

**EFFECTIVENESS OF THE JUVENILE JUSTICE SYSTEM: A CASE STUDY OF
NAKAWA DIVISION**

BY

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DEDICATION

I dedicate this research work to my best friend, Ms ADYERO FILDER CLARET. We have been together in this stormy sea called "the world", for more than five years now. Despite the storm in the waters, rightly, you never appear to quit. Many thanks for this far, but surely we can do better – God by our side!

(ii)

DECLARATION

I, **ABITI SAMSON LOUM**, hereby wish to declare that this research paper has compiled herein, is the real endeavors of my hand and talent. It has never been submitted in any institution of learning for any purpose whatsoever. Where information has been extracted from other sources, it's ethically indicated thereof.

SIGNED:.....

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UGANDA

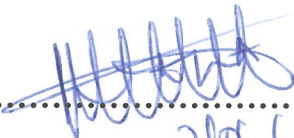
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APPROVAL

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

Miss MAGALA MIRIAM

SIGN.....
DATE.....2/06/2011.....

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This research would not have borne any fruit if the efforts and contribution of some gallant ladies and gentlemen mentioned hereinunder were not forthcoming.

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More still was the role played by stakeholders in the juvenile justice system especially those within Nakawa Magisterial area, not forgetting the RSA Nakawa. Your guidance, responses to questionnaires made this research what it's today.

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I cannot close this without mentioning the role played by my family. All of you were there when I needed your help most. This research and other academic commitments used to take me away from home but you stood there patiently with me. Blessings!

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ACRONYMS

1. CID – Criminal Investigation Department
2. DPC – District Police Commander
3. DPP - Director of Public Prosecutions
4. FCC - Family and Children’s Court.
5. JCC - Juvenile Justice System
6. JLOS – Justice, Law and Order Sector
7. KCC – Kampala City Council
8. KIU – Kampala International University
9. LAP – Legal Aid Project
10. MCA – Magistrate’s Courts Act
11. NGOs – Non Governmental Organizations
12. PCA – Penal Code Act
13. PSWO - Probation and Social Welfare Officer
14. RSA – Resident State Attorney
15. UCLF – Uganda Christian Lawyers Fraternity
16. UNICEF – United Nations Children’s Educational Fund

ABSTRACT

This research work is centering mainly on the psychological development of the juveniles and how they are treated by the law. Much will be examined on their behaviors, abuse, neglect, in relation to their delinquent behaviors.

The research will FIRST introduce briefly the concept of juvenile delinquency and the background to the problem. It will go ahead to look back at the main causes of juvenile delinquency in the area, incorporating the different categories of offenses perpetrated by these juveniles, putting into consideration the International Rules or Instruments concerning child offenders.

It would also discuss the existing laws of Uganda and its contribution in the rehabilitation of juvenile offenders. It would also criticize these existing laws on their contribution, not only in Nakawa division, but the whole country.

The research will further look at the institutional contributions in the day today operation of the law in relation to juvenile justice system in Nakawa Division. Several stakeholders' contribution in the area would be assessed; the opinion of the religious leaders and the NGOs would also be gathered.

The above then will allow the researcher to discover what contribution these institutions make in the rehabilitation of juvenile offenders in the research area. A good recommendation of the respondents and the researcher on what could be the way forward, in the struggle to rehabilitate the child offenders in Nakawa Division will then follow.

CHAPTER ONE

1.0 Introduction

There never seems to have been a time, at least since the early nineteenth century, when the criminal activity of young people has not been a cause of major public concerns. We are repeatedly told, not least by the media, that crimes among young people is a serious and ever worsening problem, often in contrast to a previous golden age, when youths posed no great threat to the public order and safety. However, if the supposed golden age is checked from the historical record, we find that, people were saying the same thing – crime among young people has always been a problem.

Despite the fact that delinquent behaviors may occur because of many factors, society stretches that children should become “proper” and “adopted” members who will not ignore accepted values and practices. Behavior which is different from the normal is usually not tolerated and is often punished. Children however, need to be supported by the society against misleading characters and behaviours. The Children’s Act provides clearly in Section 5 that:

“It shall be the duty of ...any person having custody of a child to protect the child from discrimination, violence abuse and neglect.”

The Act gives, not only the custodian of the child, but the whole society, the task of supporting the young citizens of this country from criminal behaviors. Provisions are also made in the said Act for the arrest and charge of children by the Police in the courts of law. The Probation and Social Welfare Officer (PSWO) has to make a report to assess the circumstances under which the child committed the offence. When the juvenile is found guilty of an offence, he is

convicted and sentenced. He or she may be placed on probation, or they may be placed in custody in a Remand Home or Reformatory School.

Earlier on, at least before the enactment of the Children's Act, children who were convicted of delinquent behavior were more vulnerable to imprisonment with their adult counterparts, an act which used to portray the juveniles into learning a more sophisticated measure of criminal practice. The Act recognizes that if the juveniles are given a custodial sentence it's important that their welfare needs are met.

A Child Care Open Learning Programmes Note book puts it that,

“Juveniles who have been convicted of offence and are in custody have the same needs as any other. When punishments are used, they should be appropriate and not harsh.”

Unfortunately, due to inadequate resources among others, the whole of Nakawa Division and the city of Kampala as a whole do not have a single rehabilitation centre. This is an obstacle to the reform programme in this area and the whole country.

Over the past decade, the problem of physical abuse and neglect has emerged as one of the most pressing issues of our time. This abuse must be condemned, one of which was held in the case of *INGRAHAM V WRIGHT* 1977 U.S SUPREME COURT (Bybee 1979) that.

“Physical punishment in school is neither cruel nor unusual punishment.”

This kind of court decisions gives physical punishment of the child ago ahead and thus promoting abuses. Instead, a more appropriate measure of punishment has to be put in place, recognized by the law.

IN MANY PARTS of the Kampala especially Nakawa Division, many children have resorted to a more sophisticated unlawful acts due to their abuse and more especially neglect, and embarrassments, not only from their families and parents, but the society as a whole. Most of them have been associated with conduct which does not definitely, fit the society. This kind of acts, which have greatly formed the background of this research, repulses the juvenile offenders more far away from their homes and society.

More similar to the above, there's massive influx of children into this division and even other bigger towns of the country. These juveniles normally develop very fast into street children. It mainly come due to poor treatment of juvenile delinquents who are regarded as wild elements in the society. If a more liberal method or way of rehabilitating these kids are sought and set in place, they would be easily transformed and admired by the society.

Poverty is another problem which has led to much increase of child offenders in the area, as many children are forced into illegal means of acquiring basic needs of life.

This problem has increased the rate of child abuse and neglect, which is not in line with the provision of the constitution of the Republic of Uganda 1995, which says:

“Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.”

UNFORTUNATELY, no serious step has been taken by the government and the local leaders of the area to rehabilitate these juvenile offenders, some of whom have now become habitual offenders. There is therefore need, for a speedy development of a reform programme in the area, to bring these juveniles into good citizens of the country.

This research work is endeavoring to discover what contribution the juvenile justice system has made in the life of children caught in conflict with the law; and generally, how the juvenile offenders, who are in conflict with the law, can be turned into a law abiding and useful citizens of this country.

These findings are drawn from the research undertaken from different stakeholders in juvenile justice system operating within Nakawa Division. It will encompass not only the statistical and qualitative evidence, but also the attitudes, concerns and beliefs of all those affected or involved with children in the judicial system.

Recommendations from different sectors of law enforcers, opinion and religious leaders shall be assessed, and personal remarks or recommendations would also be analyzed.

1.1 SCOPE OF THE STUDY

These findings as noted earlier, are drawn from the research undertaken from different stakeholders in juvenile justice system operating within Nakawa Division. It will encompass not only the statistical and qualitative evidence, but

also the attitudes, concerns and beliefs of all those affected or involved with children in the judicial system.

The research area i.e Nakawa Division is an area spanning about seven square kilometers. It has a High Court Circuit for the central region, a Chief Magisterial Court, a Grade II Magistrate Court based in Luzira, a juvenile remand home based in Naguru, a Probation and social welfare office, four police stations (at Jinja road, Kitintale, MUBS, and Kyambogo University police stations), a central government prison at Luzira, among others. The research covered/ was conducted in all these areas.

