

**'THE PRODIGAL CHILD':
A LEGAL INQUIRY INTO THE MECHANISMS FOR REHABILITATION AND
REINTEGRATION OF JUVENILE DETAINEES: LESSONS FROM MAURITIUS**

**DISSERTATION SUBMITTED IN PARTIAL FULLFILMENT OF THE
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BY

PATRICIA ATIM P'ODONG

STUDENT NO: 29648132

PREPARED UNDER THE SUPERVISION OF

MR PRAMOD BISSESSUR

AT FACULTY OF LAW AND MANAGEMENT, UNIVERSITY OF MAURITIUS

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Dedications

To my lovely twin daughters Apiyo.G.Gabriella and Acen.N.Isabella with all my love.

Declarations

I, **PATRICIA ATIM P'ODONG**, do hereby declare, certify and affirm that this research is my own original work and that to the best of knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfillment of the requirements of a Masters of Law Degree at any other institution of learning. Where someone else's work has been used acknowledgement and reference has been duly made. I assume personal responsibility to the correctness of facts contained herein.

Signed on this 30th day of October 2009

PATRICIA ATIM P'ODONG

E-mail: pa_odong2001@yahoo.co.uk

I, **MR PRAMOD BISSESSUR** being the supervisor, have read this research paper and approved it for partial fulfillment of the requirements of the Masters of Law Degree, Human Rights and Democratisation in Africa, of the University of Pretoria.

Signed thisday of2009

MR PRAMOD BISSESSUR

(SUPERVISOR)

E-mail:

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List of abbreviations

JJS	Juvenile Justice System
CRC	Convention on the Rights of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACommHPR	African Commission on Human and Peoples' Rights
SRPDA	Special Rapporteur on Prisons and conditions of Detention in Africa
CSO	Community Service Orders
JDL	UN Standard Minimum Rules for Juveniles Deprived of their Liberty
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
Tokyo Rules	UN Standard Minimum Rules For Non-Custodian Measures
JOA	Juvenile Offenders Act
CPA	Child Protection Act
OCOA	Ombudsperson for Children's Act
NCC	National Children's Council
NCCA	National Children's Council Act
PRI	Penal Reform International
ACPF	African Child Policy Forum
NGO	Non Governmental Organisations
OCO	Ombudsperson for Children
RYC	Rehabilitation Youth Centre
CYC	Correction Youth Centre
PO	Probation Officer
KDPA	Kampala Declaration and Plan of Action
PAS	Probation and After-care Services
PHB	Probation Hostel for Boys
PHG	Probation Homes for Girls
MSSNSRI	Ministry of Social Security National Solidarity, Senior citizen welfare and Reform Institutions
MWCDFW	Ministry of Women's Rights, Child Development and Family Welfare

Chapter One: The plight of juveniles in detention

Introduction

In many African jurisdictions the juvenile justice system (JJS) remains wanting in as far as establishing and operating a child friendly juvenile system is concerned despite the ratification of many international and regional human rights treaties. Consequently, it is contended in this paper that when States fail to develop programmes and policies that address the special needs of individual juveniles before trial, during trial and when in detention that are tailored towards rehabilitation and reintegration of juveniles, then we not only contravene our international and national undertakings to safeguard the best interest of child but also lay fertile ground for perpetual child abuse, neglect and the creation of social outcasts who are left with no choice but to become a menace in society. Borrowing Judge Murphy's expression *I have to pause here, perhaps in a moment of exasperation, to ask: What message do we send the children when we tell them that they are to be removed from their parents because they deserve better care, and then neglect wholly to provide that care? We betray them, and we teach them that neither the law nor state institutions can be trusted to protect them. In the process we are in danger of relegating them to a class of outcasts, and in the final analysis we hypocritically renege on the constitutional promise to protect.*¹ Premised on this argument, this paper attempts to spell out the international benchmarks for the protection of juvenile detainees, to examine the extent to which Mauritius justice system is juvenile friendly, to identify the measures employed by Mauritius's to guarantee rehabilitation and reintegration of juveniles and to draws best practices from Mauritius to the rest of Africa.

1.1 Background

Children² represent about a quarter of the world's population. They are not equipped to defend themselves; they must depend on what is given to them. They are victims of circumstances. They bring us joy, they bring us tears, and they are our reason to hope.³ It is therefore vital that their rights and interests are jealousy guarded for rights are important if children are to be

* The analogy of the prodigal child is derived from *The Parable of the Prodigal Son: Luke Chapter 15: Versus 11-3* The Holy Bible by T Nelson (ed); 'The Answer' (2003) New Century Version, 1081.

¹ Judge Murphy, High Court of Pretoria cited in Center for Child Law: *Child Law Matters*, News Letter (2006), 6.

² This paper will adopt the definition of a child in Article 3 of African Charter on the Rights and Welfare of a Child (1990/1999) (ACRWC) as "Every human being below the age of eighteen years".

³V Kumari.: *The juvenile justicesSystem in India: From welfare to rights* (2004), 292.

treated with equality and as autonomous beings.⁴ The African Union has noted that children occupy a unique and privileged position in the African society and that for the full harmonious development of their personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding.⁵ Unfortunately, many a time children commit crimes that bring them into conflict with the law and eventual detention either in prisons or child rehabilitation centers. It is reported that the number of children deprived of their liberty as a result of being in conflict with the law is globally estimated to be not less than one million.⁶ Sloth-Nielsen states that, although children in Africa form a fairly small portion of overall prison population, the numbers of children expressed as a percentage of the prison population in the African region generally ranges between 0.5 per cent and 2.5 per cent.⁷

Various international and regional legal instruments exist that seek to protect the rights of juvenile offenders. In spite of this, many juveniles continue to suffer gruesome abuse of their rights while in detention by either fellow inmates, or the prison officers entrusted with the role of protecting them.⁸ These violations with impunity often take place behind closed doors and are hardly brought into public arena because the society is more concerned with keeping the offenders locked up and throwing the keys away.⁹ Most governments, especially in Africa have also failed to adopt and implement policies, legislations and programmes that ensure the rehabilitation and reintegration of juvenile detainees into society. Gardner says that several jurisdictions have explicitly expanded their theory of juvenile justice, downplaying the role of rehabilitation.¹⁰ Yet, the aim of the juvenile justice system emphasis the well-being of the juvenile and seeks to ensure that any reactions to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence.¹¹ PRI also asserts that crime prevention and rehabilitation measures must involve protecting and promoting all rights of children including:

⁴ M.D Freeman: 'Taking children's rights more seriously' in M D .Freeman (ed): *The International Library of Essay on Rights: Children's Rights*, (2004) 172.

⁵ Para two of the preamble to the ACRWC.

⁶ UNODC-UNICEF: *Manual for the Measurement of Juvenile Justice Indicators* (2006), New York, 1.

⁷ J Sloth Nielsen: 'Children in African prisons' in J Sarkin (ed): *Human rights in African prisons* (2008), 117. Namibia's child prison population constitutes the highest proportion in Africa at 5.5 per cent, Burkina Faso in 2001 children constituted 2.4 per cent of prison population of 2,800. In Ghana by 2002 out of 11,379 prisoners 1.3 per cent were children, in Uganda by 2003, 173 children where in prison and in South Africa, by 2004, 1.9 per cent of 186,000 prisoners where children.

⁸ Penal Reform International (PRI): *Juvenile Justice* (2008) at <http://www.pri.ge/eng/Juvenile Justice.php> (Accesses 4th September 2009). Also see J Sloth-Nielsen: 'The international legal framework' in Sloth-Nielsen J & J Gallinetti; *Child justice in Africa: A guide for good practices* (2004) 19, observes that children deprived of their liberty are notoriously vulnerable to threats to their physical and psychological well-being as conditions in detention facilities usually do not meet the standards required by the guiding international instruments.

⁹ M Saine: 'Protecting the rights of children in trouble with the Law: A case study of South Africa and The Gambia' unpublished LLM dissertation, University of Pretoria,(2005) 1-4 notes that children accused of committing crimes are more susceptible to human rights abuses while in detention either in police cells, prisons or authorized detention centers.

¹⁰ MR Gardener: *Understanding juvenile law* (1997) 301.

¹¹ Article 17 (3) of the ACRWC

health; welfare and social services, recreation and leisure and as well as protection from violence and harm.¹²

The African Charter on the Rights and Welfare of the Child (ACRWC) recognizes that the physical, social and mental development needs of a child require particular care.¹³ Unfortunately this well recognized legal principles fall short of actual practice in many African countries as States continue to neglect to take up policies that protect juveniles. Odiambo opines that in many cases, young people in the JJS are generally viewed only in the narrow perspective as law breakers and a threat to the public. The fuller picture is not seen of children who are in need of understanding and assistance and who themselves are often victims of violence and social injustice.¹⁴ This state of affairs is further exacerbated by the fact that when in detention, most governments are not only unable or unwilling or to provide proper conditions of detention for the children, but also neglect or fail to ensure that juvenile detainees engage in meaningful activities that would guarantee their successful reform and reintegration into society and live more constructive and productive lives.¹⁵ Kumari argues that the reasons for the failure of the juvenile justice system (JJS) are not linked with the children's behaviour being not amenable to reform but because of the state's failure to take concerted view of the situation of children and have a clear policy towards them.¹⁶

It is argued in this paper that as a result of the poor JJS in most African States most child offenders find themselves in a hopeless situation with no further choice but to return to crime. Further that failure to adopt measures that give juvenile detainees the opportunity to successfully rehabilitate and reintegrate into society upon release from detention inevitably result into high rates of illiteracy, street children, unemployment, crime and recurring cases of delinquency or recidivism among the youth. And yet the JJS is centered on the need to reform and reintegrate the child offender into society after detention.¹⁷

¹² PRI: n 8 above

¹³ Preamble to ACRWC

¹⁴ G Odongo-Odiambo: 'The domestication of international law standards on the rights of a child with specific reference to juvenile justice in the African context' unpublished PHD Thesis, University of Western Cape, (2005) 8.

¹⁵ B Abrahamson as cited by A Skelton: 'INGOs and NGOs as role players' in J Sloth-Neilsen & J Gallinetti : n 8 above, 162 notes that , juveniles are described as the 'Unwanted Child' of States when it comes to living up their obligations on the rights of the Child.

¹⁶ V Kumari: n 3 above. 308

¹⁷ Article 17 of ACRWC and 40 of CRC

Mauritius was rated the child-friendliest state premised on the nature of legislations, policies and practices adopted by the government to secure child protection and wellbeing.¹⁸ Besides being privy to the International Convention on Civil and Political Rights (ICCPR),¹⁹ the International Convention on Economic Social and Cultural Rights (ICESCR)²⁰, the UN Convention against Torture (CAT)²¹, and the African Charter on Human and People's Rights (ACHPR),²² Mauritius has also ratified both the Convention on the Rights of the Child (CRC) as well as the African Charter on the Rights and Welfare of the Child (ACRWC).²³ Unlike many African countries, Mauritius has also established a number of institutions directly concerned with child protection and development and these include: The Ministry for Women's Rights, Child Development and Family Welfare (MWCFW), Child Protection Unit and The Ombudsperson for Children. Based on this, the author intends to establish the extent to which the government of Mauritius has adopted policies, legislation and programmes that conform to international principles and are tailored towards achieving the successful rehabilitation and reintegration of juvenile detainees into society. It is hoped that the best practices, if any, in Mauritius could be adopted by other African countries in order to transform their JJS.

1.2 Statement of the problem

Article 1 of the ACRWC enjoins all member States to undertake all measures necessary to give effect to the provisions of the ACWC.²⁴ Although most States in Africa are party to both the CRC, and the ACRWC, the actual realization of children's rights still remains a mirage. UNICEF affirms that, despite the rhetoric in the international community about the importance of children's rights, monitoring of the CRC shows that "the rights, norms and principles involved are regularly ignored and seriously violated virtually throughout the world."²⁵ In Africa many child offenders are often incarcerated in child detention or rehabilitation centers that are poorly facilitated resulting into a violation of their rights and best interest.²⁶ The rationale of JJS focuses on the need to give children a second chance in life by protecting their dignity and ensuring that juvenile

¹⁸ African Children Policy Forum (ACPF): *The African report on child wellbeing: How child-friendly are African governments?* (2008) www.info@africanchildforum.org (accessed 14th August 2009).

