

**University of Pretoria**

**Faculty of Law**



**THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ACCESS TO JUSTICE FOR  
JUVENILE OFFENDERS IN UGANDA**

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE DEGREE  
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### **Declaration**

I, Ivan Seguya, student No U21836834, hereby declare that this dissertation is my own work and has not previously been submitted by me or any other person for a degree at the University of Pretoria or any other tertiary institution.

Signature: IVAN SEGUYA

Date: 29 October 2021

### **Dedication**

This dissertation is dedicated to all Ugandan children and to my beloved mother, Lilian Bageya, and my grandmothers, Christine Nabukeera & the late Sarah Njala, who saw me through my years of childhood.

### **Acknowledgment**

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### **List of abbreviations**

ACERWC	African Committee of Experts on the Rights of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
FCC	Family and Children Court
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency syndrome
ICCPR	International Covenant on Civil and Political Rights
PILAC	Public Interest Law Clinic
RSA	Republic of South Africa
UHRC	Uganda Human Rights Commission
UN	United Nations
UNCRC	United Nations Committee on the Rights of the Child
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USA	United States of America

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## CHAPTER ONE: INTRODUCTION

### 1.1 Background

Juvenile delinquency is increasingly becoming rampant not only in Uganda but across the entire globe.<sup>1</sup> Over the years, there have been socioeconomic changes on account of globalisation that have contributed to the rise in juvenile delinquency.<sup>2</sup> Uganda is home to one of the world's youngest populations, with about 56.7% of its population below 18 years of age.<sup>3</sup> Children constitute the single biggest demographic group surviving under poverty in Uganda.<sup>4</sup> To seek survival, many children often find themselves in conflict with the law. Some are, for instance, pushed into theft due to necessity.<sup>5</sup> Such crimes make children subject to the juvenile justice system, thus accentuating its relevance to check whether it facilitates access to justice for child offenders.

The nature of a country's child justice system is significant in attaining the rule of law and its associated objectives.<sup>6</sup> As Nelson Mandela posited, 'there can be no keener revelation of a society's soul than the way in which it treats its children.'<sup>7</sup> Every civilised country needs to adopt an adequate legal framework to safeguard and guarantee that juvenile offenders have their rights protected and can access justice. Juvenile offenders are entitled to special care and treatment when placed under the justice system because they are vulnerable and need protection and care.<sup>8</sup>

In simple terms, juvenile justice connotes 'legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders.'<sup>9</sup> In this study, the term child justice is used interchangeably with juvenile

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<sup>1</sup> AL Pillay 'Criminal capacity in children accused of murder: Challenges in the forensic mental health assessment' in (2006) 17 *Child & adolescent mental health* at 18. See also F Zeija 'Uganda' in SH Decker & N Marteaché (eds) *International Handbook of Juvenile Justice* (2017) at 55.

<sup>2</sup> UN 'Juvenile delinquency' World Youth Report, 2003 at 189, 206  
<https://www.un.org/esa/socdev/unyin/documents/ch07.pdf> (accessed 2 August 2021).

<sup>3</sup> National Population Council 'The state of Uganda population report 2019' at 3. <http://npcsec.go.ug/wp-content/uploads/2013/06/2019-SUPRE.pdf> (accessed 3 August 2021).

<sup>4</sup> Human Rights Watch 'Where do you want us to go? Abuses against street children in Uganda' 17 July 2014  
<https://www.hrw.org/report/2014/07/17/where-do-you-want-us-go/abuses-against-street-children-uganda> (accessed 1 August 2021)

<sup>5</sup> Zeija (n 1) 57.

<sup>6</sup> UN 'Guidance notes of the Secretary General. UN approach to justice for children' September 2008  
[https://www.unodc.org/pdf/criminal\\_justice/Guidance\\_Note\\_of\\_the\\_SG\\_UN\\_Approach\\_to\\_Justice\\_for\\_Children.pdf](https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf) (accessed 1 August 2021).

<sup>7</sup> N Mandela, Address at the launch of the Nelson Mandela Children's Fund, Pretoria 8 May 1995  
[http://www.mandela.gov.za/mandela\\_speeches/1995/950508\\_nmcf.htm](http://www.mandela.gov.za/mandela_speeches/1995/950508_nmcf.htm) (accessed 5 August 2021)

<sup>8</sup> GV Bueren *The International Law on the Rights of the Child* (1995) 169.

<sup>9</sup> UN Committee on the Rights of the Child (UNCRC) General comment 24 on children's rights in the child justice system CRC/C/GC/24.

justice. For purposes of this study, access to justice means justice that ensures that the rights of juvenile offenders in the justice system are observed and upheld. It also entails creating avenues that improve an individual's access to courts, ensuring legal representation, and guaranteeing that judicial and legal outcomes are equitable and just.<sup>10</sup> Access to justice also has to be appreciated in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).<sup>11</sup> This means that there should be smooth accessibility to vital information concerning one's rights, knowledge of the law, enjoying the protection of one's rights by law enforcement bodies without discrimination, ability to access courts with ease, and reasonable costs for adjudication among others.

The Annual Police Report 2020 indicated that police received a total of 195,931 cases.<sup>12</sup> However, the report is silent on how many of these cases involved juvenile offenders, although it states that 5625 cases taken to court in 2020 involved juvenile offenders. Nonetheless, this number shows that children are subject to the juvenile justice system in Uganda. Young offenders in Uganda face an overwhelming number of challenges when they interface with the justice system. Some of these challenges are attributable to gaps in the country's legal and institutional framework. For example, police is fond of holding children together with adult suspects in the same police cells.<sup>13</sup>

The adoption of the United Nations Convention on the Rights of the Child (CRC)<sup>14</sup> in 1989 ushered in a new epoch regarding children's rights.<sup>15</sup> This was followed by the adoption of a children rights specific instrument for Africa, the African Charter on the Rights and Welfare of the Child (ACRWC) in 1990.<sup>16</sup> These instruments ensured that children were no longer objects of the law, turning them into subjects of human rights.<sup>17</sup> Children ceased being viewed as property belonging to their parents and helpless items of charity. They became full rights bearers. More importantly for this study, both

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<sup>10</sup> UNDP 'Access to justice practice note' 2015 <https://www.undp.org/publications/access-justice-practice-note> (accessed 6 August 2021).

<sup>11</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Adopted by General Assembly resolution 40/33 of 29 November 1985.

<sup>12</sup> Uganda Police 'Annual crime report 2020' at 95 <https://www.upf.go.ug/wp-content/uploads/2021/04/ANNUAL-CRIME-REPORT-2020-1.pdf?x74136> (accessed 2 August 2021).

<sup>13</sup> Uganda Human Rights Commission (UHRC) 'Human rights report 2020' at 30 <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf> (accessed 3 August 2021).

<sup>14</sup> Convention on the Rights of the Child GA Res 44/25, Annex 44 UN GAOR Supp (No 49) at 167, UN Doc A/44/49 (1989), entered into force 2 September 1990.

<sup>15</sup> African Child Policy Forum 'Realising rights for children: Harmonisation of laws on children Eastern and Southern Asia (2007) at 4 [http://www.sarpn.org/documents/d0002744/ACPF\\_children\\_rights.pdf](http://www.sarpn.org/documents/d0002744/ACPF_children_rights.pdf) (accessed 5 August 2021).

<sup>16</sup> OAU Doc CAB/LEG/24.9/49 (1990), entered into force 29 November 1999.

<sup>17</sup> GO Odongo 'The domestication of international law standards on the rights of the child with specific reference to juvenile justice in the African context' 18 October 2005 (LLD thesis, University of the Western Cape) at 10 [http://etd.uwc.ac.za/usrfiles/modules/etd/docs/etd\\_init\\_9110\\_1176963955.pdf](http://etd.uwc.ac.za/usrfiles/modules/etd/docs/etd_init_9110_1176963955.pdf) (accessed 5 August 2021).

instruments led to developing a rights-based model to child justice.<sup>18</sup> They emphasized the importance of the ‘best interests’ principle as the guiding principle in all matters concerning children.<sup>19</sup> Articles 40 and 17 of CRC and ACRWC respectively introduced guiding principles for juvenile justice to ensure that the rights of juvenile offenders are protected.

Uganda ratified the CRC and the ACRWC in 1990 and 1994, respectively. Both instruments *inter alia* required state parties to enact legislation to realise the rights of children.<sup>20</sup> Uganda was thus obligated to enact legislation domesticating the ACRWC and the CRC provisions with the objective of facilitating access to justice of juvenile offenders.

Indeed, Uganda promulgated the 1995 Constitution, which contains a bill of rights that, among others, guarantees access to justice of child offenders.<sup>21</sup> In addition, the Children Act was enacted in 1996 to effectuate the CRC and ACRWC.<sup>22</sup> The Act was hailed as Africa’s first comprehensive children’s law.<sup>23</sup> The Children Act is the primary law on children’s affairs, setting out different rights and institutional frameworks for children’s rights protection in Uganda. The Act *inter alia* covers issues of child justice. Parliament recently amended the Act in 2016 to enhance the protection given to children, including juvenile justice matters.<sup>24</sup>

However, the passing of the Children Act and its recent 2016 amendment has not shielded juvenile offenders from various injustices in the justice system. The juvenile justice system is still riddled with several challenges that impede juvenile offenders from accessing justice. The fact that Uganda does not have a specialized legislation concerning juvenile justice exacerbates the situation. A need, therefore, arises to scrutinize Uganda’s legal framework on juvenile justice to ascertain whether it is up to the standards as set forth by the ACRWC and the CRC. Therefore, this study seeks to interrogate Uganda’s legal and institutional framework for protecting children’s rights to assess whether it is up to international standards and ascertain the extent to which it safeguards the rights of child offenders.

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<sup>18</sup> V Odala ‘Spectrum for child justice in the international human rights framework: from reclaiming the delinquent child to restorative Justice’ (2012)27 *American University International Law Review* at 560.

<sup>19</sup> Art 3 CRC & Art 4(1) ACRWC.

<sup>20</sup> DM Chirwa & T Kaime ‘Where are the missing pieces? Constructing a mosaic of the CRC and the African Children’s Charter in Malawi’s law and policy’ (2008)2 *Malawi Law Journal* at 86.

<sup>21</sup> Art 34 1995 Constitution of Republic of Uganda.

<sup>22</sup> Children Act, Cap 59, Laws of Uganda, 2000.

<sup>23</sup> J Sloth-Nielsen, *Children’s Rights in Africa: A legal perspective* (2008)4.

<sup>24</sup> The Children (Amendment) Act, 2016.

## 1.2 Problem statement

Juvenile offenders are entitled to certain rights that guarantee their access to justice. These include inter alia the right to legal representation and separation from adult offenders. The principle of best interests must guide the juvenile justice system. The ratification of the CRC and the ACRWC in 1990 and 1994, respectively, led Uganda to review all child-related laws.<sup>25</sup> This was aimed, among others, to guarantee that juvenile offenders have access to justice. In 1996, Uganda enacted the Children statute to effectuate the provisions of the aforementioned international instruments. Sections 88-108 of the Children Act elaborately set out juvenile offenders' rights and procedural guarantees to protect them when they interface with the justice system.

However, despite a good law on paper, the juvenile justice system in Uganda is infested with many problems that impede juvenile offenders from attaining justice. Firstly, the Children Act is not fully implemented.<sup>26</sup> Secondly, while the CRC and the ACRWC emphasize that the best interests principle shall be the principal concern in all matters affecting children, what is done in practice is different. It is a common practice for children not to be informed of their rights after an arrest. The practice of holding children together with adult suspects by police in the same cells is very prevalent.<sup>27</sup> This is accompanied by illegal detention of children beyond the constitutionally allowed time of 48 hours before arraignment.<sup>28</sup> Thirdly, Uganda does not have a standalone legislation specifically addressing juvenile justice, which translates into giving juvenile justice in Uganda flippant attention, among others. All these mean that juvenile offenders in Uganda remain in a precarious situation, and the violation of their rights continues unabated. Therefore, a need arises to examine Uganda's legal and institutional juvenile justice framework to assess the extent to which it complies with the international juvenile justice standards, the existent gaps, and the possible solutions.

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<sup>25</sup> DM Chirwa 'Children's rights, domestic alternative care frameworks and judicial responses to restrictions on inter-country adoption: A case study of Malawi and Uganda, (2016) 16 *African Human Rights Law Journal* at 119.

<sup>26</sup> Zeija (n 1).

<sup>27</sup> UHRC (n 13).

<sup>28</sup> As above.

### **1.3 Research question**

The main research question is: To what extent does Uganda's legal and institutional framework on juvenile justice conform to the international standards set out in the ACRWC and the CRC? The sub-questions are:

- a) To what extent are the rights of juvenile offenders recognised under Uganda's juvenile justice system?
- b) To what extent does Uganda's child justice system comply with international standards on child justice under the CRC, ACRWC, and other instruments?
- c) What recommendations are necessary to close gaps, if any, in Uganda's juvenile justice system and promote access to justice?

### **1.4 Methodology**

This study adopted desktop research focusing on administration of juvenile justice. In this regard, primary and secondary sources were of great relevance. The primary sources included legislation, treaties, and case law. The secondary sources comprised textbooks, reports, journal articles, newspapers, conference papers, and relevant materials from the internet.

### **1.5 Literature review**

This literature review explores the literature on international law and the rights of juvenile offenders. In addition, it explores the juvenile justice system in Uganda after the adoption of the CRC and ACRWC. Although extensive studies have been done on the rights of children internationally, there is a dearth of literature on the juvenile justice system in Uganda. A few studies have been conducted about Uganda's juvenile justice system.

Van Bueren gives an elaborate exposition on the growth of juvenile justice in international law.<sup>29</sup> First, she examined the guiding principles for the rights of children regarding the administration of child justice, such as the right to a speedy trial, diversion, and rehabilitation as laid down under the CRC and other instruments. She explains further that the primary intention behind these principles is to guarantee that the juvenile justice system reflects the doctrine of the child's best interests. She also highlights rights that juvenile offenders enjoy while at trial and gives valuable lessons for the management of child justice in domestic jurisdictions.

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<sup>29</sup> Bueren (n 8)169 – 215.

According to Krisberg, the system of child justice remains largely unchanged from the past.<sup>30</sup> He asserts that what has fundamentally changed are the rights interpretations that child offenders enjoy as they pass through the justice system. He explains that the initial stance of juvenile courts was acting in the best interests of the child, focusing on their welfare. However, he posits that the welfare approach has been supplanted by an approach that centres on legal rights of children as humans.<sup>31</sup> The change in approach to juvenile justice was informed by increased doubt about the capacity of the children court to address several juvenile issues effectively.

Violet Odala highlights the stages of development of approaches to juvenile justice in international law.<sup>32</sup> She postulates that the juvenile justice system has evolved from the early welfarist model into the justice model, eventually to a rights based model. It is currently focusing on the restorative model. She measures the welfarist approach against the justice model approach. She contends that the welfarist model disregarded children as self-determining beings with the ability to make their own decisions.

She also asserts that the welfarist theory impeded children from enjoying safeguards of the law. Furthermore, she points out that the welfare theory denied children legal representation in courts of law and that evidentiary rules were neither followed, which eventually violated juvenile offenders' rights. She makes a case for the justice model approach, arguing that it is cognizant of children as reasoning agents with the ability to have responsibility for their actions. It also ensured that juvenile offenders enjoyed their human rights fully and that an established legal process was followed in determining the child's culpability.

Odala also underscores the importance of restorative justice in a child justice system. She asserts that it is one of the best avenues of dealing with juvenile offenders. She stresses that modern juvenile justice systems have embraced the restorative approach that includes the victim, the juvenile offender, and the public when handling crime. She also posits that the restorative approach guarantees that the victim gets reparation and the offenders' reintegration into society. This study specific to Uganda will evaluate which approach Uganda's juvenile justice system has embraced.