1.2 Objectives

The suffering of children has been enormous especially in an area like Nakawa Division. This has greatly increased the rate of juvenile delinquency, which many Ugandans have never taken into consideration. There is need to point out the plight of the child offenders in this area.

This research is to address itself to the causes of this phenomenon (juvenile delinquency) and how the juvenile offenders are being treated. Putting the above into consideration therefore, the research will have alerted the public on the dangers of this phenomenon.

It's also aiming at sensitizing the public on the existing laws on child offenders and children as a whole. The locals, opinion and religious leaders need to be aware of the existence of Children's Act and the recognizance of the plight of children in the country's legislations.

Connected to the above, there is need to know whether the existence of the law on the child offenders can enforce their rehabilitation. Here also, both the society and family of these children ought to take part in the struggle change the life of these young ones..

It will also look at the institutions involved in the juvenile justice system in the area. Their roles and weaknesses will be assessed with a view of finding reasonable solutions to the same so as to increase their potentiality in the work.

By suggesting the way forward in the struggle to rehabilitate the juvenile offenders in the area, the research would also be aiming at seeing a permanent change in the life of the juveniles, with the expectation that they would end up becoming law abiding and useful citizens of the country.

1.3 Definition of terms

1.3.1 The term “Juvenile”

Within the previous laws of Uganda, there was lack of consistent policy on the definition of a juvenile to guide the legislators in the application of the law. Various Acts and legal books in Uganda used to define a “juvenile” differently.

Collins Cobuild English Language Dictionary defines a juvenile as a child or young person who is not yet old enough to be regarded as an adult. This definition doesn't specify the age or determinants of an adult or a juvenile.

The now repealed Approved Schools Act for instance, used to define a juvenile as:

“A person who has attained the age of seven years and is under the age of sixteen years”.

This was also inconsistent with other statutes like the Reformatory School Act, and The Penal Code Act. These definitions had a descriptive effect in defining responses to children in conflict with the law. The commencement of the Children's Act addressed this anomaly and inconsistency as the Act clearly defines a child "as a person below the age of eighteen years". This definition is also in line with the definition in Halbury's Laws of England which states that:

"...a person attains full age on attaining the age of eighteen..."

1.3.2 Juvenile Delinquents

A Child Care Open Learning Programme Notebook defines juvenile delinquents as children who do things against the accepted rules of society. Tibamanya Mwene Mushana, in his comments on Juvenile Delinquency wrote that;

"Delinquency is any act that violates the law whether by an adult or a child. The term is usually used to refer to juvenile delinquency which is violation of a law or ordinance by an individual below the legal adult age of a society."

These definitions and descriptions are closely related to the Collins Co-build English Dictionary definition of a Juvenile delinquent, which is to the effect that,

"...is a young person who is guilty of a crime, especially vandalism or some form of violence".

Disrespect or abandonment of elders is regarded as deviant behavior among most African people but not delinquent as the deviance cannot be prosecuted in a criminal court. Tibamanya Mushanga continued to write that,

"All crimes committed by people below the age of criminal responsibility, all ranging from murder to rape and embezzlement can be legally defined as juvenile delinquency".

Juvenile delinquency is usually ignored as mere deviance if the offence is not a major one!

1.3.3 Rehabilitation of Juvenile Offenders

The Oxford Advanced Learner's Dictionary defines the term "to rehabilitate" as;

"To restore to a normal life by retraining, medical treatment... especially after imprisonment or illness".

Over the previous years, the laws of Uganda had no clear provision for the rehabilitation of the juvenile offenders in particular, and the offenders in general. This is fortunately redressed by the enactment of the Children Act which provides clearly in S.97 (1), for the establishment of National Rehabilitation Centre for children. However, this rehabilitation Centre needs to be expanded to cover all parts of this country. For instance, the all region from Tororo to Arua has only two remand homes and no rehabilitation Centre. Nakawa Division is at least gifted with a remand home (at Naguru) but no rehabilitation centre. This makes the move to rehabilitating these juvenile delinquents a failure.

1.4 Methodology

1.4.1 Pre-visits

The purpose of pre-visits was to identify the researcher and brief the authorities about the research. It was also to mobilize the respondents at various levels.

Pre-visits were carried out two weeks prior to the actual research. In some places however, pre-visit was made one week before the actual research.

1.4.2 Selection of Participants

The range of participants was selected to gain as compressive coverage as possible within the time and resource constraints of this research. Competency and confidentiality was encouraged, especially among the adult respondents.

The juveniles were interviewed by putting directly the question to them. Gender balance in the selection was noted and in case of the parents of the juvenile offenders, both parents would be interviewed if they are accessible. People who are acquainted with the children were also interviewed and the organizations or institutions that deal with children were of much priority. They included Courts (Magistrates), Prosecutors, Police, Probation and Social Welfare Officers, Non-governmental Organizations, Schools, Teacher Resource Centre, Religious Leaders, Politicians among others.

1.4.3 Methods of Data Collections

AN INTERVIEW GUIDE was used to collect information. The guidelines were opened to avoid pre-structuring of responses, and they were also broad enough to permit adequate discussions. There was use of questionnaires aimed at gathering enough information especially from the juveniles and NGO's. Mostly used types of questionnaires arrived at was the Question-Guide. It was mainly to gather certain specific type of information which may not be too detailed.

The researcher also used FOCUS GROUP DISCUSSIONS especially when visiting the local people, who may have to share idea among them on the topic. The groups comprised a maximum of 10 people. Similarly statistical evidence, where available, and direct observations, contributed to the findings. Data were also collected from journals, newspaper reports, and Legal text-books. Most of the statistics were either from the Court records, Police Stations, the remand home or from the Probation and Social Welfare Officers.

1.4.4 Ethical Considerations

The researcher introduced himself to the respondents and the purpose of the study was clearly explained. None of the informants were compelled to give

information, and confidentiality was emphasized. The researcher and the respondents used English language especially in offices and Police Stations; the local language (Luganda) especially to the juveniles and their parents, was emphasized for reason of clarity in their points.

1.5 Problems Encountered

The researcher encountered some problems, which much as solutions were got for most of them, had posed great challenges to these findings.

1. The findings had conflict with other academic and professional obligation, which also needed this researcher to fulfill. Most notable here was conflict in time management, as the researcher was always engaged in the academic and other professional obligations. This problem however, was solved with time. Cooperation from the Supervisor was sought, and time was allocated for this important finding.

2. There was also a problem of gathering materials especially from legal texts and law journals. This was mainly because the University Library, which contained the biggest source of materials for this research, was inadequate. This problem too, was solved. The researcher managed to visit LDC Library and that of Makerere University, though not so frequently.

3. The respondents also posed a problem to this research. Most of them especially children and the local people of the area, had fear of being confronted with interviews. They were in fear of being arrested, or reported to the press or law enforcers. This was also solved by the researcher introducing himself to the respondents and explaining the reasons for the findings. Where necessary, especially with the juveniles, the researcher

approached them through the relevant authorities like Probation Officers or their Teachers and/or parents/guardians.

4. Similarly, there was inadequate finance to allow free movement of this researcher within the area of the research.
5. Further to the above, this research suffered the effect of busy schedules by the recipients especially the professionals. The Magistrates, Prosecutors and Policemen were the most difficult to access due to their busy workload.

CHAPTER TWO

2.0 Age of Criminal Responsibility

Ugandan legislation recognizes the differences of criminal capability between the juveniles and adults. According to S.88 of the Children's Act,

“The minimum age of criminal responsibility shall be twelve years.”

The United Nations Standard Minimum Rules for the administration of Juvenile Justice requires that such age should not be fixed at too low an age, bearing in mind the child's emotional, mental and intellectual maturity. Tuhaise (1985) argued that;

“The notion of criminal responsibility for children becomes meaningless if the age of criminal responsibility is fixed too low or if there is no lower limit at all”.

Literature review has revealed that the age of criminal responsibility varies from one country to another. This variation however, doesn't change the fact that the age in many developing countries ranges from 13 to 16 years of age. In Rwanda for instance it stands at 14 years, in Burundi 13, Madagascar 13, Chad 12, Argentina 16, Cuba 16, Scotland 8, 15 in Sweden and normally 18 in Belgium. As Cavadino and Dignan put it that the age of criminal responsibility means that children below the age cannot be prosecuted for offences at all, it's important to note that juvenile delinquency is usually ignored as mere deviance if the offence is not a major one. Section 15 of the Penal Code of Tanzania (and 14 of Kenya) states that:

“A person under the age of seven years is not criminally responsible for any act or omission.

