of this charter. It spells out basic human rights that all children have. Every child has the right to live, survival and development, name, registration and nationality, freedom of expression, association, peaceful assembly, thought, conscience and religion, privacy, education, leisure, recreation and cultural

³⁵ Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA

³⁶ Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UG

³⁷ African countries that signed the 1999 African Charter on the Rights and Welfare of the Child

activities, health and health services, special judicial treatment in a manner consistent with the child's sense of dignity and worth and parental care.

African Commission on Human and Peoples' Rights

Under the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has the mandate to promote and protect human rights.³⁸ Uganda is party to the African Charter and is therefore subject to the African Commission, the charter provides that the children under detention are entitled to rights. The ACHPR, which has been greatly supported by NGOs, it fulfills its mandate through a complaints mechanism, consideration of State Reports, Special Rapporteurs, site visits and resolutions which contribute to oversight and accountability.

The ACHPR has received two communications relating to illegal arrest, arbitrary detention and torture relating to Uganda. The case of *Nziwa Buyingo v. Uganda*³⁹ involved a complaint of alleged illegal arrest, arbitrary detention, torture and extraction of money from the complainant by Ugandan soldiers in Kisoro contrary to articles 5, 6, 12 and 14 of the African Charter. The ACHPR dismissed the complaint as inadmissible as the complainant failed to demonstrate that local remedies had been exhausted. The other case was an inter-state communication, namely the *Democratic Republic of the Congo (DRC) v. Burundi, Rwanda and Uganda*.⁴⁰ In this communication, the DRC alleged numerous violations of the African Charter and other international obligations by the respondent states. In its decision, the ACHPR found that the respondent states had violated articles of the African Charter, including article 5.

Special Rapporteur on Prisons and Conditions of Detention in Africa

The African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. The Special Rapporteur has powers to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. The Special Rapporteur's work entails: examining the state of prisons and conditions of detention and making recommendations to improve them; advocating for adherence to the African Charter and

³⁸ The African Charter on Human and Peoples Rights, article 45(1) and(82)

³⁹ *Nziwa Buyingo v. Uganda*, http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf

⁴⁰ *D.R. Congo v. Burundi, Rwanda and Uganda*, African Commission on Human and Peoples' Rights, Communication No. 227/99 (2003). <http://www1.umn.edu/humanrts/africa/comcases/227-99.html>

international human rights norms; and, if requested by the African Commission, making recommendations regarding communications by individuals who have been deprived of their liberty. The visits of the Special Rapporteur are only carried out after the agreement of the state concerned. Reports are published after the integration of comments from the state's participating authorities. Although, the Special Rapporteur has the potential to contribute to the oversight and accountability mechanisms, this opportunity has not yet been used in Uganda⁴¹.

The commission found that the requirements of article 56(5) had not been satisfied because the applicants had not attempted to exhaust all available domestic remedies. The next step in the domestic court process would have been to appeal to the Regional Supreme Court. The commission found that the complainant's argument, that past cases proves that the Regional Supreme Court only considers cases where there was an error of law, was not sufficient to excuse the failure to attempt to exhaust domestic remedies. The commission cited the Constitution of Ethiopia, which states that decisions of the Regional High Court are appealable to the Regional Supreme Court and reasoned that it is not sufficient to "cast mere aspersions on the ability of the Regional Supreme Court, its Cassation Bench, and the cassation Bench of the Federal Supreme Court due to past incidences," including past cases.

The complainant represented Givemore Chari (the victim), a citizen of Zimbabwe who alleged that he was suspended from university after leading a peaceful protest of students in October 2005. After leading a peaceful march against tuition increases in May 2006, police arrested and assaulted him. He claimed that after his release, the government Central Intelligence Organization abducted, assaulted, and planned to kill him. In his escape from his captors, the victim sustained severe body injuries. As a result, the complainant claimed violations of the victim's rights under articles 4 (right to life), 5 (prohibition on torture), 6 (right to personal liberty), 7(b) (right to be presumed innocent until proven guilty), and 14 (right to property) of the African Charter.

⁴¹ Concluding Observations of the African Commission on Human and Peoples' Rights, 3rd Periodic Report of the Republic of Uganda.

The commission declared the communication inadmissible for failing to exhaust domestic remedies as required under articles 56(5) and 56(6) of the African Charter. The complainant argued that because he was forced to flee the country in fear of his life, exhausting domestic remedies was impossible as returning would be impractical. The complainant also claimed that domestic remedies were not available and effective because there was no prospect of success.

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights complements the protective mandate of the ACHPR. The added value of the Court is that it has powers to take in al and binding decisions on human rights violations. Uganda is among the 26 countries that have thus far ratified the Protocol establishing the Court, and is thus subject to its jurisdiction. The role of the African Court is however limited as Uganda has not made a declaration to allow it to receive direct complaints of human rights violations from civil society organizations and individuals.⁴² Although, the African Court has yet to handle any matter relating to Uganda, it has the potential to contribute to the process of oversight and accountability.

