AN EXAMINATION OF CRIMINAL JUSTICE SYSTEM OF SOUTH SUDAN: THEORY AND PRACTICE

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DECLARATION

I Anyang Peter Manyok, declare that the work presented herein has never been presented to any other University or institution for the award of a Degree or Diploma. It is hereby presented in partial fulfillment of the requirements for the Award of the Degree of Bachelor of Laws of Kampala International University.

Signature: .....

Date: 4/6/2013

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 fully adequate in scope and quality as a dissertation in partial fulfillment for Award of the Degree of Bachelor of Laws of Kampala International University."

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DEDICATION

This research work is dedicated with love and gratitude to my dear parents Manyok Ngong Mading and Mary Keth Kuany Ayom whose abundant love, extreme tolerance and deep understanding have sustained me throughout my life.

I also dedicate it to my beloved brothers and sister and most especially Ngong Manyok Ngong, Mading Manyok Ngong and Elizabeth Yar Manyok Ngong, all of whose love, honesty and humility I endeavored to emulate and to my friends and all South Sudanese, good and true, whose warm companionship, advice and understanding have been invaluable for my existence and wellbeing.

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ABTRACT

This research paper entails the dispensation of justice and its effectiveness in the South Sudan criminal justice system from the early days of liberation struggle by South Sudanese to the post independence of the Republic of South Sudan and examines the challenges facing dispensation of criminal justice system; making it another point in the South Sudan historical development of criminal causation and the laws creating the criminal justice system in South Sudan. Both primary and secondary data were consulted to determine the extent to which the dispensation of justice and its effectiveness in South Sudan has been observed.

It is widely acknowledged that there is institutional decay and weak institutions for accountability with little or no capacity at all. The judiciary which is the central arm that concerned with dispensation of justice suppose is still in its formative stages with no capacity to administer substantive justice and oversight and hence rendering legal profession weak with no regulatory body. There is a need to treat the system as a whole by recognizing the interdependence of the police, prosecution, courts and correctional components even though customs, traditions, and other factors tend to accentuate and perpetuate the separateness and autonomy of these functions.

As we can see the criminal justice system is designed for crime control, but the control of crime must be consistent with our social and political heritage. The justice system must achieve a balance or equilibrium (as do all systems) between competing values of vengeance and assistance, and differing political persuasion, as well as between individual actors and social regularity, it is the balance of these opposing systems that renders the justice system so complex.

LIST OF ABREVIATION / ACRONYMS

CJS	Criminal Justice System
SSBA	South Sudan Bar Association
SPLA	Sudan Peoples' Liberation Army
NCBCJ	The National Conference on Bail and Criminal Justice
NCP	National Congress Party
JOSS	Judiciary of South Sudan
TCRSS	Transitional Constitution of the Republic of South Sudan
PCA	The Penal Code Act
CCPA	The Code of Criminal Procedure Act
ACIR	Advisory Commission on Intergovernmental Relations
BJS	Bureau of Justice Statistics
NACADA	National Anti-Narcotic Drug Authority

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CHAPTER ONE

1.0 GENERAL INTRODUCTION

Criminal justice refers to the structure, function and decision processes of those agencies that deal with the management and control of crime and criminal offenders-and the police, courts and corrections. The criminal justice examines aspects of criminal law and procedure from political science is taken as an element of constitutional law and appellate court practice, from sociology, criminal justice examines the structure of certain social institutions and how these may affect the administration of justice.[1]

Criminal justice is concerned with the structure and operation of the mechanisms for the processing and management of crime and criminal offenders, for criminology focuses on such things as the role of crime in organized society, the nature and causes of crime and criminal behavior, and the relationship between crime and social behavior. The study is designed to examine the nature of crime and the process of justice and it also provide an analysis of administration of justice in its contemporary aspects as well as its historical roots. With the rise of crime rate in South Sudan, taking into account both violent crime and property crime, it is believe that almost 85 percent of South Sudanese expect to be victim of crime at least once in their life time because of the uncertainty of security in the country.[2]

Since the time South Sudan attained its Independence from the brutal regime of NCP of old Sudan, it has been crippled by number of crimes attributed to its weak institutions, presumed to be incompetency of officers in relevant institutions and laxity in the administration of justice therefore, reforming or reorganizing any part or procedure of the system would change other parts of the procedures and hence the whole system. Furthermore, the criminal process, the method by which the system deals with individual cases is not a hodgepodge of random action. It is rather a continuum- an orderly progression of events some of which like arrest and trial are highly visible and some of which though great importance, occur out of public view.

[1] James A. Inciardi Miami, Florida July, 1983
[2] FIDH-South Sudan First Anniversary of Independency Time to Act

1.1 BACKGROUND

According to Ajay S. Albanese, people think emotionally about particular incident due to the seriousness and personal nature of the crime and justice. Therefore the facts are needed to determine whether these incidences are typically or usual, it is only this way that we can properly gauge our fear, and decide precautionary measures to be taken and to determine whether or not we should support various new laws or policies being purposed.[3]

Criminal justice provides these facts by examining the nature of the crime and it is also refer to the operation and management of police, courts and correctional agencies. The decision to punish certain behaviors as crime, the arrest decision, charging decision made and sentencing decision made are a few of a far reaching decision made many times each day in the criminal justice.[4] The study will focus on striking a balance among public safety, concern for victims and protections of this fundamental rights. Crime is defined as any act or omission resulting from human conduct which is considered in itself or in it outcome as harmful and which the state wishes to prevent, and which renders the person responsible liable of some kind of punishment, generally of systematic nature, as a result of proceedings which are initiated on behalf of the state and which are designed to ascertain the nature, extent and legal consequences of that person's responsibility.[5]

Surveys have reported for many years that fear of crime steadily is increasing especially among the poor and disenfranchised who often lack the ability to change the nature and condition of their communities. There is evidence that this fear reduces the mobility of citizens, reduces their social interaction and hurts the commercial sector, and generally affects the quality of life by which we judge our leaders, our communities and our country at large.