A person under the age of twelve is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission”.

It continues that,

“A male person under the age of twelve years is presumed to be capable of having carnal knowledge”.

As noted earlier, The Children’s Act has provided for the minimum age of criminal responsibility as 12 years addressing inconsistencies that existed within the previous legislations.

In the case of **WALTERS V. LUNT**, a husband and wife were charged of receiving from their son (aged 7 years) a child’s tricycle “knowing it to have been stolen”. It was held, that since the child could not steal, the tricycle was not stolen and the parents cannot be held liable of such an act (of receiving a stolen item).

2.1 Categories of Juvenile Offences in Nakawa Division

The categories of juvenile offences in this area, like any other phenomenon, can be grouped into types. Two broad categories of crimes, not only that perpetrated by the juveniles can be recognized. The first category includes all the wrongs a person can commit against another person; and the other is all form of wrongs committed against the state.

2.2.0 Violent Crimes against a Person

These crimes can generally be categorized to include Homicide of all types, assault and forcible rape. They are commonly characterized by use of violence. Although some types of murder require no use of violence, such as poisoning, such cases are included because they involve the loss of human rights. These crimes (may be with an exception of rapes) have high visibility in that, they are

more likely to be reported and dealt with by the police than some of the other types.

Violent crimes against a person is however too low in Nakawa, compared to crimes against property. The report from Jinja Road Divisional C.I.D Officer indicates that the offences or crimes against a person were only about 10% (estimate), compared to almost 90% of crimes against property. There was no case of homicide and rape, meanwhile cases of assaults, defilement, child to child sex; dominated the statistical list.

The statistics got from the Police C.I.D Office for the year 2010, indicated that crimes against any other person is on the rise, with 90% of the juvenile offenders male, between the ages of thirteen to seventeen. Most of their victims on the other hand, are female with only around 25% victims, male.

This is because the rate of crime against other persons has been high in mainly defilement cases. Other related offences included incest and indecent assault.

Police officers and Probation and Social Welfare staffs argue that these crimes are steadily on the increase due to moral degeneration. Most people interviewed also agree with the above argument, going further to blame the influence of phonographic materials and western cultures. They say that children imitate what they watch from video, films and other photos and news they read or listen from radios, televisions, newspapers among others.

Crimes against property are the largest in the Nakawa area. Many juveniles have been nabbed in such act which includes all types of theft or stealing, shop lifting, robbery, theft of motor vehicle or their spare parts, being in possession of

suspected stolen property, arson, impersonation, among others. These crimes are so common because of some circumstances like the existence of street kids, who can be easily manipulated to commit offences, steal, rob other people and even break into shops and homes. There's also a phenomenon of poverty brought about mainly by unemployment and/ or lack of income generating activities and school drop outs. Generally speaking, increase in property crimes are closely related with industrialization and urbanization which are also a product of many forces.

The bulk of thefts always committed by the juveniles are normally against private individuals usually living in the same neighborhoods as the offenders. The items stolen include but not limited to food, clothing, house hold utensils, bicycles, vehicles and their spare parts and even money. Research indicated that these property crimes are always committed by the juveniles hailing from a poor family background, with very few in this area hailing from a rich (well to do), or middle income family. The rich always manage to silence the investigators from investigating their children's criminal behaviors. Though there is a remand home, the juvenile offenders enjoy laxity in the law. Section 94(4) of the Children's Act for instance provides that, detention shall be a matter of last resort. As a result, the offenders are always released out from police custody or even on appearance in the court.

2.2.1 Crimes against the state

According to the police record on the statistics of criminal acts of juveniles for the year 2009 and 2010, no juvenile in the all of Nakawa Division has ever been charged of an offence against the state. According to the PCA, offences against the state takes a broader degree of offences such as treason contrary to S.23, terrorism contrary to section 26 of the PCA, seditious offences contrary to S.40,

incitement to violence contrary to section 51, among others. All these offences are not registered in the police record, as being committed by the Juveniles. All in all, offences against the state are very rare, if not inexistent, among the juveniles in Nakawa Division

It's important to note that, among the categories of offences perpetrated by the juvenile in the study area, offences against property is highest, followed by offences against a person and lastly offences against the state. The rate of theft of all kind is highest, taking almost 45% of the general offences against property committed by juveniles in 2010. This is followed by offences against morality such as defilement, indecent assault, and other related offences. Offences such as idle and disorderly, being rogue vagabond, arson, escape and some others are also rarely on the list of crimes perpetrated by the juveniles in this area. Local council courts also handle some few minor crimes which the victims normally feel should not go to police and court. They include mainly assault, thefts of some minor kinds, attempted defilement among others.

2.3 Treatments of child offenders

There have been different ways of treating child offenders in this area. These differences range from their families, police, probation and social welfare office, remand home, in courts, schools and even from among the community.

From the families

Child offenders in a greater percentage are not liked by their parents. They are in most cases labeled as undisciplined, notorious, and a source of all family problems and misfortunes. Many of them have been neglected and others chased out of their homes. They are labeled as children who spoil the reputation of the family. Most of the family members visited by the researcher say that they

have tried to advise their children, but have failed. They have thus, resorted to heavily punishing the juveniles and sometimes forcing them out of the home. However, most of the parents who have been counseled by the probation officers are now trying to realize their obligation to these juveniles. Instead of torturing them, they have now resorted to responsible way of handling the juveniles. They now can counsel and advice the juveniles on how to behave, which according to one parent,

“...has created a more conducive atmosphere for both me and my child.”

Thus, families in the research area have different approach to handling the delinquent children. However, the parents and their family members are getting sensitization from the police, probation and welfare officers, NGO's among others on how to handle their delinquent children.

The Police

The police officers in the area argue that they handle juvenile offenders according to the law. When the researcher visited the Jinja Road and Kitintale Police Stations, the police officers in charge of Child and Family Protection Unit (CFPU) noted that they do all their best to see that the juvenile offenders are handled according to the Children's Act and the Police Act. They say the police normally, on arresting a juvenile suspect, call the parent of the child and he's informed of the child's arrest.

They also inform the secretary for children's affairs of the area where the child resides according to section 89(3) of the Children's Act.

This researcher is also informed that child offenders are not kept in custody for more than 24 hours. The probation officers are normally informed and they are

the ones who represent the child before court from where the child could be released on court bail. The police also deny any attempt of torturing a juvenile offender. They also said that there are so many habitual offenders but in most cases they are pardoned. They blame the increase of juvenile delinquency on the weakness of the law. That if a Rehabilitation Center could be constructed in the area or within Kampala City; the juvenile offenders could also be reformed.

The police officers also noted that very few female offenders are normally put into custody. However, in case a female child offender is arrested, she's normally attended to by a female police officer. They further noted that very few juveniles could reform even if they are cautioned.

Probation and Social Welfare Officers (PSWO)

Probation and Social Welfare Department is one of the institutions that are very closely working for the plight of the juveniles, including even the juvenile offenders. Section 1(c) of the Probation Act defines a probation officer as "...a member of the probation service..." The probation officers in Nakawa revealed that,

"The agreed purpose of the department is to co-ordinate, mobilize and supervise the effort to help and work with the socially disadvantaged, especially the children".

They said they are working closely with legal agencies like the courts, police forces and the remand home at Naguru in seeing that the juvenile delinquency is controlled and prevented. When a child is arrested by police, the charge sheet is brought before the probation officer, in case the child is not released on police bond. The probation officer concerned then get into contact with the child and establishes the circumstance under which the offence was committed. When the

child is released on bail, the probation officer will again have to make some follow-ups to establish how the juvenile is living at their home.

All in all, the probation officers in this area are the real partners of the child offenders. They always see to it that a child offender is not tortured and abused by their family members, police and the community. They also sensitize the family members on the child's right and counsel the child offenders.

Remand Home warders/ staffs

Section 89(8) of the Children' Act disagrees with putting any child in custody with an adult person. Section 91 (1) thereof stipulates that where a child is not released on bail, the court may make an order remanding or committing him or her in custody in a remand home. The staff of Naguru remand home indicated that by the time of this finding they were holding 35 juveniles on remand there.