The African Committee of Experts on the Rights and Welfare of the Child

When Uganda presented its initial report, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) made several comments. The ACERWC commended Uganda for efforts made with regard to the establishment of family and juvenile courts, a National Rehabilitation Centre and the possibilities for amicably resolving cases relating to children in conflict with the law.⁴³ However, the Committee was concerned that several districts do not always have provisional detention centers for children and that the number of functional reeducation centers is limited. The Committee was also concerned that children are held with adults in police detention centers. The Committee also observed that the report did not provide information pertaining to the treatment of mothers incarcerated with their children, pregnant women and young children. It also provide for the assessment of the children and ensuring their better conditions when during detention.

⁴² Protocol in the Statute of the African Court of Justice and Human Rights, article 5(3) and article 34(6)

⁴³ Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. <http://www.crin.org/docs/Uganda COs.doc>

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAME WORK ON PROTECTION OF JUVENILE RIGHTS DURING DETENTION AND WITNESS PROTECTION

3.0 Introduction

In Uganda, legal provisions relating to the protection of children can be found in an array of domestic legal instruments:

3.1 Legal framework

3.1.1 The Constitution of Uganda, 1995

The Constitution of Uganda comprehensively provides a framework for the Protection of all children in Uganda. It defines fundamental child rights, obliges parents to care for and bring up their children, and accord special protection to orphans and other vulnerable children under detention. It is the duty of any citizen and the state to protect children from any form of maltreatment and ensure the registration of birth for each child. Article 4 of the 1995 constitution provides for the rights of people including children under detention requiring that the fundamental freedoms of the detained juveniles need to be observed.

Children have to be cared for by parents or those obliged by law to bring them up, basic education, medical treatment, grow up together with their families or persons entitled to bring them up and be kept separately from adult offenders during lawful custody or detention, children shall be protected against Social or economic exploitation, work that is likely to be hazardous or interferes with their education or to be harmful to their health or physical, mental, spiritual, moral or social development and any form of abuse, harassment or ill-treatment

3.1.2 The Children's Act, 2003

The Children's Act provides a legal and institutional framework for child care and protection. It defines rights, which all children in Uganda have, accords specific rights for children with disabilities to ensure equal opportunities, and obliges the parents or any person in custody over the child to maintain the child ensuring education, guidance, immunization, adequate diet, shelter and medical care. Further, it covers regulations for adoptions; approve homes, maintenance,

foster care, and parentage, bail and remands.⁴⁴ section 5(1-7) provides an elaborate focus for observation of rights of detained juveniles.

Every child has the right to stay and live with parents, education and guidance, immunization, adequate diet, shelter, medical attention, assistance and accommodation if in need and Leisure and participate in sports, and positive cultural and artistic activities. Every child shall be protected from any form of discrimination, violence, abuse including those under custody or in detention in the prison and neglect, social or customary practices that are harmful to the child's health and Employment or any activity that is harmful to the child's health, education, or mental, physical or moral development.

3.1.3 The Penal Code, Cap 120

The Penal Code makes liable the following offences against children kidnapping and abduction of children under fourteen years, Indecent assaults, Defilement of girls, procurement of girls, Stealing a child under the age of fourteen years and Infanticide Neglect (not providing sufficient food, clothes, bedding, and other necessities to ensure the child's health) of children of tender years and desertion of children under fourteen years are defined as misdemeanors, without specifying penalty measures⁴⁵. The penal code provide regulations requiring that no person infringe on the rights of children under detention, the provisions undertaken in this context are taken to ensure that those violating the rights of juveniles under detention can be dealt with to avoid violation of the rights.

3.1.4 Local Government Act, 1997

The Local Government Act makes district councils responsible for the welfare of children. For this, it foresees an executive committee for each district, where a selected secretary cares for the health and welfare of children. District Councils have to ensure services, from which children are able to benefit. These include services for education, health, maternity and child welfare, probation and welfare services, and social rehabilitation. It also obliges the districts to ensure

⁴⁴ The Children's Act, 2003

⁴⁵ Penal Code. 1950

services for street children and orphans. Section 8 of the act provides a provision restraining the abuse of rights for children under detention. The Act further foresees the establishment of an executive committee at each parish and village administrative unit, including a vice chairperson who shall be secretary for children welfare.