This fear is intensified when the reports of new crimes, new criminals, police problems, plea bargain, overcrowded courts, and ineffective prisons leave individual citizens with the feeling that little effort is being made to improve the existing conditions and that life is becoming more

[3] Jay S. Albanese Criminal Justice pg iv
[4] Ibid
[5] Longman Dictionary of law

dangerous. One consequence of such feeling is the declining participation in the political process as witnessed by continuing drop in the percentage of eligible stress placed in them exemplified by increased instance of work place violence and road rage.[6] Such feelings reflect hopelessness and powerlessness of common citizens. South Sudan society is depicted as having become desensitized to violence and immunity responsibility as reported by Human right Watch.[7] As disgruntled employees respond to the pink slip with mass murder at their places of work, spree killer evades police despite leaving taunting and obvious clues and road rage becomes a frightening reality of driving, falling down prevent society in which crime is not only common but normal. Take to significance the reality of crime and justice involves more than police and the robbers, the details of legal code, and the penalties from breaking laws. From defining what a behavior is, court has to know the criminal before it decide the fate of the offenders caught, the process of criminal justice is a social process that is subject to much influence other than written laws. The process is also affected by historical, economical and other forces that shape society over time. The criminal justice process is also influenced by the decision of the individual human beings. The researcher will be deeply interested to investigate how the South Sudan society through its police, courts and correctional services try to deal with age-old problem of crime.

1.2 STATEMENT OF THE PROBLEM

South Sudan like many other African countries though young in term of institutional development, there is disagreement on many of the central problems of criminal justice. As James Thurber said "it is better to know some of the questions other than the answers."[8] The questions people always asked are whether a crime is caused by social injustice or as the result of bad individual decisions? Do we need more laws to control crime or fewer laws to enforce more effectively? Will the long prison sentences reduce or produce high rate crime in the society? Is death penalty necessary to achieve justice or is it barbaric? And finally, are prison chain gangs an effective deterrent to the offenders or are they just merely degrading and humiliating? Everyone has his or her solution to the problem of the crime.[9] One result of this confusion is the continual reinvention of the "flat tire" that is repeatedly experiment with unworkable solution to the

[6] Okwendo Opanga " the state of security in urban areas East African Standard Newspaper" April 26, 2007
[7] Amnesty International, Human Rights in South Sudan, Press Release May, 2013
[8] Nail C. Chamelin, Vernon B. Fox and Paul Introduction to criminal Justice 2nd edition p 4-8
[9] Ibid

problem and violence[10]. As a result fear is intensified when constant reports of new crimes, police cutbacks, wide spread plea bargaining, and lenient sentences of offenders leave citizens with the feeling that no effort is being exerting to improve the existing conditions, reduce fear or crime, or improve quality of life for law abiding individuals.

1.3 OBJECTIVESS OF THE STUDY

What is legal is not necessarily usually about what is right, just or ethical. It is about order. Similarly, justice is a process that makes things work, not necessarily that a result is good or moral. The objectives of this dissertation include the following;

1. To analyze the causes of injustice in South Sudanese society.
2. To analyze the causes of crimes in South Sudanese society.
3. To analyze the effectiveness of South Sudanese criminal justice system.
4. To establish the weaknesses and challenges facing the South Sudanese criminal justice system.

1.4 HYPOTHESIS

Access to justice in South Sudanese criminal justice system is not only impossible but it has remained a hallucination or a pipe dream to many poor South Sudanese due to number of reasons.

1.5 AREA AND SCOPE OF THE STUDY

1.5.1 CONCEPTUAL SCOPE

This study aimed at identifying the challenges facing dispensation of justice and its effectiveness in the South Sudan criminal justice system; analysis of the laws creating the criminal justice institutions in South Sudan; and how this affects the dispensation of justice and drawing conclusions and making recommendation that can ensure improvement of the criminal system in South Sudan.

[10] Nail C. Chamelin, Vernon B. Fox and Paul Introduction to Criminal Justice 2nd edit p 4-8

1.5.2 TIME SCOPE

This covered the period from the time South Sudan attained its Independence on July 9, 2011 and the promulgation of the Republic of South Sudan Transitional Constitution on the same day in the same year and hence making the provisions creating institutions charged with dispensation of criminal justice. The short time span of the inception of the Transitional Constitution and other laws give the researcher opportunity to analyze whether the institutions task with the dispensation of criminal justice and its effectiveness by Transitional constitution of the Republic South Sudan pursuit for justice.

1.5.3 GEOGRAPHICAL SCOPE

The geographical scope of the study is mainly limited to Juba, the capital city of South Sudan which is situated in Central Equatoria State of South Sudan. This research will be carried out in police centers, courts and prison departments. Other states will also be considered as the study involves data collections from members of South Sudan bar Association who are lawyers in their chambers as well as people of the community.

1.6 SIGNIFICANCE OF THE STUDY

The findings of this study are important in that, they will help the institutions responsible for the dispensation of criminal justice and effectiveness to know the likely challenges they faced and be able to come up with the appropriate measures of dealing with such setback so as to allow speedy dispensation of justice equally and fairly.

The findings of this study will also be beneficial to the readers because it will add to the existing literature in this particular area of law given that very few scholars have written about this topic as far as South Sudan is concerned. Furthermore, training of police, lawyers and prison wardens will be promoted by the findings of this research for the improvement in the areas where there is doubt of fair and equal dispensation of criminal justice and how to avoid the challenges that stand on the way of dispensation of criminal justice and its effectiveness.