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<sup>30</sup> B Krisberg 'Rediscovering the juvenile justice ideal in the United States' in J Muncie & B Goldson (eds) *Comparative Youth Justice* (2006) 6-18.

<sup>31</sup> R Smandych 'Canada: Re-penalization and young offenders' rights' in Muncie & B Goldson (eds) *Comparative Youth Justice* (2006) 19-33.

<sup>32</sup> Odala (n 18).

Mats Melin examined the impact of the CRC on the position of children in society.<sup>33</sup> He stresses that the juvenile justice system should establish avenues to see that the views of children are respected and heard. He also advocates for avoidance of subjecting juvenile offenders to legal proceedings in courts, arguing that it may cause trauma to children. However, his work was general, with no specific attention to Uganda, which this study aims to achieve.

Julia Sloth-Nielsen gives a general overview of the child justice system in Africa.<sup>34</sup> She highlights legal reforms that have been undertaken across the continent, pointing out their strengths and gaps. She observes that the focus of the child justice system is now the protection of children. She also points out that several African countries have legal frameworks espousing reforms that guarantee child-friendly justice systems. She recommends a need for reform of institutions involved in child justice.

Odongo also states that several African states in concurrence with the ACRWC and CRC have adopted policies and laws regulating child justice administration in their respective countries.<sup>35</sup> He, however, notes that many African states have not put the CRC and ACRWC into practice.

One of the leading works on juvenile justice in Uganda is by Lilian Tibatemwa-Ekirikubinza.<sup>36</sup> She evaluates the extent to which Uganda's juvenile justice system upholds child rights. She discusses the perceptions of society towards the juvenile justice system. She argues that societal perception is essential because the enjoyment of rights partly depends on what society perceives as acceptable values and norms. The stakeholders' perceptions are very impactful on the level to which rights contained under particular legislation are realised.

Ekirikubinza also makes a case for restorative justice, arguing that it is more appropriate for a child justice structure since it creates additional room for reintegration into society and rehabilitation. She further highlights the principles of restorative justice: accountability for wrongdoing, diversion, community participation, shaming, rehabilitation, and family responsibility. She assesses how Uganda law fits into the above principles. Finally, she argues that adopting an appropriate restorative justice system should consider indigenous justice traditions, which will guarantee that the model adopted is

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<sup>33</sup> J Sloth-Nielsen 'What's in a name? Child friendly justice in Africa' in S Mahmoudi et al *Child friendly justice. A quarter of a century of the UN Convention on the Rights of the Child* (2015) at 27.

<sup>34</sup> M Melin 'A quarter of century with the UN Convention on the Rights of the Child' in S Mahmoudi et al *Child friendly justice. A quarter of a century of the UN Convention on the Rights of the Child* (2015) at 233.

<sup>35</sup> GO Odongo 'Kenya' in SH Decker & N Marteache (eds.) *International Handbook of Juvenile Justice* (2017).

<sup>36</sup> LT Ekirikubinza 'Juvenile justice and the law in Uganda: Towards Restorative Justice' in L Lindholt & S Schaumburg-Muller *Human Rights in Development Law Year Book* (2003).

culturally sensitive and acceptable to society. However, Ekirikubinza's study places much reliance on restorative justice. This study will be all-encompassing, assessing the extent to which Uganda's legal and institutional framework complies with international standards regarding juvenile justice. In addition, her work was decades ago before the recent amendment of the Children Act in 2016. This study will highlight the current situation after the amendment.

Flavian Zeija stresses some of the primary roots of juvenile delinquency in Uganda.<sup>37</sup> He highlights that some of the main causes of child crime in Uganda include adult influence and necessity, broken homes, drug abuse, HIV/AIDS, domestic violence, inherited traits, and uncontrolled media. His work is vital as it considers aspects of the Children Act and how it upholds children's rights in the justice system. However, his work focuses on all children's interactions with the justice system, including child witnesses. This study focuses specifically on juvenile offenders.

In 2010, Marianne Moore made a study about juvenile detention in Uganda.<sup>38</sup> The study assessed functionality of juvenile detention facilities in Uganda to ascertain whether they live up to the international guidelines and standards. The study, in particular, pointed out that there are relatively good elements regarding juvenile detention centres in Uganda, although they were affected by a lack of adequate resources. The findings are very relevant to this study as they cover detention, an essential component of juvenile justice administration. Besides, it is an eye-opener on what practice entails regarding juvenile detention as a component of juvenile justice.

## **1.6 Limitations of the study**

There is a shortage of literature on juvenile justice administration in Uganda, with available literature emphasizing other rights in the Children Act. No tangible literature exists on gaps in Uganda's legal framework concerning juvenile justice. There is also no accurate data on the number of children who run afoul of the law annually in Uganda due to poor record-keeping. For example, the annual Police report does not indicate how many cases involving juvenile suspects it receives or the cases it has resolved through diversion mechanisms. In addition, an appraisal of the juvenile justice system would necessitate an interface with children who have been subjected to this system. However, due to constraints in resources, this was not possible; instead, reliance was placed on secondary sources.

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<sup>37</sup> Zeija (n 1).

<sup>38</sup> M Moore 'Juvenile detention in Uganda. A review of Uganda remand homes and the National Rehabilitation Centre' October 2010 <https://resourcecentre.savethechildren.net/node/3994/pdf/3994.pdf> (accessed 23 August 2021).



## **1.7 Chapter outline**

The paper is divided into five chapters. Chapter one sets out the background to the study, the problem statement, the research question, the methodology, the literature review, and the limitations of the study.

Chapter two critically interrogates the development of various approaches/theories of juvenile justice. The chapter traverses the different approaches/theories to juvenile justice from the welfarist approach to the contemporary child rights approach. The purpose is to lay a foundation for the child rights based approach that the CRC and ACRWC front. The chapter also covers the historical development of the child justice system in Uganda.

Chapter three outlines international and regional legal frameworks governing child justice as enunciated by the CRC, ACRWC, and other instruments. Herein, the requirements for an effective child justice system that safeguards the rights of children rights as presented under the CRC, ACRWC, and other guidelines such as the Beijing Rules are examined.

Chapter four sets out Uganda's legal and institutional framework for child justice administration. All the laws and institutions that govern juvenile justice in Uganda are assessed against the standards outlined by the CRC, ACRWC, and other instruments. More emphasis is put on the Children Act Cap 59 and its 2016 amendment. The assessment aims at showing the existent gaps in the system. In addition, for each standard highlighted, the disparity between the law and practice is highlighted and the possible causes of such disparity.

Chapter 5 sets out the conclusion to the study and the recommendations to close the existent gaps in Uganda's juvenile justice system.

## CHAPTER TWO: HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE: ANALYSIS OF THE DIFFERENT APPROACHES TO CHILD JUSTICE.

### 2.1 Introduction

The manner in which juvenile offenders are treated is critical for every juvenile justice system. A nation's civility, value system, compassion, humanity, and moral integrity are signified by how juvenile offenders are handled in the justice system.<sup>39</sup> Over time, the juvenile justice system has evolved through different theories or approaches. A juvenile justice system connotes laws, guidelines, procedures, standards, mechanisms, policies, bodies, and institutions applicable to child offenders above the age of criminal liability.<sup>40</sup> Globally, there is no consensus on the proper response to child crime. As a result, varied theoretical approaches to juvenile justice have been developed over time to guide the child justice systems of different states.<sup>41</sup> These approaches include the welfare approach, the justice model, and the child rights model.

This chapter will focus on the major approaches to child justice that have shaped the juvenile justice systems over time, right from the welfarist approach to the contemporary child rights approach that the CRC and ACRWC introduced. The last part will briefly consider the historical context of the child justice system in Uganda.

### 2.2 Welfarist approach

The early forms of justice handled children in a similar manner as adults.<sup>42</sup> Children were subjected to similar criminal justice procedures as adults, and no justice system specifically for children existed.<sup>43</sup> In the late 19<sup>th</sup> century, it was realised in some Western systems that children needed special treatment because of their vulnerability. This culminated in developing a distinctive justice system for children

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<sup>39</sup> B Goldson 'What "justice" for children in conflict with the law? Some reflections and thoughts' (2009) 79 *Criminal Justice Matters* at 19.

<sup>40</sup> GT Patterson & W Graham *Clinical interventions in criminal justice settings* (2018) 6.

<sup>41</sup> JA Winterdyk 'Introduction: Juvenile justice in the international arena' in JA Winterdyk (ed) *Child justice: International perspectives, models and trends* (2015) at 7.

<sup>42</sup> K Richards 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & issues in crime and criminal justice* at 1.

<sup>43</sup> WR Miller 'Juvenile delinquency, history of' in WR Miller (ed) *The social history of crime and punishment in America. An encyclopedia* (2012) at 56

<https://books.google.co.za/books?id=vs9wCQAAQBAJ&pg=PT1066&dq=children+were+given+similar+punishments+like+adults&hl=en&sa=X&ved=2ahUKEwiyt43prtvvAhXGhVwKHeZfCw0Q6AF6BAgJEAI#v=onepage&q=children%20were%20given%20similar%20punishments%20like%20adults&f=false> (accessed 23 August 2021).

in the United States of America (USA) and some Western European states at the start of the 20<sup>th</sup> century. The welfarist approach to juvenile justice influenced this development.

The welfare approach was rooted under the legal doctrine of *parens patriae*.<sup>44</sup> Under this doctrine, the state was bestowed with authority over children seeking protection and guidance. The *parens patriae* doctrine can be traced back to the 1500s in England, where chancery courts were created to safeguard the king's interests in the property of orphaned children whose parents had left property behind.<sup>45</sup> The state would assume control over such property until the child reached majority age. Therefore, the state started acting as the parent (*loco parentis*) for the child's estate. In this regard, the state would provide direction and make decisions concerning the best interests of the child.<sup>46</sup> This approach justified the replacement of parental control with state control on the ground that the state would act in the child's best interests and thus better the child's wellbeing.

The welfarism theory operated under the belief that juveniles are developmentally distinct from adults.<sup>47</sup> Accordingly, children are not regarded as rational beings on account of their juvenility. Welfarism thus advocated for the treatment of children differently because of their immaturity.<sup>48</sup> The welfarist theory drew inspiration from sociology and criminology.<sup>49</sup> The moral, intellectual development theory under criminology was of importance. This theory proposes that the younger the person, the less plausible it is that the feeling of good and evil always illuminates the person's conduct.<sup>50</sup> Because of a lack of rationality among children, the state assumes a protective role over juvenile offenders.

Children were regarded as vulnerable and thus needing special treatment different from the one given to adults to be rehabilitated. The idea was that children had to be guided into responsible adults. Thus, under this approach, the juvenile court was not obligated to consider whether a juvenile offender was

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<sup>44</sup> EL Jensen 'An historical overview of the American juvenile justice system' in EL Jensen & J Jepsen *Juvenile law violators, human rights, and the development of new juvenile justice systems* (2006) at 104.

<sup>45</sup> As above

<sup>46</sup> RA Lawrence 'History and Development of juvenile court and justice process' at 21 16 February 2008 [https://www.sagepub.com/sites/default/files/upm-binaries/19434\\_Section\\_I.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/19434_Section_I.pdf) (accessed 15 August 2021).

<sup>47</sup> J McCord, CS Widom & NA Crowell *Juvenile crime, juvenile justice* (2001)157.

<sup>48</sup> As above

<sup>49</sup> D McCallum & J Laurence 'Has welfarist criminology failed? Juvenile justice and the human sciences in Victoria' (2007) 60 *Australian Social Work* at 410.

<sup>50</sup> BW Sokol & SI Hammond 'Piaget and affectivity' in U Müller, JIM Carpendale, & L Smith (eds) *The Cambridge companion to Piaget* (2009) at 315.

innocent or guilty; instead, it sought to save the juvenile from a downward career of criminal activity.<sup>51</sup> The court was more concerned about what treatment to give a particular child than a punishment.

The juvenile court had a chain of support from clinicians, probation officers, and social service personnel.<sup>52</sup> These were vital in assisting court to establish a suitable treatment plan to meet a specific child's needs. As such, there emerged a group of philanthropists better known as child savers or progressives who masterminded reforms in response to social complexities brought about by urbanisation, modernisation, and rapid industrialisation from the mid 19<sup>th</sup> century to early 20<sup>th</sup> century in USA.<sup>53</sup> The progressives feared that social problems could destabilise society and lead to new problems of social control.<sup>54</sup> They thus asserted that allaying of social issues such as juvenile delinquency relied on benign state action steered by experts.

Welfarism viewed punishment from the perspective of treatment. The juvenile court thus sought to give offending juveniles treatment rather than punishing them so that they are rehabilitated.<sup>55</sup> Children were not to be given severe penalties or exposed to ruthless procedures in adult courts.<sup>56</sup> The welfarists believed juveniles offended due to broken elements in environments where they survived.<sup>57</sup> While the court was looking for how to rehabilitate a particular child, it had to consider each child's economic and social background.<sup>58</sup> The assumption was that the court would study each juvenile offender's needs to determine how best the child was to be treated.<sup>59</sup> The court considered the best interests of the child in terms of the paternalistic role of the state, which influenced it to arrive at the best choice for a protection measure.<sup>60</sup>

The juvenile court hearings were informal, and court enjoyed vast discretion.<sup>61</sup> The juvenile court was viewed as a semi-social welfare establishment that apportioned help to children in trouble. There was,

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<sup>51</sup> JW Mack 'The juvenile court' (1909) 23 *Harvard Law Review* 104-122 at 120.

<sup>52</sup> Odongo (n 17)22.

<sup>53</sup> AL Patenaude 'History of the treatment of and attitudes toward children' in B Sims & P Preston (eds) *Handbook of juvenile Justice: Theory and practice* (2006) at 16.

<sup>54</sup> Odongo (n 17)23.

<sup>55</sup> CA Nolasco *Contemporary trends in juvenile justice* (2004)7.

<sup>56</sup> JF Sanford 'Juvenile justice reform. An historical perspective' (1970) 22 *Stanford Law Review* at 1222.

<sup>57</sup> TX Rousseaux 'Introduction' in TX Rousseaux (ed) *Youth and justice in Western States, 1815-1950: From punishment to welfare* (2017) at 2.

<sup>58</sup> C Breen *The Standard of the Best Interests of the Child* (2002)195.

<sup>59</sup> Mack (n 51)120.

<sup>60</sup> Odongo (n 17)22.

<sup>61</sup> McCord (n 47)154.

therefore, no need to include due process requirements like legal representation because court was seen as helping the youth and not punishing them.<sup>62</sup>

With the human rights movement gaining ground across the globe in the 20<sup>th</sup> century, the welfare approach was demonised for abusing children's rights, its character of paternalism, and its dependence on the institutionalisation of juvenile offenders. Moreover, as already highlighted above, this approach did not give attention to due process when handling juveniles in courts. As a result, children did not benefit from legal representation and many other substantive guarantees such as evidence rules. For instance, in *Re Crouse*,<sup>63</sup> the Pennsylvania Supreme Court, under the spirit of the welfarism theory, ruled that the bill of rights was not applicable to children.

Some criticism was also because it was considered too lenient in handling wayward juveniles.<sup>64</sup> It was also argued that its concept of 'meeting needs' was used as a spurious justification for restricting individual liberty, especially of girls, which was disproportionate to the severity of the offence or the practical needs of one needing protection and care.<sup>65</sup> In addition, the length of the sentences was determined by the discretionary psychological evaluations concerning the improvement of the offender instead of referring to the actual offence committed. This meant that in some cases, minor offenders could serve longer sentences than serious offenders.<sup>66</sup>

The relevancy of the welfarist approach was questioned by the Supreme Court of the United States in the monumental decisions in *Kent v. The United States*<sup>67</sup> and in *Re Gault*,<sup>68</sup> in which the Court granted juveniles many procedural safeguards that adults enjoyed. In *Kent*, Court held that transferring of Morris Kent's case to the criminal court without affording him a hearing and without granting his legal representative access to social information used by the juvenile court to reach its decision was a denial of due process rights to the juvenile. In *Re Gault*, Court was emphatic that the state of being a child 'does not justify a kangaroo court.' Thus, Court, among others, held that juveniles had a right to legal counsel, written notice to charges, and the right against self-incrimination.