¹⁹ Acceded on 12th December 1973

²⁰ Acceded on 12th December 1973

²¹ Ratified on 9th December 1992

²² Ratified on 19th June 1992

²³ Ratified CRC on 26th July 1990 and ACRWC 14th February 1992

²⁴ Also see article 4 of CRC

²⁵ UNICEF: *Innocent digests* (1998) as cited in G Odongo- Odiamble n 14 above, 7

²⁶ Article 3 of CRC and Article 4 of ACRWC

detainees are rehabilitated and reintegrated into society to play more constructive roles.²⁷ Unfortunately, very few states in Africa undertake relevant measures that conform to their international obligations to guarantee the protection of juvenile offenders. Such policies target the provision of the necessary facilities or programmes that are geared towards rehabilitation and reintegration into society of juvenile offenders. As a consequence, after serving their sentence former juvenile detainees are often unleashed into society with no education, no livelihood skills, no prospects of engaging in gainful employment, limited opportunity of enrolling in school and sometimes no family support. In essence the system succeeds neither in rehabilitation nor reintegration but only produces societal outcasts or people who can only make a living out of a life of crime. Decrying this situation within South African context, it is impossible to ignore the lamentation of Gallinetti *et al* that

On the streets of most African cities, we find children and young people wandering around looking for money, food or employment. When we visit prisons in Africa, we find children and young people who are either suspected of having committed crimes, or have already been convicted and are serving a sentence. In South Africa, for example, there are almost 5 000 children in prisons. It is also true that probably 99 percent of these children will be released, and will return to the communities from which they originate. However, the majority of these children will continue to live on the periphery of society and will not have access to the services and care that most children enjoy. They will continue to be marginalised, and it is more than likely that they will find themselves in conflict with the law once again. This cycle is well known to those who work with children in need of care and children at risk.²⁸

Yet it is acknowledged that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process of a child and tends to disappear spontaneously in most individuals with the transition to adulthood.²⁹ Hence the need to ensure that the JJS benefits its recipients by alleviating personal characteristics deemed undesirable through rehabilitation.³⁰

1.3 Research questions

1. What legal frameworks provide for the reform and reintegration of juveniles detainees?

²⁷ Article 17(3) of ACRWC and article 40(1) of CRC. Also see Rule 79 of the JDL guarantees the rights of juveniles to reintegrate into the community.

²⁸ J Gallinetti *et al*: 'Child justice concepts' published in J Sloth-Neilsen & J Gallinetti.J (ed): n8 above , 30.

²⁹ Rule 5 (e) of Riyadh Rules

³⁰MR Gardner: n 10 above, 303

2. To what extent has the Government of Mauritius adopted national legislations or polices in conformity with international principles pertaining to child friendly?
3. Whether the Government of Mauritius has adopted any practical measures in the JJS to implement the provisions of the international and regional instruments and to guarantee the successful reform and reintegration of juvenile detainees into society?
4. What are the challenges faced by the stakeholders in ensuring the successful rehabilitation and reintegration of juvenile detainees?
5. What steps can be taken by Mauritius and other African governments to achieve successful rehabilitation and reintegration of juvenile detainees?

1.4 Objectives of the study

The main objective of this study is to find out the extent to which the Mauritius government programmes and policies address the need for reform and reintegration of juvenile detainees.

The specific objectives will be;

- a) To layout the normative content of both the international and Regional legal framework on the reform and reintegration of juvenile detainees.
- b) To establish to what extent the government of Mauritius has adopted and implemented legislation, policies and practical programmes in the JJS that are in conformity with the international principles on JJS and secure successful rehabilitation and reintegration of juveniles in detention.
- c) To identify the challenges faced by stakeholders in implementing the relevant programmes.
- d) To suggest steps that can be taken by both Mauritius and other African governments to transform the JJS and guarantee rehabilitation and reintegration of juveniles.

1.5 Methodology

The research will employ qualitative research methodology which will include;

- a) Desk top analysis of available literature on the subject as a primary source of data,
- b) Formal and informal interviews will be conducted with stakeholders and juvenile detainees if possible in the in detention centers. The relevant stakeholders will include: the Ministry of Women's Rights, Child Development and Family Welfare, the Ombudsperson for Children, the Child Protection Unit, Staff of the Rehabilitation Centers and the Probation and After-care services institution. It is hoped the interviews will enable the researcher obtain primary information from key players in the JJS.

1.6 Significance of the study

It is hoped that the findings in the research will add knowledge to the already existing information on matters relating to the juvenile justice and that the findings will also inform policy makers in the respective African countries on what needs to be done to enhance the protection of the children and secure successful rehabilitation and reintegration into society of juvenile detainees in order to reduced rates of illiteracy, unemployment and crime resulting from delinquent and frustrated youth.

1.7 Synopsis

Chapter one will mainly cover the background, research questions, statement of the problem, methodology, the scope, the significance of the study, definition of key terminologies and literature review.

Chapter two will examine the principles relating to the protection of the rights and interests of juveniles offenders in detention as spelt out in the international and regional instruments, guidelines and rules. The chapter will also briefly comment on the role of the international and regional enforcement bodies under the ACRWC and the CRC in monitoring the implementation of the CRC and ACRWC.

Chapter three will involve the analysis of the policies, legislations and practical programmes undertaken by the government of Mauritius that are in conformity with the principles relating to

juvenile justice spelt out in the international and regional instruments and whether these measures guarantee successful reform and reintegration of juvenile detainees in Mauritius. It will also identify challenges faced by stake holders in JJS in Mauritius.

Chapter four draw a conclusion of the findings and make relevant suggestions of the possible steps that can be taken by Mauritius and other African States to reform their JJS and in order to enhance the successful rehabilitation and reintegration of former juvenile detainees.

1.8 Defining of key terminologies

a) Juvenile

Rule 2(2a) of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) defines a juvenile as a child or young person. However, in conformity with the definition of a child as adopted by the ACRWC, rule 11(a) of the JDL defines a juvenile as a person below the age of eighteen years. A juvenile will also be used to mean children in conflict with the law.

c) Juvenile deprived of liberty or juvenile detainees

Rule 11(b) of the UN Standard Minimum Rules for the Protection of Juveniles deprived of their Liberty (JDL) defines deprivation of liberty to mean any form of detention or imprisonment or placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by the order of any judicial, administrative or other public authority. Therefore, juvenile detainees refers to children accused of committing offences and sentenced to serve a period of time in prison or any other detention facility.³¹

c) Juvenile Justice

Juvenile justice refers to a set of laws, policies, procedures and institutions put in place to deal with children alleged or accused of committing crimes.³² In the same vein UNODC-UNICEF state that JJS refers to laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the laws.³³ A JJS is said to refer to the laws, policies, practices and norms of handling and managing juveniles.³⁴ Here JJS will refer to all the legislative, policies and programmes measures undertaken by the state to determine causes of delinquency and protect the rights of juveniles, in order to

³¹ J Sloth-Neilsen n 8 above, 117

³² G Odiambo-Odongo,,n 14 above 4.

³³ UNODC-UNICEF: n 6 above 1

³⁴ UNICEF et : *UN Study on violence against children in Uganda: Children in conflict with the law* (2007), 12.

safeguard their interests, reduce recidivism and ensure their successful rehabilitation and reintegration into the society.

d) Offence

An offence is any behaviour which is punishable by the law of any legal system.³⁵

e) Juvenile offender

A juvenile offender is a child or young person who is alleged to have committed or has been found to have committed an offence.³⁶

f) Rehabilitation and reintegration

Rehabilitation is the process of preparing an offender by the prisons officers so that he or she is reformed and can easily be reintegrated and accepted by the community as someone useful and constructive and be able to lead a crime free life and reintegration is the process through which former offenders are allowed to return and live within their communities after serving their sentences and having become productive and functional members of the community.³⁷ Dissel opines that Rehabilitation is broadly understood to mean a planned intervention which aims to bring about change in some aspects of the offender that is thought to cause the offender's criminality and the intervention is intended to make the offender less likely to break the law in the future.³⁸ Reintegration is the process by which a person is reintroduced into the community with the main aim of living in a law abiding manner, preparation for reintegration can occur in prison.³⁹ Reintegration also requires a community oriented approach which shifts the emphasis from the individual to the community to which the offender returns, with the aim of building capacity and establishing community resources to assist in the reintegration. This approach requires operational changes to facilitate the provision of a continuum of care from imprisonment through to release and case management, balancing surveillance with support and building partnerships with stakeholders.⁴⁰ Gallinetti et al state that conventionally speaking, 'reintegration' refers to working with prisoners and ex-prisoners who have committed crimes and have served,

³⁵ Rule 2 (2b) of Beijing Rules

³⁶ Rule 2 (2c) of Beijing Rules

³⁷ C Birungi: 'Community service in Uganda as an alternative to imprisonment' unpublished MA thesis, University of Western Cape (2005) 9.

³⁸ A Dissel in 'Rehabilitation and reintegration in African prisons' in J.Sarkin: *Human Rights in African Prisons* (2008) 154

³⁹ As above 156.

⁴⁰ M Borzyki.: 'Interventions for prisoners returning to the community' (2005) Canberra: Australian Institute of Criminology as cited by A Dissel: n 38 above 159.

or are serving, a custodial sentence by providing programmes that aim to reduce re-offending through the provision of certain life and marketable skills.⁴¹ Successful reintegration, therefore, refers to the development of the ability(ies) to deal with risk factors, that is, conditions leading to crime so as to enable and individual function successfully in society, thereby improving the quality of life of the person and the community.⁴²

1.10 Literature review

The need to protect the rights of children detained in despicable conditions in African prisons has for long been an issue in the child rights discourse. Scholars advocated for the need to improve prison conditions in Africa; Appraised the extent to which CRC and the ACRWC give adequate protection to children and the role the different Committees established therein play in the monitoring of the implementation of the instruments ; The need to protect the due process rights of juveniles during trial and introducing approaches like: diversions, restorative justice, community service, alternatives to imprisonment and generally enacting national laws that conform to the set international principles to improve the JJS in Africa. However, there is scarcity of literature on the different measures that can be adopted by states to prepare juvenile detainees for successful rehabilitation and reintegration into their communities which is the ultimate aim of the JJS the lacuna addressed by this paper..

Without divulging on the measures of rehabilitation and reintegration, of juvenile detainees the Community Law Centre (CLC) in a detailed report condemned the appalling conditions of children prisons in South Africa characterized by overcrowding, lack of health facilities, insufficient education programmes and violence.⁴³ In the same context, Skelton advocates for the need to adopt restorative justice mechanisms to guard against institutionalisation of juveniles which is contrary to international principle of detention being a matter of last resort down plays the desire to maintain harmony between the juvenile offender, the victim and the community.⁴⁴ Similarly, Saine calls for the need protect the due process rights of juveniles during pre-detention and trial.⁴⁵

⁴¹ J Gallinettl et al: n 28 above.31

⁴² . As above 31

⁴³ Community Law Centre: *Children in prison in South Africa; A situation analysis* (2002) University of Western Cape

⁴⁴ A Skelton: 'Restorative justice as a framework for juvenile justice reform in South Africa' (2002). Also see A Skelton: 'Juvenile justice reform: Children's rights and responsibilities versus crime control' in CJ Dawel (ed): '*Children's rights in transitional society*' (1998) 89.

⁴⁵ M Saine n 9 above

Because of the ramifications of imprisonment many scholars continue to advocate for the adoption by states of mechanisms that not only improve prison conditions but also guard against detention of prisoners who include juveniles. For instance, Bareebe discusses how Uganda can use alternative sentencing methods to lessen the adverse impact of imprisonment on children of incarcerated parents especially women.⁴⁶ Likewise Sloth-Nielsen deals with the challenges faced by children in detention. She decries the often poor prison conditions including; overcrowding, failure to ensure speedy trial and detention for the shortest possible period of time, Failure to separate children from adult offenders in detention, Lack of adequate nutrition and health care, lack of education and access to programmes. In spite of these difficulties she also highlights the positive steps that are being taken by African governments to improve the juvenile justice sector including; Diversions, using customary laws and traditional structures to deal with child offenders, legal reform to bring national legislations in conformity with the CRC and the ACRWC as well as setting limitations on the maximum length of imprisonment to be imposed on a child. She also briefly addresses the challenge of children in prison as a result of their mother's under incarceration.⁴⁷ To buttress Sloth's position, Mujjuzi advocates for the adoption by African states as well as the African Human Rights System of non-custodial measures as an alternative to imprisonment which include: probation orders community service orders, attendance orders, Reparation orders, Anti- social behaviour orders, Supervision orders, Curfews and electronic tagging orders. He contends that these mechanisms will address the problem of overcrowding in prison, and pave way for the better rehabilitation and reintegration of offenders.⁴⁸ Correspondingly, Gose focuses on an evaluation of the extent of efficacy of the provisions within the ACWRC as compared to those in the CRC with no attempt to tackle the question of rehabilitation and reintegration of juveniles.⁴⁹ Odongo-Odiambo on the other hand examines to great detail the extent to which African counties like Uganda and Ghana have domesticated the provisions in the CRC in their national legislations.⁵⁰ Sharing the sentiments of this paper Dissel advocates for the need for African governments, civil society and all stakeholders operationalise the Plan of Action set out in the Ougadougou Declaration in their

⁴⁶ R Bareebe: 'Alternative sentencing of parent offenders and the implications on the rights of a child in Uganda's criminal justice system' Unpublished LLM Thesis, University of Pretoria, (2008).