Courts

Cases involving the juvenile offenders in the Chief Magistrate's Court of Nakawa are normally heard in the Family and Children Court following the procedures laid down in the Family and Children Court Rules, 1998. The said court (FCC) is manned by three Magistrates Grade II. They assured this researcher that, most of the juveniles brought before them are normally released on bail, according to Rule No. 25.

Rule No. 24 provides that,

“Every case shall be handled expeditiously without unnecessary delay and shall be conducted from day to day, except that for exceptional reasons, short adjournments may be granted by the court”.

The magistrates noted that cases of juvenile offenders are normally disposed off as soon as possible. They also revealed that most of the cases are heard in camera and that reconciliation is usually promoted between the complainants and the child, as provided for in Rule. 29 thereof.

In other courts like the Village Local Committee Court, children are also handled appropriately. The child's parent is always made to attend and where possible assist the child in the proceeding. There is no report of harassment of the juvenile in these courts. Appeal from the village courts lies in the Family and Children's Court, as provided for in Rule 33 of the Family and Children's Court Rule, 1998.

Although there's a High Court Circuit in Nakawa and a Resident Judge presiding over the same, there has been so far very little report of cases of juvenile offenders. However, the Registrar of the High Court in Nakawa revealed that cases of juvenile offenders are generally handled expeditiously without any delay. Those children are normally bailed out by their parents and with the assistance of probation officers, in cases of capital offences. He also noted that the High Court treats the juvenile in a "loco parent" manner and that, only children charged with capital offences have been committed into the remand home during his time as Registrar of the High Court.

Generally speaking, courts in Nakawa recognize the plight of children. They also take into consideration the circumstances under which the child committed the offence. Reports from the probation and social welfare office have been of great assistance in the trial of juvenile offenders in this area.

Prosecutors

Cases against children are handled by prosecutors appointed by the Director of Public Prosecutions (DPP). Article 120 of the Constitution empowers the DPP or someone working on his behalf to among others advise/ direct police on investigations. They adduce/ lead evidence against the offenders in court, and also to some good extent they promote reconciliation between the parties. According to the Resident State Attorney (RSA) Nakawa, cases against the juveniles are handled with utmost care. That her office normally consider the best interest of the child. She also noted, that the prosecutors do not usually emphasize remand or custodial sentences. The office also do not sanction files against children where possibility of reconciliation is high. Sometimes, the police are advised by the RSA's office to consider cautioning the child than preferring charges.

Schools

Schools are one of closest associate and custodian of not only the child offenders but children as a whole. Most of the schools visited by this researcher said that they are very concerned about the plight of children. When this researcher got into contact with a teacher of Naguru Katale Primary School, she noted that child offenders are always at their access. She said that as teachers, they try to convince the child to appreciate the nature and gravity of the offence committed, and be remorseful and accept that he can be forgiven. Most of them were met at the Teachers' Resource Centre in Nakawa Division headquarters, manned by KCC (as it then was). They were all seconding the view that children who perpetrate offences should be handled by the concerned authority. One prefects of St. Kizito Primary School when asked on how the juvenile offenders are handled, noted that,

“In one time I saw a teacher handing over a suspected child offender to the police, after counseling him.”

Teachers also agree that they first counsel the child before taking any other step. Generally speaking, juvenile offenders are handled responsibly by their respective school authorities. Most of the suspected child offenders are first counseled before he's handed over to the police or to their parents. Teachers also advise the policemen not to harass the pupils in case they are arrested, and in custody.

In the public (society):

In public places, there are different reactions to children perpetrating crimes. Some of the children when netted in criminal acts are thoroughly beaten by their victims (the mob), even before the case is reported to police. They're labeled as notorious kids who cannot be reformed. However, there are some people who at least realize the plight of the child. They first take notice of circumstances which prompted the commission of the offence, and if the offence is not of much gravity they can set the child free.

Many people in the area say that they are now tired of children who cannot get reformed. There are some respondents however, who maintain that some children are so vulnerable to criminal behaviors such that they can easily be influenced by their peers. Generally speaking, handling of child offenders in Nakawa Division by the society is mixed up. Some people are now a bit sensitized on the plight and the rights of the child, including the child offenders. Others however, believe that torturing a child offender is the easiest means of “reforming” the child and doesn't waste time. The police are however, advising the public to handle the juvenile offenders with “good heart”. Even the probation

officers and other responsible authorities are advising the people to consider the plight of the juveniles and should not harass them.

2.4 Children's reaction towards the treatment of their counterparts.

Reactions of children within Nakawa on the treatment of their counterparts (the child offenders) have been of great concern not only to the researcher, but even the authorities that deals with them. Most of them say they appreciate circumstances where their counterparts are mistreated by beating and neglect by their families and the society. One pupil of Mbuya Primary School noted that,

“...I felt comforted when I saw our teachers talking and giving advice to a child offender last term”

She added that one time she almost shed tears when she saw one of her classmates being beaten by his victim of stealing a cake from the shop. Many children especially the school going pupils, are so concerned on the treatment of their counterparts. Another student of Progressive High School Kitintale noted that he doesn't admire any child being beaten or treated badly for committing an offence. He added that:

“The law enforcers need to take into consideration circumstances under which the children commit the offence.”

Most children believe that, their counterparts must have committed those offences due to some unavoidable circumstances, which the public and the police ought to take into consideration. Another added that,

“I always feel so sorry and disturbed when I see a policeman arresting a child or taking him to police station”

Most children also disagree with an idea that they are not reformatory. They cited examples of children who were so traumatized when they were street kids but are now united with the society as good citizens adding that it depends on the way those children are handled by the concerned authority and the public.

Children also had a reaction on how their parents treat the child offenders. They noted that some parents are not responsible at all, and they end up torturing their counterparts and even denying them the right to eat. They added that such parents need advice. Other children are also appreciative on the role of some parents. They say that, the parents are the most responsible people in handling the child offenders. The children also appreciate appropriate punishments given to their offending counterparts, arguing that punishment which is appropriate to a child can reform them. They are however, not happy at all on the parents who instead resort to torturing the child offenders and abusing their rights adding that such parents need to be cautioned by both teachers and the police.

2.5 Children's experience with juvenile justice

Children especially those that have ever experienced arrests by police officers have got some lessons to learn from this. They gave their mixed experience with Juvenile Justice System in the area.

Those interviewed from Naguru remand home noted that, they are at times victimized as a result of family related disputes and /or misunderstandings. Others say that charges are manipulated to suit the interest of the arresting officers, adding that they are always falsely arrested.

Some of the juveniles also said they are denied opportunity to give point of views as to their fate and the circumstances of their arrest, especially when the charge has been due to victimization of family related disputes and due to manipulation by the arresting officer.

Other children however, appreciate the work of most policemen who after considering the circumstances of their crimes, releases them on police bond.

Some children play hide and seek with the law, by always escaping from custody even if he was arrested on true charges or not. One child offender said,

“I was arrested for being idle and disorderly, but was charged of theft in court. I decided to escape from the police but was re-arrested, and again escaped. Now I am charged of escaping from lawful custody”.

CHAPTER THREE

3.0 Existing laws on child offenders

3.0.1 International Instruments and Rules concerning child offenders

The UN Convention on the rights of the Child:

Here, matters regarding Juvenile Justice are specifically covered by Article 37 and 40 of the above convention. Article 37 provides, inter alia, that

“No child shall be deprived of his or her liberty unlawfully or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort, and for the shortest appropriate period of time”.

Article 37 further requires that a child deprived of his or her liberty should be separated from adult offenders, have legal representation and other appropriate assistance and should be assisted to maintain contact with his or her family.

Article 40 establishes standards which should be applied to children who have infringed the penal law. Children in such situations should be treated in a manner which, one, is consistent with the promotion of the child's sense of dignity and worth; secondly, reinforces the child's respect for the human rights and fundamental freedom of others; and three, takes into account the child's age and the desirability of promoting reintegration and the child assuming a constructive role in society.

O'Donnel (1991) observes that the above is an admirable summary of the main principles which should inspire and inform the treatment afforded juveniles who are in conflict with society, and the law. He expresses the hope that they strike a responsive chord in the spirit of those who labour in what he calls a “challenging and often thankless field”. It's fortunate that our laws of Uganda

have copied up the above provisions of the convention for the benefit and the upholding of the rights of the children.