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<sup>62</sup> *Re Holmes*, 379 Pa (1954).

<sup>63</sup> *Ex Parte Crouse* (1839).

<sup>64</sup> McCord (n 47)158.

<sup>65</sup> J Muncie 'Children's rights and youth justice' in B Franklin (ed) *The new handbook of children's rights - Comparative policy and practice* (2002) at 84.

<sup>66</sup> As above.

<sup>67</sup> *Kent v. the United States* 383 U.S. 541.

<sup>68</sup> *Re Gault* 387 U.S.1 (1967).

As a result of the shortcomings presented by the welfare model, there was a move from welfarism to a new approach known as the justice model.

### 2.3 The justice model

This approach gained ground in the second half of the 20<sup>th</sup> century and early 21<sup>st</sup> century. It aimed at dismantling the protectionist policies that characterised the welfare approach. This theory prioritised punishment for the aberrant youth and also recognised children as rational beings.<sup>69</sup> Children thus ceased being looked upon as immature and juvenile offenders were not seen as victims of their surroundings.<sup>70</sup> The justice model stood against criminalising non-criminal behaviour such as status offences like vagrancy. Its understanding is that the criminal justice system should not handle such crimes. It prioritised citizens' liberty and freedom, of which children were an integral component.

The justice model is rooted under the classicist approach, which avers that crime is unreasonable and punishment is needed to demonstrate the unreasonableness of criminal conduct.<sup>71</sup> There must be proportionality between punishment and the harm occasioned to the violated interests. The classicist also contends that juvenile offenders' lack of capacity should be used for only mitigation purposes instead of a broad excuse to escape criminal responsibility.<sup>72</sup>

The justice model thus recognises that all people are rational beings and therefore accountable for their actions.<sup>73</sup> Children were to be held responsible if they engaged in criminal activity and necessary punishments imposed. The justice model asserts that the role of child justice was to measure the child's guilt and administer the necessary penalty depending on the severity of the crime.<sup>74</sup> Children were to enjoy full rights while on trial like adults, and the broad discretion that the juvenile court enjoyed under the welfarist model was curtailed. The justice approach sets substantial accentuation on consistency and determinateness.

This approach puts all people on equal footing regarding access to justice in criminal trials. It saw no need for distinction between adults and children. Therefore, procedures that were previously

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<sup>69</sup> Patenaude (n 53)21.

<sup>70</sup> J Junger-Tas 'The juvenile justice system: past and present trends in Western society' in I Weijers & A Duff (eds) *Punishing juveniles: Principle and critique* (2002) at 31.

<sup>71</sup> J Pickford 'Introduction: A new youth justice for a new century?' in J Pickford (ed) *Youth Justice: Theory and Practice* (2000) at xxvii.

<sup>72</sup> As above.

<sup>73</sup> Patenaude (n 53).

<sup>74</sup> As above.

applicable to only adult trials equally became applicable to juvenile trials.<sup>75</sup> Ultimately, juvenile offenders started being subjected to harsh sentences such as the death penalty and hard labour.

Unlike the welfare model, the justice model ensured that the state's powers when handling child offenders are inhibited. As stressed above, the model considered children to be self-determined with their own will. Therefore, where a child acting out of their own volition violated the law, justice demanded that such a child had to be chastised. To achieve the goal of consistency/determinateness, the severity of punishment must be proportional to the degree of the crime.<sup>76</sup>

The justice theory was inspired by the need to protect society through meting out punishments to juveniles engaged in criminality. In this way, this approach concentrated more on retribution. The system's agenda was to see that the juvenile offender experiences pain for the crime they might have committed. Unfortunately, this was at the expense of looking into how to safeguard children's best interests.<sup>77</sup>

However, although the justice model ensured an upgrade in due process rights for children on trial, the court did not fully embrace all safeguards operating in adult trials. For instance, the court retained the doctrine of *parens patriae* in some cases.

## 2.4 Rights-based approach

Towards the end of the 20th century, a new movement regarding children's rights saw children being recognised as legal subjects who held individual rights.<sup>78</sup> Children's rights gained more ground when the CRC was adopted in 1989. This was followed by the adoption of a regional instrument for Africa, the ACRWC in 1990. These two instruments were hallmarks in the field of children's rights. They both *inter alia* made pronouncements on children's rights in the justice system.

With the advent of the rights-based approach, juvenile justice is seen through a monocle of children's rights, as opposed to the initial approaches to juvenile justice that did not prioritise children's rights. The ACRWC and CRC laid down fundamental principles governing all matters concerning children. These include the child's best interests, non-discrimination, the right to life, survival, and development, and respecting the child's views. Through these principles, these instruments have endeavoured to reconcile the paternalistic viewpoint presented by welfarism and the participatory rights of children.

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<sup>75</sup> Muncie (n 65).

<sup>76</sup> D Scheid 'Kant's retributivism' (1983) 93 *Ethics* 262-282 at 263.

<sup>77</sup> Breen (n 58)199.

<sup>78</sup> L LeBlanc *The Convention on the Rights of the Child: United Nations lawmaking on human rights* (1995) 62.

Both instruments contain provisions taking into account welfarism and justice theories, albeit covered under the notion of children's rights.

The ACRWC and CRC established standards upon which laws and policies on juvenile justice were to be assessed.<sup>79</sup> The CRC developed six elements ushering in a new normative standard for child justice that was previously missing from previous theories.<sup>80</sup> These are spelt out under Articles 37 and 40 of the CRC. They include creating different laws, procedures, and institutions for juvenile offenders and creating a minimum age for criminal responsibility. Under the ACRWC, guidance on child justice is found under Article 17. The standards established for the child rights model from the ACRWC and CRC will be examined in the ensuing chapters to assess how Uganda's juvenile justice system lives up to them.

## 2.5 Historical background to Uganda's child justice system

In pre-colonial Uganda, juvenile justice was governed by the customary law of different ethnic groups. However, this law was not written, and each community dealt with delinquency according to its customs. African customs did not define childhood by age but used other defining characteristics like rituals.<sup>81</sup> For instance, among the Bagisu, Sabinu and Sebei communities, one ceased being a child upon circumcision.<sup>82</sup> In many communities in Uganda, children were considered as belonging to the community, and any elder could discipline any child. Society viewed crimes as wrongs between families and individuals, and these crimes were solved with the objective of promoting society's well-being.<sup>83</sup> Important to note is that most traditions in Uganda stressed compensation, restitution, or fines as a mechanism of redressing grievances and restoration of harmony among conflicting parties.<sup>84</sup> This practice extended to juvenile justice as well. However, some communities like the Baganda used corporal punishment like caning to discipline errant children.<sup>85</sup>

By the 1902 Order in Council, Uganda was brought under British command and control.<sup>86</sup> After colonisation, customary law was relegated to a secondary position and was only applicable if it was

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<sup>79</sup> J Sloth-Nielsen 'The role of international law in the development of South Africa's legislation on juvenile justice' (2001) 5 *Law, Democracy and Development* at 67.

<sup>80</sup> As above at 68.

<sup>81</sup> A Skelton 'Freedom in the making: Juvenile justice in South Africa' in FE Zimring, M Langer & DS Tanenhaus (eds) *Juvenile justice in global perspectives* (2015) at 328.

<sup>82</sup> KM Otiso *Culture and customs of Uganda* (2006) 103.

<sup>83</sup> Skelton (n 79) 328.

<sup>84</sup> J Parry-Williams 'Legal reform and children's rights in Uganda - some critical issues' (1993) 1 *The International Journal of Children's Rights* 49-69 at 62.

<sup>85</sup> Report of the Committee of Enquiry into the problem and treatment of juvenile delinquency in Uganda (1958) at 36.

<sup>86</sup> AN Makubuya *Protection, patronage or plunder? British machinations and (B) Uganda's struggle for independence* (2018) 52.



not repugnant to justice and morality as defined by the British.<sup>87</sup> British laws took centre stage and governed all spheres of life in Uganda, including juvenile justice. Therefore, Uganda's juvenile justice system during the colonial period and even after independence echoed the British laws, which emphasized the welfarist aligned provisions.<sup>88</sup> At the forefront of the statutes governing juvenile justice in Uganda at the time was the Approved Schools Act 1951, which mirrored the British Children and Young Persons Act of 1933.<sup>89</sup> This law made provisions regarding children below 16 years as offenders and those in need of protection and care. Another law was the Reformatory Schools Act. They remained in force till 1996, when the Children Act repealed them.

It should be noted that Uganda's child justice legal setup remained welfarist for many years. This was despite the fact that there had been radical changes in Britain's juvenile justice system over time which witnessed the passing of the Crime and Disorder Act, introducing an era of 'just deserts' approach coupled with the crime control approach. Furthermore, it is worth noting that the colonial laws founded on English laws were devoid of the notion of children's rights. For instance, the British Children and Young Persons Act 1933, on which the Approved Schools Act was modelled, did not include provisions protecting 'regard to the welfare of the child.'<sup>90</sup>

Uganda ratified the CRC and the ACRWC in 1990 and 1994, respectively. Adopting these instruments was significant because they ensured that children were no longer objects of the law, turning them into subjects of human rights.<sup>91</sup> As a result, children ceased being viewed as property belonging to their parents and vulnerable objects in need of charity, becoming full rights bearers.<sup>92</sup> This countered the welfarism under which children were looked at as objects.

Uganda enacted the Children Act in 1996 to effectuate the CRC and the ACRWC and streamline the country's child justice system with the conditions under the ACRWC and CRC, plus other international guidelines. The Act also included the fundamental principles governing children's rights, such as the principle of 'best interests.' The Children Act repealed the Reformatory Schools Act and the Approved Schools Act, which were previously applicable to children. Part X and XI of the Children Act elaborately set out rights of juvenile offenders and procedural guarantees to protect them

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<sup>87</sup> BK Twinomugisha 'African customary law and women's human rights in Uganda' in J Fenrich, P Galizzi & TE Higgins (eds) *The future of African customary law* (2011)449.

<sup>88</sup> Odongo (n 35).

<sup>89</sup> Parry-Williams (n 84)51.

<sup>90</sup> As above at 57.

<sup>91</sup> Odongo (n 17)10.

<sup>92</sup> M Wernham *An outside chance: Street children and juvenile justice - An international perspective* (2004)13.

when they interface with the justice system. The Act will be evaluated in the subsequent chapters to check how it facilitates access to justice for juvenile offenders in Uganda.

The Children Act was recently amended in 2016, portraying a commitment to cement the protection of children's rights further. The amendments *inter alia* included provisions relating to juvenile justice. For instance, Section 104A of the Amendment Act expressly banned applying the death penalty for children. Nonetheless, despite the existence of a law that seems robust and comprehensive, juvenile offenders are still faced with a multitude of problems that impede their access to justice.

In its concluding observations on Uganda's last periodic report, the UNCRC *inter alia* made recommendations on how Uganda could improve its juvenile justice system. The Committee, among others, recommended that Uganda should:

Increase the availability and quality of specialized juvenile courts and judges, police officers, and prosecutors *inter alia* through systematic training of professionals; provide adequate financial, human, and technical resources to the juvenile courts at the sub-county level; ... provide children with legal assistance at an early stage of legal proceedings and improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice.<sup>93</sup>

These recommendations were in 2005. The ultimate question is whether the recent amendment of the Children Act in 2016 addressed some of these concerns to improve the accessibility to justice for juvenile offenders.

## 2.6 Conclusion

Different jurisdictions during different times have adopted different approaches in handling juvenile offenders. Each model seeks to achieve different objectives, and different theoretical underpinnings influence it. Notably, the justice approach and the welfare model based on the principle of *parens patriae* dominated the earliest forms of juvenile justice. The contemporary approaches include the rights-based approach, introduced by CRC and ACRWC. However, it must be noted that all jurisdictions, including Uganda, have a hybrid juvenile justice system espousing elements of all models. This is because no one child justice system exists in the pure form of any of the models.<sup>94</sup>

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<sup>93</sup> Concluding Observations on the Second Report of Uganda, UNCRC (23 November 2005) CRC/C/UGA/CO/2.

<sup>94</sup> B Krisberg *Juvenile justice: Redeeming our children* (2005) 203.

## CHAPTER THREE: THE INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK ON CHILD JUSTICE

### 3.1 Introduction

The integration of children's rights into the child justice system is a relatively recent development.<sup>95</sup> The movement to protect the rights of children in the law of nations can be traced back to the 1920s when the League of Nations adopted the Declaration of the Rights of the Child.<sup>96</sup> This was followed by the United Nations Declaration of the Rights of the Child in 1959.<sup>97</sup> However, both of these instruments were silent on the rights of children in the justice system, which meant that genuine access to justice for children remained elusive. Subsequently, some instruments were developed in international law to define procedures and guarantee rights of juvenile offenders. These included the CRC, the International Covenant on Civil and Political Rights (ICCPR), and ACRWC. In addition, there were also a series of non-binding instruments on juvenile justice like the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>98</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)<sup>99</sup> and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).<sup>100</sup>

This chapter will address how access to justice by juvenile offenders is guaranteed under international law through the above-mentioned instruments. It will also highlight how international law interacts with juvenile justice approaches discussed in the previous chapter. It will also explicate the features of the human rights-based approach that are key in realising accessibility to justice for juvenile offenders. The features highlighted in this chapter will be critical in assessing how Uganda's juvenile justice system facilitates access to justice for child offenders.

### 3.2 International instruments governing child justice

#### 3.2.1 The ICCPR

This was the first international law instrument to explicitly state the rights of juvenile offenders.<sup>101</sup> It guarantees the right to due process in criminal trials for all individuals, including children. Under

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<sup>95</sup> GV Bueren *A Commentary on the United Nations Convention on the Rights of the Child, Article 40: Child criminal justice* (2006) 4.

<sup>96</sup> Adopted 26 September 1924, League of Nations.

<sup>97</sup> UN General Assembly Resolution 1386, 20 November 1959

<sup>98</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985

<sup>99</sup> Adopted by General Assembly resolution 45/113 of 14 December 1990.

<sup>100</sup> Adopted by General Assembly resolution 45/112 of 14 December 1990.

<sup>101</sup> General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

Article 10(2)(b), it directs the separation of child offenders from adult offenders and calls for speedy conduct of juvenile trials. In addition, under Article 14(4), state parties are obligated to adopt procedures that consider the age of children and the desire to promote their rehabilitation. The ICCPR also makes reference to the punishments meted out against children by prohibiting the imposing of the death sentence on all individuals below 18 years.<sup>102</sup>

However, the specific provisions of the ICCPR on juvenile justice have been criticized for being very narrow.<sup>103</sup> The instrument is, for instance, silent on the need to create a child justice system. Nonetheless, the ideas it espouses as enunciated above were critical in developing juvenile justice in international law. The ICCPR is also credited with galvanising nations to create separate juvenile justice systems.<sup>104</sup> However, it did not elaborate on how such separate justice systems were to be implemented, their nature and procedures meaning that each state had the discretion to define the nature of its juvenile justice system.<sup>105</sup>

### **3.2.2 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**

The UN General Assembly adopted these Rules in 1985 to provide a framework under which states were to model their juvenile justice systems. These Rules provide guiding principles for the development of child justice systems. They are made up of six parts that cover the whole juvenile justice process. The Rules emphasize that the child justice system should strive to ameliorate the welfare of juveniles and guarantee that there is proportionality between the offence, the circumstances of the juvenile offender, and the imposed reaction.<sup>106</sup> The Rules also require that the placing of child offenders in institutions should be done as a step of last resort.<sup>107</sup>

Although the Beijing Rules are not legally binding, their contribution to the rights of children in the child justice system was significant.<sup>108</sup> These rules were incorporated into the CRC in 1989, and Van Bueren has argued that they became binding on states because of their incorporation into the CRC.<sup>109</sup>

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<sup>102</sup> Art 6(5) ICCPR.