⁴⁷ J Sloth –Nielsen: 'Children in African prisons' in J Sarkin (ed): n 7 above, 177.

⁴⁸ JD Mujjuzi: 'Alternative sentencing under African human rights instruments and mechanisms: Lessons for Southern Africa' in (2008) *University of Botswana Law Journal* 47.

⁴⁹ M Gose: 'The African Charter on the Rights and Welfare of the Child: An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of a Child,' (2002) *Community Law Centre*. Also see A Lloyd: 'A Theoretical analysis of the reality of children's rights in Africa: An Introduction to the ACRWC' (2002) 2 *African Human Rights Law Journal*, 11; R E Adegbola: 'Children's rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare of the Child' unpublished LLM dissertation, University of Pretoria (2007) ; F Viljoen: *International human rights in Africa* (2007) 260-266 BD Mezmur: 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum Game?' (2008) 23 *SAPR/ PL*.

⁵⁰G Odongo-Odiambo n 14 above

respective JJS and to develop programmes tailored towards rehabilitation and reintegration of prisoners from the time they are in prison to immediately after release. Although Dissel's findings greatly inform the author, it is not specific to the JJS in Mauritius. This thesis will add value by identifying the programmes specifically adopted by Mauritius to ensure successful rehabilitation and reintegration process of her juvenile detainees.⁵¹

The literature surveyed also reveals that Mauritian scholars in the JJS area have also not critically examined the extent to which Mauritius has adopted policies and programmes to ensure the successful rehabilitation and reintegration of juvenile offenders. Agnihotri reviewing the statistical trends of Juvenile delinquency in Mauritius notes that the common crimes include; wounds and blows, damaging of property and sexual assault like attempt upon chastity and rape. He attributes the increasing incidences of juvenile offending to risk factors like poverty, alcoholism, divorce resulting into broken homes and a poor family environment, negative peer pressure within the community or while at school.⁵² A decade ago, Gunnoo noted the increasing levels of juvenile crimes attributed to increased industrialization in Mauritius that consequently affected family structure and parental responsibilities. He then identifies and describes the mode of operation of the then existing institutions for child care and rehabilitation before reinsertion in society without examining the different programmes used in detail.⁵³ Maghooa on the other hand, writes about the need to protect children as accused persons, as victims, as witnessed and as convicts in the criminal justice system of Mauritius. He briefly examines the level of protection accorded under the Juvenile Offenders Act (JOA) and concludes that there is insufficient protection availed to children in the criminal justice system, hence the need for imminent legislative reform.⁵⁴ The need to protect the right to privacy of juvenile offenders under Mauritius JOA has also been deliberated upon.⁵⁵

⁵¹A Dissel n 38 above 155

⁵² AK Agnihotri : 'Juvenile delinquency scenario in Mauritius' in Anil Aggrawal's (2003) *Internet Journal of Forensic Medicine and Toxicology* ,Volume 4, No.1.

⁵³ G Gunnoo: 'The rehabilitation of juvenile delinquents in Mauritius,' unpublished LLB thesis, University of Mauritius, (1990).

⁵⁴ MI .Maghooa: 'The protection of the child under criminal law' unpublished LLB thesis, University of Mauritius (1990). Also see S Howoldar: The protection of the accused in criminal cases', unpublished LLB thesis, University of Mauritius (1989).

⁵⁵ PJ Backory: 'The right to privacy of the child in the juvenile justice system' unpublished LLB thesis, University of Mauritius (2003).

Chapter Two: International and regional legal framework of the protection of juvenile detainees

2.1 Introduction

Apart from the death penalty, imprisonment is one of the harshest punishments a society can impose on those who transgress its rules.⁵⁶ In order to protect the child from such harsh punishment, international and regional instruments have clearly spelt out binding as well as persuasive legal principles to protect juveniles from the ramifications of prosecution and long term incarceration. Skelton opines that there is a growing view that it is an over simplification to regard international guidelines and rules as having no legal force.⁵⁷ These instruments could be referred to as 'soft law' implying that when read together with other related instruments, the rules or guidelines take a strongly persuasive quality akin to law.⁵⁸ This section will mainly focus on the principles spelt out for safeguarding the rights of juvenile detainees.

2.2 The legal framework to secure rights of juvenile detainees

The major instruments examined here include the UN Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), JDL and Beijing Rules. The CRC is the first international instrument with a specific focus on the protection of children.⁵⁹ In its preamble, state parties are called upon take recognition of the inherent dignity and of the equal and the inalienable rights of all members of the human family (of which children are part) as the foundation for freedom, justice and peace in the world.⁶⁰

The ACRWC on the other hand, was adopted by African leaders because the CRC did not give effective and adequate protect to the unique social economic conditions of the African child.⁶¹ According to Lloyd the ACRWC puts children's rights legally and culturally into perspective, however in order for the ACRWC to have significantly and effectively change children's lives in

⁵⁶J Sarkin: 'An overview of human rights in prisons worldwide' in J Sarkin (ed): n 7 above 2.

⁵⁷ A Skelton and B Tshehla: *Child justice in South Africa* (2008) 16.

⁵⁸ D O'Donnell: 'The Convention on the Rights of the Child and other international standards concerning juvenile justice' (1993) *Atheneo Human Rights Law Journal* cited in A Skelton & B Tshehla, as above 16.

⁵⁹ T Hammarberg: 'The United Nations Convention on the Rights of a Child: And how to make it work' (1990) *12 Human Rights Quarterly* 97-99.

⁶⁰ Para 1 of preamble

⁶¹ Para 3 of Preamble to the ACRWC

Africa, people and the governments collectively need accept children's rights and recognize binding duties on them.⁶² Hence, although the two instruments largely complement each other, Mezmur concurs that the ACRWC offers greater number of progressive provisions tailored to address African realities⁶³ Be that as it may; both instruments spell out the fundamental principles to safeguard the rights of juvenile detainees:

a) Best interest of the child

Both the CRC and the ACRWC imposes a duty on all State parties to ensure that in matters concerning a child all authorities adhere to notion that the best interest of the child is a (the) primary consideration.⁶⁴ Expounding this concept Lloyd asserts that all rights apply to all children without exception; every child has an inherent right to life and the State has the obligation to ensure the child's survival and development; all actions concerning the child should take full account of her best interest and the child has the right to express his opinion freely and to have the opinion taken into account in any matter of procedure affecting the child.⁶⁵ In the 20th century, the welfarist approach to JJS focused on the child's needs rather than the child's deeds. The welfare of the child was the most important consideration. Welfarism promoted the idea that in the justice system children should be separated from adults and that they should be dealt with in different forms and different procedures from those used for adults.⁶⁶ The CRC Committee has also noted that the protection of best interest of the child means that the traditional objectives of criminal justice, such as repression and retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.⁶⁷ In promoting the child's wellbeing States are further called upon to set minimum age of criminal responsibility.⁶⁸

⁶² A Lloyd: n 49 above

⁶³ BD Mezmur: n 49 above: Also see M Gose: n 49 above "after serious critic of the ACRWC still observes that once authoritatively interpreted by an appropriate body to clarify the points in doubt and exclude possibilities of regressive interpretation, the ACRWC has the potential to step out of the CRC shadow particularly because of its enforcement provisions." 141

⁶⁴ Articles 3 of the CRC and 4 of the ACRWC

⁶⁵ A Lloyd: n 49 above 19

⁶⁶ A Skelton & B Tshehla: n 57 above 8

⁶⁷ CRC Committee General Comment No.10/ 2007: Children's Rights in Juvenile Justice adopted on the 44th Session

⁶⁸ Article 40 (3a) of the CRC and 17 (4) of ACRWC. Also see rules 2(3) & 4(1) of the Beijing Rules

b) Speedy trial

States are enjoined to take all necessary measures to breathe life into the provisions enshrined in the instruments and prevent juvenile delinquency.⁶⁹ This includes channeling sufficient resources to ensure that relevant institutions are effectively in operation.⁷⁰ This will in effect guarantee the expeditious trial of juvenile offenders.⁷¹ As Sloth opines the absence of a speedy trial not only exposes the detained children to other possibly hardened offenders for protracted periods, but also inevitably compromises the children's right to education, to quality legal defence and to reintegration into their family and the community.⁷² Delay in the administration of justice confirms the legal maxim *justice delayed is justice denied*.

c) Detention as a matter of last resort and for the shortest period of time

Article 37(a, b) of the CRC outlaws the imposition of the death penalty or life imprisonment on child offenders. It also stipulates that where imprisonment is preferred it should be as a matter of last resort and for the shortest period of time.⁷³ Disappointingly, the ACRWC makes no equivalent provision to this end.⁷⁴ However, Lloyd observes that although the ACRWC does not explicitly provide for the exclusion of life imprisonment for children, article 5 obliges states to ensure to the maximum extent possible, the survival and development of a child and life imprisonment would clearly impinge on the development of a child, contrary to articles 17 (3) of the ACRWC.⁷⁵ Opposing life imprisonment of children Leighton affirms that

The sentence of life in prison without the possibility of release is the harshest of sentences an adult can receive short of death. Imposing it on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child's rehabilitation and redemption.⁷⁶

⁶⁹ Articles 4 of CRC and 1 of ACRWC, also see rules 45, 52-59 of the Riyadh Guidelines, Rule 19 of Beijing Rules

⁷⁰ Also see article 40 (3) of CRC, Rule 45, 52-59 of Riyadh Guidelines, Rules 1 & 2 of JDL and Rule 10(2) & 20 of Beijing Rules which elucidates that speedy trial in Juvenile cases is a paramount concern since as time passes the juvenile will find it increasingly difficult to relate the procedure and disposition of the offence.

⁷¹ Article 40 of CRC, 17(2c) (vi) of ACRWC & 14 (3c) of ICCPR

⁷² J Sloth: in n 7 above 122

⁷³ Also see rule 46 of Riyadh Guidelines

⁷⁴ M Gose: n 49 above, 67-75 stated that the ACRWC provisions on juvenile justice seem to be very fragmented and lacking in substance. The lack of fundamental guarantees for the safeguard of children's freedom and the legal remedies is of great concern.

⁷⁵ A Lloyd: 'The African Regional System for the Protection of Children's Rights' in Sloth-Nielsen: '*Children's rights in Africa: A legal perspective*,' (2008) 37.

⁷⁶ M Leighton: 'Sentencing our children to die in prison; Global law and practice' published by *Center For law and Global Justice, University of San Francisco Law School* (2007) 21.

Equally the UNODC-UNICEF notes that a JJS should operate in a 'child friendly' environment using appropriate language and the minimum possible employment physical restraint.⁷⁷ Therefore, the judicial approach towards sentencing of the juvenile offender must be reappraised and developed in order to promote an individualized response which is not only proportional to the nature and gravity of the offence and the needs of society, but which is also appropriate to the needs and interest of the juvenile offender.⁷⁸ In effect, any legislation that provides for long term detention of a juvenile coupled with no opportunity of release on parole or otherwise in the shortest time possible violates international standards and is contrary to the best interest of the child and the need to ensure rehabilitation, reintegration, reconciliation and resocialisation of the juvenile as envisaged by law.⁷⁹

d) Freedom from cruel inhumane and degrading treatment

Article 37(a) calls upon State parties to ensure that no child is subjected to cruel in humane and degrading treatment or punishment. In the same vein article 17(a) of the ACRWC specifically outlaws torture of children while in detention. Torture is defined to mean any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purpose as obtaining from him or third person information or confession or is suspected of having committed , or intimidating or coercing him or a third party or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation or with the consent of public official or any other person acting in an official capacity.⁸⁰ Sloth remarks that the express and specific out law of torture of children in detention points to the fact that the drafters of the ACRWC where aware of the special risks to physical integrity faced by children deprived of their liberty in the African context.⁸¹ This is buttressed by Articles 37(c) of the CRC and 17 (1) of ACRWC emphasizes the need to treat every child in detention with dignity and in a manner which reinforces the child's respect for human rights and freedoms and takes into account the needs of persons of the child's age.