3.0.2 UN Standard Minimum Rights for the Administration of Juvenile Justice (Beijing Rules)

The Beijing Rules were established in 1985 and accordingly states that;

“A Juvenile Justice System shall emphasize the well-being of the Juvenile and shall ensure that any reaction of Juvenile offenders shall be in proportion to the circumstances of both the offender and the offended”.

Other areas emphasized in the Rules include:-

- Right of presumption of innocence, notification of the charges, legal representation and the right of appeal.
- Community based intervention, such as restitution, supervision and other diversion methods.
- Remand and custodial responses to be used as a last resort and for the shortest possible time.
- Presence of parents/careers during the trial;
- Professional training for those involved in the Juvenile Justice System;
- Non-recourse to formal trails;

The above provisions are very good initiatives that were taken by international bodies in ensuring that Juvenile’s rights to a fair hearing are met. Emphasis made on the training of professionals involved in the juvenile justice system goes a long way in ensuring high standards of adherence to the rules by the officers involved in this noble field.

This provision of the rule ensures that “the loco parents” principle is realized. Prof. David Cricksank once remarked that;

“The goal for all those who work with young offenders will be the best interest of the child”

All the community based activists and the local authorities, have to ensure that such a provision of the law is not just left to hang there, but emphasized to all the law enforcement units, social workers and the general populace, to ensure that the rights of the child to a fair trial is met. Prof. David A. Cruickshank continued to say that;

“For the young person, treatment or punishment under the guise of best interests must surely produce a sense of injustice. While everyone tells offenders that “treatment” is good for them, they feel that they are being deceived when they receive penal custody in some dressed-up form”.

3.0.3 UN Rules for the Protection of Juveniles Deprived of their Liberty

These Rules provide for the manner in which juveniles should be treated in residential facilities. Specific provisions include.

- the right for the juveniles to receive regular visits and remain in contact with parents or guardians
- Forbidding the use of corporal punishment, solitary confinement, reduction in diet or denial of contact with their families.
- Inspection of the facilities by an agency, different to that which administer the institution
- Medical examination and psycho-social examination of each juvenile on admission to the facility
- The juvenile’s right to privacy and to retain personal effects
- The juvenile’s right to complain and to assistance in making a complaint.

The above provisions for the manner in which juveniles should be treated in residential facilities are one of the significant rules for safeguarding juveniles from abuse and neglect by their family members and the community as a whole.

In the first place, the right for the juvenile to receive regular visits and remain in contact with the parents or guardians is a fundamental right of the child. David A. Cruickshank remarked that:

“Time and again it has been emphasized that where a young person has become involved with the law he is in need of protection and advice.”

The protection and advice quoted above is a good remark, but the “protection and advice” cannot be done in exclusion of the child’s parent or guardian. Children can best be assisted through their parents or guardians, or close relatives. The struggle for the rehabilitation of the delinquent children also can best be realized when the parents of these juveniles are cooperative enough with the concerned authorities.

3.0.4 UN Guidelines for the Protection of Juvenile Delinquency (Riyadh Guidelines)

These guidelines places responsibility for general prevention of juveniles offending on the family, with the government having a duty to preserve the integrity of the family including the extended family.

It further emphasizes the participation of children in community affairs and making plans for their future and that formal agencies of social control should be a means of last resort. The guidelines states among others that:

“The prevention of delinquency requires efforts on the part of the entire society with the responsibilities of the state and society being essential and complimentary”.

It stretches the importance of the school system as being essential for socialization as well as education.

Clegg, (1994) emphasized the importance of the above instruments, noting that they represent international recognized definitions of children’s rights and standard of policy and practice; and whatever the chosen methods of intervention, the best interest of the child should be the primary consideration.

Edwin M. Scur also commenting on these guidelines wrote that;

“Although it could be viewed as a motherhood statement, it fits with a “community approach” to delinquency that is widely advocated now”.

Prof. David A. Cruickshank also wrote that:

“In this approach, better community understanding of delinquency is encouraged and community participation in prevention and sentencing is solicited”.

It’s important that the juvenile justice agencies and society is made to understand the nature of delinquent behaviour among the juveniles and their loco parents contribution to the struggle of preventing the rehabilitating juvenile delinquency within their community. As Prof. Cruickshank noted, the community ought to understand better the delinquency concept. Their precipitation not only in prevention and sentencing, but in their rehabilitation, if of great importance.

The laws of Uganda, recognizes the plight of children who are seen as one of the most vulnerable members of society, greatly in need of care and protection, not only from their parents and the government, but the community as a whole. As Edwin Scur recommended, the authorities and the community has to view the plight of the juveniles in a “motherhood” manner that can lead to their reformation into a law abiding and useful citizens.

This guidelines as noted above, place the responsibility for general prevention of juvenile delinquency on the family. It further extent to the government, the duty of preserving the integrity of the family including the children. Much as the family has a primary duty of preventing juvenile delinquency from within themselves families, this duty ought not be place wholesomely on them. They are indeed the primary source of child discipline and protection from delinquent behaviours. The family ought to prune up their children by appropriately punishing them. Tim Lwanga in his article “Do Not Interfere When Your Partner is punishing a Child” noted that;

“Punishment aims at stopping or suppressing undesirable behaviour. It is not meant to be retaliatory or as a means to get even with the child.”

It’s indeed from the family that a child gets his or her source of behaviour. This also explains why most neglected children tend to be the highest juvenile offenders. If a child is brought up properly in a stable family, he’s more likely to become an obedient and useful child in the future. Punishing child offenders however, ought to have a limit. Many children, who are extremely punished, end up fearing their parents or guardians instead of respecting and leading an obedient life. Lwanga further noted in the article that:

“Extreme care should be taken when punishing children because some punishments can be identified as child abuse”.

This guideline further emphasizes the participation of children in community affairs and making plans for their future and the formal agencies of social control should be a means of last resort. This is a good development for the juveniles.

3:1 Laws of Uganda and their role in rehabilitation of child offenders

Within the previous laws of Uganda there were inconsistencies on the definite law concerning children. For instance, the definition of the term Juvenile alone wasn't consistent. The Approved Schools Act, Reformatory Schools Act (which are now repealed) and the Penal Code Act, all had different definitions on the term Juvenile. However, amendments by the creation or enactment of recent laws have addressed such anomalies and inconsistencies.

The Children Act has now addressed so many anomalies created by previous laws. It clarifies on who is a child, the age of criminal responsibility, among many others. The Act has also empowered the Police in S.89(2) to dispose off cases at their destination without recourse to court hearings. This is an appropriate provision for the juvenile offenders since they need not be detained for even minor infringements. Most of them are so vulnerable to criminal behaviours in a way that they can easily be manipulated to committing such crimes. It's also a good provision in that, some of these juveniles commit crimes due to some unbearable circumstances like lack of what to eat, abuse and neglect from their parents or guardians.

It's also provided in section 89(6), that

“where a child is arrested with or without a warrant and cannot be immediately taken before a court, the police officer to whom the child is brought shall inquire into the case and, unless the charge is a serious one, or it is necessary in the child’s interest to remove him or her from associating with any person, or the officer has reason to believe that the release of the child will defeat the ends of justice, shall release the child on bond on his or her own recognizance or on a recognizance entered into by his or her parent or other responsible person”.

By legalizing the release of a child by police on bond, it creates a source of reconciliation and a room for reformation to the child. He/ she would realize a sign that he’s not deserted by the society, but would be admired if he reforms. This is therefore one of the provisions that enforces the rehabilitation of the juvenile offenders. Provisions are also to the effect that,

“No child shall be detained with an adult person... A female child shall, while in custody, be under the care of a woman officer.”

The Magistrate’s Courts Act (MCA) however, provides in section 190(i) that, a Magistrate’s court shall not pass a sentence of imprisonment on any person who is in the opinion of the court under the apparent age of eighteen years. It also continues that;

“...but the court shall, if it is of the opinion that having regard to all the circumstances (including the character of the offenders and the gravity of the offence)... order him to be detained in safe custody, pending an order by the minister...., in such place and manner as it thinks fit and shall transmit the court record, or a certified copy thereof, to the minister.”

The Children Act on the other hand provides for some reliefs in respect of a child against whom the offence is proved. This is provided for in section 92(4), where the role of the Resistance Committee courts is stipulated, as far as trial of a child offender is concerned. The above section provides that, a village Resistance Committee court may, notwithstanding any penalty prescribed by the Penal Code in respect of the offences stated in sub section (2) of the above section, make an order, for some reliefs in respect of a child against whom the offence is proved. The reliefs include, reconciliation; compensation; restitution; apology; or caution. Subsection (5) of the above section states that;

“In addition to the reliefs under subsection (4) of this section, the court may make a guidance order under which the child shall be required to submit himself to the guidance, supervision, advice and assistance of a person designated by the court”.