<sup>103</sup> Bueren (n 8) 170.

<sup>104</sup> RJR Levesque 'Future visions of juvenile justice: Lessons from international and comparative law' (1996)29 *Creighton Law Review* at 1566

<sup>105</sup> As above.

<sup>106</sup> Rule 5.1 Beijing Rules.

<sup>107</sup> Rule 19.1 Beijing Rules.

<sup>108</sup> Levesque (n 104)1567.

<sup>109</sup> Bueren (n 95)5.

### 3.2.3 The Convention on the Rights of the Child

The adoption of the CRC in 1989 was a landmark in the realisation of children's rights. The CRC is the most ratified human rights treaty globally, demonstrating a commitment to protecting and promoting the rights of children. Moreover, it radically changed the image of childhood globally.<sup>110</sup> As highlighted previously, the CRC ensured that children were no longer objects of intervention, turning them into legal persons capable of holding human rights.<sup>111</sup> Consequently, children ceased being viewed as property belonging to their parents and vulnerable objects in need of charity becoming full rights bearers. This countered the welfarism approach under which children were looked at as objects. Furthermore, the CRC introduced the child rights based approach to juvenile justice.

The CRC is a very comprehensive human rights convention because it enumerates civil, political, economic, social, and cultural rights and also offers guiding principles for all matters involving children.<sup>112</sup> These include non-discrimination,<sup>113</sup> the child's best interests,<sup>114</sup> the right to life, survival and development,<sup>115</sup> and child participation.<sup>116</sup> It is noteworthy that these principles are part and parcel of a regime of human rights enjoyed by every child.

Regarding juvenile justice, the CRC avails a comprehensive framework under which child justice is to be administered. The safeguards offered by the CRC are laid down under Articles 37 and 40. They include the right to be informed of the charges, the presumption of innocence, the right to have assistance to prepare a defence, the child's right to privacy throughout all proceedings, the right to have the determination reviewed by a higher authority, the right to have the matter determined without delay by a competent authority, the right to protection against self-incrimination and to examine witnesses among others. Some of these safeguards will be elaborately discussed in this chapter.

### 3.2.4 The Guidelines for the Prevention of Juvenile Delinquency 1990 (the Riyadh Guidelines)

The UN General Assembly adopted these Guidelines in 1990 as a response to what to do about children committing crimes within the context of development. The Guidelines complement the

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<sup>110</sup> GV Bueren 'The United Nations Convention on the Rights of the Child: An evolutionary revolution' in CJ Davel (ed) *Introduction to Child Law in South Africa* (2000) at 202.

<sup>111</sup> J Sloth-Nielsen 'Child justice and law reform' in CJ Davel (ed) *Introduction to Child Law in South Africa* (2000) at 387.

<sup>112</sup> Levesque (n 104)1567.

<sup>113</sup> Art 2 CRC.

<sup>114</sup> Art 3 CRC.

<sup>115</sup> Art 6 CRC.

<sup>116</sup> Art 12 CRC.

protections offered under the CRC. They took a broader approach to children's rights, inter alia seeking to accentuate the importance of policies aimed at preventing delinquency. They thus afford guidance to states on appropriate measures that can avert children from engaging in criminality.<sup>117</sup> They also called for the adoption of social policies shunning criminalisation of behaviours. In addition, the Guidelines aim at redirecting resources towards the prevention of antisocial behaviour.<sup>118</sup> For instance, they call for focusing on reforming education programmes, strengthening families, among others. They also accentuate society's responsibility to help families give protection and care to children and guarantee their wellbeing.<sup>119</sup>

### **3.2.5 The United Nations Rules for the Protection of Children Deprived of their Liberty 1990 (the Havana Rules)**

These rules address the guarantees for protecting children deprived of their liberty. These include children on remand pending trial, those on trial, and those convicted and sentenced to imprisonment. One of the primary objectives of these Rules is to see that children are not deprived of their liberty through upholding the requirement of detaining or imprisoning children as a matter of last resort.<sup>120</sup> The Guidelines also emphasize that imprisonment should be used in only exceptional circumstances.<sup>121</sup> This principle emanates from Article 37(b) of CRC. The Rules also accentuate the preparation of children for their return into society from the moment they are detained.<sup>122</sup> The Havana Rules also call for the fortification of other rights provided for under the CRC, like the right to health, education and play.

### **3.2.6 The United Nations Standards Minimum Rules for Non-custodial Measures (the Tokyo Rules)**

The primary objective of these rules is to see that the use of non-custodial measures is promoted. They also aim at ensuring that there is observance of human rights in situations where measures other than imprisonment are used.<sup>123</sup> In addition, these Rules support the notion of social reintegration as

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<sup>117</sup> A Skelton & B Tshela 'Child justice in South Africa' (2008) *Monograph* 150 at 18 <https://www.files.ethz.ch/isn/103622/MONO150FULL.pdf> (accessed 6 September 2021).

<sup>118</sup> Levesque (n 104)1568.

<sup>119</sup> As above.

<sup>120</sup> Rule 1 Havana Rules.

<sup>121</sup> Rule 2 Havana Rules.

<sup>122</sup> Skelton & Tshela (n 117)24.

<sup>123</sup> Rule 1.1 Beijing Rules.

provided for under Article 40(1) of CRC, in the sense that they aspire to see that offenders get a sense of responsibility towards the public.<sup>124</sup>

### **3.2.7 The African Charter on the Rights and Welfare of the Child**

This is a children rights instrument specific to the African continent, and it supplements the CRC.<sup>125</sup> The ACRWC guarantees the rights of juvenile offenders to have their dignity and due process rights upheld. Like the CRC, the ACRWC also sets out the four fundamental principles to guide all matters concerning children. However, it is essential to note that although the ACRCW cements the protection of several children's rights, it does not lend a proper voice to child justice administration. For instance, it omits to state the rule that 'no child shall be deprived of his or her liberty unlawfully or arbitrarily' nor emphasize that 'imprisonment should be used only as a measure of last resort and for the shortest possible time.'<sup>126</sup> Therefore, the CRC holds more comparatively detailed provisions on juvenile justice than the ACRWC.

### **3.3 Features of a rights based juvenile justice system**

The principle of best interests of the child, child participation, equality and non-discrimination, and the right to life maximum survival and development as developed under the ACRWC and the CRC inspired particular features which must exist to guarantee the rights of juvenile offenders and ensure their accessibility to justice. These features laid down by the CRC and the ACRWC must exist from the time of arrest to the conclusion of the trial. These are highlighted below.

#### **3.3.1 Special courts and procedure**

The CRC seeks to ensure that every child justice system establishes special procedures and rules governing the trial of children. Article 40(3) of CRC provides that:

State parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.

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<sup>124</sup> Rule 1.3 Beijing Rules.

<sup>125</sup> J Sloth-Nielsen 'The international framework' in J Sloth-Nielsen & J Gallinetti (eds) *Child justice in Africa: A guide to good practice* (2004) at 29.

<sup>126</sup> M Gose 'The African Charter on the Rights and Welfare of the Child' July 2002 at 67–68

<https://dullahomarinstitute.org.za/childrens-rights/Publications/Other%20publications/The%20African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> (accessed 7 September 2021).

The reasoning behind this obligation is to see that the children's special needs are met. This is because children are vulnerable due to their age.<sup>127</sup> Therefore, states are obligated to set up special procedures and institutions to handle juvenile offenders regarding this objective. This extends to creating specialized units for children within the judiciary, police, prosecutor's office, courts, and other entities dealing with juvenile offenders. It also entails having separate detention centres for children.

When it comes to separate courts for children, the court determining the charge need not be judicial provided it complies with the procedures laid down under the CRC.<sup>128</sup> This is because Article 40 of CRC includes the phrase 'authority or judicial body.' However, the body or court in issue must have the competence and should uphold the objectives of a juvenile justice system as prescribed under international law.<sup>129</sup> The special court/authority envisioned should also adopt some informality in its proceedings. However, the incorporation of informality into the court should not be at the expense of fundamental procedural rights and due process. The use of any authority other than the court to try juvenile offenders has been denounced for increasing chances of offending established standards for juvenile justice due to the absence of a qualified judicial officer.<sup>130</sup>

The child court or tribunal should strive to ensure that the best interests of the child are upheld and afford the juvenile a chance to participate in the proceedings freely.<sup>131</sup> In addition, the court or authority must accord parents or guardians of the juvenile an opportunity to be present and participate in the proceedings. Their presence is vital in giving emotional and psychological assistance to the juvenile.

### **3.3.2 Delinquency prevention policy**

Although the CRC does not directly state the obligation to avert juvenile delinquency, the UNCRC has inferred that there is an obligation to prevent it based on interpretation of the objectives of the CRC of promoting the child's talents, personality, physical, and mental capabilities to their utmost potential.<sup>132</sup> The UNCRC has thus urged state parties to have delinquency prevention policies in their

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<sup>127</sup> Article 40(3)(a) CRC.

<sup>128</sup> Bueren (n 8) 180-185.

<sup>129</sup> G Odongo 'The impact of international law on children's rights on juvenile justice law reform in the African Context' in J Sloth-Nielsen (ed) *Children's Rights in Africa: A Legal Perspective* (2008) at 179.

<sup>130</sup> As above.

<sup>131</sup> Rule 14.2 Beijing Rules.

<sup>132</sup> UNCRC General comment 10 (2007) Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 para 16.



child justice systems. The UNCRC maintains that the lack of such a policy in a child justice system constitutes a severe shortcoming.<sup>133</sup> The Riyadh Guidelines also refer to this point.

State parties are obligated under Article 33 of CRC to adopt administrative, legislative, and other measures to safeguard children from illegal use of narcotics. Nations also have to adopt programmes to support families, especially those under the scourge of economic hardship.<sup>134</sup> Supporting families is ideal, considering the role of a family in nurturing children and guaranteeing their wellbeing.

### **3.3.3 Setting of the minimum age of criminal responsibility**

A child's age is vital in determining whether a child is criminally responsible by virtue of being able to understand the consequences of his actions.<sup>135</sup> International law has generally adopted a protective approach regarding the criminal liability of children because they are mentally and emotionally immature. Therefore, setting a lower age for criminal liability is discouraged, favouring a higher one because the latter can promote the child's right to life, development, and survival. State parties to the ACRWC and the CRC should establish the minimum age for criminal responsibility under the law.<sup>136</sup> Both the CRC and ACRWC define a child as an individual below 18 years.<sup>137</sup> However, the age for criminal responsibility is not dependent on this definition which means that state parties must legislate upon the appropriate age for criminal responsibility.

Although the ACRWC and the CRC are silent on the appropriate minimum age for criminal responsibility, the UNCRC, referring to the Beijing Rules, has obliged state parties to use the child's development and maturity as key features in determining the minimum age for criminal responsibility.<sup>138</sup> According to Rule 4.1 of the Beijing Rules, in determining the appropriate age of criminal responsibility, it has to be determined whether a child is capable of living up to the psychological and moral facets of criminal responsibility. Rule 4 of the Beijing Rules also requires that when states establish the age of criminal responsibility, the same should not be put too low, keeping in mind the child's mental, emotional, and intellectual maturity. The UNCRC has thus endorsed the absolute minimum age as 12 years and set 18 as the upper limit.<sup>139</sup> The Committee has been emphatic

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<sup>133</sup> As above para 17.

<sup>134</sup> Guideline 11- 19 Riyadh Guidelines.

<sup>135</sup> Bueren (n 8)173.

<sup>136</sup> Art 17(4) ACRWC & Art 40(3)(a) CRC.

<sup>137</sup> Art 1 CRC & Art 2 ACRWC.

<sup>138</sup> UNCRC General Comment 10 para 32.

<sup>139</sup> As above paras 30, 32 & 38.

that the principles of juvenile justice apply to all individuals aged 18 at the moment when the crime was allegedly committed.<sup>140</sup>

### 3.3.4 Diversion

Diversion entails utilising formal and informal measures instead of the criminal justice system in dealing with juvenile offenders.<sup>141</sup> According to the CRC, an ideal child justice system should promote the principle of diversion. This is embedded under Article 40 (3) (b), which states that state parties should put in place ‘measures for dealing with such children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected.’ This requirement is fortified by Rule 11.1 of the Beijing Rules, which provides that ‘consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.’ Some of the diversionary measures include counselling, community service, reprimand, restitution, and fines.

Diversion is crucial in protecting juveniles against stigmatisation that arises due to being subjected to criminal trials.<sup>142</sup> It also shields juvenile offenders from human rights violations that characterize different justice systems. Furthermore, by putting juvenile offenders out of the criminal justice system, it helps in preventing juveniles from further getting contaminated through interface with other serious offenders. It is also less costly than the normal court process.<sup>143</sup>

The UNCRC has given guidance on the practical implementation of diversionary measures. The Committee has, for instance, guided that it should only be used where there is compelling proof that the juvenile committed the crime in issue.<sup>144</sup> Furthermore, the juvenile must accept responsibility for the crime and should not be subjected to any form of pressure as a way of extracting an admission.<sup>145</sup> In other words, the child’s consent should be obtained voluntarily. Where a child is aged below 16, consent can be obtained from the parents.<sup>146</sup> Furthermore, the admission obtained should not be used against the juvenile in any future legal process.

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<sup>140</sup> As above para 37.

<sup>141</sup> Bueren (n 8) 174.

<sup>142</sup> As above.

<sup>143</sup> BC Feld ‘The transformation of the child court - part II: Race and the “crack down” on youth crime’ (1999)84 *Minnesota Law Review* 350-354 at 351.

<sup>144</sup> UNCRC General Comment 10 para 27.

<sup>145</sup> As above.

<sup>146</sup> As above.

### **3.3.5 Pre-trial safeguards**

Pre-trial procedures entail processes to which a juvenile suspect is subjected from the time of their arrest to when he is formally charged before a court of law. Child suspects enjoy certain rights under international law before they are presented before court.<sup>147</sup> The CRC and ACRWC put forward various safeguards to guarantee that arrested children have their rights protected. These *inter alia* include the right not to self-incriminate and the right to be informed of reasons for the arrest, discussed below.

#### **3.3.5.1 Right to be informed**

Upon arrest, a juvenile is entitled to be informed immediately of the reasons for his arrest.<sup>148</sup> This requirement satisfies the principle of participation applicable to children by enabling the juvenile to participate effectively in the proceedings. The charges have to be relayed to the juvenile in a language that he understands.<sup>149</sup> The child should also be given information concerning the child justice procedures and measures to be taken by the court. Where the child is oblivious of the language being used, he should be afforded the assistance of an interpreter.<sup>150</sup>

Where appropriate, information about the nature of charges against the child offender can be relayed to their parents or legal guardian.<sup>151</sup> The CRC uses the phrase 'where appropriate' to safeguard the interests of the child because getting the parents informed may not be in the best interests of the child in all circumstances.<sup>152</sup> The juvenile must also be informed of his/her right to have legal representation. All this will enable the child to understand the process and prepare his/her case effectively.

#### **3.3.5.2 Right not to confess to guilt**

Under Article 40 (2) (b) (iv) of CRC, state parties have an obligation to guarantee that juveniles are not forced to give testimony or confess to guilt. This provision is fortified by Article 14 (3) (g) of the ICCPR and Rule 7 of the Beijing Rules. Therefore, a child suspect/offender has a right to remain silent. Compelling is not restricted to physical force or other forms of abuse, but it also entails giving children promises of being released or rewards as a way of obtaining information from them or threatening them with incarceration if they do not give out information. Furthermore, to safeguard

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<sup>147</sup> Arts 37, 40 CRC, & Art 17 ACRWC.