⁷⁷ UNODC-UNICEF: n 7 above 1

⁷⁸ J Sloth-Neilsen & J Gallinetti: n 8 above , 21

⁷⁹ Articles 40(1) of CRC and 17 (3) of ACRWC

⁸⁰ Article 1 of CAT, article 10 & 7 of ICCPR and 5 of ACHPR

⁸¹ J Sloth- Nielsen: in n 7 above 120

e) Maintaining family contact and community participation

The basic tenets of love, care and meaningful socialization for the development to their personality are common for all children. Any signs of social maladjustment or atrophy are not reasons enough for cutting off the ties of the child and isolating him or her in institutional regimes of the juvenile justice system.⁸² Unlike the ACRWC, the CRC expressly protects the rights of the child to maintain contact with his or her family while in detention as per article 37(c). However, the ACRWC recognizes the family as the natural unit of society desirous of State protection.⁸³ The Riyadh Rules further stresses the importance of the family in the development of a child's well-being, socialization, the integration process and the prevention of juvenile delinquency.⁸⁴ Hence since most prisoners will be released into the community from which they came, it is essential that their community and family ties are maintained and encouraged while in prison. The family and the community each have a role to play in normalizing the prisoner after the institutionalising experience by providing shelter and food, and offering support while the ex-offender attempts to procure gainful employment.⁸⁵ This therefore, means that governments should establish policies conducive to preserving family links and families in need of services to achieve this goal should be assisted.⁸⁶ Consequently Mbambo explains that

The establishment of community-based responses to dealing with troubled children stems from the need to move away from institutional approaches, whose solution is to remove troubled children from their families and communities. Community-based approaches recognize the interplay of environmental factors in influencing the behaviour of the individual child. The responsibility for addressing the needs of a child becomes a responsibility that is shared by the family, the community and professionals, instead of simply passively expecting the formal system to address issues relating to children. It further promotes integration instead of isolating and stigmatization of the offender.⁸⁷

f) Ensuring rehabilitation, reform and reintegration into society

Sarkin argues that while rehabilitation remains the goal of many penal policy makers in Africa, lack of political will impedes its ultimate realization⁸⁸ yet the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law is ensuring reformation

⁸² V Kumari: n 3 above 310

⁸³ Article 18. Also see rule 8 JDL

⁸⁴ Rules 11-19, Rule 12d.

⁸⁵ A Dissel, n 38 above 168

⁸⁶ A Skelton & B.Tshehla n 57 above 19

⁸⁷ B Mbambo: ; 'Communities as role players' in J Sloth-Neilsen, & J Gallinetti : n 8 above ,140

⁸⁸ J Sarkin: 'Prisons in Africa: An evaluation from a human rights perspective' (2008) 9 *International Journal on Human Rights* 31.

and reintegration into the family and social rehabilitation.⁸⁹ Sloth emphasizes that the principle establishes the norm that the approach to juveniles must be aimed at rehabilitation and fostering a sense of accountability, and that a purely punitive system which does not entail reintegration and resocialisation is at odds with the required standard.⁹⁰ Skelton concurs that the provision reflects a child centered approach and highlights the relevancy of reintegration and the child assuming a constructive role in society.⁹¹ Hence as previously argued States must ensure that their JJS meet these credentials.

g) Separation of children from adults while in detention

Both the CRC and the ACRWC oblige States to ensure that children in detention are separated from adult offenders.⁹² This is intended to guard against the contamination of young offenders by adult offenders.⁹³ Overcrowding also compromises a child prisoner's health and hygiene and exposes them to risk of sexual abuse as they compete with adults for scarce resources.⁹⁴ Sloth remarks that this problem has remained prevalent in Africa however one possibility to solve this problem would be for States to commission separate facilities to accommodate sentenced or detained children or to allocate portions of existing facilities to be used exclusively for children.⁹⁵ This must be coupled with the use of diversionary measures to combat juvenile incarceration.

h) Adopting diversionary and non-custodial measures

Violations involving the abuse of children within the official justice system are at the heart of moving away from the incarceration of young offenders.⁹⁶ Hence, the CRC acknowledges the use of diversionary measures to curtail criminalization, penalization and detention of children.⁹⁷ These measures include: diversion, restorative justice, mediation, probation, counseling, supervision, guidance, restitution, compensation of the victim, community service, reparations and other alternative to imprisonment mechanisms employable in the JJS that will inevitably safeguard the well-being of the juvenile and facilitate the discretionary disposition of juvenile

⁸⁹ See Article 40(1) of CRC, article 17(3) of ACRWC, Rules 1-12, 30&39 of Riyadh Guidelines, Rule 1(2&3) of Beijing Rules and Rule 80 &38(3) of the JDL which provide for the juvenile's right to education and vocational training that is likely to prepare the juvenile for future employment after release.

⁹⁰ J Sloth; n 7 above, 121

⁹¹ A Skelton & B. Tshehla: n 57 above 17

⁹² Articles 37(c) and 17(2b) respectively. Also see rules 13(4) of Beijing Rules and rule 8 of JDL

⁹³ J Sloth Nielsen: n 7 above, 123

⁹⁴ J Sarkin: n 88 above 29

⁹⁵ J Sloth-Nielsen: n 7 above, 123

⁹⁶ Save the Children: *Justice for children: Challenges for policy and practice in Sub-Saharan Africa* (1998) 3.

⁹⁷ Articles 40 (3b) & (4), also see the rules 5-9 of Riyadh Rules and 11(1-4) & 18 of the Beijing rules

case.⁹⁸ Although the author will not attempt to discuss these measures in detail, they can briefly be understood as follows:

i) Diversion

Diversion is a central feature of all progressive juvenile justice systems in the world today and is currently developing as an international law norm.⁹⁹ Diversion, involves removal from criminal justice processing and, frequently, redirection juveniles to community support services, it is commonly practiced on a formal and informal basis in many legal systems. Through diversion a child who is accused of committing a crime is given the opportunity to take responsibility for his or her conduct and to make good for the wrongful actions, through this process, diversion may involve a restorative justice component, depending on the nature of the diversion,¹⁰⁰

ii) Community Service

Community service is a programme through which convicted offenders are placed in unpaid positions with non-profit or tax supported agencies to service a specified number of hours performing work or services within a given time limit as a sentencing option of condition.¹⁰¹ Muntingh observes that Community Service Orders (CSO) have increasingly proved their feasibility as alternative sentencing options in a number of countries. Although not exclusively used for children the CSO offers an alternative and more constructive sentencing option for juveniles.¹⁰² Community service also represents a shift from traditional methods of dealing with offenders towards a more restorative form of justice and takes into account the interest of both society and the victim. It also seeks to ensure that offenders maintain ties with their family and friends and continue to fend for the family during free time, while performing work that benefits the community and reconciles him to the victim.¹⁰³

iii) Restorative Justice

Restorative Justice refers to an emphasis on dealing with the offender by focusing on ways of repairing the harm caused to the victim and the community, and in so doing involving the victims

⁹⁸ Article 8 of the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules). Also see the Ouagadougou Plan of Action, 2002

⁹⁹ A Skelton & B Tshehla: n 58 above 17

¹⁰⁰ J Gallinetti et al: n 28 above .28

¹⁰¹ C Birungi: n 37 above. Also see the Kadoma declaration on community service orders adopted at Kadoma, Zimbabwe 24th-28 November 2008. Currently practiced in Uganda, Zimbabwe, Lesotho, Rwanda, Zambia, Kenya and Malawi.

¹⁰² L Muntingh: 'Alternative sentencing' in Sloth- Nielsen & J Gallinetti: n 8 above 87.

¹⁰³ R Bareebe: n 46 above 4

the communities as well as the offender in the reparation process.¹⁰⁴ Reconciliation, restitution, and the restoration of peace are all very important features of restorative justice.¹⁰⁵ It is also viewed largely as the African approach to dispute settlement, it is premised not so much on punishment but rather to redress or restore a balance that has been knocked askew and restorative of the dignity of people.¹⁰⁶ Skelton opines that in restorative justice we are striving for more than formalistic protection, we are aiming higher hoping for a behaviour change, hoping to prevent reoffending, hoping to balance the needs of the offender with the needs of the victim.¹⁰⁷ What we need to do is to ensure that the risks are well managed, that the rights of the child offender are protected while at the same time ensuring that an overly protectionist approach to children's rights does not hinder the opportunity for the child to understand that rights come with responsibilities, that the balance between these two is what makes for harmonious living.¹⁰⁸ Restorative justice may take the form of family group conferencing, victim-offender mediation and dialogue or circle sentencing.¹⁰⁹

iv) Alternatives to imprisonment

Alternative to imprisonment covers a wide range of sanctions that aim at restoring the relationship between the offender and the victim and the wider community by taking into consideration the rehabilitative needs of the offender, protection of the community and interest of the victims.¹¹⁰ Muntingh comments that non-custodial sentencing probably has its origin in the realization that imprisonment is not suitable for all offenders, and that it can have a range of detrimental effects, often not anticipated when punishments are imposed.¹¹¹ Zvekić agrees that firstly non-custodial measures are considered more appropriate for certain types of offences and offenders. Because they avoid 'prisonisation' they promote integration back into community as well as rehabilitation, and are therefore more humane. Thirdly, they are generally less costly than sanctions involving imprisonment. Fourthly, by decreasing the prison population, they ease

¹⁰⁴ C Cunneen & R White: 'Juvenile justice: Youth and crimes in Australia' (2003) 361,

¹⁰⁵ A Skelton: 'Restorative justice in child justice systems in Africa' in J. Sloth-Nielsen: *Children's Rights in Africa: A legal Perspective* (2008) 129

¹⁰⁶ D Tutu as cited by A Skelton in 'Restorative justice as a frame work for juvenile justice reform: A South African perspective' (2002) 42 *British Journal Criminology* 4

¹⁰⁷ As above 10

¹⁰⁸ As above 11

¹⁰⁹ C Cunneen & R White n 104 above 367-369

¹¹⁰ PRI: 'Alternatives to imprisonment' at <http://www.pri.ge.org/Alternatives.php> (Accessed on 29th September 2009).

¹¹¹ L Muntingh: 'Alternative Sentencing' in J Sloth-Nielsen & J Gallinetti (ed); n 8 above 83

prison over crowding and thus facilitate administration of prisons and the proper correctional treatment of those who remain in prison.”¹¹²

Equally Mujjuzi proposes that African States could adopt the alternative measures identified by the Commonwealth Secretariat which include: Probation orders; Community service orders; Reparation orders, attendance orders; anti-social behaviour orders; supervision orders; curfews and electronic tagging in order to transform prison conditions.¹¹³

I) Ensuring proper conditions of living in detention facilities

The Beijing rules promote the need to ensure that while in custody juveniles receive care, protection and all necessary individual assistance; social, educational, vocational, psychological, medical and physical that they may require in view of their age sex and personality¹¹⁴ which services should be provided by professionally trained personnel.¹¹⁵ Equally the JDL stipulates that deprivation of liberty should be effected in conditions and circumstances which ensure respect for human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaning full activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.¹¹⁶

2.3 Other Regional Instruments

In addition to above discussed instruments, a number of declarations have been adopted by African leaders and other stakeholders to tackle the appalling conditions in African prisons. This move is atleast evidence of the commitment by African leaders towards reforming prison conditions on the continent.