3.1.5 National Council for Children Act, 1996

The National Council for children Act foresees the establishment of a national council for children, to ensure proper coordination, monitoring and evaluation of all policies and programs relating to the survival, protection and development of a child. Through this body, the problems affecting children shall be communicated to the government, and other decision-making institutions in Uganda. The Council further shall promote the implementation of programs; and maintain a database on the situation of children and activities relating to children in Uganda. It shall also support the implementation of district plans and the creation of district monitoring plans, as well as continuously analyze the changing needs of children, and promote discussion for emergency issues⁴⁶.

3.1.6 Child Labour Policy, 2006

The Child Labour Policy provides a framework to mobilize all actors to take action to eliminate the practice. It explains the socio economic context of child labour, the nature, extend and magnitude, the causes, consequences and effects. It further outlines governmental response to the problem of child labour, and the institutional framework within the national child labour policy operates. Section 19 of the policy is intended to enhance the values of the children and those under detention need not be subject to labour while in detention centers to restrict development mix for the children status.

3.1.7 The Orphans and Vulnerable Children Policy, 2004

The Orphans and Vulnerable Children Policy provides a framework for the full development and realization of rights of orphans and other vulnerable children: children who live on the streets, those that toil under exploitative conditions of labour, as well as those that suffer sexual abuse and other forms of discrimination. It also states the situation of orphans and vulnerable children,

⁴⁶ Section 5-8 of the Orphans and vulnerable children policy, 2004

the national and international framework, guiding principles for the implementation of the policy, and policy priorities the government of Uganda will focus on.

3.1.8 Legal rights of Juveniles during detention in Uganda

The Government of Uganda ratified the United Nations Convention on the Rights of the Child in 1990. As a signatory to the CRC, the Government of Uganda pledged to implement the provisions of the Convention to its fullest by putting in place administrative and institutional measures for the realisation of these commitments. The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organisation of African Unity in 1990 with the purpose of localising the provisions of the CRC within the African context. Uganda signed and ratified the ACRWC in 1992 and 1994 (respectively).

The Constitution of the Republic of Uganda, 1995 (Constitution) recognises the rights of the child and specifically provides for children's right to health, right to education, and right to protection from exploitation. The Constitution also states that a child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

Uganda adopted the Children Act, Chapter 59 of the Laws of Uganda on August 1, 1997. The Children Act passes into national law, the rights of the child and the associated protections, duties and responsibilities contained in the CRC and the ACRWC.

The Children Act further puts into effect the Constitutional provisions on children. The Children Act was enacted to reform and collate the law relating to children, provide for the care, protection and maintenance of children, provide for local authority support for children, establish the Family and Children Court and make provision for children charged with offences and for other related purposes.

Other national laws relevant to children include the Domestic Violence Act, 2010; the Education Act 2008, Chapter 127; the Penal Code Act, Chapter 120; the Births and Deaths Registration Act, Chapter 309; and the National Council for Children Act, Chapter 60. A comprehensive list of Ugandan law and policy relevant to children is set out in the Unicef Uganda/ FIDA publication „A Collection of Children Laws."

The fundamental rights and freedoms of the individuals are inherent and not granted by the government.⁴⁷ Therefore all the organs and agencies of the government and all the persons to respect and uphold and promote the human rights.⁴⁸ In this instance the fundamental rights are not gifts from the state but rather inherited to the persons by reason of birth and therefore prior to the state and the law.⁴⁹ In this effect when the juveniles have infringed the penal laws, the above has to be put into consideration that their rights are in born (Not given by anybody)

A person detained is to be kept in a place authorized by the law⁵⁰

The phrase “the place authorized by the law implies two things namely, first that the place of child detention of the individuals and secondly that the place must be reasonably accessible to the public. The ultimate purpose of this clause is to secure the security of the child and avoiding likely disappearance of the child to unknown detention facility.

The child arrested, restricted or detained be informed immediately without delay in a language that he understands.⁵¹ In this instance the reason for detention should be explained to the accused person and the right to legal counsel of the children. This provision contain the traditional duty placed upon arresting official especially in respect of arrest for commission of the crime of reasonable suspicion of commission or about to commit an offence, the criminal charges against him and the rights to consult the lawyers

Right to grant bail

The constitution of Uganda⁵² provides for the right of the individual to apply for a grant of bail. The provision on the right to grant of bail primarily place the discretion on the courts must be exercised in a reasonable manner and in such a way that the conditions set are not punitive and in effect negate the release of the individual on bail. This is because the grant of bail is to allow the individual at liberty and is time based on the argument that while the individual attends trial, he is to be presented innocent until proven guilty.