<sup>148</sup> Art 17 (2)(c)(ii) ACRWC & Art 40 2(b) (ii) CRC.

<sup>149</sup> Art 40 (2) (b)(ii), CRC.

<sup>150</sup> Art 40 (2) (b)(vi), CRC & Art17(2)(c)(ii), ACWRC.

<sup>151</sup> Article 40 (2) (b) (ii) CRC.

<sup>152</sup> Bueren (n 8)177.

against self-incrimination, the juvenile offender must have access to his attorney during interrogation and is at liberty to have his parents present.<sup>153</sup>

### **3.3.6 Trial safeguards**

Where the case against the juvenile has not been diverted from the criminal justice system, it means that the matter has to proceed to trial. The trial process begins when the child is presented in court on a charge or an indictment. The right to a fair trial is a fundamental feature of a criminal justice system to which every child is entitled. The CRC and the ACRWC have several provisions that guarantee that juvenile offenders get justice in cases where the matter proceeds to trial. These are discussed below.

#### **3.3.6.1 Legal representation**

Legal representation is a core component of a fair trial. This right is guaranteed under Articles 40 (2) (b) (ii) and 17(2)(c)(iii) of CRC and ACRWC, respectively. These articles guarantee that juvenile offenders receive adequate legal and other appropriate assistance in preparing and presenting their defence. These provisions are fortified by Article 12(2)(d) of ICCPR.

A child suspect is entitled to legal representation as soon as he is arrested. The arresting entity should not interrogate the child before affording the child an opportunity to meet and consult his attorney.<sup>154</sup> When presented in court, it must inform the child of his right to have legal representation. In certain circumstances, the juvenile must be afforded free legal representation in the interest of justice. Legal representation is imperative because it ensures that the interests of the juvenile are protected and assists the juvenile offender in understanding the otherwise complex court proceedings. It also helps children to get psychological support during the pendency of the proceedings. In other words, legal representation is critical in guaranteeing that the juvenile offender's right to participate in proceedings is respected.

States have the discretion to determine how legal assistance is to be extended to juvenile offenders.<sup>155</sup> However, the UNCRC has advised that this assistance should be free of charge. A person chosen to represent the child legally need not have legal qualifications.<sup>156</sup> However, such a person must possess

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<sup>153</sup> UNCRC General Comment 10 para 58.

<sup>154</sup> Art 40(2)(b) CRC.

<sup>155</sup> UNCRC General Comment 10 para 49.

<sup>156</sup> As above.

sufficient knowledge on legal affairs regarding juvenile justice.<sup>157</sup> It should also be noted that any legal assistance extended to the juvenile must be with the juvenile's consent.

### **3.3.6.2 Privacy**

Children are entitled to have their privacy protected in all stages of proceedings. A child offender's right to privacy during trial is guaranteed under Article 40 (2) (b) (vii) and Article 17 (2) (d) of CRC and ACRWC, respectively. These provisions are fortified by Article 16 of CRC, which proscribes arbitrary or unlawful interference with a child's privacy. States are therefore obligated to guarantee that children's privacy is safeguarded through the proceedings. The primary purpose of this right is to guarantee that the child's honour and name are protected by preventing unnecessary publicity. The UNCRC has noted that this right is essential in averting the possibility of labelling against juvenile offenders.<sup>158</sup> In that way, this right guarantees the protection of children's dignity.

The cases involving juvenile offenders should be heard in camera to fortify children's right to privacy.<sup>159</sup> The juvenile names should also not be revealed on court documents such as judgments.<sup>160</sup> There should also be no publishing of any data that may disclose the child's identity.<sup>161</sup> Rule 21.1 of the Beijing Rules is emphatic that children's criminal records should only be accessed by authorised persons. In addition, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender.<sup>162</sup>

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<sup>157</sup> As above.

<sup>158</sup> UNCRC General Comment 10 para 64 & Rule 8 Beijing Rules.

<sup>159</sup> As above para 65.

<sup>160</sup> As above para 64.

<sup>161</sup> As above.

<sup>162</sup> Rule 21.2 Beijing Rules. See also UNCRC General Comment 10 para 67.

### 3.3.7 Post-trial procedures: Legal guidelines on sentencing

Children tried and found guilty of any offence enjoy certain guarantees under international law. This is especially relevant when it comes to sentences that should be imposed. The CRC, ACRWC, and the Beijing Rules give some directives to be followed when sentencing. Courts are enjoined to take into account the age of the child and the need for reintegration into society while coming up with the appropriate punishment or measures.<sup>163</sup> This is emphasized by Rule 17 of the Beijing Rules, which states that:

The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile and society.

The focus of society should thus be geared towards seeing that a child is reintegrated and getting a productive role in the community.<sup>164</sup> Since the CRC focuses on enhancing the child's worth and dignity, the sentencing policy adopted by the juvenile court should not be punitive and deterrence-centred.<sup>165</sup>

Courts should use means other than detention which deprives children of their liberty. In absence of other measures, detention should only be used for the shortest time possible. Article 40 (4) of CRC and Rule 18.1 of the Beijing Rules prescribe alternative sentencing measures that can be put in place. These include community service orders, probation, foster care, educational and vocational training programmes. There must also be proportionality between the action taken by the court and the magnitude of the offence, the needs of the juvenile, and those of society.<sup>166</sup> Above all, when sentencing, just like other matters concerning children, the court should consider the best interest of the child.<sup>167</sup>

There is certain kind of sentences that are prohibited under the CRC and ACRWC. This is because certain punishments infringe on the dignity of children and other rights and go against the need to treat juveniles in a way that is consistent with promoting their dignity and human rights.<sup>168</sup> These include corporal punishment, life imprisonment, and the death penalty.

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<sup>163</sup> Art 40(1) CRC.

<sup>164</sup> Bueren (n 8)183.

<sup>165</sup>As above.

<sup>166</sup> Rule 17.1(a) Beijing rules. Art 40(4) CRC.

<sup>167</sup> Art 3 CRC & Art 4 ACRWC.

<sup>168</sup> Art 40(1) CRC.

Corporal punishment is outlawed because it constitutes torture, inhuman or degrading treatment which is prohibited under Articles 17(2)(a) and 37(a) of ACRWC and CRC, respectively. These are fortified by Rule 17.3 of the Beijing Rules, which provides that ‘juveniles shall not be subject to corporal punishment.’ Corporal punishment violates children’s physical integrity and dignity, and states must abolish it from their statutes.

Furthermore, states are prohibited from applying the death penalty on children.<sup>169</sup> The prohibition under the CRC and ACRWC is fortified by Article 6 (5) of ICCPR. In addition, Rule 17.2 of the Beijing Rules is emphatic that juveniles should not be subjected to capital punishment for any offence. The death penalty is prohibited because of the importance attached to the right to life, survival, development, and dignity. States that still have the death penalty for juveniles have been called upon by the UNCRC to abolish it.<sup>170</sup>

In addition, the CRC prohibits imposing of life imprisonment on juveniles without the prospect of being released.<sup>171</sup> This is in line with the standard that where incarceration is deemed necessary for a juvenile offender, it should be for the least amount of time possible. It is also consistent with the goal of promoting children’s reintegration and ensuring their best interests.

### **3.3.8 Post-sentencing measures**

The aim of international law regarding child offenders is to see that they are integrated into society. As such, measures that are taken after the conclusion of the juvenile trial are very relevant. Guideline 79 of the Havana Guidelines provides that:

All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

In this regard, states must put in place measures aimed at helping juveniles return to society and curtail prejudice against them.<sup>172</sup> These measures aim to see that juveniles get appropriate shelter, occupation, and the necessary means to survive in society after their release so that they are fully reintegrated.<sup>173</sup>

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<sup>169</sup> Art 37(a) CRC, Art 5(3) ACRWC & Art 1 Second Optional Protocol to the ICCPR GA Res 44/128.

<sup>170</sup> UNCRC General Comment 10 para 76.

<sup>171</sup> Art 37 (a) CRC.

<sup>172</sup> Guideline 79 Havana Guidelines.

<sup>173</sup> As above.

Further guidance is found under Rule 29.1 of the Beijing Rules, which provides that:

Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

The consequences of this uniform approach are clear: community-based and family-engaged programs must be implemented to the greatest extent possible.

### **3.4 Conclusion**

The international law standards on juvenile justice have been highlighted in this chapter. These standards are enshrined under international instruments such as the ICCPR, the CRC, and the ACRWC. There are also standards from non-binding sources such as the Riyadh Guidelines and the Beijing Rules. These standards prescribe the norms for the entire child justice system from when a child is arrested to the post-sentencing period. It is agreeable that an ideal juvenile justice system should espouse the four principles of child participation, best interests of the child, non-discrimination, the right to life, survival and development. This is not to forget the specific elements of an ideal juvenile justice system as discussed above. Where a child justice system espouses the features discussed above, such a juvenile system then allows children to access justice. As noted previously, Uganda ratified the CRC and the ACRWC and domesticated them through the Children Act. The ultimate question that will be addressed in the next chapter is how Uganda's juvenile justice system lives up to the elements described in this chapter.



## **CHAPTER FOUR: AN APPRAISAL OF THE JUVENILE JUSTICE LEGAL & INSTITUTIONAL FRAMEWORK IN UGANDA**

### **4.1 Introduction**

Uganda's juvenile justice system has evolved over time with distinctive legal features that differentiate it from the adult criminal justice system. Uganda enacted the 1995 Constitution, which expressly recognised children's rights, including rights of juvenile offenders. The protection offered under the Constitution was fortified by enacting the Children Act, which ushered in a new epoch regarding juvenile justice in Uganda. This law enshrines several guarantees to ensure that juvenile offenders receive effective justice. However, debate still looms on the disparities between the legal framework and the general practice. Interest in the juvenile justice system has increased over time, especially with the amendment of the Children Act in 2016. Children make up the most significant percentage of Uganda's population, and they involve themselves in various crimes, including capital offences like murder. Although children's crimes are lesser than adults', it is crucial that Uganda maintains a robust legal framework that protects children's rights and guarantees their access to justice.

This chapter will thus interrogate how Uganda's child justice system measures up to the standards set out under the international legal framework concerning the rights of children in conflict with the law. More emphasis will be placed on the Children Act and its 2016 amendment. The assessment aims at showing existent gaps in the system and the disparity between the law and practice. In this regard, the adequacy of the law in protecting children at all stages of proceedings will be assessed through a systematic analysis of the legal framework as well as the practice in entities such as the police, remand homes, and courts.

### **4.2 The minimum age of criminal responsibility**

Setting a minimum age for criminal responsibility is vital in determining whether the child has the capacity to commit an offence or not. This requirement is embedded under Articles 17 (4) and 40 (3) of ACRWC and CRC, respectively, which oblige states to set a minimum age for criminal responsibility. A child is defined as a person below 18 years of age under the Children Act.<sup>174</sup> This implies that the guarantees under the law for the juvenile justice system are applicable to all individuals below the age of 18. The Act goes ahead to stipulate that the minimum age of criminal responsibility

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<sup>174</sup> Sec 2 Children Act.

is 12 years.<sup>175</sup> Accordingly, children below 12 years do not have criminal capacity under Ugandan law and cannot be charged with any offence. The age of 12 has been recommended by the UNCRC as the minimum for criminal responsibility.<sup>176</sup> In this regard, the law complies with international standards regarding the minimum age for criminal responsibility.

However, it is essential to point out that in as much as the law sets 12 years as the minimum age for criminal responsibility, it does not give guidance on situations where a child below 12 years commits a crime. The law does not expressly guide police, prosecution, or court on what directions are to be taken regarding such children. There is also a striking absence of any particular programme explicitly designed for such children under the law.

It is also imperative to note that children below 12 years continue to be charged with offences before various courts in Uganda.<sup>177</sup> This issue stems from the police, which is fond of arresting children below 12 years on account that they are liable for breaking the law.<sup>178</sup> By arresting such children, they are effectively brought into the whims of the criminal justice system. Indeed, children below 12 have found themselves in remand homes as a result.<sup>179</sup> Much as police can be blamed for not taking due diligence, the major problem emanates from the lack of proper birth records for children around the country. As Zeija asserts, 70% of births in Uganda are not registered.<sup>180</sup> This means that many juveniles, especially in rural areas, lack birth certificates that can conclusively determine their age. The police, therefore, sometimes resort to rudimentary methods such as taking measurements of bone length and counting teeth to determine the child's age.<sup>181</sup> Unfortunately, some of these methods cannot conclusively give accurate age of children.

Nonetheless, section 88(3) of the Children Amendment Act 2016 tries to cure this anomaly by requesting the court to rely on other documents such as health records, school records, medical evidence, or statements confirming age from the child's parent. Despite this amendment, courts have consistently rejected other means of proving age for lack of authenticity, and in some cases, these

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<sup>175</sup> Sec 88 Children Act.

<sup>176</sup> UNCRC General Comment 10 para 32.

<sup>177</sup> Zeija (n 1) 64.

<sup>178</sup> The Public Interest Law Clinic (PILAC) 'Empirical study to examine challenges faced by Juvenile Justice Courts enhancing access to Justice for Juvenile Offenders' at 29 Jan 2020  
[https://law.mak.ac.ug/sites/default/files/Pilac\\_JC1\\_Report\\_30\\_aug.pdf](https://law.mak.ac.ug/sites/default/files/Pilac_JC1_Report_30_aug.pdf) (accessed 25 September 2021).

<sup>179</sup> Moore (n 38)10.

<sup>180</sup> Zeija (n 1)51.

<sup>181</sup> PILAC (n 178)30.

documents are not presented to court.<sup>182</sup> In addition, the guidance rendered by section 88(3) of the Children Amendment Act is for court. This means that underage children without proper documentation are likely to be prejudiced in pre-trial procedures with police before being brought to court.

In this regard, therefore, it can be concluded that Uganda's law is consistent with international law standards regarding the minimum age for penal liability. However, there are disparities in practice mainly attributed to a flawed system of child registration and lack of guidance to police.

### **4.3 Incorporation of diversion**

As previously explained, diversion involves utilising formal and informal measures instead of the criminal justice system in dealing with juvenile offenders.<sup>183</sup> It essentially aims at ensuring that juvenile offenders are not subjected to formal court criminal proceedings. In this way, children are protected against the adverse impacts of criminal proceedings, such as stigma. In Uganda, child justice law is based on the understanding that it is in the child's best interest that a child who has breached the law gets rehabilitated and reintegrated into society.<sup>184</sup> The law believes this can be achieved when juvenile offenders are taken out of the formal justice system through diversion.

Section 89 (2) of the Children Act allows police to dispose of cases at its discretion without recourse to formal court hearings. Under section 89(1), upon arrest, police is empowered to caution and release the child. In order to effectuate diversion, police issued the Police Diversion Guidelines 2019 to guide it in locating appropriate diversionary measures.<sup>185</sup>

In addition, the Children Act incorporates diversion by vesting jurisdiction over some juvenile criminal offences in the village executive committee courts, which operate at the local council level.<sup>186</sup> Some of the offences under their jurisdiction include affray, criminal trespass, and theft. Local councils constitute administrative units established at village, parish, and sub-county levels up to county level. These courts derive their judicial power from the Local Council Courts Act, 2006. The rationale of

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<sup>182</sup> As above.

<sup>183</sup> Bueren (n 8)174.

<sup>184</sup> LT Ekirikubinza 'Juvenile justice and the law in Uganda: Operationalisation of the Children statute in (2005) *International Survey of Family Law* 511-528 at 520.

<sup>185</sup> UNICEF 'Guidelines to promote the rights of children in conflict with the law launched' Press release 22 August 2019 <https://www.unicef.org/uganda/press-releases/guidelines-promote-rights-children-conflict-law-are-launched> (accessed 30 September 2021).