The above provision are all aimed at seeing that the child offender is not neglected, but assisted to reform and become a law abiding citizen. The Act also provides in section 94(4), that detention of a child shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and whether the gravity of the offence warrants the order. This order also, have to be made after the court is satisfied that a suitable place is readily available as provided in section 94(5) of the Act.

The provision (in section 96(1))for the National Rehabilitation Centre for children is also a good provision in the Act that looks forward to the rehabilitation of the juvenile offenders.

This is also provided for in the Family and Children’s Court Rules. It’s however, suppose to be as a last resort. Rule 30 stipulates that;

“Where the case of a child appearing before a court is not completed within three months after plea has been taken, the case shall be dismissed and the child is not liable to any further proceedings for the same offence”.

These are provisions which support the concept of “Justice delayed, justice denied”, in the trial of a juvenile offenders. It’s also provided in section 94(a) that;

“NO child shall be subject to corporal punishment”

This provision confirms the decision of the Supreme Court in the case of SALVATORI ABOOKI v. A.G, where their Lordships unanimously agreed that corporal punishment is unconstitutional in that it’s a degrading and inhumane treatment.

The rehabilitation of offenders cannot be effective and will never have any impact if the laws are inconsistent with it. In Uganda at least for this matter, the juveniles are seen as one of the most vulnerable and marginalized groups of people in the country. They are now fortunate that, even the Constitution of the Republic of Uganda, which is the supreme law of the land, recognizes their plight. Article 34(4) of the Constitution for instance provides that,

“Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is hazardous or interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

Daniel K. Kalinaki in his Monitor article described the Children's Act as;

“... a noble and progressive pro-children piece of legislation in Africa.”

This is because of the abnormalities and inconsistencies that have been addressed by the Act and as far as the laws on children in Uganda are concerned.

3.2 Criticisms of the existing laws.

Much as the laws of Uganda are mostly favouring the child including even the child offenders, there are certain areas which have not been clearly addressed, mainly as far as the rehabilitation of juvenile offenders in relation to the different roles of the concerned agencies are concerned.

The Act itself provides for the establishment of National Rehabilitation Center. However, this National Rehabilitation Centre is created only in Kampiringisa, as per S.96(2). This has made most of the regions in the country to suffer. It can therefore be argued that, the Act was prematurely created or made to prematurely come into force.

Even the remand homes which have been provided for in the Act are very rear in the country. The whole regions from Tororo to Arua for instance, have only two remand homes yet there are more than 30 districts in that area. This factor has instead created into children, the feeling that they cannot be detained in any (lawful) custody, even if the police arrest them. It has therefore been one the factors that is increasing the rate of juvenile delinquency.

The law also empowers the district council of a given area (each district) to be the authority to put up detention centers and to cater for the welfare of the juveniles. This has brought a setback in the establishment of Remand Homes for children due to resource constraints on the side of the districts. Consequently, most of them lack Remand Homes and this means that the role of putting children into custody as one of the factors that may reform them, is being jeopardized. This factor has raised a lot of concern not only from this researcher, but a lot of the respondents including probation officers, and police.

The Act also provides for twelve years, as being the minimum age of criminal responsibility. However, this age seems to be high, taking into consideration the increase in delinquent rate of children not only in Nakawa, but the whole country. The officer in charge of the Child and Family Protection Unit at Jinja road Police Station noted that the age is high. They argued that the number of street kids and the general child offenders are on the increase, but most of them are of age between 9-16 years. She therefore suggested that, the age be reduced at least to ten years, so as to deter the habitual child offenders at that age. It's a debatable idea however, since one would wonder if the kids below twelve are capable of knowing that they ought not to have done such unlawful acts.

The Magistrates of Nakawa Magistrate's court in-charge of FCC also said, that much as the Act and other laws protect the child offenders, the protection is too much to an extent that, it can instead encourage them in delinquent behaviours. They also said the Act doesn't provide adequate remedies for the offended children. That a child complainant is not so much protected by the Act, which is unfair, compared to the protection of the offender. The Act and other related laws therefore, need to point at the protection of both the child and the society, by stretching more on the rehabilitation of juvenile offenders to

become a more obedient and lawful citizens. Government should support the child offenders and re-integrated them into school and also give them training skills which can enhance their socio-economic life. This can be a great contribution to the reformation of the child offenders.

CHAPTER FOUR

Rehabilitation of juvenile offenders

4.0 Historical developments

At common law, over a century and half ago, children were tried and punished for violation of law in the same way as adults with exception that a child under seven years of age was regarded as not responsible, and therefore as incapable of committing a crime.

However, a child between the ages of seven and fourteen was regarded as having possibility of such discernment as would make him responsible and this was to be decided in each case by an examination. A child under seven years of age therefore, could not be punished by order of court while a child between the ages of seven and fourteen could be subjected to all forms of punishment that were suitable for adults. In the course of time, a maximum age was raised in some American states from seven to ten.

Differencing reactions to the offences perpetrated by children and those committed by adults have been developing for more than a century, while the societal reaction to the offences of both groups has been slowly changing from a punitive to a treatment reaction, this change has been much more pronounced in the case of the juveniles. At least, the official policies for dealing with juvenile offenders have incorporated more treatment methods than the official policies for dealing with adult offenders.

As early as 1824, a juvenile reformatory school was established in New York State so that children after conviction would not be confined with adult criminals.

The Laws of Illinois (a state in America) in 1831 provided that for certain offences, the penalties for minors might differ from those of adults. In 1861, a legislature of Illinois authorized the mayor of Chicago to appoint a Commissioner before whom boys between the ages of six and seventeen could be taken on charges of petty offences. This Commissioner had authority to place the boys on probation to send them to reform school and generally to use treatment methods. In 1867, this work was transferred to the regular judges of the court.

In 1889, the first juvenile court came into existence in Chicago. This new court raised two significant points. One, the age below which a child could not be a criminal was advanced from seven to sixteen years. However, whereas the previous law had made definite provision for dealing with culprits below the age of responsibility, the new law made provision for dealing with them under a softer name "delinquents".

Secondly, the work of the court was placed under Chancery of Equity jurisdiction. For several centuries, dependent children had been under the Chancery Division (jurisdiction). In principle, all children were wards of the state if their parents were not willing or able to care for them. In practice, ward means a person under Guardianship of an older person or of local authorities.

In practice, the protection of dependent children was confined almost entirely to those who had property. The juvenile court law of Chicago was merely a logical extension of this principle of guardianship by the court of chancery or children who were in need of protection and guardianship of the state and thus was made to include delinquent children.

The juvenile court movement developed rapidly after the Chicago court was authorized. 22 states had somewhat similar laws within ten years. The Juvenile court movement spread to other continents and most of the civilized countries now have specialized Juvenile courts. The age of children coming under the court jurisdiction however, vary from country to country.

In the middle of the 19th century, the European governments began to move towards reforms rather than punishments. Charitable organizations then operating courts, begun pardoning young offenders instead of imprisonment on condition that they were placed under the care of these charitable institutions. In 1838, Parliamentary Act was passed in England establishing juvenile prison for children aged between ten to eighteen years. Reformatory schools were gradually introduced, the principle of equity before the law was encroached upon in respect of trial proceedings of the young. The young emerged as a distinct group to whom more liberal measures were applied than to adults; courts were to treat them as a parent would do. The Loco parents' principle emerged. In 1908, the Child Act was passed in England, which crystallized into social policy which was a land mark in the history of treatment of juvenile delinquents. The rest of the present English law, were improvements on the Act.

In Uganda, before the colonial introduction of common law system, the law consisted of the customs of the different indigenous community. Children were punished for wrong doing by flogging. The punishment of children just like in the old western cultures was usually far in excess of the faults. However, motives especially children, were restrained from committing crime through fear of the power of gods.

As early as 1915, the Government of Uganda had recognized the need for institutional treatment of juveniles and passed a Reformatory School Ordinance in 1930. But it was not until 1950's that reformatory schools were established. They included Naguru Remand Home, Kampiringisa, Fort Portal (for girls) among others.