The right to an order of Habeas Corpus

⁴⁷ Article (20) of the 1995 constitution of Uganda

⁴⁸ Article 20 (2) of the 1995 constitution of Uganda

⁴⁹ Holding in the case of Rev Christopher Mtikira Vs AG

⁵⁰ Articles 23(2) of the 1995 constitution of Uganda

⁵¹ Article 23(3) of the 1995 constitution of Uganda

⁵² Article 23(4) Constitution of republic of Uganda, 1995

The 1995 constitution of Uganda⁵³ provides for an order of Habeas Corpus which is inevitable in the sense that it cannot be derogated from or suspended. The order of Habeas Corpus has been a traditional been a remedial procedure to secure personal liberty where the court orders whoever is detaining an individual before the court and give justification for detention failure of which the individuals should then be free to regain personal liberty.

Right to fair trial

The constitution of Uganda⁵⁴ guarantees the right to fair trial that the individual shall be entitled to a fair speedy and public hearing before an independent and impartial court , therefore their should be no unreasonable delay in the trial, the trial must be in the public view of fairness although there are circumstances in which the public may be excluded for the reasons of morality , public order and national security.

The right for legal representation

Presence of lawyers, parents and others during questioning: Article 37(d) of the CRC requires states to provide children with „prompt access to legal and other appropriate assistance. The UN Principles and Guidelines on Access to Legal Aid in criminal Justice Systems assert that states should establish child-friendly legal aid systems that „enable children, who are arrested, deprived of personal liberty, suspected or charged with a crime, to contact their parents/guardians at once and to prohibit any interview in the absence of a parent/guardian, and lawyer or other legal aid provider.“ Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report cases of violence.

In Uganda, 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. Section 89(5) of the Children Act states that: „Where a parent or guardian cannot be immediately contacted, a probation and social welfare officer or an authorized person shall be informed as soon as possible after the child's arrest so that he or she can attend the police interview“. However, according to FHRI, parents or guardians are often scared to accompany their children to police stations in fear that they might be arrested as

⁵³ Article 23(9) of the constitution of republic of Uganda, 1995

⁵⁴ Article 28 of the constitution of republic of Uganda, 1995

well.⁵⁵ As a consequence, children appear in court unaccompanied and the magistrate is forced to deny them bail and remand them since bail is conditional on being accompanied by an adult. Legal representation at the police station is sporadic.

3.1.9 Gaps in the legal framework

Use of detention as a last resort: Children should only be detained as a matter of last resort and keeping children out of police and pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings. Section 94(4) of the Children Act of Uganda promotes this by stipulating 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.

Comprehensive law and policy on children in criminal justice: The development of a comprehensive law and policy on juvenile justice in line with the core elements set out in the Committee on the Rights of the Child's General Comment No 10 can help to construct a climate where children in conflict with the law are defined as rights holders who are entitled to proportional and fair treatment in line with international human rights standards and to establish that detention should only be used as a last resort. The Uganda Children Act Cap. 59 includes a comprehensive outline of the rights of children in conflict with the law in Uganda that is largely in conformity with international human rights standards.

Minimum age of criminal responsibility: Setting the age of criminal responsibility as high as possible and no lower than 12 years (as recommended by the UN Committee on the Rights of the Child) is an important preventive measure since it reduces the number of children in detention. A minimum age for detention above that for criminal responsibility can also reduce the number of children detained. A child in Uganda is defined as anyone under 18 years⁵⁶ and the age of criminal responsibility is 12 years old.⁵⁷ However, fewer than four percent of children aged between 12 and 18 have birth certificates and methods of age determination are at times arbitrary and may be inaccurate. In order to establish the age of a child, the police may contact his or her parents, assess appearance, or check the child's teeth. Research conducted by APP in 2010

⁵⁵ Foundation for Human Rights Initiative, *Juvenile Justice in Uganda*, January to July 2009, 2009, p6.

⁵⁶ Section 2 of the Children Act, Cap. 59.

⁵⁷ *Ibid.* S.88.

concluded that Uganda's remand homes had at times housed children who were younger than 12.⁵⁸

Abolishing status offences: Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco. Such conduct would not be a criminal offence if committed by an adult but a child can be arrested and detained simply on the basis of their age. Status offences focus disproportionately on regulating the actions of girls as well as boys who are poor, disadvantaged or who work or live in the streets and therefore spend much of their time outside of the home. These offences should be abolished and the related conduct should be addressed instead through multi-agency child protection mechanisms. This will ensure that children are not held in detention and exposed to the risk of violence for behavior which does not represent a serious risk to the child or others. A number of status offences were decriminalized under the Children Act including vagrancy, begging, gambling in a public place and being a „rogue or vagabond“. However, children living and/or working on the street are routinely rounded up by police and placed in Kampiringisa Rehabilitation Centre where they are held alongside children who have been convicted of offences.

Diversionary measures: Local councils are meant to play a central role in the administration of juvenile justice legislation and the Children Act stipulates that all matters of a civil and criminal nature concerning children should be dealt with by the Village Executive Committee Court (Local council level 1).⁵⁹ 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“. The local councils are not supposed to make an order remanding a child into custody but this still happens.