<sup>186</sup> Sec 92(2) Children Act.

equipping these village courts with judicial power over children rests in the fact that communities can handle children matters more swiftly without recourse to the formal criminal courts.<sup>187</sup> These courts are empowered to make orders such as caution, reconciliation, apology, compensation, or restitution.<sup>188</sup> However, they are restrained from making orders remanding any child into detention/custody. They can also make a guidance order under which a child is supposed to submit herself/himself to a designated person for guidance, supervision, advice, and assistance.<sup>189</sup> This practice fits into the traditional African understanding of communal responsibility for children.

With the above provisions, it can be deduced that the Children Act incorporates diversionary measures into the juvenile justice system as required under international law.

However, despite the aforementioned provisions, there are concerns that police is reluctant to use diversionary measures stipulated above.<sup>190</sup> As a result, formal courts are clogged with heavy caseloads partly because juvenile matters are brought to these courts rather than having them handled by village executive committee courts.<sup>191</sup> This means that more juveniles are being exposed to the criminal justice system. There are also reports that local councils sometimes make orders to remand children into custody in utter breach of the law.<sup>192</sup> The village courts have also been faulted for meting out injustice to juvenile offenders since they are not operated by lawyers.<sup>193</sup> For instance, some of them subject children to corporal punishments.<sup>194</sup>

## **4.4 Pre-trial safeguards**

### **4.4.1 Arrest**

Article 23 of the Constitution sets out safeguards everyone enjoys, including children when and after being arrested. The arrest of children under the Children Act is governed by section 89. Section 89(1) provides that where a child is arrested, police shall under justifiable circumstances caution and release the child. However, this provision does not specify the manner and circumstances of arrest for a child. In this way, the Act is silent about the circumstances under which the child's arrest might be justified.

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<sup>187</sup> Moore (n 38)20.

<sup>188</sup> Sec 49 Local Council Courts Act, 2006.

<sup>189</sup> Sec 92(5) Children Act.

<sup>190</sup> Moore (n 38)18.

<sup>191</sup> PILAC (n 178)26, 37.

<sup>192</sup> PRI & FHRI 'A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Uganda' (2012) at 13 <https://cdn.penalreform.org/wp-content/uploads/2013/06/A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-Uganda.pdf> (accessed 2 October 2021).

<sup>193</sup> Moore (n 38)3.

<sup>194</sup> PILAC (n 178)37.

The effect of this is that police is left with broad discretion when it comes to arrests. Unfortunately, this discretion is sometimes abused, leading to the arbitrary arrest of children without good reasons. Indeed police has been accused of hastily causing arrests without doing enough investigations leading to more children being remanded and into the criminal justice system.<sup>195</sup> Street children have been the heaviest victims in this regard.<sup>196</sup>

The lack of guiding principles on the mode of arrest means that children are arrested under the auspices of the Criminal Procedure Code Act (CPC). The CPC Act does not distinguish between arrests of children and those of adults. In this way, the law does not pay attention to the special nature and vulnerability of children. The police is fond of violently arresting suspects and pushing them under the seats of their patrol cars. Juvenile offenders are not spared from this kind of dehumanising treatment. In addition, suspects are usually handcuffed, and since there are no guidelines on the matter, children are as well not spared. Police has also been reported for subjecting arrested children to beatings.<sup>197</sup> All these affect juvenile suspects psychologically and physically and also create an intimidating environment for them.

The law also is silent on whether arrests of juveniles should be limited to only exceptional situations and as a matter of last recourse. In this regard, it violates Article 37 (b) of the CRC.

Section 89 (8) of the Children Act directs that a child shall not be detained with an adult person upon arrest. The objective of this requirement is to ensure that juveniles are not further contaminated through association with adult offenders. Besides, these adult offenders sometimes can abuse children.<sup>198</sup> Unfortunately, almost all police stations in Uganda do not have holding cells for juveniles.<sup>199</sup> This means that upon arrest, juveniles are mixed with adult suspects while at police stations.<sup>200</sup> The lack of police holding cells for juveniles is a direct affront to Articles 17(2)(b) and 37(c) of ACRWC and CRC, respectively.

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<sup>195</sup> As above.

<sup>196</sup> As above 38.

<sup>197</sup> As above.

<sup>198</sup> UNICEF 'Justice for children. Developing a child friendly and responsive justice system' (2015) <https://www.unicef.org/uganda/what-to-do/justice-for-children> (accessed 3 October 2021).

<sup>199</sup> Foundation for Human Rights Initiative 'Juvenile Justice in Uganda January to July 2009' at 9 <https://cdn.penalreform.org/wp-content/uploads/2013/06/A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-Uganda.pdf> (accessed 2 October 2021).

<sup>200</sup> UHRC (n 13) 30.

The police is also required after the child's arrest to promptly inform the juvenile's parents or guardians and the secretary for children's affairs of the local government council for the area in which the child resides.<sup>201</sup> This is to ensure that the interests of the child are protected, and arrangements for bail and legal representation are made. Despite the gripping nature of this provision, its practical use is minimal. Many parents are not contacted by police when their children are arrested.<sup>202</sup> In other cases, children do not have their parents' contact details, others are unwilling to give them out, and police sometimes requests bribes to make contact.<sup>203</sup> Besides, the Act does not specify any sanctions for police officers who contravene this provision. This means that many juvenile offenders are interrogated without their parents or guardians at many police stations.

To further protect the interest of the arrested child, section 89 (5) of the Children Act requires that:

Where a child's parent or guardian cannot be immediately contacted or cannot be contacted at all, a probation and social welfare officer or an authorised person shall be informed as soon as possible after the child's arrest so that he or she can attend the police interview.

Under section 89(7), where a child is not released on bond, a child should only be detained in police custody for a maximum of twenty-four hours or until the child is taken before a court, whichever is sooner. This is commendable in as far as it limits the detention of juveniles after being arrested by police.

#### **4.4.2 Right to be informed of the grounds of arrest**

As indicated in the previous chapter, international law requires that a child is informed of the reasons for his arrest. However, the Children Act does not explicitly require that an arrested child is informed of reasons for his arrest. The absence of such a requirement is a significant loophole that can be exploited to violate children's rights. It also contravenes Articles 40 (2) (b) (ii) and 17(2) (c) (ii) of CRC and ACRWC, respectively. Worth noting is that Article 23(3) of the Constitution requires that the person arrested, restricted, or detained is informed immediately, in a language that he/she understands, of reasons for the arrest. However, it would have been prudent for children-specific legislation like the Children Act to explicitly make a provision on it and offer guidance on how such information is to be relayed to a child.

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<sup>201</sup> Sec 89(3) Children Act.

<sup>202</sup> Moore (n 38)3.

<sup>203</sup> As above.

## 4.5 Trial safeguards

### 4.5.1 Separate Courts

A special court for children known as the family and children court (FCC) is established under section 13 of the Children Act. This court is established at every district level and is to be presided over by a magistrate, not below the grade of a magistrate grade II. This court has jurisdiction to hear and determine criminal charges against children, excluding capital charges like murder.<sup>204</sup> Its jurisdiction is also ousted in cases where a child is jointly charged with an adult.<sup>205</sup> Section 15(2) of the Children Act requires that this court sits in a different building from one used by other courts and its proceedings are to be held in camera.<sup>206</sup> The rationale behind this is that juveniles enjoy a child-friendly environment with specially trained staff in children matters. The proceedings in this court are also supposed to be informal and by inquiry rather than adversarial.<sup>207</sup>

It should be noted that although the Act talks of establishing a children court, there are no courts in Uganda exclusively for children. It is the primary magistrate courts that are transformed into children courts for purposes of trying juveniles.<sup>208</sup> In some cases, juvenile cases are handled together with other caseloads by magistrates in open court, which creates an intimidating environment for children.<sup>209</sup> Some magistrates even take pleas in open court as opposed to their chambers. This *modus operandi* is contrary to the aim of a human rights based approach to juvenile justice. This is because general courts give divided attention to children and may not have proper facilities suited to the needs of juvenile offenders. This practice also contravenes the requirement to have the children court sit in different buildings. The lack of separation for these courts also means that juveniles are sometimes kept in the same court cells with adult suspects when brought to court, as some courts lack juvenile cells.<sup>210</sup> This offends children's right to privacy and also subjects juveniles to the adult criminal system.

As indicated above, the Children Act excludes children from the FCC over offences punishable by death.<sup>211</sup> This means that such children have their cases tried in the High Court, which is not designated as a children's court. Some of the offences punishable by death under the Penal Code Act include treason, murder, rape, and aggravated defilement. The High Court is guided by procedures

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<sup>204</sup> Sec 14(1)(a) Children Act.

<sup>205</sup> Sec 93 Children Act.

<sup>206</sup> Sec 16(1)(b) Children Act.

<sup>207</sup> Sec 16(1)(c) Children Act.

<sup>208</sup> PILAC (n 178)13.

<sup>209</sup> UNICEF (n198).

<sup>210</sup> PILAC (n 178)27, 32.

<sup>211</sup> Sec 93(a) Children Act.

under the Criminal Procedure Code Act and the Trial on Indictment Act. These two laws do not necessarily pay attention to the special treatment that child offenders need. Section 104(3) of the Children Act requires the High Court to have regard to the child's age and procedures of law relating to the procedure of trials involving children. However, this provision is also vague because it is unclear whether High Court is obligated to observe all procedural standards under the Children Act related to child offenders. The jurisdiction of the FCC is also excluded in cases where the child is charged jointly with an adult.<sup>212</sup>

Excluding the FCC jurisdiction denies children benefits that accrue to a children's court, such as informality of proceedings. It also breaches their right to privacy as proceedings in adult courts are conducted in a manner similar to those of adult trials.<sup>213</sup>

In its concluding observations to Uganda, the UNCRC conveyed concern about the lack of magistrates.<sup>214</sup> This confirms that even though the law establishes these courts, they lack enough magistrates to handle juvenile offenders. Furthermore, the lack of enough judicial officers has led to an increased court case backlog, which has also affected children's cases.<sup>215</sup> In addition, there are also questions concerning the training of magistrates in the rights of children. Thus the Committee recommended that Uganda should 'increase the availability and quality of specialized juvenile courts and judges, police officers and prosecutors, inter alia through systematic training of professionals.'<sup>216</sup>

To sum it up, it can be argued that the law measures up to international standards in creating separate courts for children. However, these have not been operationalised as per requirements under the law, and their jurisdiction is also limited.

#### **4.5.2 Privacy**

As already portrayed, Articles 40(2) and 17(2) of CRC and ACRWC, respectively, mandate states to safeguard the right to privacy of juvenile offenders throughout all proceedings. This is meant to curtail any harm to the child resulting from undue publicity. Section 16 (1) (b) of the Children Act provides that proceedings of the children's court shall be held in camera. The Children Act also restricts the

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<sup>212</sup> Sec 93(b) Children Act.

<sup>213</sup> Ekirikubinza (n 184)519.

<sup>214</sup> UNCRC (n 93).

<sup>215</sup> D Karashani 'Covid-19 and juvenile justice: An examination of the measures adopted to mitigate covid-19 at Naguru Remand Home, Uganda' (2021) 18 *Makerere Law Journal* 89 -117 at 108.

<sup>216</sup> UNCRC (n 93).



number of people to attend criminal proceedings involving children.<sup>217</sup> Those allowed to attend include parties, attorneys, witnesses, parents or guardians of the child, probation officer, and any other person authorised by court. The restriction on people that can attend such proceedings cements the privacy enjoyed by children under the law. In addition, the requirement under section 15 of the Children Act to have the children's court sit in different premises from one usually used by other courts is meant to guarantee that the privacy of juveniles is reinforced.

The requirements under section 16 are fortified by section 102 of the Children Act, which states as follows:

The child's right to privacy shall be respected throughout the court proceedings in order to avoid harm being caused to him or her by undue publicity; and no person shall, in respect of a child charged before a family and children court, publish any information that may lead to the identification of the child except with the permission of court.

To further buttress children's privacy in criminal proceedings, the Children Act criminalises publication of the name or address of the child, name or address of any school which the child has been attending, or any photograph or other matter likely to lead to identification of the child without court's permission.<sup>218</sup>

In this regard, therefore, one can conclude that indeed the law on protecting juvenile offenders' privacy is concrete and matches with requirements under international law. However, the practice has shown that there is less enforceability of this law. The media is still awash with images of children sometimes paraded with their suspected stolen items.<sup>219</sup> In some stories, the names of the juvenile offenders are indicated.<sup>220</sup> This speaks to the looseness in the enforceability of the law. There is also a glaring absence of guidelines for the media to follow when covering stories related to child offenders.

It should also be noted that prohibition of publication under section 102 is restricted to proceedings in courts. This means that children's privacy is left with no legal protection during other stages of interaction with the justice system, such as during arrests and investigations. This is concerning

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<sup>217</sup> Sec 16(3) Children Act.

<sup>218</sup> Sec 102(2) Children Act.

<sup>219</sup> For example see S Okabo Apec security arrests 10 street children 23 September 2020 <https://ugandaradionetwork.net/story/apac-security-arrests-ten-street-children> (accessed 3 October 2021).

<sup>220</sup> For example see A Wesaka Court quashes child sex offence Daily Monitor 19 April 2021 <https://www.monitor.co.ug/uganda/news/national/court-quashes-child-sex-offence--3367600> (accessed 3 October 2021).

because most cases are handled at the police level. The absence of such protection contravenes Article 40 (2) (vii) of CRC, which requires that the juvenile's privacy is 'fully respected at all stages of the proceedings.'

#### **4.5.3 Remand and rehabilitation facilities**

Remand homes are used for the temporary detention of juvenile offenders before the conclusion of the trial. As indicated previously, international law demands that children be detained in separate detention facilities from adults. Section 91(1) of the Children Act requires that in situations where court does not release a child on bail, the child is committed to custody in a remand home. Uganda currently has five remand homes.<sup>221</sup> These are Gulu, Fort Portal, Mbale, Naguru and Rukunkuru remand homes. Five remand homes are an apparent shortage in a country where children form the biggest population. For instance, Naguru Remand home in Kampala, which was constructed to host a maximum of 20 children, currently on average takes over 200 children per month.<sup>222</sup> The shortage of remand homes across the country inevitably leads to remanding of children at police stations pending transportation to one of the five remand homes, yet these lack separate cells for juveniles.

In terms of rehabilitative centres for convicted juveniles, Uganda has only one national rehabilitation centre at Kampiringisa. This rehabilitation centre is overwhelmed and operates at an overcrowded level.<sup>223</sup> This adversely impacts on the well-being of the detained children. Consequently, at times, children are detained at police stations and adult prisons.<sup>224</sup> This is so, although section 91(6) of the Children Act prohibits remanding of children in an adult prison. It makes children better criminals rather than reformed individuals because of learning destructive behaviours from adult detainees. At times children also suffer from abuse from adult detainees.<sup>225</sup> This is a blatant violation of Articles 10(2)(b) and 37(c) of ICCPR and CRC, respectively.

Worse still, even some of the existing remand homes are in a debilitating state with a shortage of beds, poor hygiene, and clothing for the juveniles.<sup>226</sup> Such conditions subject juvenile suspects to dehumanising and unlivable conditions. The UNCRC expressed concern about the lack of remand

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<sup>221</sup> Zeija (n 1)63.

<sup>222</sup> E Nshakira 'Naguru Remand/Home/reading to rebuild' 25 July 2019

<http://somanystories.ug/blog/features/2019/07/naguru-remand-home-reading-to-rebuild> (accessed 3 October 2021).

<sup>223</sup> Moore (n 38)2.

<sup>224</sup> PILAC (n 178)43.

<sup>225</sup> UNICEF (n 198).