The Children's Act made more changes in respect of children who commit offences. It also established provision for the rehabilitation of juvenile offenders, Approved schools among others. This enactment is of great significant to the juveniles of this country. Children of Nakawa Division of course, are no exception to this trend. More steps however, need to be taken by different institutional bodies in the area, to see that the delinquent children are reformed. With poverty and other social political and economic problems that have affected the area, there ought to be taken serious steps of rehabilitating these juveniles especially by empowering the stakeholders involved.

4.2 Roles of Police and Probation Officers

4.2.1 The Police Force

The role of the police in juvenile justice system cannot be underestimated. The police force, according to the OC CID of Jinja Road Police Station is as concerned about the prevention and the reduction in the rate of delinquent behaviours of not only the juveniles, but the society as a whole. Their role can be seen as below in the advancement of juvenile justice:

Arrest

The police is reasonable with the arrest of juveniles. When cases of criminal act is reported to them, especially that of the juvenile, they see to it that the

juvenile is arrested, and the parent with the secretary for the children affairs of that area, are informed of the child's arrest. They argue that,

“when a child has committed an offence and he's arrested and brought to the police station, he will realize that he has infringed on the law of the land, and will definitely try to reform.”

INTERVIEW

On arrest, the child offenders are subjected to interview by the police officer in the presence of either the parent, probation officer, the secretary for children's affairs of the area, or both of them. During this interview, the police will come to know the family background of the child, and the general circumstance that brought about the offence. This can give a good source of assistance to the child, whereby the police can release him on police bond according to S.89(1) of the Act.

Counseling/ Moral advice

The Police also try to see that the juvenile offenders are rehabilitated by giving them moral advice especially during/after the release. When this researcher visited the police station they said that the moral advices they give to the children with the caution that they issue them, is a great contribution factor to their reformation.

The police noted that they normally face problems when handling the juvenile offenders. They said the children don't have fixed places of abode and many of them are becoming street dwellers. This, they said, gives them a problem in that, when they are arrested, it becomes so difficult to contact their parents or

guardians. That even the secretary for children affairs of the child's area would not be known.

RECONCILIATION

The research also found that the police in this area try to promote reconciliation between the offender and the offended. This, they argued, reduces backlog and creates a softer avenue for the rehabilitation of the child offender.

Probation and social welfare officers

The probation and social welfare officers (PSWO) are one of the institution/ personnels who are very closely working with children on a day today basis. Their role emanates from the provisions of both the Probation Act and the Children's Act.

Historically, the institution of probation-of-offenders system came into existence way back in 1948. It was first suggested by the Chief Justice in September 1931. It then started in 1948 and it was subsequently accommodated in Criminal Procedure Code in 1950, under sections 314-317. One of the main reasons for its establishment was to coordinate, mobilize and supervise the effort to help and work with the socially disadvantaged, especially the disadvantaged children. The PSWOs in Nakawa are playing the following roles, in the administration of juvenile justice.

1. MAKING RELEVANT REPORTS:

The law requires the probation officers to make report on the social background of the child. The report includes among others the social and family background, the circumstances in which the child is living and the conditions under which the offence was committed. This report as per section 95 of the

said Act enables court to reach a fair conclusion. The report may be written or where court deems fit, oral.

2. Supervision of the juveniles

The PSWO also supervises the juvenile offenders from their places of abode, so as to see that these juveniles are being assisted to reform. In their supervisory role, they try to see that the juveniles are being treated appropriately by their parents. They also see to it that the juvenile offenders are not harassed by their parents, peer groups and the society as a whole. Also, supervision is meant to ensure that the offenders do not resort back to the criminal ways of life i.e. reform purpose. By supervising the child offenders, they are made aware of the concern the society has over them. They are thus, encouraged to note and appreciate the concept of judicial system and the purpose of punishment. One parent of a juvenile offender being supervised by the PSWO noted to this researcher that,

“I have come to like these officers because of their concern over my child. I now love my reforming child and appreciate the probation officers.”

Sensitization

The probation officers also sensitizes the public especially the parents on how to handle cases of delinquent children. Much sensitization is based on the fact that the child offenders are one of the most vulnerable members of society, who should be treated with great concern with the aim of reforming them. They also discourage the use of abusive words on these children and condemns any kind of harassment extended to them. This has made parents of the juvenile offenders to have concern and hope in seeing their children reform. They

instead have resorted into counseling and advising their children on how to avoid criminal behaviors.

The PSWO also sensitizes the public on the rights of the child (both the offenders and the innocent ones). Children are also undergoing sensitization on how to avoid bad behaviour, including criminal acts. Notable among these kind of children, are the street kids, the child offenders, among others. This has increased awareness, not only to the children, but the society as a whole. The children are also encouraged to continue with their studies, and the parents are encouraged to send these kids to school so as to get formal knowledge. The probation officers also encourage other institutions and organizations, especially the NGOs to come up and assist the juvenile offenders by giving them material assistance, where necessary. This made some NGOs in the area to support the children who are disadvantaged and are therefore, so vulnerable to criminal acts.

4.3 Prisons and Courts' role

4.3.1 Prison's roles

The Prisons Services is an institution created by the Constitution for the Republic of Uganda, 1995. The prisons service in Nakawa Division is only Luzira Prisons, created to handle adults offenders and criminal suspects undergoing trails (on remand) and those committed/ sentenced to imprisonment by the courts of law. From Luzira Prison, the Superintendent noted that the Prison Service of Uganda realizes the plight of the juvenile offenders. He added that no juvenile offender or suspect is entitled to be remanded in Luzira prison or even any other prison of adults as dictated by the Act.

They all noted that they are not involved with child offenders and therefore may not be of direct concern to them. Thus, they do not deal with the child offenders as stipulated in the law. They however noted that this does not mean the prisons service doesn't take into consideration the plight of the child. Adding that, after all by not putting a child in custody with adult offenders, he's already playing a key role in the positive administration of juvenile justice.

NAGURU REMAND HOME

This remand home is located at Naguru Estate, overlooking the Nakawa Market. It's about five kilometers away from Nakawa Magistrate Court building. They currently hold 161 offenders, with 13 girls and the rest are boys. The remand home has about sixteen staffs looking after these offenders. They include counselors, warders/ wardresses, nurses, security guards, cooks (caterers) and the officer in-charge of the remand home. These personnels are the ones involved in the day today running of the home and protection of the offenders remanded therein in different capacities.

4.3.9 The courts

The courts in Uganda are one of the institutions which come into direct experience with the child offenders. They are therefore expected by the society to be one of the major contributors to the rehabilitation of the child offenders. This researcher came into constant touch with the Magistrates of Nakawa Court, especially the ones who presides over the Family and Children Court (Grade II Magistrates).

The jurisdiction of the FCC is set out in section 93 of the Children Act. The Family and Children's Court Rules provides for the procedures to be followed in handling criminal cases concerning children, and the jurisdiction of the court.

The court is contributing to the rehabilitation of the juvenile offenders through its proceedings. The trial of the child offender is always aimed at reforming him or her (in his best interest). They are made to realize that the law of the land is effective and need to be upheld. Fear might naturally be inflicted in him but a feeling of reformation is encouraged in him. Rule 24 of the children court rules provides for the expeditious handling of cases, without unnecessary delay, this can make a juvenile to learn the purpose of the law which is mainly the spirit of reformation.

Section 140 of the Magistrates Courts Act also provides for the trial by summary procedures which encourage the child's reformation.

The court also contributes to the reformation of a juvenile offender by the orders it gives. These orders include detention or probation orders, as provided for in the Family & Children Court Rules, the care order or interim care order, supervision or interim supervision order, among others.

These orders are always issued appropriately taking into consideration the circumstances and the gravity of the offence.

The courts also contribute to the reformation of a child offender by promoting reconciliation between the child and the complainant. Here, the child can realize the concern of the society as a whole towards his reformation. This reconciliation is provided for in Rule No 29(1) of the children's court rules, and this has given a great contributory factor to the rehabilitation of the child offenders. The magistrates of the children court in Nakawa noted that, the provision for the above reconciliation has really brought a lot of understanding between the child offenders and their parents, plus the offended parties. Thus,

encouragements are extended to the child for them to reform. This role has greatly contributed to the reformation for the child offenders in the research area.