Alternatives to pre-trial detention

Under the Children Act, „whenever possible, the court shall consider alternatives to remand such as close supervision or placement with a fit person determined by the court on the

⁵⁸ African Prisons Project, Juvenile detention in Uganda, 2010, p10.

⁵⁹ Section 92, Children Act, Cap. 59.

recommendation of a probation and social welfare officer.⁶⁰ There is a further opportunity for diversion at the Family and Children's Court level, where the magistrate can use his or her powers to involve parties in alternative dispute resolution. However, FHRI reports that in 2009 the only diversionary measures in operation were those operated by civil society organizations.⁶¹

Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in General Comment No 10 that no child should be detained for more than 24 hours without a judicial order. The longer the period spent in police custody without the knowledge of the court system and possibly without the knowledge of family or guardian, the greater the risk of violence taking place. In Uganda, if a child cannot be taken to court immediately then the police may give them a release bond or they may be detained in police custody for a maximum of 24 hours or until they are taken to court, whichever is sooner.⁶²

Limiting time in pre-trial detention

According to international standards, the maximum time spent in pre-trial detention should be no longer than six months. Enforcing time limits will ensure that the numbers of children in pre-trial detention are reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days. The Children Act requires that every case be dealt with expeditiously and without unnecessary delay. General Principle 2 of the First Schedule to the Children Act obliges any court of law to consider the general principle that any delay in determining the case is likely to be prejudicial to the welfare of the child. In relation to matters concerning children who are accused of having infringed the law, Section 99(2) states that „where a case of a child appearing before the Family and Children's Court is not completed within three months after the child's plea has been taken, the case shall be dismissed and the child shall not be liable to any further proceedings for the same offence". However, it goes on to say that remand in custody should not exceed six months in the case of an offence punishable by death (if they were an adult). According to APP, the majority of children are not remanded

⁶⁰ Section 92, Children Act, Cap. 59.

⁶¹ Foundation for Human Rights Initiative, *Juvenile Justice in Uganda, January to July 2009*, 2009, p9.

⁶² Section 89(6), Children Act, Cap. 59.

beyond the time limits. However a minority, mostly charged with capital offences, are being remanded for a longer period.⁶³

3.2 Institutional framework

3.2.1 The Courts Village Executive Committee Court

Local councils are meant to play a central role in the administration of juvenile justice.⁶⁴ 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 Executive Committee 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.⁶⁵

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.⁶⁶ 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 first port of call for a young person, they often refer the children on to the remand homes (Moore, 2010).

3.2.2 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,⁶⁷ and in addition, the General Comment No. 10, which

⁶³ African Prisons Project, *Juvenile Detention in Uganda*, 2010, p19.

⁶⁴ 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

⁶⁵ Government of Uganda (1997) *The Children Act* Cap 59

⁶⁶ Defence for Children International (2007) *From Legislation to Action? Trends in Juvenile Justice Systems across countries*.

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

⁶⁷ United Nations (1989) *Convention on the Rights of the Child*, article 40

recommends that state parties establish juvenile courts either as separate units or as part of existing regional/district courts.⁶⁸

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.⁶⁹

The government acknowledged that the Family and Children Court could not function properly due to inadequate funding, poor transportation facilities and understaffing. Family and children Courts were not functioning at all due to the unavailability of magistrates.⁷⁰ 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.

3.2.3 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.⁷¹ However this rarely appears to be the case.⁷² 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.

⁶⁸ United Nations (2007) Convention on the Rights of the Child General Comment 10: Children's rights in juvenile justice

⁶⁹ Government of Uganda (1997) The Children Act Cap 59

⁷⁰ Defence for Children International (2009) Juvenile Justice Newsletter No. 13

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

⁷² Defence for Children International (2007) "From Legislation to Action? Trends in Juvenile Justice Systems across 15 countries

According to Section 40 (1&2) of the Trial on Indictments Act on evidence to be given on oath:

Every witness in a criminal cause or matter before the High Court shall be examined upon oath, and the court shall have full power and authority to administer the usual oath. Any witness upon objecting to being sworn, and stating as the grounds for such objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief, shall be permitted to make his or her solemn affirmation instead of taking an oath, which affirmation shall be of the same effect as if he or she had taken the oath.

Section 40 (3) of the Trial on Indictments Act further states that:

Where in any proceedings any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received, though not given upon oath, if, in the opinion of the court, he or she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; but where evidence admitted by virtue of this subsection is given on behalf of the prosecution, the accused shall not be liable to be convicted unless the evidence is corroborated by some other material evidence in support thereof implicating him or her.