¹¹² U Zvekic: ‘ International trends in non-custodian Sactions: In Promoting probation internationally’ cited by L Muntingh as above 83

¹¹³ Commonwealth Secretariat: ‘Alternative sentencing in small commonwealth jurisdictions: Panacea or Placebo? Report presented to the meeting law ministers and Attorneys General of Small Common Wealth Jurisdiction. London 4-5 October 2007, provisional agender Item 13, LMSCJ (07)19, paragraph 17-52 as cited by JD .Mujuzi n 48 above Also see article 8 of UN Standard Minimum Rules For Non-Custodial Measures, UN GA Resolution 45/110 of 1990

¹¹⁴ Rule 13 (5), also see Riyadh Rules 20-30

¹¹⁵ Rule 22, also see Rule 81-87 of JDL

¹¹⁶ Rule 12, also see rules 30-37 on proper feeding, sanitation and accommodation facilities and rule 60 outlawing inhuman, cruel and degrading treatment

a) Kampala Declaration on Prison conditions in Africa and Plan of Action (KDPA)¹¹⁷

This document seeks to uphold prisoner's rights by specifically emphasizing improvement of prison conditions. Notably, it recognizes the important role that international, regional and national Non- Governmental Organisations (NGOs) can play together with the government and other actors to better the situation of prisoners.¹¹⁸ It also recognizes the importance of maintaining family ties and the need to treat prisoners with human dignity so that they do not lose their self respect and sense of personal responsibility.¹¹⁹ As well as the need to give prisoners access to education and skills training in order to ease their reintegration into society after their release.¹²⁰ It further calls for the training and adequate remuneration of prison staff as well as using alternative sentencing or non-custodial methods like mediation, compensation, community service, reconciliation and reparations to reduce overcrowding in prisons. It emphasizes the important role that the African Commission on Human and Peoples' Rights (ACommHPR) continues to play in the protection of human rights and prisoners rights in particular in Africa. Worth noting is that the KDPA addresses the vulnerable status of juveniles.¹²¹

Although Dissel compliments the KPDA for being the a primary document out lining the rights of prisoners in Africa,¹²² Mujuzi criticizes it for falling short of mandating the Special Rappourtuer on Prisons and conditions of Detention in Africa (SRPDA) from encouraging states to use alternatives to imprisonment.¹²³ However, it could be contended that the KDPA places a duty on all key players to co-operate with the SRPDA and inform him or her of the prison conditions on the continent and any other alternative sentencing measures who in turn would make a report to the ACommHPR as well as the particular State on the findings.

¹¹⁷ Adopted in Kampala, Uganda in September 1996

¹¹⁸ Principles 1 and 8

¹¹⁹ Principles 3-5

¹²⁰ Principle 7

¹²¹ Prargraph 4 of preamble

¹²² A Dissel n 38 above 160

¹²³ JD Mujuzi n 48 above 62

b) The Ouagadougou Declaration on Acceleration Prison and Penal Reforms in Africa¹²⁴

In addition to recognizing the need to improve conditions and decongest prisons by use of alternatives to imprisonment measures such as diversions, restorative justice and traditional justice mechanisms in dealing with crime subject to human rights standards. The declaration further stresses the need to undertake greater efforts to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime free life in the future by improving rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.¹²⁵ This goal could be attained through vocational training, skill development, civil and social education, providing social and psychological support provided by trained and adequate staff, promoting family and community ties and sensitizing them in preparation for the reintegration of the prisoner in society and involving them in the rehabilitation and development programmes. The declaration also advocates for the use of half way housed and open prison measures depending on circumstance. The Declaration has been appreciated by a number of scholars. Haling it Mujuzi states that the Declaration emphasizes the importance of a criminal justice policy that encourages the use of alternative imprisonment. As a plan of action it makes very pragmatic recommendations to various stakeholders in the prison and penal reform sectors including the ACommHPR.¹²⁶ As a short fall, the Declaration does not emphasize the extremely vulnerable and special status of juveniles deprived of their liberty although it could be argued that they are covered under the general umbrella as prisoners.

Notably, there are a number of other international instruments that are equally important but for want of space will not be discussed here these include: The CRC Committee General Comment,¹²⁷ The UN Standard Minimum Rules for the treatment of Prisoners;¹²⁸ The Code of Conduct for Law Enforcement Officers;¹²⁹ The Body of Principles for the Protection of all Persons under any form of detention or imprisonment (1988);¹³⁰ and The Basic Principles for the Protection of Prisoners (1990).¹³¹

¹²⁴ Adopted by the ACommHPR Resolution No.64 (XXXIV) 2003 at the 34th Ordinary Session held in Banjul, The Gambia

¹²⁵ Principle 3

¹²⁶ J Sarkin: n 88 above 33, J D Mujuzi n 48 above 65, and A Dissel n 38 above 159

¹²⁷ General Comment No.10/ 2007 adopted at the 44th Session on Children's Rights in Juvenile Justice

¹²⁸ Adopted by UN Congress on the Prevention of Crime and the Treatment of Offenders, 1955

¹²⁹ Adopted by UNGA Resolution 34/169 of 1979

¹³⁰ Adopted by UNGA Resolution 43/173 of 1988

¹³¹ Adopted by UNGA Resolution 45/111 of 1990

2.4 Enforcement Mechanism for the Protection of Children's Rights

In addition to the national courts as first instance forums for seeking redress by an aggrieved child, the CRC establishes the Committee on the Rights of the Child (CRC Committee) as the body mandated to examine the progress made by member states in achieving the obligations undertaken in the convention.¹³² This CRC committee is composed of ten experts of high moral standing and recognized competence in the field covered by the convention and are nominated and elected by State parties and hold office for a period of four years.¹³³ To execute its objective, member states are obliged to present state reports before the CRC Committee on what measures their governments have undertaken to give effect to the provisions of the Convention.¹³⁴ However, CRC Committee has no individual complaint mechanism.

Correspondingly, the ACRWC establishes the Committee of Experts on the Rights and Welfare of the Child (African Committee)¹³⁵ which is composed of eleven members nominated and elected by State parties and hold office for a period of five years.¹³⁶ Unlike the CRC Committee, the African Committee has a wider mandate which includes taking all necessary measure to promote, protect and prevent the abuse of the rights in the ACRWC.¹³⁷ It is also mandated to examine State reports on measure adopted to give effect to the provisions of the ACRWC¹³⁸ and examine Individual complaint in abide to buttress the protective role of the African Committee. Any person or group or non-governmental organization recognized by the Organisation of African Unity (now African Union), by member state or the united nations may submit communications alleging the violation by a state party of the rights guaranteed in the ACRWC.¹³⁹ Following the submission of a communication the African Committee may conduct investigations and submit a report and recommendations before the Assembly of Heads of States.¹⁴⁰ Lloyd remarks that the individual complaint mandate provides an area where the African Committee has the potential to make positive contributions to the protection of children's rights. That this is a tool for ensuring that individual violations by a state can be directly addressed, and States held accountable by the African Committee. Though no prescriptive sanctions are provided by the

¹³² Article 43(1) of CRC

¹³³ Article 43(2, 3, 6)

¹³⁴ Article 44

¹³⁵ Article 32 of ACRWC

¹³⁶ Articles 33-37 of ACRWC

¹³⁷ Article 42 of ACRWC

¹³⁸ Article 43 of ACRWC

¹³⁹ Article 44

¹⁴⁰ Article 45

ACRWC, the AU could take action to ensure the enforcement of breaches of ant sanctions imposed.¹⁴¹

2.5 The African Commission on Human and Peoples Rights

Considering that the (ACommHPR) has the mandate to ensure the promotion and the protection of human and people's rights in Africa.¹⁴² The ACommHPR has shown on its special concern on the subject of poor prison conditions in Africa by adopting special resolutions to oblige States to reform their prisons.¹⁴³ The KDPA recommended that the ACommHPR should continue to attach priority to the improvement of the prison conditions throughout Africa. As one of its initiatives the ACommHPR established the office of the SRPDA.¹⁴⁴ Although scholars like Viljoen have welcomed the creation of the office of the SRPDA by the ACHPR and advocate for the need to strengthen it.¹⁴⁵ Others have criticized it for being vague in its mandate and inconsistent in its reports.¹⁴⁶ Murray recommends that the SRPA should identify the basis on which it is evaluating prisons and other places of detention and clarify more precise guidelines and standards when assessing prison conditions. That the SRPA should exist more appropriately and cohesively with other aspects of the Commission's work and be developed to ensure its applicability across all states.¹⁴⁷ The KDPA also propounded the need for stakeholders to cooperate with the SPPA to enable the SPRA execute the task.

2.6 Conclusion

In summation comprehensive legal framework and enforcement mechanisms exists to protect the rights of juveniles and ensure their rehabilitation, reintegration into society and restoration of a sense of dignity and self worth as emulated above. It is believed that effective implementation of the principles spelt out in the instruments by African States will greatly lead to rehabilitation of juveniles as well as reduce the recurring cases of delinquency, unemployment, illiteracy and crime. However, for this approach to be fruitful, it must enjoy maximum commitment by

¹⁴¹ A Lloyd: n 75 above 49. Also see M Gose n 49 above 67-75

¹⁴² See articles 30 and 45 of ACHPR

¹⁴³ ACommHPR Resolution on Prisons in Africa. Available at www.chr.up.ac.za/hr_doc/africa/docs/achpr/achpr26.doc (Accessed on 5th September 2009).

¹⁴⁴ Established at the 20th Ordinary Session of the African Commission in October 1996. See Mandate of the Special Rapporteur on Prison Conditions of Detention in Africa at http://www.achpr.org/english/info/prison_mand...html (Accessed on 5th September 2009)

¹⁴⁵ F Viljoen: *International human rights law in Africa* (2007) 392-397. Also see F Viljoen: 'The Special Rapporteur on Prisons in Africa: Achievements and possibilities' (2005) *Human Rights Quarterly*, 125-171. Also see JSarkin: n 88 above 37-38.

¹⁴⁶ R Murray: 'The African Commission's approach to prisons' in J Sarkin (ed) n 7 above, 204.

¹⁴⁷ As above 216 ,

government and all stakeholders especially in the implementation process. As Freeman clarifies the passing of laws and ratification of conventions is only a beginning; it is a signal that must be acted upon by government, institutions and individuals.¹⁴⁸

¹⁴⁸ MD Freeman: n 4 above 179

Chapter three: How juvenile-friendly is Mauritius?

3.1 Introduction

Mauritius has been ranked the first most child-friendly state premised on its child protection policies and practices.¹⁴⁹ This section, explores the extent to which Mauritius through its laws, policies and programmes has ensured the protection of the rights of juveniles detainees as stipulates in the instruments examined above, though with much emphasis on the approach taken for rehabilitation and reintegration of juveniles that could also be employed by other African States to transform their JJS.

Notably, children account for 29.3% of the Mauritian population of 1,243,253 people.¹⁵⁰ Juveniles are responsible for only 0.79% of the total crime¹⁵¹ and the actors leading to crime in the country include: poor family environment, alcoholism, divorce, poverty, peer pressure and child neglect.¹⁵² At this point it is timely to address the legislative framework on juvenile protection.

3.2 Reviewing the National Legislative and policy initiatives

3.2.1 Constitution of the Republic of Mauritius of 1968

In line with international principles the Constitution the supreme law¹⁵³ prohibits the subjection of any person to cruel inhuman and degrading treatment.¹⁵⁴ It further recognized the right to a fair and speedy trial before and independent court or tribunal, which includes the right to legal counsel.¹⁵⁵ Sadly, the Constitution neither defines a child nor makes special provision for children's rights. Arguably the bill of rights equally applies to children as human beings however, it is pertinent that the Constitution places specific emphasis on the particular rights of children premised on their vulnerable status.¹⁵⁶

¹⁴⁹ N 18 above

¹⁵⁰ MWCDFW: *Mauritius national progress report of the special session of the General Assembly on children: A world fit for children* (2006), 2

¹⁵¹ AK Agnihotri: n 52 above

¹⁵² As above

¹⁵³ Article 2

¹⁵⁴ Article 7 (1)

¹⁵⁵ Article 10

¹⁵⁶ Article 34 of the 1995 Constitution of Uganda and article 28 of the Constitution of the Republic of South Africa.

3.2.2 Children Protection Act (CPA) Cap 1994¹⁵⁷

The main objective the CPA is to give protection to children who are victims of abuse and neglect. It defines a child to mean *any unmarried person under the age of eighteen years*.¹⁵⁸ This definition is contrary to the benchmark already set under the article 1 of the CRC and more specifically article 2 of the ACRWC as a child being a person below 18 years. Interestingly, the Ombudsperson for Children Act (OCA) definition conforms to international law.¹⁵⁹ Hence, there is need to create consistency between the national laws as well as harmonize CPA problematic definition with international standards in order to ensure protection of all children.

3.2.3 Juvenile Offenders Act (JOA) Cap 186 of 1935

The JOA specifically deals with the rights of the juveniles and procedure regarding the JJS. Though well intended it is tainted with a number of short comings:

a) Age of criminal Responsibility

The primary rationale of fixing a minimum age is the legal presumption that a child is a *doli incapax*, that is, incapable of wrong.¹⁶⁰ As already noted article 40(1) of the CRC recognized both the need to consider the child's level of maturity when applying penal laws and the desirability of reintegration rather than punishment as the aim of responding to child offenders. The CRC Committee has urged member states to adopt the minimum age of criminal responsibility at twelve (12) years and to continue to increase it to a higher level.¹⁶¹ Contrary to international principles the JOA does not set a minimum age for criminal responsibility, it only defines a juvenile as a person under the age of 18 years and a young person to mean one who has attained the age of 14 and is under the age of 18.¹⁶² There is need to amend the JOA to explicitly and unequivocally state the age of criminal responsibility. As illustrated in *Annexure 2 below* the youngest inmates are nine years old.