1.7 LITERATURE REVIEW

The desire to fight and nauseating problem of criminal justice in the world and South Sudan in particular has elicited and ignite debate, conferences, TV talk show and research on the subject of dispensation of criminal justice and its effectiveness in South Sudan criminal justice system. This has not only raised controversial issues but rather has unearthed a wealth of information concerning the question of the effectiveness of criminal justice system.

One of the eminent writers, **Jay S. Albanese** stated that "it is essential that society be able to tell when changes occur and what they are that it be able to distinguish normal ups and down from long term and what they are, repetition trend whether amount of crime is increasing or decreasing and how much is the important question for law enforcement, for the individual citizens who must run the risk of crime, and for the official who must plan and establish preventing and control program."[11]

According to **Professor Herbert Packer** in his landmark Book, the limits of the Criminal Sanction, Packer introduces two models for the criminal justice system; the control model and due process model. The underlying value of crime control model is that the most important function of criminal justice process is to punish and repress criminal conduct. Though not indirect conflict with crime control the underlying value of due process model focus more on protecting the right and the accused through legal constrain on police, courts and correctional centers. He continues to argue in his piece of work that under crime control model; law enforcement must be counted on to control criminal activity. Controlling criminal is at best difficulty and probably impossible.[12]

For the criminal control model to operate successively Parker stated that "must produce higher rate of apprehension and conviction, and must do so in the context where the magnitude being dealt with are very large and real sources for dealing with them are very limited."

In other words, the system must be quick and efficient. In the ideal control any suspect who likely did not commit crime he is quickly jettisoned from the system, while those who are

[11] Jay S. Albanese criminal justice 2nd edition published by Pearson at pg 48
[12] Herbert Packer, The limits of criminal Sanction(Stanford, CA: Stanford University press, 1968)

transferred to the trial processes are convicted quickly as possible. It was in this context that Parker referred to the criminal system as a process as an assembly line.

The Crime Control Model assume that police are better position than court to determine the guilt of an arrested suspect so that the judge cannot operate on the " presumption of guilty" but as few restriction as possible should replace on police investigation and fact gathering activities. **Parker** argued that criminal justice system places preference on the right of an individual to be protected from the power of government. Due process values hold that the state must prove that the accused person is guilty within the confine process designed to safeguard persons' liberties as enumerated in the Bill of Rights.

Just as there is idealized image of criminal justice system as smooth continue, there also exist idealized version of the criminal justice process, or procedural through which criminal justice system meets the expectations of the society. Professor Herbert Parker, for example compared the idealized criminal process to an assembly line which he said: "down which more and endless stream of cases never stop carrying the cases to workers who stand at fixed station and who perform on each case as it comes by same small but essential operation that bring each one closer to being finished product, or to exchange the metaphor for the reality, across file."[13]

1.8 METHODOLOGY

This section presents the research method, the study area, and data collection methods used to conduct the research

1.8.1 The research design

The study used was the descriptive correlation method of research because the sole purpose of the study was to evaluate the dispensation of justice and its effectiveness in the South Sudan. This was an exploratory research with the aim of gaining general information for the purpose of defining the research topic, explaining variables and generating hypothesis. The study employed a survey-randomized non-experiment design; this was used solely due to the researcher's interest in establishing a cause-effect relationship between criminal justice, crime victims and the dispensation of justice in south Sudan. The data generated from the research was compared to the

[13] Kappeler, Mark Blumberg and Grey W. Potter. The Mythology of Crime and Criminal Justice 2nd pg 34

data generated by other studies of other criminal justice system that have been researched, the result of which are presented in literature.

1.8.2 Data gathering procedure

The evaluation methodology was applied by implementing procedures designed to address the research questions and achieve the purpose of this study: The Quantitative and qualitative data collection methods were used; Empirical legal research was employed to reveal and explain the practices and procedures of legal redress and dispute resolution and the impact of the legal phenomena on the social institutions. Secondary sources were also used, such as books, scholarly articles, legal encyclopedias, these were helpful in pointing out the primary sources of law, such as legislation and case law; revealing current developments in the respective area of law.

1.8.3 Data Analysis

Data was screened to differentiate the most authoritative from the least authoritative based on either the quality or relevancy of the data to the research issue. Data was graded by analyzing the legislation to understand its meaning and also the judicial decisions to derive the principle(s) of law; therefore legal analysis, and statistical inference was applied.

1.8.4 Ethical Considerations

Criminology and criminal justice concentrates on the area of social science which deals with crime, criminal behavior, and the criminal justice. Thus, the researcher was concerned with the impact of research upon the subjects. Therefore, the researcher was particularly objective and value free in approaching and reporting upon the subject matter, the informed consent of the research subjects was sought and obtained first and the researcher assured the respondents of confidentiality of research and statistical data and was further assured that the researcher is a bachelor of law student of Kampala International University and that the information given is privileged and will be protected by the Institution.

1.8.5 Limitations of the Study

Though the researcher was able to identify perfectly the population of interest, the researcher was not able to access most of them; some of them feared for their jobs and others restrained information due to insecurity in the area and so it was hard to contact.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF LAWS AND CRIME CAUSATION

2.0 The early development of laws

From birth until death, everyone is affected either directly or indirectly by criminals. A person maybe directly affected by being the victim of a violent criminal act. Others may be indirectly affected for example, by the mere fear of going out after dark.

Therefore, when criminal law is broken, the Justice System must begin to operate. An arrest must be made by the appropriate law enforcement agency. The accused is entitled to a speedy trial so the courts must function, and if the accused is convicted and sentenced, the correctional officer comes into the scene.[14] In the administration of justice, many judicial procedures must take place between the time of the arrest and the sentencing each of which will be explained in detail throughout this research paper.