<sup>226</sup> Moore (n 38)4.

homes and conditions in such institutions.<sup>227</sup> Similar cries were echoed by the African Committee of Experts on the Rights of the Child (ACERWC). It noted that several districts do not have provisional detention centres for children and expressed concern about detaining children with adults in police detention centres.<sup>228</sup> In this regard, one can conclude that Uganda violates provisions of the CRC and ACRWC.

#### 4.5.4 Speedy trial

Having a speedy trial is necessary in an ideal juvenile justice system guaranteed under Article 17(2)(c)(iv), 10(2)(b) and 40 (2) (b) (iii) of ACRWC, ICCPR, and CRC respectively and Rule 20 of the Beijing Rules. Ensuring a speedy trial warrants that in case a child is detained during the pendency of the trial, the time for detention is cut short. In this regard, a speedy trial protects the best interest of the child and curtails the time a juvenile can be deprived of liberty if detained. Section 3(2) of the Children Amendment Act provides that:

In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child.

The above provision is reinforced by section 99 of the Children Act, which requires every case to be handled expeditiously and without unnecessary delay. Where the case is not completed within three months after the child's plea has been taken, section 99(2) requires that such a case be dismissed, and the child is not to be held liable to any further proceedings for the same offence. For cases before the High Court, the law gives a maximum of 12 months to complete the case.<sup>229</sup>

The above provisions thus show that the Act measures up to the requirements under the CRC and ACRWC as far as guaranteeing a speedy trial for juveniles is concerned.

However, despite of the aforementioned provisions, juvenile trials still experience delays in courts. The delays affect children, especially those on remand. For example, research conducted in Naguru Remand Home in 2020 indicated that most children there had been remanded beyond the prescribed statutory time.<sup>230</sup> The delays primarily affect children charged with capital offences triable by only the

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<sup>227</sup> UNCRC (n 93) Para 79.

<sup>228</sup> ACERWC, Recommendations and Observations sent to the Government of the Republic of Uganda by the ACERWC on the Initial Implementation Report of the African Charter of the Rights and Welfare of the Child, November 2010 para 6.

<sup>229</sup> Sec 99(4) Children Act.

<sup>230</sup> Karashani (n 215)106.

High Court.<sup>231</sup> However, delays are also prevalent in magistrate courts because of a lack of capacity in the courts and the Director of Public Prosecution's office.<sup>232</sup>

What is more agonising is that some juveniles are detained beyond the time prescribed for custodial punishments under the Children Act. For instance, in *Uganda v Kaggwa Joseph*,<sup>233</sup> the juvenile offender had spent five years on remand at the time of the conclusion of the trial. This meant that the juvenile had spent an extra two years above the maximum possible punishment of three years detention allowed under the Children Act for capital offences in case of a conviction.

These shortfalls thus indicate that the practice does not meet up to international standards.

#### **4.5.5 Legal representation**

One of the elements of the right to a fair trial is the right to have legal representation. Section 16(e) of the Children Act provides that every child shall have a right to legal representation. This provision is fortified by section 4k of the Children Amendment Act 2016, which provides that every child shall have a right to effective legal aid, including representation in all civil, criminal, and administrative proceedings. Legal representation is vital for ensuring that the interests of the child are safeguarded and enabling the child offender to understand the otherwise complex court proceedings. For instance, lawyers are instrumental in helping children appreciate the nature of charges and preparing the child's defence.

However, section 16(e) fails to provide a framework under which this right is to be realised. Legal representation is not made mandatory under the Children Act. In as much section 4k of the Children Amendment Act enumerates that every child enjoys the right to effective legal aid, it does not provide a legal framework under which disadvantaged children are to access this legal aid. It fails to address the issue of who bears the legal expenses for children's representation. Children are left with the burden of looking for legal representatives themselves. The result is that most of them end up without legal representation.<sup>234</sup> In the face of complex court procedures, the idea of a child representing himself reeks much injustice. The only children catered for are those charged with capital offences like murder, as these are afforded free legal representation as per Article 28(3) of the Constitution.

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<sup>231</sup> Moore (n 38)3.

<sup>232</sup> Zeija (n 1)64.

<sup>233</sup> High Court Criminal Session Case 0521 of 1999.

<sup>234</sup> PILAC (n 178)42.

Majority of children are, as a result normally left at the mercy of legal aid service providers.<sup>235</sup> Unfortunately, these are sometimes overstretched and may be unable to represent juveniles effectively.<sup>236</sup>

The UNCRC, in its concluding observations to Uganda, recommended that the government should ‘provide children with legal assistance at an early stage of legal proceedings.’<sup>237</sup> This recommendation was made in 2005, and to date, no efforts have been made to ensure that child offenders have access to free legal representation. This is thus a blatant violation of Article 37(d) of CRC.

In addition, Uganda’s legal framework does not have special guidelines for lawyers who are to represent children in courts. This is a big loophole because lawyers ought to be guided on the proper manner of dealing with children due to their vulnerable nature. It also affects the quality of legal representation accorded to children because representing children may require different skills specific to children.

#### **4.6 Sentencing procedures for juvenile offenders**

The CRC and the Beijing Rules detail some guiding standards regarding sentencing for juvenile offenders. The central direction taken by these standards is in line with non-custodial measures as opposed to punitive and retributive ones. The sentencing should focus on the reintegration of the child and ensuring that the child gets a constructive role in society.

Section 94(1) lists several orders that the children's court can make where a child is found liable. These include an absolute discharge, caution, conditional discharge, binding the child to be of good behaviour, compensation, restitution or fine, probation order, or detention. By the Children Act providing numerous non-custodial options, it measures up to international standards. Furthermore, section 101 of the Children Act restricts the use of the words “conviction” and “sentence” in a children’s court. The Court is instead enjoined to use the words “proof of an offence against a child” and “order.” This is meant to ensure that the child does not get the feeling of being a criminal.

Further still, even in cases of detention, the maximum period of incarceration is quite reasonable with a maximum of three months for a child under sixteen years of age and a maximum of twelve months

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<sup>235</sup> Moore (n 38)21.

<sup>236</sup> Refugee Law Project ‘Challenges faced by children while accessing justice and enjoying their human rights 15 June 2020 [https://refugeelawproject.org/index.php?option=com\\_content&view=article&id=220:challenges-faced-by-children-while-accessing-justice-and-enjoying-their-human-rights&catid=26&Itemid=101](https://refugeelawproject.org/index.php?option=com_content&view=article&id=220:challenges-faced-by-children-while-accessing-justice-and-enjoying-their-human-rights&catid=26&Itemid=101) (accessed 4 October 2021).

<sup>237</sup> UNCRC (n 93) Para 80(d).

for a child above sixteen years of age and in case of an offence punishable by death, a maximum of three years.<sup>238</sup> However, the court has to consider an order of detention as a matter of last resort and after careful consideration and after trying all other reasonable alternatives.<sup>239</sup> This shows that the law aims at ensuring that the child is reintegrated into society rather than being incarcerated.

In addition, before sentencing the child, the court is obligated to get a social welfare report on the child to secure the child's best interests.<sup>240</sup> This requirement is in sync with the principle of the best interests of the child.

#### **4.6.1 The prohibition of certain sentences**

As indicated in the preceding chapter, certain punishments are prohibited under the international juvenile justice legal regime because they infringe on children's liberty, dignity, and right to life and survival. These include the death penalty, corporal punishment, and life imprisonment. Section 104A of the Children Amendment Act forbids the court from imposing the death penalty against any person if the offence in question was committed when the person was below 18 years. In the same vein, Section 94 (9) of the Children Act explicitly proscribes the imposition of corporal punishment on children. The law thus measures up to international standards regarding sentences for children. However, it must be noted that children continue being subjected to corporal punishment in some segments of the justice system. This is common in remand homes where corporal punishments are used for 'disciplining' children.<sup>241</sup>

#### **4.6.2 Post sentencing measures**

The Children Act under section 98 provides an avenue for the aftercare for children released from detention. It provides that before a child is released from detention, the probation and social welfare office and the authorities in the detention centre shall discuss the period of aftercare with the child, which should not exceed twelve months after the child's release from detention. In this regard, it can be seen that the Children Act makes attempts to ensure that released children are rehabilitated, although as Zeija has reported, once children are released, they are just passed on to their relatives, and no follow-up is made because of shortage of resources.<sup>242</sup>

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<sup>238</sup> Sec 94(1)(g) Children Act.

<sup>239</sup> Sec 94(4) Children Act.

<sup>240</sup> Sec 95(1) Children Act.

<sup>241</sup> Moore (n 38)4.

<sup>242</sup> Zeija (n 1) 64.

#### **4.7 Conclusion**

This chapter has disclosed that although a more significant part of the juvenile justice legal framework complies with international standards as set out under the CRC and ACRWC, there are gaps that need to be closed if juveniles' rights are to be fully protected and granting them access to genuine justice. Unfortunately, the recent amendment of the Children Act did not close some of these gaps. There is also a considerable disparity between the law and its implementation, which is the greatest challenge impeding children's access to justice. The non-implementation of the law means that juveniles are denied all the safeguards that were put in place to guarantee their rights and ensure their accessibility to justice.

## **CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Conclusion**

The study sought to examine Uganda's legal and institutional juvenile justice framework to assess the extent to which it complies with international juvenile justice standards. The aim was to see how it protects rights of juvenile offenders, guarantees their access to justice, and highlight the existent gaps that impede access to justice of child offenders. Chapter 2 demonstrated the evolution of juvenile justice from the welfarist model to the contemporary child rights approach. Regard was also placed on the historical development of juvenile justice in Uganda from the precolonial era to its present form.

Chapter 3 demonstrated how juvenile justice has developed in international law from the adoption of the ICCPR to a children-specific instrument, the CRC in 1989 and an African regional instrument, ACRWC in 1990, and other guidelines such as the Beijing Rules. The CRC and ACRWC put in place several standards aimed to protect rights of juvenile offenders when they interface with the justice system. These include the minimum age for criminal responsibility, diversion, arrest, right to be informed, separate court and procedures, speedy trial, privacy, sentencing, and post-sentencing measures, among others which were discussed in chapter 3. These standards cover both pretrial and trial proceedings. As noted in this study, Uganda ratified the CRC and ACRWC in 1990 and 1994, respectively. Consequently, Uganda assumed the obligation to put in place all the standards enunciated in the CRC and ACRWC regarding juvenile justice.

Uganda enacted the Children Act cap 59 to give effect to the juvenile justice standards provided under the CRC and ACRWC. The Act was recently amended in 2016 to further buttress the protection accorded to children. In Chapter 4 of this paper, Uganda's juvenile justice system was weighed against the standards enunciated under the CRC, ACRWC, and other guidelines. The study established that a significant part of Uganda's juvenile justice legal framework complies with Articles 37 and 40 of CRC and Article 17 of ACRWC. Nonetheless, there are gaps that need to be closed if juveniles' rights are to be fully protected and guarantee their access to genuine justice. These include gaps in the arrest, jurisdiction of the FCC, legal representation, the right to be informed of reasons for arrest, among others.

The study also established that there is a considerable disparity between the law and its implementation, which is the most significant impediment to children's access to justice. The non-



implementation of the law means that juveniles are denied all safeguards that were put in place to guarantee their rights and ensure their accessibility to justice.

The existing gaps can be cured through taking a number of reforms, both legal and non-legal, explicated in the recommendations below:

## **5.2 Recommendations**

### **5.2.1 Minimum age**

The Children Act sets the minimum age for criminal responsibility at 12, which is in line with the one recommended by the UNCRC.<sup>243</sup> However, the law is silent on what happens to children below 12 who engage in criminality. Although it is undoubtedly unfitting to subject children below 12 years to criminal liability, the action of just releasing such children after they have engaged in criminal activity may send a wrong signal to society. In some cases, society may even get rudimentary ways of dealing with them, such as mob justice. It is thus recommended that the law be amended to explicitly provide that children below 12 are completely exonerated and also put in place programmes outside the justice system to rehabilitate them through programmes such as counselling together with their parents or guardians.

It was also noted that many children lack birth certificates that problematise proving their age, leading to the inclusion of children below 12 years in the criminal justice system, where some are even remanded. The government should thus take it upon itself to ensure that there is improvement in child registration through enactment of enabling laws and policies

### **5.2.2 Legal representation**

The CRC requires that children have access to free legal representation at all stages of proceedings. However, as indicated, the Children Act does not provide a framework under which children can access free legal representation. Even the 2016 amendment, which guarantees every child's right to effective legal aid in criminal proceedings, does not clarify whether the government has an obligation to provide free legal services to children. The result is that most children go unrepresented in criminal trials, which infringes on their right to a fair hearing.

Therefore, there should be an adoption of rules or policy framework to guide the provision of legal aid to children so that they are represented in trials. This representation should be made mandatory in all cases, whether capital or non-capital. Of recent, there have been plans to pass a legal aid bill,

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<sup>243</sup> UNCRC, General Comment 10 para 32.

although the process seems to be moving at a snail pace. Parliament should thus take it as a matter of urgency to see that the legal aid bill is passed without delay to give full effect to the right to legal representation of many Ugandans who cannot afford services of a lawyer.

In addition, there should be adoption of rules to guide lawyers when dealing with children clients. These should be trained on handling children because representing children has its own challenges, which may be difficult for some to handle, especially the junior ones.

### **5.2.3 Privacy**

The privacy of children is very instrumental in protecting them against stigma and other adverse consequences of criminal trials. However, as the study indicated, the protection offered by the Children Act is restricted to matters in court, leaving children without protection of their privacy in other stages of legal proceedings, especially at police after an arrest. The Children Act should thus be amended to guarantee that children's privacy is protected from the earliest point of contact with the justice system. There should also be adoption of regulations for the media when covering proceedings involving children.

### **5.2.4 Arrest**

As noted in the preceding chapter, there are no guidelines, especially for children in terms of arrests. Instead, reliance is placed on the Criminal Procedure Code Act, which does not distinguish between an arrest for a child and that of an adult. As a result, police enjoys broad discretion in deciding when and how to arrest children which can be abused and children being mishandled by, for instance, being handcuffed. It is thus recommended that the Children Act be amended to take into account the manner in which children are to be arrested.

### **5.2.5 Separate courts**

As noted in Chapter 4, the Children Act created the FCC to handle inter alia criminal proceedings involving children. This court is supposed to use informal procedures and be housed in different buildings from ones used by the general court. While creating the children's court is commendable, the study established that there are no special courts strictly for children. It is the general courts that are used interchangeably, and sometimes matters of children are handled together with those of adults. It is thus a recommendation of this study that the provisions of the Children Act regarding establishment of separate courts are fully implemented. The actual children court should be established with facilities to accommodate both genders, having special courtrooms that can create a less intimidating environment for children, and other child-friendly facilities such as decor. This would

guarantee that the special needs of juveniles are catered for. The government should thus channel more funds towards the realisation of this requirement.

It is also recommended that the FCC's jurisdiction be revised to cover all offences committed by children. As the study established, the Children Act excludes the jurisdiction of the children's court over capital offences like murder and in cases where children are charged jointly with an adult. This exposes children to the adult criminal justice system and denies them privileges of the children's court, such as informality of proceedings. Moreover, the Magistrate courts, which are designated as children's courts, have jurisdiction to try crimes other than those for which the maximum penalty is death or life imprisonment. Since the maximum penalty for children in respect of capital offences is three years, there is no justification why the children's court should not be placed to hear all kinds of offences against children.

Furthermore, extending jurisdiction of the children's court to cover capital offences would also solve the problem of prolonged trials in the High Court for children, which prolongation is due to the heavy workload of the High Court.

#### **5.2.6 Detention facilities**

As noted in chapter 4, Article 37 of CRC requires children to be kept in separate detention from adults. This has been emphasized by the UNCRC that state parties have an obligation to put in place separate facilities having different policies, staff, and practices for the proper detention of children.<sup>244</sup>

The availability of enough detention centres is necessary to safeguard children rights who are sent into detention. Yet, as indicated, police stations in Uganda do not have holding cells for juveniles. Worse still, it is unfathomable that the country has only one rehabilitation centre and only five remand homes.