¹⁵⁷ See Amendments to the CPA ; The Child (Miscellaneous Provisions) Act 1998; The Child Protection (Amendment) Act No.34 of 2005 and The Child Protection (Amendment) Act No.40 of 2008

¹⁵⁸ Section 2

¹⁵⁹ Article 2 of Act No.41 of 2003

¹⁶⁰ G Douglas: 'The child's right to make mistakes: Criminal responsibility and the Immature minor' in G Douglas & L Sebba (ed) : *Children's Rights and Traditional Values* (1998) Ashgate 265

¹⁶¹ See General Comment No.10/2007

¹⁶² Section 2

b) Competent Juvenile Court

Odongo-Odiambo states that article 40(3) of the CRC calls for the need for separate specialized courts that uphold the aims of the JJS and are better placed to ensure successful reintegration.¹⁶³ In compliance section 3 of the JOA establishes the juvenile court in every district presided over by a Magistrate who tries all offences committed by the juvenile except those committed against the state like murder, manslaughter and assault causing death that are excluded in section 3(4a). Maghooa notes that the privacy of the juvenile is achieved by establishing separate juvenile court and this motivated the legislators to provide that juvenile courts must sit in different buildings and different days from that of the ordinary court.¹⁶⁴ There are nine districts in Mauritius and each has a district court which constitutes itself as a juvenile court in juvenile cases hence enhancing accessibility of justice.¹⁶⁵ Disappointingly in practice the juvenile courts are not only held in full public view violating the principle of anonymity but also run by largely ill-trained and under staffed judicial officers.¹⁶⁶

c) Sentence upon a valid charge and conviction

It is clear that a child-friendly juvenile system should not abuse the due process rights of the juvenile among which includes the right not to be arbitrarily arrested and detained or prosecuted for an offence which is not stipulated by law.¹⁶⁷ In spite of this, Section 18 of the JOA allows parents to cause the detention of their child upon an application on oath before a juvenile court that the child is beyond parental control. Evidently, *Annexure 1* shows that these children constitute the highest number in the detention facility. Emphasis should be made that it is the primary obligation of parents to take care of their children. The removal of children from family and community net work as well as educational and vocational opportunities, can compound social and economic disadvantages and marginalization.¹⁶⁸ It is unclear whether the so called 'children beyond parental control' will be given an opportunity to be heard. Be reminded that the child's conduct could be attributable to the parents' inadequacies or poor family environment. Hence, instead of detaining a juvenile based on parental oath before the court the state should

¹⁶³ G Odongo-Odiambo: 'The impact of international law on children's rights on juvenile justice law reform in the African Context' in Sloth-Nielsen (ed): '*Children's Rights in Africa: A legal Perspective*' (2008), 156.

¹⁶⁴ MI Maghooa: n 54 above 3

¹⁶⁵ Interview with Assistant Commissioner for PAS on 11th September 2009

¹⁶⁶ Ombudsperson for Children Annual Report (2008-2009)

¹⁶⁷ Articles 40(2a,b) of CRC, 17(2c) (iii) of ACRWC & 14(3a) of ICCPR

¹⁶⁸ PRI: n 8 above

employ other alternative measures like supervision, counseling, mediation, attendance orders or anti-social behaviour orders as opposed to detaining the child in the absence of an offence.¹⁶⁹

d) Duration of sentence

By virtue of section 3(4b) a Magistrate cannot inflict on a juvenile imprisonment for more than one year for the offences within the Magistrates jurisdiction or in the alternative impose a fine exceeding 1000 rupees. A period of one year depending on the nature and circumstances of the offence may be acceptable by international standards that detention should be a matter of last resort and for the shortest period of time. Maghooa opines that the aim of the legislators in the passing of the JOA, was to treat the child in such a way that they do not become future hardened criminals, hence the sentence must be passed in such a way that it will not coerce the child into further wrong doing.¹⁷⁰ This guarantee may also be extremely fruitful where judicial officers are awake to their role to exercise their discretion very judiciously with extreme sensitivity to the needs of the juvenile.

However, the protection is lost where a juvenile commits a serious offence or an offence jointly with an adult. Such a juvenile is tried in another court which is not mandated to refer the juvenile on conviction back to the juvenile court for sentencing or in the alternative take into consideration the best interest of the juvenile.¹⁷¹ The juvenile may even face long term imprisonment.¹⁷²

e) Separation of children from adults

To conform to this principle sections 8 and 15(4) prohibit the detention of juveniles with adults. However, the sections provide for exceptions, that is, in cases where the “adult is a relative” or “no separation in as far as practicable” these exceptions violate the cardinal principles that make separation of juveniles from adults mandatory. Yet a child must as far as possible not be interfered with by adults.¹⁷³ Hence, the JOA should make separation of juveniles from adults mandatory to avoid possibilities of abuse.

¹⁶⁹ JD Mujjuzi: n 48 above 49-57

¹⁷⁰ MI Maghooa: n 54 above 9

¹⁷¹ Sections 4(2 b & d) and 16

¹⁷² Criminal Code Act 1838, S.222 &223 on conviction of murder and Manslaughter the sentence is life imprisonment or under special circumstance 60 years;

¹⁷³ MI Maghooa n 54 above.9

f) Diversionary measures

The JOA does not give the police the discretion to try and settle the matter between the juvenile and the victim without recourse to court. Under section 9 the police upon apprehension of the juvenile may only release the juvenile on bail or detain him if he is considered to be unruly but must take all reasonable steps to inform the juvenile's parents or legal guardian of his arrest and place of detention. Such a position is contrary to the legal requirement for employing diversionary and non-custodial measures to curtail exposing juveniles to hostile court formal proceedings and incarceration. Lemert stresses the need for 'non judicious- intervention' in responding to juvenile offending on the basis that offending is a relatively normal part of growing up, which most offenders will grow out of as they mature.¹⁷⁴ Hence mechanisms like diversion, community service, restorative justice, restitution, reparation, anti-behaviour orders, mediation to mention but a few needs to be adopted combat juvenile incarceration.

g) Alternatives to imprisonment

Article 40(4) of CRC as well as the Beijing rules and General Comment 10 all stipulate that sentencing of children should be proportionate with their age and the desirability of promoting their reintegration and assuming constructive role in society and upholding the child sense of dignity.¹⁷⁵ The JOA provides that the court make a probation order on conviction of the juvenile.¹⁷⁶ Section 17 provides for the substitution of custody for imprisonment and under section 22 the court is given a list of alternative methods to imprisonment. However, the list is not exhaustive, the JOA should expressly include methods like community service, attendance and all those identified under rule 8 of the Tokyo Rules. Unfortunately, the Probation and After care Service (PAS) institution that works together with the juvenile court in monitoring and placing juveniles on probation remains largely understaffed, financially constrained and ill-trained human resource. This therefore, inhibits the effective implementation of the probation process.¹⁷⁷

h) Maintaining family contact

Although parents are significant in providing psychological or emotional assistance to the juvenile their presence does not mean that parents can act in defense of the child or be involved

¹⁷⁴ E.Lemert: 'Instead of Court: Diversion in Juvenile Justice' (1971), National Institute of Mental Health, Maryland as cited by G Douglas & L Sebba: n 160 above 285.

¹⁷⁵ Also see G Odongo-odiambo: n 163 above 158

¹⁷⁶ Sections 12.

¹⁷⁷ N 165 above

in the decision making process".¹⁷⁸ Criminalizing parents for the wrongs committed by their children is prohibited as will curtail the active participation of parents in the social reintegration process.¹⁷⁹

Accordingly, the JOA recognizes the role of parents or legal guardians in the JJS by protecting their right to be informed of the juvenile's arrest and eventual detention and to be consulted by the court during the trial.¹⁸⁰ However, it is hoped that the court will be keen to ensure that the parents' views or victim's interests do not override the need to listen to the juvenile, protect his or her best interest and where necessary avail legal aid and the right to legal counsel. Let's be conscious of the fact that both the parents and juveniles will most often not have the legal knowledge required understand court proceedings.

i) Other role players: Lawyers, probation officers, police officers and president

It's an international legal requirement that a juvenile offender should be given all legal or any other assistance to defend his case or in the JJS.¹⁸¹ However, the JOA does not provide for the role of a legal counsel during juvenile proceedings. Interestingly, there is provision for mandatory legal aid for minors who are charged of a crime.¹⁸² This glorious provision is however not merged with sensitization of the masses of its existence and there is no procedure established for accessing this legal aid.¹⁸³

Besides, the JOA does not expressly provided for the role of probation officer. However, they exist in practice under the PAS who work closely with the court in providing probation or social inquiry reports pertaining to relevant information regarding a particular child and supervising the implementation of the probation order passed by court and other rehabilitation programmes.¹⁸⁴

j) Community participation

Gunno remarks that delinquents are products of the society and the society should find out ways of and means to find solutions to their problem through proper rehabilitation process with a view

¹⁷⁸ CRC Committee General Comment No.10/2007, comm 53- 54. Article 37 (c) of CRC & Rule 15 of Beijing rules provides for exception where the presence of the parents has negative effects on the child.

¹⁷⁹ As above

¹⁸⁰ See sections 9(3), 11(3),13, 14, 18 & 21

¹⁸¹ Article 40(2b) (ii) .CRC, & 17(2c) (iii) ACRWC. Also see Gen Comment No.10/2007 and article 14 of ICCPR

¹⁸² Legal Aid Act Cap 57 of 1973

¹⁸³ N 165 above

¹⁸⁴ As above

for their reinsertion in society.¹⁸⁵ Unfortunately, the JOA makes no provision for the participation of the community in the juvenile justice process. This according to the Commission is to guard against the right to privacy of the juvenile and curtail community stigmatization at the point of reinsertion of the juvenile in society; hence participation is limited between the relevant officials and the juvenile's family.¹⁸⁶ As already noted community participation is essential in the JJS, it is therefore pertinent that measures should be adopted to enhance community awareness on the rights of the juvenile and role of the community in order to avert any fears of stigmatization.

k) Separate detention facilities for Juveniles

The JOA recognizes the need for the Government to establish places of remand and detention of juveniles.¹⁸⁷ Pursuant to this four institutions were established: the Probation Hostel for Boys (PHB); Probation Homes for Girls (PHG); the Rehabilitation Youth Centre and the Correction Youth Centre. Unfortunately, these institutions are situated at Beau Bassin in the Central region of the country (*See annexure 1 and 2*). For this reason some parents or legal guardians have to travel long distances to the detention institutions and this at times limits their ability to visit the juveniles in detention.¹⁸⁸ No wonder the CRC Committee has decried the insufficient available rehabilitation centers in Mauritius.¹⁸⁹ This may however, be attributed to the low number of juveniles detained in the country. At the time of the research it was reported that the RYC had twenty 19 girls and 18 boys and the PHB had 5 boys while PHG had 6 girls.¹⁹⁰ These low numbers is commendable as states are obliged to ensure that detention is a matter of last resort and for the shortest period of time, although it could be attributed to the low population in Mauritius. Disappointingly, the OCO has reported instances of inhuman and degrading treatment taking place on young offenders in the CYC.¹⁹¹ Unfortunately, the beaurocracy and language constraints inhibited the possibility to access the juveniles and obtain further information. However, it goes without telling that such practice is contrary to international standards.

l) Record keeping and the right to privacy

A JJS must protect the right of the child to have his or her privacy fully respected at all stages of the proceedings.¹⁹² And also prohibit the publication of information which may lead to the

¹⁸⁵ G Gunno: n 53 above 67

¹⁸⁶ N 165 above

¹⁸⁷ Sections 19, 20 & 25

¹⁸⁸ N 165 above

¹⁸⁹ CRC/C/MUS/2 of 27th/Jan/ 2007

¹⁹⁰ Interview with OCO on 10th October 2009. Also see MSSNSRI Annual Report (2009).

¹⁹¹ N 166 above, 33

¹⁹² Article 40

identification of a juvenile offender.¹⁹³ In conformity with this principles section 7 of the JOA protects the privacy of the juvenile and makes it an offence for any person who contravenes the section. Backory has argued that if a juvenile is identified during the criminal process, it can result in a permanent Identification of the young person as a delinquent. He or she will carry on this stigma through out his or her childhood and adulthood, thus impeding his or her reinsertion as a valued member of the society.¹⁹⁴ In spite of this the OCO reports that court sessions in juvenile cases continue to be heard in public and publication of juvenile identity in the media takes place with impunity.¹⁹⁵ Hence states must ensure the juvenile records and identity remain confidential to avoid stigmatization, recidivism and enable successful reintegration of the offender.