As was stated in the problem statement, curbing crime is actually everyone business, but primarily responsible are those who compose the criminal justice, that is, the law enforcement agencies, the courts, and the correctional departments.[15] It is their function to properly administer justice in this country. In so doing, they must take the necessary actions against the criminal offenders so that the society will remain protected. Therefore, when a criminal law is broken, the justice system must begin to operate. An arrest must be made by the appropriate law enforcement agency. The accused is entitled to a speedy trial so that the court must function, and if the accused is convicted and sentenced, the correctional officer comes to the scene.[16]

Since the evolvement of the Criminal Justice System, it begins with the breaking of a criminal law, it may be well to digress momentarily froth the study of the legal procedures and determine what a law is and whether laws are necessary in our society. A law in its simplest form is merely

[14] Herbert Parker, The Limits of Criminal Sanctions, (1968) pg 62
[15] Ajay S. Albanese Criminal Justice 2nd edition published by Pearson at pg 48
[16] Herbert Parker, The Limited of the Criminal Sanction,(1968) pg 62

a guideline for human behavior. Its purpose is to encourage people to do what is right and discourage them from doing wrong. It has been described as a social tool to mold and regulate human conduct. Legally, a law is defined as an act of legislative body written and recorded in some public repository informing people of what is right and wrong. In the case of **Koenig v. Flynn**[17], law was stated as "that which must be obeyed and followed by citizens, subject to sanctions or legal consequences."

The next question to be answered is: are laws necessary today? It has been stated frequently that laws are made to be broken. Also it has been alleged that if there were no laws, they would not be broken. In fairness to the declaration of this statement, it is only logical to assume that if there were nothing to break, nothing would be broken. So we return to the question: are laws necessary? Before answering, it may be well to consider the origin of laws and why they came into being.

A human being comes into the world with certain basic needs that remain throughout his or her life. These are the needs for food, shelter, companionship, and sexual gratification.[18] If untrained and uncontrolled, a person may attempt to satisfy these needs in a most animalistic manner. If one were completely isolated from all other human beings, the fashion in which he or she might try to accomplish satisfaction of personal needs would relatively be unimportant. However, the moment one comes in contact with another the needs of each individual must be considered, and each must respect the desires of the other. Each person must learn to realize that his or her liberties cease where others begin. Certain restraints upon activity must be imposed. Thus, there is a necessity for some guidelines about satisfying personal needs without infringing upon the rights of others. They may agree upon a division of territory, and each will confine his or activities to that territory. If this takes place, there is little reason for other guidelines but if they should agree to combine their efforts, further regulations must be made. It must be decided who will do what and how they will share. As much and more enter the picture, the necessity for more rules becomes apparent.

[17] 258 NY 292(1932)
[18] Nail C. Chamelin, Vernon B. Fox and Paul Introduction to Criminal Justice 2nd edition pg 4-8

Eventually, it will be necessary to choose a leader or chief to see that the rules are followed and to keep order within the tribe or society. Undoubtedly, many of the early established guidelines came about through trial and error. When it was recognized that a tribal member committed an act that threatened the existence of the tribe, restraint against that act was created, and a violation of that restraint was what we now know as a crime. It probably did not take long for members of a primitive tribe to learn that they could not go about killing each other and have the tribe continue to exist. Therefore rules against murder were established of which the South Sudan Penal Code derives it force, "which states that whoever causes death of another person with intention of causing death; or knowing that death would be probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause, commit the offence of murder, and upon conviction be sentenced to death or imprisonment for life, and may also be liable to a fine, provided that, if the nearest relatives of the deceased opt for customarily blood compensation, the court may award it in lieu of death sentence with imprisonment for a term not exceeding ten years."[19]

According to Nail C. Chamelin, to satisfy man's need for food and shelter, he devised certain tools that became his property. The taking of these tools by another depriving the owner of their use, was a serious act, so a rule against theft was enacted. People took mates to satisfy theft needs for companionship and sexual gratification. The mate was also personal property and to violate that property right was an offense, so rules against adultery were formed.[20] Nail further says that, as tribes, or societies, grew in number and became somewhat more sophisticated so did their regulations. As time passed, people developed belief in a deity. Regulations respecting these beliefs were also established, and the violation of these rules was a serious offense against the society.

Biblical historians tell us that when Moses led the Israelites out of Egypt some thirteen hundred years before Christ, he quickly realized that these people must have some guidelines to follow if they were to exist[21]. Through an inspiration from God, ten basic rules known as the Ten Commandments were established. Included were not only those laws that earlier tribes found

[19] Sec 206 of the Penal Code (Laws of Southern Sudan)
[20] Exodus 20: 12-17
[21] Ibid

necessary for existence, that is, rules against murder, theft, and adultery, but also more sophisticated rules that pertained to admonitions against not respecting God.[22] In addition were admonitions against certain thoughts that people may conceive that might lead them into greed. Thus a person should not covet his or her neighbor's property. When Moses gave these guidelines to the people of Israel, he commanded that they obey them since they would ensure life and entrance into the possession of the land. He further indicated that these laws were not to be tampered with in the interest of human weakness. There was no mention that these laws were made to be broken. Nor has there been any such suggestion by anyone in authority since that time those laws are made to be broken.[23]