4.4 Local Leaders and NGOs

4.4.1 Local leaders

The Children's Act stipulates for roles that local leaders can play in juvenile justice system. According to most local councils (L.Cs) of the area, the child offenders are always seen as one of the most vulnerable members of the society. They are normally treated with great concern.

The leaders say that they normally see to it that the child offenders are treated well, not only by their parents, but the society as a whole. They also added, that they normally try to assist the police in handling cases concerning the child offenders and advices them to sensitize and unite the child with the parents. These local leaders also argue that, they assist in the rehabilitation of the juvenile offenders by helping other institution like the probation officers and the NGOs in sensitizing the public on how to treat the juvenile offenders. The local leaders also play a role in reconciling the child offender with the aggrieved party, so as to give the child conducive room for reformation. By promoting reconciliation between the child offender and the complainant, the child is made to realize the love people have towards him and a sign of encouragement to him to reform and becomes a friend to the society.

The local leaders including the sub-county and parish chiefs, also play a role in juvenile justice by sensitizing the community. They said that as the Children Act created an office in all local councils concerned with the children, these officials (secretaries for children affairs) normally spear head sensitization

programmes in co-operation with the probation office and other NGOs. The local leaders said that, it's from this sensitization that the parents of the juvenile offenders are made aware of the existing laws on child offenders and how to handle in relation to their rights and obligations to the society.

4.4.2 The Non-governmental Organization (NGOs)

The NGOs in this area have had a tremendous contribution in juvenile justice. Notable among these NGOs in working for children are World Vision International, The Legal Aid Project of Uganda Law Society, The Uganda Christian Lawyers Fraternity (UCLF), and Mission after Custody, and UNICEF. Others though are supporting children; do not deal with them so directly.

They have projects aimed at supporting the child offenders who have been in custody. Their main objectives here are to help the child offenders get empowered in the community; fostering advocacy for the plight of the children.

When this researcher visited their office, the counseling (Paralegal) officer of UCLF noted that they deal a lot with child offenders by advocating forgiveness and reconciliation between the aggrieved party and the child, including their parents. They also added that their advocacy has helped a lot in making the juveniles and the public understand the concept of reconciliation as one factor in helping the child offender's reform.

They also added that they always consider spiritual lessons by religious leaders as one of the factors that reform the juvenile offenders. They said that the religious leaders of different denominations are always invited to preach to these children which change their lives into obedient children, thus reforming their lives. He also said they contribute to their rehabilitation by reconciling and uniting the child with the parents and the society. They also make follow-ups to

see that the juveniles are reforming, and are living to the expectation of the society.

They also contribute to the rehabilitation of the child offenders by sensitizing the public on the rights of children and how they should be handled, especially the traumatized and the juvenile offenders. They called upon all stake holders and the Government to join hands in supporting the juvenile offenders, so as to rehabilitate them into law abiding and useful citizens of the country.

Others have their main objective in the promotion of the wellbeing of child offenders, through psychological rehabilitation, integration, educational activities and advocacy for their plight.

They play important role by sensitizing parents and the community about the rights of a child offender and their responsibilities to the society. Thus, they encourage the society not to neglect the child offenders. He also added that, they play a role of training the juvenile offenders with life skills and income generating activities so as to give them a source of life. They also liase with the probation and welfare officers, plus other NGOs in sensitizing, counseling both the child offenders and their parents so as to give them an atmosphere of reconciliation.

UNICEF

UNICEF is an international NGO, advocating for the plight of children all over the world. At their office, the Programme Co-ordinator noted that they are well known internationally in the fight for the rights of the child. She continued to add that, they are very active in the advocacy for the reformation of the child offenders.

She also said that, as far as their role is concerned, they advocate for reconciliation between the child offenders and the complainant. She also said, they promote sensitization of the child offenders to see that they are reformed. They also provide material assistance to these children, taking into consideration the fact that poverty is one of the main causes of child offences.

They provide material assistance which includes safe water, health services like through immunization and improved education. As a result, the child offenders can get incorporated into schools and skills training to improve his life and the general living standards of the children, which can influence his life from delinquent behaviours.

4.5 Education system and religious leaders

The education system of this country has been so much praised by international bodies, especially the introduction of the on-going Universal Primary Education (U.P.E) system.

It has been able to play a very big role by re-integrating children (including the juvenile offenders) into school. By re-integrating the child offenders into school, the education system has contributed in reforming their lives. Most of the children who committed crimes due to idleness and peer influence, now have a source of reformation at school.

Teachers are also playing great roles of assisting the child offenders. The coordinator of Teacher Resource Centre in Nakawa noted that they assist the child offenders by advising them to appreciate the nature and gravity of the

offence committed, and also get convinced that he can be reconciled with the victims of such a crime.

Teachers also counsel the child offenders and give moral assistance so as to provide them room for reformation. Recently, courses for Guidance and counseling were conducted for teachers from different schools. Intensive training on guidance and counseling are also reportedly being conducted in teachers training colleges to improve the role of the teachers in reforming the school going pupils including the child offenders. Thus the education system of the county is contributing a positive role to the rehabilitation of the juvenile offenders.

Religious leaders

Religious leaders are one of the people or institution who recognizes the plight of the child offenders and thus, contributes to their rehabilitation.

The religious leaders who responded to this researcher noted that, “our main tool is prayers and counselling”. One priest also said.

“We believe that if we pray we will see children who have lived as thieves, slaves, prostitutes and soldiers come to trust in Jesus”.

They said also that, it’s the responsibility of all members of society to see to it that they contribute to the rehabilitation of the child offenders.

The religious leaders also play their roles by meeting these children and preaching to them directly. This has contributed a great deal in reforming children’s lives. Many traumatized children who were formally under custody at the remand home in Naguru have changed their lives through the preaching, prayers and counseling conducted by religious leaders. The researcher was also

informed by religious leaders that, Christian all over the world have declared June 5th of every year, as a day of prayers for all the children “at risks”. That this also included the child offenders who are always vulnerable to delinquent life.

The religious leaders of the area are generally contributing a great deal to the rehabilitation of juvenile offenders through their teachings both morally and spiritually.

CHAPTER FIVE

5.0 Recommendations

To address the problem of juvenile offenders in Nakawa, the collective efforts of all the actors in criminal justice system and community based institutions need to be sought and put in place. The problem and concerns entails collective efforts, which measures are proposed as below:-

- i) The government needs to advance income to support the probation and welfare officers and other concerned institutions like the NGOs so as to increase their sensitization process in the areas.
- ii) The government also needs to support the construction and establishment of a rehabilitation centre in the area so as to reform the habitual juvenile offenders who cannot easily get deterred by the mere existence of the law and a remand home. However, the police, magistrates and other law enforcers also need to exercise the non-custodial options within the jurisdiction as provided in the Act, in respect of bond and bail, in order to minimize unnecessary remand.
- iii) Training is required for the stakeholders involved with children in conflict with the law to enable adherence to the law and their roles and responsibilities in rehabilitating the juvenile offenders.
- iv) The NGOs, Teachers, Religious and opinions leaders need to increase their role of sensitizing the children, parents and the society on how to address this phenomenon, and on how to promote the rehabilitation of the juvenile offenders in the area.
- v) Regular co-ordination meeting should be instituted involving key actors in the area to review progress, share successful and good practice and point out in aadequate and bad practice and discuss ongoing cases.
- vi) Government and other actors need to take a step of mobilizing and assisting the street kids, since they are the major groups of children

conflicting with the law in the area. They need to be rounded up, counseled and sensitised on how to control their delinquent behaviours. They also need to be re-integrated into school and in life skills training to provide them with a hope in life.

- vii) Schools can contribute a great deal to the recovery process of children in difficult circumstances. They can be helped by a good teacher-pupil relation and good disciplinary methods. Also, by the happiness found in creative activities, the possibility of helping other people and having the responsibilities, and being able to continue schooling will advance this cause. Thus, the education system should be boosted to encourage juvenile offenders to join schools and benefit the system.

5.1 CONCLUSION

This study has shown that there are still inadequate and inappropriate measures and practices in the implementation of the Children Act in regard to children in conflict with law, especially in Nakawa Division.

Children are still being abused and neglected even for minor infringements, especially by their parents. Most parents are still ignorant about the rights of the child, including the juvenile offenders. The probation and social welfare officers therefore need to increase their participation in checking the parents that abuse and neglect their children, especially the perpetrators of offenders.

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