Similar provisions are in section 101 (1&2) of the Magistrates Courts Act which states:

Every witness in a criminal cause or matter in a magistrate's court shall be examined upon oath, and the court before which any witness shall appear shall have full power and authority to administer the usual oath. Any witness upon objecting to being sworn, and stating as the grounds for that objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief, shall be permitted to make a solemn affirmation instead of taking an oath which affirmation shall be of the same effect as if he or she had taken the oath.

Regarding child witnesses, the Magistrates' Courts Acts provides in section 101 (3 &4):

(3) Where, in any proceedings, any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, the child's evidence may be received, though not given upon oath, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. Where evidence admitted by virtue of subsection is given on behalf of the prosecution, the

accused shall not be liable to be convicted unless that evidence is corroborated by some other material evidence in support of it implicating him or her. Accordingly, it is the duty of the magistrate to carry out an investigation and make definite findings on the capacity of the child to give sworn or unsworn evidence. The inquiry the magistrate makes in this connection is the voir dire. For this purpose the court should put questions to test the child's general knowledge and perception and find out if he/she knows the difference between truth and lies and the need to tell the truth.

If the child does not possess sufficient intelligence nor understands the duty to speak the truth, his or her evidence cannot be received in court nor can that child give unsworn evidence. If the child is possessed of sufficient intelligence and understands the duty of speaking the truth, he or she will be permitted to give evidence not on oath. *Kibangeny Arap Kolil -vs- R* (1959) EA. Although it is a legal requirement that unsworn evidence of a child requires corroboration to support a conviction, in practice even a child's evidence on oath requires corroboration by some other independent evidence implicating the accused. Moreover, even a child who gives evidence not on oath is liable to cross examination.

The focus should be on reliability and not sincerity

Under the Common Law tradition inherited from England, child witnesses were regarded as suspect. The reasons for this attitude were not clear. However, because of the spiritual immaturity of a child, his ability to appreciate an oath taken before God eclipsed all other possible concerns. Most children were precluded from testifying "because of their supposed inability to understand the significance of the oath" in a religious sense. It is not altogether clear whether the early justification for finding children incompetent was the child's susceptibility to adult influence, the child's inability to distinguish truth from fantasy, or a combination of these two presumptions. For whatever reason, until late in the eighteenth century, English courts did not permit children under the age of fourteen to give testimony.

In spite of the above, England and other Common Law Countries have moved on, whilst Uganda is still focused on establishing whether a child understands the importance of telling the truth by asking them questions that aim to establish their understanding of religious concepts. On the

other hand, in Canada, the voir dire allows questioning on an unemotional topic that will demonstrate the child's ability to communicate and to determine the child's appreciation of the truth. Children begin to lie starting around age 3. They soon learn that it is morally wrong to do so. Nonetheless, there is no evidence that younger children are more likely to lie than older children or adults. A major pitfall with children is that they are open to suggestibility.

CHAPTER FOUR

PRESENTATION AND INTERPRETTION OF STUDY FINDINGS

4.0 Introduction

This chapter is concerned with presentation and interpretation of findings for the study based on the constitutional review provisions of the Ugandan 1995 constitution and relevant acts related to Juvenile rights under detention. The presentation is based on the research objectives set in chapter one. The presentation is a secondary data review of the constitutional provisions including the aspects sought for in the study in line with the research objectives.

4.1 Comparison of Juvenile rights protection in Uganda with other jurisdiction

Cambodia

The Constitution of the Republic of Uganda provides for the creation of Local Councils as part of the decentralization of power. Local Councils are the lowest units with administrative, legislative, and judicial powers on behalf of central governments.⁷³ Local Council Courts have the authority to handle petty offences to the criminal code. The Children's Act also gives the local councils the responsibility to safeguard and promote the rights and welfare of children. However, a situation analysis conducted in 2000 by DCI and partners revealed that Local Council courts were not handling petty offences as stipulated by law, as Local Council committees tended to prioritise cases other than those involving children in conflict with the law. As a result there had been a high influx of children's cases of petty crime into the formal legal system.

The legal protection for children in conflict with the law is not sufficient in Cambodia. Children in conflict with the law too often have their rights to legal protection denied. This includes the right to have access to justice, to obtain redress, and to have legal assistance in the preparation of their defence. The reasons for this gap in protection include the following: a shortage of funds for legal aid lawyers, a lack of lawyers specializing in children's issues, low interest in handling such cases, and in some circumstances, judges not appointing lawyers as required by law

⁷³ The Local Councils are also involved with activities such as making by-laws in the communities, general welfare and development, conflict resolution like land disputes, protecting the Constitution, and promoting democratic leadership and governance.