Ecclesiastical law on the nations of Europe, these Ten Commandments were incorporated into their laws and in turn, were brought to this country by the colonists. The early criminal law Included rules against murder, theft, adultery, profanity, perjury, and those describing family responsibilities as provided in Marriage and Domestic Acts although the nations have become a more secular society and take some of the earlier guidelines less seriously, a few of the Commandments are still found in the criminal laws of all the states of this nation because they are necessary for the existence of any society. These are the laws against murder, theft, perjury, and adultery; other laws are added to these from time to time as provided by Penal Act as societies become more complex so do their laws. New restraints are placed upon people's activities. These laws are designed with the hope that people can and will live more peacefully and pleasantly with their fellow human beings. Again we see, from a sociological standpoint, that laws are necessary for humankind's existence. In **Shaw v Director Public Prosecution**[24], Shaw was charged with, inter alia, conspiracy to public morals by publishing a booklet, the Ladies Directory, which listed names, addresses and other information concerning prostitutes such as the sexual services they were willing to offer. The information was capable of helping an interested person to get in touch with a prostitute. The Court of Criminal Appeal as well as the House of Lords upheld Shaw's conviction by the trial court. **Lord Simonds** of the House Lords said: "in the sphere of criminal law I entertain no doubt that there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only

[22] Exodus 20: 12-17
[23] Ibid
[24] [1962]AC 220

the safety and order but also the normal welfare of the state, and that it is their duty to guard it against the attacks which may be the more insidious because they are novel and unprepared for." From a legal standpoint, laws are necessary to inform people of what is right and what is wrong. They must be made aware of the acts for which, if committed, they may be prosecuted.[25] In the present form of government, crime must be spelled out in detail so that a person may know the exact act of that if committed is a violation of the law. If a law is considered too vague, it will be declared null and void.

2.0.1 The Common Law

Much of the basic criminal law of this country originated from the common law of England. Originally, the common law of England was nothing more than a set of regulations and customs that acted as guidelines in settling disputes, determining the inheritance of property, and dealing with persons who committed misdeeds of a serious antisocial nature. As time passed, court decisions were made as part of common law. Thereafter, the common law was further enlarged by legislative enactments and was brought to this country by the colonists to act as guidelines for conduct. According to Card, Cross and Jones, 1992:191 there is no modern authority on what is required for an independent existence. The authors however reported that earlier case law reveals that while some judges favored the test of independent breath, others favored that of independent circulation. In **R v Malcherek and Steel**[26], the victim was on a life support machine. The machine was switched off by the doctors. The court said that according to medical evidence there is only one test of death and that is the irreversible death of the brain stem which controls the basic functions of the body such as breathing. In the case of brain stem death, the body has died, even though, by medical means the lungs are caused to operate and some blood is circulation.

2.0.2 Modern Criminal Law

Today, the criminal law of the various states is a written set of regulations that is largely the result of legislative action. These regulations are recorded in some official record within the states and are often referred to as the penal code. Criminal laws vary

[25] (1961) ALL ER 446
[26] (1981) 2 ALL ER

somewhat between the states of South Sudan. In some countries, there is no reliance upon the common law to determine what is right and wrong. The statutes spell out specifically the act that is made a crime and the punishment that maybe inflicted for the commission of such an act for example, the code may state that manslaughter is the unlawful killing of a human being without malice. This definition will be followed by a statement that if one is convicted of manslaughter he or she may be imprisoned for a period not to exceed fourteen years. The statutes of other countries provide that "manslaughter" is punishable by imprisonment not to exceed a prescribed number of years. But this statute does not define what act constitutes manslaughter. The courts must then look to the common law to determine the interpretation of manslaughter. In **R v Muinda**[27], it was held that a conviction of manslaughter ensure the manner in which and the circumstances in which the accused drove the car would appear to the ordinary person to show that the accused when driving just before the accident, was callously indifferent to human life, then a conviction for manslaughter might ensue.

In **Regina v Onufrejczyk**[28], in this case, the appellant was convicted of murder of his partner, who had disappeared. There was no trace of the victim's body, or direct evidence of his death or of the way in which he died, and no confession or admission of the death by the appellant, by very strong evidence, in particular the conduct of the appellant, which showed his that he knew that the victim could never appear again and that he had tried to fabricate evidence that he was alive. On the basis of the conduct of the appellant and the fact that the victim had not been seen alive, the appellant was convicted of murder. He appealed against the conviction. It was submitted by the appellant that unless the body can be found or an account given of the death, the law is that there is no proof of a corpus deliciti. **Chief Justice Lord Goddard and Justices Cassels and Sellers held:** it is clear that fact of death, like any other fact, can be proved by circumstantial evidence, that is to say, evidence of facts which leads to one conclusion and one conclusion only, that the victim is dead. The circumstances must be so cogent and compelling as to point to no rational hypothesis other than death....it is indeed a grave step to find a murder proved when there is no body...but of course, the burden of proving everything against the accused is on the crown.

[27] (1936-51) 6 U.L.R 163
[28] (1955) QBD 388

2.1 classifications of crimes and punishment

In the present form of jurisprudence, not only do we tell people what a criminal act is, but we also tell them the punishment they may be subjected to if they commit the act. The allowing definition is generally found in the statutes of the states: A crime or public offence is an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed, upon conviction, one or more of several punishments.

*In **Board of Trade v Owen**, full citation* the House of Lords revise the statement "a crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act liable to legal punishment."[29] The basic forms of punishment are death, imprisonment, fines, removal from office, or disqualification to hold and enjoy any office of honors trust, or profit. We have classified criminal laws in accordance with their seriousness to society and stated the punishment that could be inflicted upon conviction. Earlier in our history, we classified criminal acts as treason, felonies, and misdemeanors. Most countries eliminated treason as a category of crime and listed it merely as another felony violation, thus two classifications remained: felonies and misdemeanors. However, in recent years, a few countries have added a third and fourth classification, an infraction arid a state jail felony.[30]

With the felony being the most serious crime, the violator is subjected to the most severe punishment either by death, imprisonment in a state prison, or carrying a sentence of more than one year. The misdemeanor, being a less serious threat to the existence of a society, carries a lesser punishment, the most severe of which is usually not more than a year in jail. The infraction is the least serious crime, carrying a fine or probation but, in some countries, no imprisonment. The state jail felony is a crime that is more serious than a misdemeanor, but not as serious as a felony.[31]

The procedure by which one accused of a crime is brought to trial and punished is known as a criminal action, and the one being prosecuted is known as the defendant. Criminal actions are commenced with the tiling of a formal written document with the appropriate court. In some

[29] (1957)AC 602
[30] David Fablanic, 'Journal of Criminal Justice (200) p.200
[31] Ibid

countries, there is no requirement to file a formal written document, in cases involving infractions. The charging document is referred to as an accusatory pleading. In felony prosecutions, the documents will be an indictment or information.