Therefore, it is recommended that the detention facilities be increased so that the children in detention can live in dignified conditions.

#### **5.2.7 Training and creation of awareness**

The children Act provides that the children's court is to be presided over by a magistrate, not below the rank of magistrate grade II. As established in the previous chapter, some of the magistrates are not well-versed with children's rights. In its concluding observations to Uganda, the UNCRC recommended that judicial officers should receive more training.<sup>245</sup> The government should thus

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<sup>244</sup> UNCRC, General Comment 10 para 85.

<sup>245</sup> UNCRC (n 93) para 80 a.

ensure that judicial officers receive more training in children's rights. The training should not be restricted to judicial officers only but to all officers who engage with children in the justice system, such as police officers, prosecutors, and probation and social welfare officers. This will equip them with knowledge about children's rights and make them sensitive to their needs.

There should also be creation of more public awareness about children's rights. This can assist in educating children about their rights and parents about their responsibilities. Public awareness can be achieved through outreach activities in the community and can be instrumental in improving access to justice for juveniles. For instance, the population should be made aware of the various diversion options at the disposal of police so that the latter are encouraged to use them.

### **5.2.8 Delinquency prevention**

There is a glaring absence of a policy aimed at preventing delinquency among children in Uganda. Although the government passed the National Child Policy 2020, it does not explicitly address the issue of preventing juvenile delinquency. A juvenile delinquency prevention policy should thus be adopted with programs focused on solving issues which contribute to children getting into crime. The policy should aim at easing the accessibility of children to protection services and basic needs of life. This is because lack of basic needs is a key driver of children into crime.<sup>246</sup>

Lastly, Uganda needs to develop a standalone legislation that specifically addresses the administration of justice of child offenders. Although sections under the Children Act cover elements of juvenile justice, the Children Act does not comprehensively detail every aspect covering juvenile justice as this study has revealed. It would thus be more beneficial if a comprehensive legislation on juvenile justice is adopted.

**Word count: 19958**

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<sup>246</sup> N Jumani et al 'Crimes causes in educated youth of Pakistan' in (2011) 3 *International journal of Academic Rev* at 333.

## BIBLIOGRAPHY

### Books

Breen, C *The Standard of the Best Interests of the Child* (Springer 2002)

Bueren, GV *A Commentary on the United Nations Convention on the Rights of the Child, Article 40: Child criminal justice* (Brill Nijhoff 2006)

Bueren, GV *The International Law on the Rights of the Child* (Springer Netherlands 1995)

Krisberg, B *Juvenile justice: Redeeming our children* (Sage Publications 2005)

LeBlanc, L *The Convention on the Rights of the Child: United Nations lawmaking on human rights* (University of Nebraska Press 1995)

Makubuya, AN *Protection, patronage or plunder? British machinations and (B) Uganda's struggle for independence* (Cambridge Scholars Publishing 2018)

McCord, J; Widom, CS & Crowell, NA *Juvenile crime, juvenile justice* (National Academies Press 2001)

Otiso, KM *Culture and customs of Uganda* (Greenwood Press 2006)

Patenaude, AL 'History of the treatment of and attitudes toward children' in Sims, B & Preston, P (eds) *Handbook of juvenile Justice: Theory and practice* (Routledge 2006)

Patterson, GT & Graham, W *Clinical interventions in criminal justice settings* (Academic Press 2018)

Wernham, M *An outside chance: Street children and juvenile justice - An international perspective* (Consortium for Street Children 2004)

### Book Chapters

Bueren, GV 'The United Nations Convention on the Rights of the Child: An evolutionary revolution' in Davel, CJ (ed) *Introduction to Child Law in South Africa* (Lansdwoon: Juta Law 2000)

Ekirikubinza, LT 'Juvenile justice and the law in Uganda: Towards Restorative Justice' in Lindholt, L & Schaumburg-Muller, S *Human Rights in Development Law Year Book* (Martinus Nijhoff Publishers 2003)

Jensen, EL 'An historical overview of the American juvenile justice system' in Jensen, EL & Jepsen, J (eds) *Juvenile law violators, human rights, and the development of new juvenile justice systems* (Hart Publishing 2006)

Junger-Tas, J 'The juvenile justice system: past and present trends in Western society' in Weijers, I & Duff, A (eds) *Punishing juveniles: Principle and critique* (Hart Publishing 2002)

Krisberg, B 'Rediscovering the juvenile justice ideal in the United States' in Muncie, J & Goldson, B (eds) *Comparative Youth Justice* (Sage Publications 2006)

Melin, M 'A quarter of century with the UN Convention on the Rights of the Child' in Mahmoudi, S; Leviner, P; Kaldal, A & Lainpelto, K *Child friendly justice. A quarter of a century of the UN Convention on the Rights of the Child* (Brill Nijhoff 2015)

Miller, WR 'Juvenile delinquency, history of' in Miller, WR (ed) *The social history of crime and punishment in America. An encyclopedia* (Sage Publications 2012)

Muncie, J 'Children's rights and youth justice' in Franklin, B (ed) *The new handbook of children's rights - Comparative policy and practice* (Routledge 2002)

Odongo, GO 'Kenya' in Decker, SH & Marteache, N (eds) *International Handbook of Juvenile Justice* (Springer International Publishing 2017)

Odongo, GO 'The impact of international law on children's rights on juvenile justice law reform in the African Context' in Sloth-Nielsen, J (ed) *Children's Rights in Africa: A Legal Perspective* (Routledge 2008)

Pickford, J 'Introduction: A new youth justice for a new century?' in Pickford, J (ed) *Youth Justice: Theory and Practice* (Routledge 2000)

Rousseaux, TX 'Introduction' in TX Rousseaux (ed) *Youth and justice in Western States, 1815-1950: From punishment to welfare* (Palgrave Macmillan 2017)

Skelton, A 'Freedom in the making: Juvenile justice in South Africa' in Zimring, FE; Langer, M & Tanenhaus, DS (eds) *Juvenile justice in global perspectives* (NYU Press 2015)

Sloth-Nielsen, J 'Child justice and law reform' in Davel, CJ (ed) *Introduction to Child Law in South Africa* (Lansdowne: Juta Law 2000)

Sloth-Nielsen, J 'The international framework' in Sloth-Nielsen, J & Gallinetti, J (eds) *Child justice in Africa: A guide to good practice* (Community Law Centre 2004)

Sloth-Nielsen, J 'What's in a name? Child friendly justice in Africa' in Mahmoudi, S; Leviner, P; Kaldal, A & Lainpelto, K *Child friendly justice. A quarter of a century of the UN Convention on the Rights of the Child* (Brill Nijhoff 2015)

Smandych, R 'Canada: Re-penalization and young offenders' rights' in Muncie, J & Goldson, B (eds) *Comparative Youth Justice* (Sage Publications 2006)

Sokol, BW & Hammond, SI 'Piaget and affectivity' in U Müller, JIM Carpendale, & L Smith (eds) *The Cambridge companion to Piaget* (2009)

Twinomugisha, BK 'African customary law and women's human rights in Uganda' in Fenrich, J; Galizzi, P & Higgins, TE (eds) *The future of African customary law* (Cambridge University Press 2011)

Winterdyk, JA 'Introduction: Juvenile justice in the international arena' in Winterdyk, JA (ed) *Child justice: International perspectives, models and trends* (Routledge 2015)

Zeija, F 'Uganda' in Decker, SH & Marteache, N (eds) *International Handbook of Juvenile Justice* (Springer 2017)

## **Journal articles**

Chirwa, DM & Kaime, T 'Where are the missing pieces? Constructing a mosaic of the CRC and the African Children's Charter in Malawi's law and policy' (2008)2 *Malawi Law Journal* 86

Chirwa, DM 'Children's rights, domestic alternative care frameworks and judicial responses to restrictions on inter-country adoption: A case study of Malawi and Uganda, (2016) 16 *African Human Rights Law Journal* 119.

Ekirikubinza, LT 'Juvenile justice and the law in Uganda: Operationalisation of the Children statute in (2005) *International Survey of Family Law* 520

Feld, BC 'The transformation of the child court - part II: Race and the "crack down" on youth crime' (1999)84 *Minnesota Law Review* 351

Goldson B 'What "justice" for children in conflict with the law? some reflections and thoughts' (2009) 79 *Criminal Justice Matters* 19

Karashani, D 'Covid-19 and juvenile justice: An examination of the measures adopted to mitigate covid-19 at Naguru Remand Home, Uganda' 18 (2021) *Makerere Law Journal* 108

Levesque, RJR 'Future visions of juvenile justice: Lessons from international and comparative law' (1996)29 *Creighton Law Review* 1566

Mack, JW 'The juvenile court' (1909) 23 *Harvard Law Review* 120

McCallum, D & Laurence, J 'Has welfarist criminology failed? Juvenile justice and the human sciences in Victoria' (2007) 60 *Australian Social Work* 410.

Odala, O 'Spectrum for child justice in the international human rights framework: from reclaiming the delinquent child to restorative Justice' (2012)27 *American University International Law Review* 560

Parry-Williams, J 'Legal reform and children's rights in Uganda - some critical issues' (1993) 1 *The International Journal of Children's Rights* 62

Pillay, AL 'Criminal capacity in children accused of murder: Challenges in the forensic mental health assessment' in (2006) 17 *Child & adolescent mental health* 18

Richards, K 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & issues in crime and criminal justice* 1

Sanford, JF 'Juvenile justice reform. An historical perspective' (1970) 22 *Stanford Law Review* 1222

Scheid, D 'Kant's retributivism' (1983) 93 *Ethics* 263

Skelton, A & Tshehla, B 'Child justice in South Africa' (2008) *Monograph 150* 18

Sloth-Nielsen, J 'The role of international law in the development of South Africa's legislation on juvenile justice' (2001) 5 *Law, Democracy and Development* 67

### **Theses and dissertations**

Nolasco, CA 'Contemporary trends in juvenile justice' Master's thesis, Kyushu University, 2004

Odongo, GO 'The domestication of international law standards on the rights of the child with specific reference to juvenile justice in the African context' LLD thesis, University of the Western Cape, 2005.

### **Reports and papers**

Human Rights Watch 'Where do you want us to go? Abuses against street children in Uganda' 17 July 2014 <https://www.hrw.org/report/2014/07/17/where-do-you-want-us-go/abuses-against-street-children-uganda> (accessed 1 August 2021)



Moore, M 'Juvenile detention in Uganda. A review of Uganda remain homes and the National Rehabilitation Centre' October 2010  
<https://resourcecentre.savethechildren.net/node/3994/pdf/3994.pdf> (accessed 23 August 2021).

National Population Council 'The state of Uganda population report 2019'  
<http://npcsec.go.ug/wp-content/uploads/2013/06/2019-SUPRE.pdf> (accessed 3 August 2021).

PRI & FHRI 'A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Uganda' (2012) at 13 <https://cdn.penalreform.org/wp-content/uploads/2013/06/A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-Uganda.pdf> (accessed 2 October 2021)

Report of the Committee of Enquiry into the problem and treatment of juvenile delinquency in Uganda (1958)

The Public Interest Law Clinic (PILAC) 'Empirical study to examine challenges faced by Juvenile Justice Courts enhancing access to Justice for Juvenile Offenders' (2020)  
[https://law.mak.ac.ug/sites/default/files/Pilac\\_JC1\\_Report\\_30\\_aug.pdf](https://law.mak.ac.ug/sites/default/files/Pilac_JC1_Report_30_aug.pdf) (accessed 25 September 2021)

Uganda Human Rights Commission (UHRC) 'Human rights report 2020'  
<https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf> (accessed 3 August 2021)

Uganda Police 'Annual crime report 2020' <https://www.upf.go.ug/wp-content/uploads/2021/04/ANNUAL-CRIME-REPORT-2020-1.pdf?x74136> (accessed 2 August 2021)

UN 'Juvenile delinquency' World Youth Report, 2003

### **Internet sources**

Foundation for Human Rights Initiative 'Juvenile Justice in Uganda January to July 2009'  
<https://cdn.penalreform.org/wp-content/uploads/2013/06/A-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-Uganda.pdf> (accessed 2 October 2021)

Gose, M 'The African Charter on the Rights and Welfare of the Child' July 2002  
<https://dullahomarinstitute.org.za/childrens-rights/Publications/Other%20publications/The%20African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> (accessed 7 September 2021)

Mandela, N Address at the launch of the Nelson Mandela Children's Fund, Pretoria 8 May 1995  
[http://www.mandela.gov.za/mandela\\_speeches/1995/950508\\_nmcf.htm](http://www.mandela.gov.za/mandela_speeches/1995/950508_nmcf.htm) (accessed 5 August 2021)

Nshakira, E 'Naguru Remand/Home/reading to rebuild' 25 July 2019 [Naguru Remand Home | Reading to Rebuild - Sooo Many Stories \(somanystories.ug\)](#) (accessed 3 October 2021)

Okabo AS 'security arrests 10 street children' 23 September 2020  
<https://ugandaradionetwork.net/story/apac-security-arrests-ten-street-children> (accessed 3 October 2021)

Refugee Law Project 'Challenges faced by children while accessing justice and enjoying their human rights' 15 June 2020  
[https://refugeelawproject.org/index.php?option=com\\_content&view=article&id=220:challenges-faced-by-children-while-accessing-justice-and-enjoying-their-human-rights&catid=26&Itemid=101](https://refugeelawproject.org/index.php?option=com_content&view=article&id=220:challenges-faced-by-children-while-accessing-justice-and-enjoying-their-human-rights&catid=26&Itemid=101) (accessed 4 October 2021)

UN 'Guidance notes of the Secretary General. UN approach to justice for children' Sept 2008  
[https://www.unodc.org/pdf/criminal\\_justice/Guidance\\_Note\\_of\\_the\\_SG\\_UN\\_Approach\\_to\\_Justice\\_for\\_Children.pdf](https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf) (accessed 1 August 2021)

UNDP 'Access to justice practice note' 2015 <https://www.undp.org/publications/access-justice-practice-note> (accessed 6 August 2021)

UNICEF 'Guidelines to promote the rights of children in conflict with the law launched' Press release 22 August 2019 <https://www.unicef.org/uganda/press-releases/guidelines-promote-rights-children-conflict-law-are-launched> (accessed 30 September 2021).

UNICEF 'Justice for children. Developing a child friendly and responsive justice system' (2015)  
<https://www.unicef.org/uganda/what-to-do/justice-for-children> (accessed 3 October 2021)

Wesaka, A Court quashes child sex offence Daily Monitor 19 April 2021  
<https://www.monitor.co.ug/uganda/news/national/court-quashes-child-sex-offence--3367600> (accessed 3 October 2021)

## **International instruments**

The African Charter on the Rights and Welfare of the Child

The Convention on the Rights of the Child

The International Covenant on Civil and Political Rights

**Soft law**

The Declaration of the Rights of the Child

The United Nations Declaration of the Rights of the Child in 1959

The United Nations Guidelines for the Prevention of Juvenile Delinquency

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice

UN Committee on the Rights of the Child (UNCRC) General comment 10

UN Committee on the Rights of the Child (UNCRC) General comment 24 on children's rights in the child justice system CRC/C/GC/24

**Domestic law**

1995 Constitution of Republic of Uganda

Children Act, Cap 59, Laws of Uganda, 2000

The Children (Amendment) Act, 2016

The Criminal Procedure Code Act

The Local Council Courts Act, 2006

The Penal Code Act

The Trial on Indictment Act

**Cases**

*Ex Parte Crouse* (1839).

*Kent v. the United States* 383 U.S. 541.

*Re Gault* 387 U.S.1 (1967).

*Re Holmes*, 379 Pa (1954).

*Uganda v Kaggwa Joseph* High Court Criminal Session Case 0521 of 1999