3.2.4 Policy initiatives

A number of policies tailored towards enhancing the social, economic and cultural wellbeing of the child do exist and include: Early Childhood Development Policy adopted to cater for children between 0-3 years; National Children's Policy which embodies the framework that will lead to further promote and protect the rights of children and ensure their survival, development and education¹⁹⁶ and the Educational Reform Policy which makes education compulsory for all children. A critical examination of these policies however reveals that the vulnerable situation of the juvenile detainee is not given keen emphasis. For instance there is no available programme for education especially for juveniles at secondary school level who are mainly detained in RYC or CRC.¹⁹⁷

3.3 Child protection institutions

Commendable, unlike other jurisdictions in Africa various institutions exist in Mauritius that are directly tailored towards the realization of children's Rights. The fundamental question is whether these institutions incorporate juvenile justice concerns in their activities. These institutions in short include:

¹⁹³ Article 8(1) Beijing Rules

¹⁹⁴ PJ Backory: n 55 above 21

¹⁹⁵ N 166 above 36

¹⁹⁶ MWCDFW Report: *National children's policy: A Republic fit for children* (2003) 9.

¹⁹⁷ N 165 above

3.3.1 Ministry of Women's Rights, Child Development and Family Welfare (WCDFW)

The ministry mandated to cater for women rights, child development and family welfare. One of its key objectives is to promote the development and welfare of a child from the very tender age in accordance with the CRC.¹⁹⁸ It is supported by the Child Protection Unit (CPU) responsible for the enforcement of legislations and policies pertaining to survivors of child neglect and abuse as well as the Family Protection Unit (FPU) which mainly offers counseling services to families.¹⁹⁹

3.3.2 National Children's Council (NCC)

NCC's mandate is to ensure that policies are more dynamic and responsive to the needs of children and to guarantee better participation of children in policy formulation. As well as being the key consultative and coordinating body on all activities relating to children.²⁰⁰ Notably the Act also establishes a National Children's Committee comprising of boys and girls between the age of 15-18 elected from children's organisations, may deliberate on matters relation to the child's welfare and offer its views to the National Children's Board.²⁰¹ Although the Committee is not yet in operation,²⁰² It is wondered whether juveniles will be given room to participate in the National Children's Committee being mindful also of the need to protect their identity and privacy.

3.3.3 Ombudsperson for children's office

The OCO seems to be a unique creation by Mauritius, as no other African country has enacted an equivalent institution. OCO is entrusted with the role of an advocating for children's rights. Its main objectives are: to advise the Minister and other public bodies and institutions on matters relating to the promotion and protection of children's rights and also to carry out any such investigations as she/he decides among others.²⁰³ The creation of this office is in line with rule 57 of the Riyadh Rules that requires states to establishment an office of ombudsman. Unfortunately, the OCO has no rights to prosecute the violator of the child's right and secure redress but only mediate between the parties and submit a report to the Ministry.²⁰⁴

¹⁹⁸ N 150 above 12

¹⁹⁹ As above 14-13

²⁰⁰ The National Children's Councils Act Cap 5 of 2003

²⁰¹ Section 13 of NCC Act

²⁰² N190 above

²⁰³ The Ombudsperson for Children Act Cap 41 of 2003, sections 5 -7

²⁰⁴ Section 7(3) as above

3.3.4 Police Family Protection Unit (PFPU)

The PFPU receives, investigate with extreme sensitivity, arrange for investigation and coordinate the investigation of reported or suspected cases of domestic violence, Child abuse, elderly abuse and family conflict.²⁰⁵ The PFPU has a special '*children's corner*' manned by a psychologist.

Other institutions which not be addresses herein include: the Brigade pour la protection des mineurs which acts as a watchdog against all forms of exploitation and abuse against children;²⁰⁶ the 'Drop –in- Centre' mandated to deal with children who are victims of commercial sexual exploitation and offer relevant information, education, psycho-social, medical and logistical support to ensure their protection, rehabilitation and reintegration.²⁰⁷ The Observatory for Children's Rights set up to ensure a follow up of children's rights, create a statistical data base on social development of a child.²⁰⁸

As a shortfall, most of these institutions seem to be addressing the needs of the child victim of neglect, abuse and sexual exploitation. Very limited emphasis seems to be placed on the specific interest of juvenile.

3.4 Measures in place to secure the rehabilitation and reintegration of juvenile detainees

Prisons as an institution are supposed to provide social rehabilitative programmes for inmates like vocational training, education and sports which help the inmates acquire new skills to enable them rehabilitate, be self reliant and productive in their communities and families on release.²⁰⁹

Dissel argues that perhaps the greatest challenge for offenders lies in the period immediately after release when they attempt to reintegrate into the community and reestablish their lives.²¹⁰

Hence the rationale of developing different life skill programmes that are tailored towards rehabilitating the juvenile and preparing him or her for reinsertion in society. This sub-section examines the different practical approaches taken by Mauritius to address this cause.

²⁰⁵ N 150 above 14

²⁰⁶ As above .13

²⁰⁷ As above 14

²⁰⁸ As above 17

²⁰⁹ C Birungi: n 37 above 16

²¹⁰ A Dissel: n 38 above 172

a) Probation and open prison

This programme is run by the PAS the process attempts to rehabilitate juvenile delinquents in the open, through the medium of mediation and supervision of the juvenile and the family towards enhancing the personal and social development and repair of the offender and the family relations. Probation cases whose treatment in the open is not possible owing to non conducive home environment (open prison) are channeled to the probation PHB or PHG.²¹¹ While on probation either at home or in the probation hostel, the probation officer supervises the juvenile and works with the family to create a better family environment or deal with the problems causing delinquency. If in detention in the probation facilities the juvenile is allowed a weekend home visit dependant on his or her behaviour and the family can visit the juvenile too.²¹² This process is essential as it prepares the juvenile for reinsertion in the family well as the society.²¹³ The PO then prepares and submits a report regarding the progressive reform of the juvenile which is then submitted to the District Probation Committee chaired by the Magistrate. Where the juvenile's behaviour is not improving or he or she is not complying with the conditions of probation when in the Probation hostels, the Magistrate may order sending the child to the RYC or the CYC meant for the medium and high risk juveniles respectively.

However, caution must be taken at this point of transfer as exposing the 'minor' offender to high risk juveniles may deteriorate the juvenile's rehabilitation process and further harden him.

b) Through-care services

This is conducted when the juvenile is in detention, the PO continues to counsel the juvenile and also visit the juvenile's family to discuss with the family the ways of disciplining the juvenile and how to improve the family circumstances in order to create conducive atmosphere for the juvenile's reinsertion, development and growth.²¹⁴ During through care the juvenile is counseled and the PO tries to establish the reasons for his offending behaviour and work with the family to address them.

²¹¹ Para 145 of Mauritius State Report at Juvenile Justice Information Portfolio; http://www.unicef-irc.org/portfolio/documents/421_mauritius.htm (As accessed on 27th Aug 2009)

²¹² As above

²¹³ N 165 above

²¹⁴ As above

c) Education and vocational training of juveniles

Basic teaching is carried out in the detention institutions. The juveniles in the open probation hostels are allowed to report to school respectively. Those in closed institutions like the RYC and CYC mainly engage in basic education conducted by visiting teachers to enable them attain Certificate of Primary Education. However, there is no education opportunity for juveniles at secondary level school level. In addition, vocational training and apprenticeship in areas of mechanics, beauty care, tailoring, basket making, gardening, sowing, baking, blacksmith, embroidery, bicycle, plumbing, pipe fitting, and hair dressing have recently been embarked on to equip the juveniles with life skills and enable them reintegrate in society upon release.²¹⁵ Many of these activities are provided by Non-Governmental Organisations like African Network for the Protection and Prevention of Child Abuse and Neglect (APPCAN), Industrial Vocation Training Board (IVTB), Caritas, IKinonete and Elan.²¹⁶ However, these are newly adopted programs that require evaluation of their impact on the reintegrated juvenile.

d) Counseling and recreation

In addition specialized services like counseling; medical care and psychologist are also provided in the institution. Juveniles also engage in outdoor activities like visiting historical sites; football, swimming, badminton, lexicon and television programmes.²¹⁷

e) Aftercare services and halfway homes

Before release of a juvenile the PO visits the family to ensure that the family environment is favourable for the return of the juvenile. A juvenile is released from detention pursuant to the decision of the Managing Committee of the probation hostels. Upon release the juvenile is supervised for a period of one year or more depending on his or her circumstances as determined by the PO. This aftercare service is to ensure that the juvenile is coping well within the community. Where the juvenile fails to cope, he or she may be recalled to the detention centre for further counseling and monitoring and may stay in the detention facility until he turns eighteen. This is strengthened with the setting up of halfway homes to cater for girls who leave the detention institutions between the age of 16-18 and have no place of abode or family to take care of them, unfortunately, no aftercare services exist for adult offenders.²¹⁸ Halfway homes for

²¹⁵ As above

²¹⁶ MSSNSRI Annual Report (2009) 1-5

²¹⁷ As above

²¹⁸ N 165 above

boys from the detention centers should also be established to avoid the contravention of the principle of non-discrimination of children.

f) Community service

This is also a newly adopted mechanism in Mauritius a Magistrate can now sentence a juvenile to a maximum of 180 hours of community service.²¹⁹ The Act provides for minors between the age of 16-18 to provide community service instead of being imprisoned. Community service is hailed as a practice that could reduce the overcrowding of African prisons and create better room for rehabilitation and reform of offenders.²²⁰ Hence the government introduction of community service is a step in the right direction.

Although most of these initiatives are new they are commendable as they pave the way for the rehabilitation and reintegration of juveniles. The challenge now is to develop evaluation and monitoring mechanisms to assess the impact of the adopted programmes.

3.5 Listening to the children's voice

The principle of the best interest of the child emphasizes the need to take a child's view into consideration and ensure child participation when dealing with matters relating to children taking into account the child's age and level of maturity.²²¹ Lloyd comments that children are a part of the society as much as any other group, yet a child is always almost seen as someone who is 'on the way' to integrate into society, the society of adults.²²² Kassan agrees that the right of children to participate in matters that directly affect them is guaranteed by CRC, despite this, children's participation remains the most neglected right.²²³

The CRC Committee has also emphasized the need to listen to, respect and implement the views expressed by the children at every stage of the juvenile justice process.²²⁴ Where the child's view cannot be obtained the family guidance should be sought in as far as applicable.²²⁵ If children are not involved in the advocacy for their rights, then they remain in such a passive role when they are hidden behind legal advocates who struggle for their procedural rights using

²¹⁹ Community Service Order Act (No.17 of 2002) now amended to the Community Service Order Amendment Act No.12 of 2009, section 16

²²⁰ J Sarkin: a 88 above 34

²²¹ Article 12 of CRC

²²² A Lloyd n 75 above 24

²²³ D Kassan: 'Participation by children' in J Sloth-Nielsen & J Gallinetti (ed): n 8 above 54.

²²⁴ See CRC General Comment No.10/2007

²²⁵ Article 5

professional language still incomprehensible to the child and with aims that they do not understand derivative of the advocates' 'specific brand' of human rights ideologies.²²⁶ The creation of the National Children's Committee under NCC Act is a step in the right direction to ensure child participation. Unfortunately, the Children's committee is not yet in operation at the moment. In the mean time, the OCO has launched a 'Budi Friend' child network programme for children between 12-18 years with the main purpose of engaging children in talks about their rights.²²⁷ It is hoped that the OCO as the 'watchdog' of children's rights in Mauritius will ensure that juveniles partake in these programmes.

3.6 State Reporting and concluding observations

Both the CRC and the ACRWC call upon states to submit periodic reports before the respective Committees of experts on the Rights of the child.²²⁸ The state country reporting allows the Committee to monitor how the state parties have implemented provisions of the ACRWC into municipal laws and practice. States are required to provide information including legislative, administrative, judicial and other measures that they have adopted.²²⁹ The Committees then give the recommendations to a particular state through its concluding observations. In compliance with this obligation, the Government of Mauritius through the Ministry has submitted a number of reports before both the CRC²³⁰ and the ACRWC Committees. Mauritius has further been commended for its constructive dialogue before the CRC Committee and positive response to the recommendations proposed.²³¹ However, the Mauritian state reports have not provided sufficient information on the situation of the juveniles in the country.