In misdemeanor prosecutions, the accusatory pleading is generally a complaint. When a Law is broken, it is against the society as a whole, so the prosecution action is brought in the name of the people; thus, the action is generally entitled "People versus (the defendant]," "State versus [the defendant]," or "Common wealth versus" (the defendant) stating the defendant's name.[32]

2.1.1 Civil Laws

The research primarily concerned with criminal laws as they relate to our study of the administration of justice, but I must not overlook other laws that regulate conduct between individuals. These we know as civil laws. Civil laws cover many subjects, including rules against negligent or careless actions, defamation of reputation, and trespass onto property. Civil laws impose both the duly to perform contracts entered into voluntarily and the responsibility to pay debts. When one of these laws is broken, court action can be taken against the Offender in an effort to get some redress in the form of damages. The violation is regarded as being against the individual or victim. Therefore, the victim must take the necessary action against the wrongdoer, and the suit is filed in the name of the victim, known as the *plaintiff* versus the wrongdoer, known as the defendant. Lord Atkin in **Donoghue v Stevenson**[33] "rule that you are to love your neighbor becomes in law; you must not injure your neighbor, and the lawyer's question, who is my neighbor received a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then in law is my neighbor? This seems to be –persons who are so closely and directly affected by act when I am directing my mind to the acts or omissions which are called in question."

[32] Harvey Wallace and Cliff Robertson, principle of criminal law Longman, White Plains, New York pp 20-29
[33] [1932] A.C. 562. H.L at p.580

2.2 Crime causation

To better understand the judicial processes involved in the administration of justice, and particularly the correctional philosophy, it is important to consider both the causes and the extent of crime in South Sudan. The causes of crime are many and complex. In law, the cause of an act is an essential ingredient of every crime in which the offender's behavior and the harm or injury sustains by the victim for which the state imposed penal sanctions and inextricably are related, that is the conduct of the offender must reflect his intention and constitute the proximate cause of the result. Thus, a person cannot be held responsible for the indirect consequences which a reasonable person could not have foreseen as likely to have resulted from such conduct or behavior, nor for those consequences which would have occurred regardless of the actor's behavior. **In Siraj Sajabi vs Uganda**[34], the appellant was convicted of murder of the deceased. The prosecution case was that the appellant shot the deceased in the head with a pistol. The deceased fell down and died on spot. The deceased's body was taken to Mulago hospital on the day of the incident for post-mortem examination. However, no evidence was led by the prosecution as to whether the post-mortem examination was carried out and if so, with what result. The trail judge was not bothered by that omission as he was satisfied that the deceased died of the gun shot injury on his head. It was held on appeal, that there can be no doubt the cause of death was the gun shots, since the deceased was well and in good health until he was shot and died almost instantly. Be that as it may.....the trial court should have called the medical evidence as to the cause of death since it was available.

2.2.1 Crime and Infringement of freedom of expression

It has been alleged that most crimes are committed in East African countries[35] but South Sudan is the most crime-ridden nation in the Eastern African region. This is a debatable statement since undoubtedly there are other nations that are equally crime-ridden. However, one could easily get the impression that South Sudan has the most serious rate of crime for three major reasons: freedom of the press, which devotes much space and time to coverage of criminal activities, outstanding records and statistics on crime and an inefficient law enforcement agencies that

[34] Criminal Appeal No. 31 of 1989 (Supreme Court of Uganda)
[35] Okwendo Opanga "the state of security in Urban areas East Africa Standard New Paper," April 26, 2007

make many arrests, which in turn, are recorded in files and publicized in the news media. The media in South Sudan is at various stages of development. Some news agencies and journalists pursue the correct public interest stories, however, in some instances, use questionable methods and poor quality reporting which does not differentiate between facts and allegations.[36]

This observation was confirmed by journalists themselves, as well as the Deputy Minister of Information, also a Journalist. In some instances, the media have focused on the theme of corruption and leadership policy Vis-a visa national value and as a result, news agencies and reporters have suffered direct backlash from the authorities, including from the government and security forces for reporting on issues that may put political leadership under public scrutiny. A substantial number of those who were interviewed expressed concern over the curtailment of freedom of expression contending that the provisions of the Transitional Constitution of the Republic of South Sudan[37]guaranteed in similar terms the enjoyment of freedom of expression, which included freedom to hold opinions without interference, freedom to receive ideas and information, freedom to communicate ideas and information to the public generally or to any person or class of persons and freedom from interference with correspondence.[38] That constitutional guarantee notwithstanding, it was found out that there are various violations on the exercise of right to freedom of expression in South Sudan. Even the so-called independent media houses are indirectly intimidated in order to cover the official position or mislead the public on the other views or ignore them together. Examples of suppression of the media were given which included the arrest and prosecution of editors and Journalists, killing of some opinions writers like the instance case of Isaiah Abraham Chan who was shot dead on 4th of December 2012, simply of because of his mere opinion expression which blamed on the security apparatus.