Philippines

Research in the Philippines has shown that children in conflict with the law experience particularly high levels of abuse at the time of arrest and in police custody. The conditions in detention facilities are generally bad and children are often detained with adults. There is almost no practical experience of crime prevention programs or diversion in the formal system, and little support to help children returning to their communities to become socially reintegrated after detention. There is currently no legislation setting out a separate system to address situations of children in conflict with the law. There is a number of Juvenile Justice Bills awaiting Congress' attention. Crime prevention and diversion are components of these Bills but there are as yet very few practical models that could be followed. This project is one of them.

Malawi

Different from Uganda, currently does not have a specialized system for children in conflict with the law. There are no governmental legal aid services and there is a dearth of social workers. However, communities in Malawi have a history of caring collectively for children. Community based programs, such as the Community Crime Prevention Committees, are a return to traditional ways of handling children's issues. Traditionally in Malawi whenever a child committed a crime, the traditional system (chiefs, Traditional Authorities and the community elders, the child and his/her family and, finally the victim) would counsel the family and the child and make decisions on what to do. Most of the time the children were requested to do some work for the benefit of the whole community, for example, herding cattle or cooking. Such a sanction was not considered abuse or exploitation of the child, but simply the only means the community had with which to address the conflict and to support the rehabilitation of the child.

Netherlands

The Dutch criminal code and the code of criminal procedure contain special provisions which establish that sanctions for children in conflict with the law must be designed for rehabilitation. In 1995, a new amendment to juvenile criminal law was passed in the Netherlands. While the amendment reinforced the legal basis for alternative sanctions, it also tightened provisions relating to juvenile criminal law. For example, the maximum period of imprisonment for children in conflict with the law was raised from one to two years. Legal restrictions were eased, which shielded children from the application of adult criminal law to their cases.

Since 1995, the possibility of calling on the services of HALT bureaus, which were set up in 1981, is embodied in the criminal code. Further details on the operation of the HALT bureaus have been laid down in legal regulation and in the unitary guidelines of the state prosecution service. The Dutch juvenile justice system lays down different forms of alternative sanctions at different levels. For instance, the police can refer to a HALT project and the public prosecutor and the judge have the possibility to use „task penalties“ that consist of learning- and working schemes. The Netherlands lobbies for and gives institutional support to alternatives to the deprivation of the liberty of children. This is done by sending out press releases, as well as organizing expert seminars and meetings with politicians.

Tajikistan

Compared to Uganda, Tajikistan signed the CRC in 1993. The National Commission on Child Protection (NCCP) was founded in 2001 and is chaired by the Deputy Prime Minister and attended by deputy ministers from relevant ministries. In 2001 the NCCP established an Expert Group to make recommendations for the harmonization of child justice legislation and with the convention on the Rights of the Child. The Director of Nasli Navras, SC UK's partner NGO, is a member of the Experts Group. In Tajikistan, the Commission on Minors has a mandate to address the cases of children brought forward by either police or parents, as well as children in conflict with the law who are under the age of criminal responsibility. The Commission often sends children who are under 14 years (some as young as 7 and even 3 years of age) into detention centers, in contravention to their regulations. There are also cases where children are detained for long periods, e.g. a 13 year old who was detained for 6 years. The children brought to the Commission on Minors are in need of care and protection and many are working children or children living in the street. It is these groups of children that Nasli Navras' Drop-In Centre has assisted as well as those released from detention. Until recently, the centre was primarily involved with children who may also have been working but went home at night. Now they are assisting children living in the street. The life-style of these children is very different from the former as they live a hand-to mouth existence in gangs, and are in frequent contact with the police. The younger children are often in danger of violence, especially gang rapes by older

children as punishment, usually for failing to collect sufficient amounts of money. The younger children are in need of shelter at night for protection.

Lebanon and Egypt

Uganda has an established system of Juvenile detention different from that of Lebanon and Egypt were not in a position to confront the escalation in juvenile delinquency without restructuring their legislative and institutional systems. Efficient administration of juvenile justice in both countries was hampered by the absence of a coordinating body and the lack of an effective information-gathering system. Therefore, within the context of juvenile justice reform, a Department for Minors (Lebanon) and the General Administration for the Legal protection of Children (Egypt) were established as part of the respective ministries of Justice. These ministerial entities coordinate the work carried out by the judicial police officers, judges, prosecutors, social workers, educators, and the personnel working in detention and correctional facilities. While working in close cooperation with other concerned ministries, these departments are responsible for policy development and for the initiation of new education and reintegration programs. They also encourage the preparation of plans of action to prevent juvenile delinquency and to protect child victims.⁷⁴

⁷⁴ Juvenile Justice Initiative in Lebanon, Alexandre Schmidt and Ralph Riachy. Strengthening Legislative and Institutional Capacities of Juvenile Justice in Egypt, UNODC. Additional information provided by Zarir Merat, Renee Sabbagh (UNODC Field Office - Beirut/Lebanon) and Leif Villadsen, Myrna Bouhabib (UNODC Field Office - Cairo/Egypt)

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter is concerned with the summary of the findings, conclusions and recommendations of the study.