3.7 Conclusion

Mauritius is undoubtedly commended for its commitment to fulfill its obligations under the CRC and ACRWC through its state reporting practice and the establishment of various institutions, policies, programmes and other measures to secure the qualitative future of the Mauritian child

²²⁶ Ya'ir Ronen: 'Protection for whom and from what? Protection proceedings and the voice of the child at risk' in G.Douglas & L.Sezba (Eds): n 160 above 255. Also see A Lloyd: n 75 above 38.

²²⁷ OCO Report to the Committee on the Rights of the Child (2005) <http://oco.gov.mu> (Accessed on the 1st Oct 2009)

²²⁸ Articles 44 of CRC and 43 of ACRWC

²²⁹ A Lloyd: n 75 above 25

²³⁰ Latest is CRC/ C/MUS/CO/2 at 41st Session on 27/ Jan/ 2006 and CRC/C/MUS/CO/2 of 17th/ Mar/ 2006. Interview with Commissioner at MWCDWF confirmed that Mauritius has submitted two state reports before the CRC and the next is due on 2010 (Interview 2nd September 2009)

²³¹ CRC/C/MUS/CO/2

and meet its 2015 Vision of a “Republic Fit For Children.”²³² However, although Mauritius is several steps ahead in protection of victims of child abuse, abandonment and neglect, and the provision of the economic, social and cultural rights of its children compared to many African states, Its limited focus on the juvenile offender and the JJS coupled with the grave lacunas in the JOA leaves Mauritius one step backwards. These shortfalls affirm the ACPF opinion that “In spite of its ranking as the most child-friendly government Mauritius has not performed well in the area of JJS.”²³³ In spite of this, there are still a number of good practices that can be borrowed by other African States from Mauritius to improve their respective JJS.

²³²MWCDFW Report: n 196 above, 5

²³³N 18 above, also see Concluding Observations CRC/C/MUS/CO/2 of 27th Jan 2006

Chapter Four: Paving a way forward with lessons from Mauritius

4.1 Introduction

Mauritius still faces a number of obstacles as above highlighted that need to be addressed in order to achieve a child friendly JJS. This section proposes a number of strategies for addressing the bottlenecks in the JJS in Mauritius and draws lessons from Mauritius to other African states that are grappling with the challenge of creating a more child friendly JJS as required by international benchmarks.

4.2 Recommendations for Mauritius

a) Legislative reform

The JOA requires urgent amendment to bring it in conformity with the international principles set out above. This should be followed by a massive sensitization of the populace of the law and their legal rights protected therein. The JOA should clearly spell out the various diversionary and alternative to imprisonment measures and expressly grant the police as well as judicial officers to use them to avoid incarceration of juveniles.

b) Education and vocational training

Education is an entitlement to youth who are incarcerated in juvenile facilities and it is essential for their cognitive and social development, rehabilitation and re-entry in community. Mauritius government should continue its commitment to the effective implementation of the identified programmes for rehabilitation and develop more. A programme for secondary level education should be established coupled with programmes in spiritual building, psychiatry and stress management services. Kumari argues that the reasons for the failure of the JJS are not linked with children's behaviour being not amenable to reform or children showing irresponsible behaviour despite opportunities being given to them for development and growth. It has not succeeded in ensuring the promised care because of the state's failure to take a concerted view of the situation of children and have a clear policy towards them.²³⁴ Successful rehabilitation programmes should focus on addressing employment related skills; sufficient flexibility to cater

²³⁴V Kumari: n 3 above 308

for individually identified needs, include on-going monitoring and follow up of the impact, ensure collaboration with family and the communities and restorative justice components.²³⁵

c) Community participation

It is vital that community participation if enhanced in the JJS, this can be done through sensitization of the masses on the rationale of the JJS and the role of the community in enabling the effective reinsertion of juveniles.

d) Adequate financial and human resource

The established institutions should be supported with sufficient financial and adequately trained and professional human resource that are sensitive to the needs of juveniles and awake to their task. These should include judicial officers, police, lawyers, social workers, probation officers, counselors, medical practitioners, teachers, prison officers and psychologist to mention a few. PRI comments that helping juveniles become law abiding is much more the job of parents, teachers, social workers and psychologists than the police and courts.²³⁶ This means that governments have to direct resources to not only devising non-custodian measures, but also training and employing the necessary staff to supervise and monitor offenders where necessary. In cases where offenders have been sentenced to imprisonment, government should avail sufficient funds for the prison authorities to enable them develop and operate programmes that would target the rehabilitation of offenders. Kurami observes that the JJS suffers not so much due to paucity of funds but rather by frittering away the scarce resources or by adopting more expensive measures like institutionalization with lesser prospects of rehabilitation, instead of cheaper and more effective measures like probation and community placement.²³⁷

e) Coordination

There should be effective coordination, accessibility and lack of duplicity between the various different institutions established to address children's rights. These institutions should also engage and cooperate with the relevant NGOs. This coordination may also extend to other countries to allow sharing of best practices. The Ouagadougou Declaration Plan of action also encourages civil society groups to visit prisons, to work with offenders and assist them with pre-release and reintegration programmes.

²³⁵ J Sarkin: n 88 above 32

²³⁶ PRI: *Ten Point Plan for Juvenile Justice* (2000)

²³⁷ V Kurami: n 3 above.305

f) Monitoring

A monitoring and evaluation data mechanism should be developed to enable the effective assessment of the impact of the reintegration and rehabilitation programmes adopted. There is generally lack of information on the situation of the already reinserted former juveniles.²³⁸ Sarkin reports that there is little research to show that recidivism rates in Africa drop in the presence of effective and supportive rehabilitation programmes.²³⁹ Hence the need for effective monitoring and evaluations tools as well as data availability and accessibility.

4.3 Drawing lessons from Mauritius to the rest of Africa

Despite its lacunas in the JJS, as premised on the findings in the course of this research, It is suggested that African States have lessons to draw from Mauritius to improve their child protection ranking by adopting the following practices: Ratification of the key human rights international and regional instruments; Prioritising children in policy formulations and the protection of basic social economic and cultural rights (for all children including juveniles in detention); Establishing effective forums for child participation in decision making like a National Children's Committee; Setting up Institutions specifically dealing with child rights and protection like the unique OCO; Providing mandatory legal aid grants for juveniles; Complying with state reporting obligation before both the CRC and the ACRWC to allow for self assessment and make immediate positive and practical response to the concluding observations made by the respective Committees; Providing free legal and counseling services for victims of child abuse; Establishing separate juvenile detention facilities and maintaining low numbers of incarcerated juveniles to avoid overcrowding and the dangerous effects of imprisonment on children; seriously embarking developing child centered rehabilitation programmes like; open prisons, through care, halfway homes, after-care services, spiritual building, counseling and medical services; ensuring accessibility of juvenile courts and ensuring the participation of parents or legal guardians in the juvenile justice process.

²³⁸ N 165 above

²³⁹ J Sarkin: n 88 above

4.4 Other strategies for Africa

In addition to the identified best practices from Mauritius it is also proposed that starts continue to address the problem of overcrowding as this continues to be one of the mature problems in most of the African prison this is coupled with the poor sanitation and general health conditions.²⁴⁰ Such is not different in juvenile detention centers. Sloth notes that children are frequently detained in extremely overcrowded conditions that violate their right to dignity and are not in accordance to the best interest of children.²⁴¹ African States must focus on diversion and alternative sentencing methods as opposed to imprisonment. This will not only address the problems of overcrowding in prison, but also present a more promising solution for the successful rehabilitation and reintegration of prisoners and specifically juveniles.

Besides this States should also commit themselves to improve living conditions. It is argued that when prison provides services that prisoners recognize as valuable and conditions that are comfortable, as well as encourage substantial contact with families, prisoners are not only more willing to abide by prison rules and regulations, but are apparently also less likely to offend on release.²⁴²

Furthermore as States adhere to their state reporting obligations under the ACRWC, CRC and before the ACommHPR and avail detailed information regarding the condition of detention facilities and measures adopted to enhance the protection of prisoner rights and specifically child-friendly JJS. The ACommHPR, the African Committee as well as the office of the SRPD should at the same time continue to intensify their mandate regarding the promotion, protection and prevention of violations of prisoner's rights including juvenile detainees as well as embarking on effective follow up of the implementation of their recommendations in respective States.²⁴³ Viljoen rightly observes that the mandate of the SRPD should extend to reformatory schools and all clandestine detention facilities.²⁴⁴ Correspondingly Mujuzi suggests that the African Human Rights System should require states parties to implement alternatives to imprisonment.²⁴⁵

²⁴⁰ J Sarkins n 88 above 37

²⁴¹ J Sloth n 7 above 124

²⁴² A Dissel n 38 above 168

²⁴³ J Sarkin n 38 above 34-38

²⁴⁴ F Viljoen: n 145 above 132

²⁴⁵ JD Mujuzi: n 48 above 49

4.5 Concluding remarks

It is opined that if Mauritius adopts the proposed recommendations that do not profess to be conclusive and comprehensive it will go an extra mile in enhancing its JJS and conforming to international standards. By so doing, its 2015 vision of a *Republic fit for children* will encompass juveniles too.

5.0 Conclusion

Although comprehensive provisions in the spirit of protecting the juvenile are clearly laid out in the international and regional instruments above discussed. The above analysis of the JJS in Mauritius reveals that even the child-friendliest state to a large extent remains wanting in its protection of the rights of juveniles. That although initiatives are underway in practice for the development of programmes for rehabilitation and reintegration of juveniles, the JOA which is the key legislation regulating the JJS in Mauritius needs urgent amendment to be brought in conformity with international benchmarks and this calls for strong political will to prioritise JJS. As Kumari argues that the reasons for the failure of the JJS are not linked with children's behaviour being not amenable to reform or children showing irresponsible behaviour despite opportunities being given to them for development and growth. It has not succeeded in ensuring the promised care because of the state's failure to take a concerted view of the situation of children and have a clear policy towards them.²⁴⁶ Besides, the new and few initiatives for rehabilitation and reintegration adopted by Mauritius are a ray of light for a better JJS in Mauritius. These initiatives can be further developed by Mauritius also borrowing the good practices of other countries on the continent.

Therefore, it is now the time for all African States and all stakeholders to walk the talk of the obligations enshrined in the international, regional and national legal instruments and ensure the protection of the juvenile within their respective jurisdictions. In Sarkin's words the sentiments of reforming African prison conditions are evidenced by the progressive rhetoric that is prevalent on the continent in various forms. However, policies must be converted into reality on the ground and now is the time to do so. It is now a matter of fully implementing these theoretical desires²⁴⁷. Hence African states must now ensure that their prison policies and programmes are tailored towards rehabilitation and reintegration of juvenile offenders. It should be remembered that the

²⁴⁶ V Kumari: n 3 above 308

²⁴⁷ J Sarkin: n 88 above 33

reintegration programmes need to continue for a while even after the release of a prisoner, through after-care and halfway home services as is the case in Mauritius to allow time for the released juvenile to adjust into the community.

It is believed that if African governments adhere to their obligations to create child friendly JJS, then indeed the 'prodigal child' will find a home in the community upon release and live a more constructive life that will benefit the society. The identified rehabilitation and reintegration initiatives in Mauritius and elsewhere will slowly but surely be worth the effort, for after all Baldwin reminds us that "these are all our children, we shall all pay for or profit from what they become".²⁴⁸

(Word count: 17976)

²⁴⁸ J Baldwin: 'A Blueprint for Juvenile Justice Reform' (2005), 4 (Accessed on 21st October 2009)
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Annexure: Population of inmates in rehabilitation institutions as at 16th October 2009 by offences

Offence	RYC (Girls)	RYC (Boys)	Probation Home for Girls	Probation Hostel for Boys
Child beyond control	11	4	5	4
Uncontrollable juveniles	1	1		
Application for a child liable to be committed to the care of an institution	4	3	1	1
Larceny		3		
Sodomy		1		
Wounds and blows causing death without the intention to kill		1		
Aiding and abetting	1			
Variation of sentence	1			
REMAND	RYC (Girls)	RYC (Boys)	Probation Home for Girls	Probation Hostel for Boys
Child beyond Control	1	2		
Larceny		3		

TOTAL	19	18	6	5

Annexure 2: Population of inmates in rehabilitation institutions as at 16th October 2009 by age

AGE (Years)	RYC (Girls)	RYC (Boys)	Probation Home for Girls	Probation Hostel for Boys
9		1		1
10		1		
11				1
12	2		1	
13	2	1		2
14	2	3	4	
15	3	3		
16	3	6		1
17	7	4	1	
TOTAL	19	18	6	5

As statistics as per the Ministry of Social Security and National Solidarity, Senior Citizen Welfare and Reform Institutions 2009