In May 2012, police detained a radio Journalist in Rumbek for two days following a radio talk show about the relationship between police and civilians. During the show, callers criticized police, saying they were slow to respond when needed and alleging that the police demanded money to allow citizens to file complaints.[39]

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[36] Article 24(3)
[37] Article 24(1) of the Transitional Constitution of the Republic of South Sudan, 2011
[38] Ibid
[39] Human Rights Watch, Washington Dc, South Sudan: step up urgent Human Rights Reforms, 5 July 2012

Whether or not we are the most crime-ridden nation in the region, we certainly have too many crimes. There are many reasons why this is true. These reasons should not operate as an excuse for lawlessness but as explanations with which we must work on to control crimes in the future. One reason for our high crime rate is that South Sudan society contains mixed emotions concerning law and order. Perhaps, there is no place on earth where people wish to live more comfortably and peacefully with others than in South Sudan, yet no group of people resent more than we do being told what we can and cannot do. We want to be protected by the authority vested in our government, particularly in law enforcement, but at the same time we do not hold authority particularly in high esteem. Another reason for our high crime rate is that South Sudan is a nation made up of an extremely heterogeneous people, from different nations, and of varied races and ethnic backgrounds. Such people tend to gather in cliques in certain sections of a city often isolating themselves from other nationalities, many are a matte belittled and discriminated against, and they find themselves becoming part of a community is a frustrating experience. This frustration frequently leads to resentment and hostility striking-out against society.

The constant urge to acquire material possessions contributes to the high rate of crime in South Sudan; we enjoy the luxuries of life, the comforts of a nice home; enjoyment of good transportation, the pride of nice clothes, and the pleasures that are seen on the television, and other entertainment it gives us. Since we like to live in an affluent, many material things are to be had. The fact that one cannot always afford luxuries does not make the desire for them any less. When these luxuries are obtained legitimately, there is always the temptation to get them by various tons means, such as prostitution, pushing narcotics, stealing, or buying at a low price from a questionable source without asking any questions.

An additional reason for the high crime rate is that South Sudan is a mobile society. We enjoy the right to move from one place to another without restrictions. As a result, many are constantly on the move from one community to another. Therefore they establish no roots and do not become part of any community.

They care little about what takes place in the community as long as it does not affect them directly. Thus, general social disapproval of criminal acts, "once a factor in curbing crime in a stable community is unknown in a mobile society." With the weakening of the family,

neighborhood, and community, the potential offender is more ready to challenge authority since his or her identity is more easily lost, thereby making discovery more difficult. And the offender, if caught, may feel that the punishment will be reduced because of the lack of local emotional involvement in the criminal act.

Too many of our citizens want their families to be safe from the hoodlum but do not want their favorite bookie arrested. They want their streams stocked with fish at all times, but they like to brag about 'bagging" more than the limit. South Sudan's child wants to grow up as a wholesome, law-abiding citizen, but while on the Sunday drive, they station him in the back seat to be the lookout for 'cops' while dad speeds. Too many want the law to control the "other guy" but want complete freedom of movement for themselves. These same people expect to be aided in an emergency but do not want to become involved in others problems as it goes with the provision of the law which states that all levels of government shall guarantee the freedom of press and other media as shall be regulated by law in a democratic society.[40] But government has been criticized on the provision of freedom of press given that number of people has been arrested and even some killed living many people wondering whether this provision of the law is being observed by the state authority. In summary, as a nation our people love freedom and individuality without restraint on access to information as enshrined under the Transitional Constitution of the Republic of South Sudan[41] and as such it equally hinders dispensation of justice and its effectiveness in South Sudan.

2.2.2 Individual Physical Traits

Up to now in our discussion of crime rates, we have been concerned with the population as a whole. But our high national crime rate is the result of many individuals committing crimes within our society. Thus, our study must now turn to why individuals commit crimes. As stated, laws are established so that society may exist and so people may live more peacefully together. Why then are these humanitarian rules broken? In recent years, more had been written about this subject than about almost any other, but I still have no concrete answer for why people commit crimes or how to cure them. In view of the volumes of materials that have been written on the

[40] Article 24(2) of the Transitional Constitution of the Republic of South Sudan
[41] Article 24(1) of the Constitution of the Republic of South Sudan, 2011

subject of crime causation, it is impractical to indulge in a lengthy discussion of the subject. But a general discussion of some of the alleged more prevalent causes of crime will be presented.

Despite the world scientific accomplishments during the past half century, no definite answers to crime causation or its cure have been determined. Scientists have been able to transport humans from one end of the country to the other in a matter of hours; have made it possible for persons to sit in their living rooms and watch the events of the world take place by merely beaming a light ray through space; have placed astronauts on the moon and returned them to earth within a few hundred yards of their designated landing spot, and have all but wiped out epidemics and extended the life span of humans by many years. Yet the cause of crime and its cure still remain riddles to humanity. Why should this be so when we have been able to perform other miraculous achievements? The answer to this question is not an easy one to attain. However, there may be some plausible explanations.

In the pasts human beings devoted much time and study to the development of material objects that would make life easier and more pleasant. They did not concern themselves too seriously with crime since that was something that involved only the "other fellow," Besides, they felt that it was the responsibility of the church and religion to mold human conduct. If those who committed crimes were not caught and punished on earth, God would see that they received some divine punishment after death. As the emphasis on religion as a motivating factor in community life began to wane, people turned to the school and education as a solution to all of their problems, including the regulation of human behavior. But as time passed, people realized that crime was beginning to affect them indirectly, if not directly, and that neither church nor school had been the solution to curing crime. Therefore, a direct study of crime causation and its cure was begun. But this study is only a century and a half old, and the initial findings left much to be desired. It is only during the past fifty years that any concentrated study has taken place.