5.1 Conclusion

The purpose of the study is to assess the effectiveness of legal framework on protecting Juveniles in Uganda. The study had the objectives which included conducting an analysis of the legal rights of Juveniles during detention in Uganda; establish the level of enjoyment of rights by Juveniles in detention in Uganda, to make a comparative study on other jurisdiction and to establish the gaps in legal framework on Juvenile rights and make recommendations for the study. The study on the first objective conclude that the legal framework in Uganda despite stipulating some conceptions on the Juveniles is not clear on the terms and treatment of the children the legal system in this context of the management of detained juveniles, the laws prevails thought the implementation of the legal provision. On the second objective the study conclude that Juveniles rights of detentions are observed through schools, access to the health services, accommodation and feeding though this is limited. On the third objective, in comparison of the legal systems of the countries, Uganda seem to be similar to the countries of Africa like Malawi were the legal framework is not effective. On the fourth objective, the study conclude that gaps in legal framework on Juvenile rights and make recommendations for the study. The legal framework in Uganda especially in the local council authorities provides contradictory information concerning the system of the legal framework

5.2 Recommendations

On the first research objective, the study makes the following recommendations

Proper registering of detainees within a time limit: Registering of detainees is an important preventive measure since it establishes that the police station has responsibility and is accountable for the treatment of a child detainee. Specialist police officers to deal with children: International standards encourage specialization within the police to deal with child offenders and a child should be referred to the relevant specialized officer as soon as possible following arrest.

Separation from adults during police detention: Article 34(6) of the Constitution of the Republic of Uganda 1995 provides that, „a child offender who is kept in lawful custody or detention shall be kept separately from adult detained with an adult person. However, a report by FHRI on juvenile justice in Uganda states that there are very few specialized cells in police stations and children are often detained with adults. This is confirmed by the Commissioner of Police and Community Affairs: „The police have few detention facilities and in some cases, children are detained with adults or at police posts where such detention is not allowed. It is not uncommon to find children remanded at police stations by courts. This may be due to lack of remand homes in some magisterial areas. The 2010 UHRC report confirms that, „in some instances, juvenile suspects remanded by courts would be taken back to the Police either because the Probation Officer was unavailable or because there was lack of transport to take the juvenile suspects to the respective remand homes.

On the second objective, regarding the enjoyment rights of juveniles during detention

Separation from adults in pre-trial detention: Although it is not permitted under the Children Act, there is evidence that children are detained alongside adults in Uganda. Ordinarily, detained children should be placed in the formal basis. The remand homes and national rehabilitation centre have an open policy on visits from family and parents. Specialized standards and norms concerning disciplinary measures and procedures with respect to children in pre-trial detention Corporal punishment is prohibited as a disciplinary measure in penal institutions in the Prisons Act 2006.

Appropriately qualified, trained and remunerated staff: According to the UN Study: „Unqualified and poorly remunerated staff are widely recognized as a key factor linked to violence within institutions.“ The APP report found that there is generally a lack of specialist staff training in the facilities for juveniles. In an interview with the APP, 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 had received no specific training on working with children in conflict with the law.

Implementation of a clear child protection policy, with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions where children are detained do not have a clear overarching child protection policy that includes a clear statement that every child has the right to be protected from all forms of violence, abuse, neglect and exploitation, and it is the duty of every police officer and detention facility employee to ensure that children are so protected and where everyone has a duty to immediately report any concerns, suspicions or disclosures of to the appropriate authorities.

On the third objective, for the comparison of the Juveniles rights protection

Different countries such as Uganda need to attain specific regulations to be drawn up and implemented in line with the developed countries concerning the use of disciplinary measures in all detention facilities where children are held. Staff must be trained in child rights and non-violent disciplinary measures, and must be fully aware of all the provisions outlined in the children act and other relevant legislation. Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees, and they must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.

On the fourth objective, the study makes the following recommendations

Ensure that independent inspections and monitoring of detention facilities by qualified bodies takes place on a regular basis, at times unannounced, with full access to the facilities and freedom to interview children and staff in private. Uganda is obliged to thoroughly and promptly investigate allegations of violence (including the use of torture) against children in police and pre-trial detention, prosecute those implicated by the evidence, and, if their guilt is established following a fair trial, impose proportionate penalties. Implied in this is that the children concerned should have the opportunity to assert their rights and receive a fair and effective remedy, that those responsible stand trial, and that the victims themselves obtain reparations. It is recommended that an independent body for receiving and processing complaints by children in detention be established in order for any instances of abuse, ill-treatment or torture to be properly reported and followed up.

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