2.3 THEORIES OF CRIME CAUSATION

When the first study of crime causation was made, it was believed that criminals fell into physical types. For example, it was believed that if all of those who committed a particular type of crime were placed together, certain basic physical similarities would be detected, such as same

height, weight, or facial characteristics. In other words, robbers would be of a different physique than burglars. Based on this theory, it was concluded if a person possessed physical characteristics of a criminal group or type, that person 'was doomed to a life of crime, Cesare Lombroso theory.[42]

2.3.1 Psychological theory

The earliest psychological approaches to crime where based on Sigmund Freud's[43] (1870-1937) psychoanalytic theory, which divided the human mind into id, ego and super ego. The id (latin word for "it") consist of instincts, original tendencies and impulses that come from our biological heritage. Super ego is the embodiment of the moral codes of society. The ego in (latin word "I") is the rationale and conscious self that mediates between the drives of the id and the restraints of the super ego. Criminality largely was explained as a failure of the super ego, a criminal person who has failed to tame the impulses sufficiently or who has failed to transform them in socially acceptable ways of behaving.

Mental defect was once used as a specific explanation of crime. The explanation was that almost all criminals are feeble minded. This is so because it is taken that they do not have sufficient intelligence to appreciate the reasons for laws and consequences of violations of law. According H. Goddard, every investigation of the mentality of criminals, delinquents and other antisocial groups has proven beyond the possibility of the contradiction that nearly all persons in these classes and in some cases all are of low mentality. It is no longer to be denied that greatest single cause of delinquency and crime is low grade mentality, much of it within limits of feeblemindedness.

Low intelligence and feeblemindedness still attract attention as causes of crime because people equate low intelligence with maturity; they see lots of children doing all sorts of mischief because they are not mature and when an adult commits an act some people think they are immature or have low intelligence.

[42] (1836-1909)
[43] (1870-1937)

2.3.2 Insanity and criminal responsibility

Generally according to Sutherland and Cressey (the principle of Criminology at page 167), insanity is used to described legally harmful behavior practiced under circumstances in which the offender did not know the nature or quality of his act or did not know right from wrong. To constitute a crime, it must have been committed with a criminal intention or mens rea (translated as 'guilty mind').

In law, insanity is defined in what lawyers call the M'Naghten rules.

In **R-v-M'Naghten**[44], in 1843 a Scotsman named Daniel Mac Naghten assassinated Edward Drummond by shooting him with a pistol. He pleaded not guilty. A defense was raised to the effect that the prisoner was at the time of commission of the crime laboring a delusion, which carried him away beyond the power of his own control and left him with no moral perception of right and wrong. The medical evidence convinced the jury that Mac Naghten was insane.

Tindal CJ[45] held among others thus;

1. "Every man is to be presumed sane and to possess a sufficient degree of reason to be responsible for his crime until the contrary be proved to the satisfaction of the jury.

2. That to establish a defense on the ground of insanity it must be clearly proved at the time of committing the act that the party accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing.

3. If he did know the nature of the act, that he did not know he was doing what was wrong"

The nature and quality, this phrase refers to the physical nature and quality of the act rather than the moral quality. It covers the situation where the defendant does not know what he is physically doing. For example, two common examples are used; the defendant cuts a woman's throat under the delusion that they are cutting a loaf of bread, the defendant chops off a sleeping man's head because they have the deluded idea that it would be great fun to see the man looking for it when he wakes up. Wrong here means legally rather than morally wrong. The defendant

[44] (1843-60)AllER 229
[45] Tindal CJ at pg 233

must be functional unaware that his actions are legally wrong at the time of the offence to satisfy this requirement. The application of these rules also known as the knowledge rules became established practice in most legal system. The South Sudanese Legislature has also adopted the 'knowledge rules' in the Penal Code Act in the following terms. S.22 thereof provides thus; every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question, until the contrary is proved. This section was intended to avoid the abuse of the defense of insanity to escape liability, as everyone would allege insanity at the time of commission of the crime.[46]

S. 23 thereof provides thus; a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in this section in reference to that act or omission[47]. It is observed in this case that the provision of S.22 of the Penal Code was a codification of the M'Naghten Rules.

Philip Muswi s/o Musele v R[48], in that case the appellant had been convicted of the murder of his wife and the sole question on the appeal was whether the trial judge was wrong in refusing to bring in the verdict of the guilty but insane. The appellant had given evidence that when he killed his wife he did not know what he was doing. A psychiatrist gave evidence that he thought the appellant was very depressed and thought he was justified in killing his wife but that his belief as to what was right was colored by the belief that his wife was practicing witchcraft on him. It was held inter alia "to establish the defense of insanity it was necessary for the appellant to prove that at the time when he killed the deceased he was; (a) suffering from a disease affecting his mind (b) through such disease incapable of (i) understanding what he was doing, or (ii) of knowing that he ought not to kill the deceased. To establish the defense must be proved that the accused, if he was capable of understanding what he was doing, was incapable of knowing that his act was

[46] 22 of the Penal Code Act (laws of Southern Sudan)
[47] 23 Ibid
[48] (1956)23 EACA 622

contrary to law. Ignorance of the law is no excuse unless it is shown that the ignorance was the result of disease affecting his mind."

A person charged with a crime may defend himself in court by showing that he was insane at the time of commission. A person who is insane at the time he kills another, commits no crime and in most cases is committed to hospital for treatment other than imprisonment. It would be a futile exercise if the law allowed the punishment of a person who at the time of commission of the offence was so insane as to be blameworthy.

In cases where the accused pleads the defense of insanity, the onus is always upon him to prove that at the time of commission of the crime he was insane at the time of commission and not thereafter. In law you cannot punish a person whom you cannot try. That is why at any stage of the proceedings if the court realizes that the accused may be of unsound mind, then it must inquire in the fact of unsoundness and make a finding on it. Usually during the inquiry into unsoundness of mind the court shall rely on medical evidence but other evidence from the police, relatives and prison officers shall assist. As it was in Philip Muswi s/o Musele v R[49], in that case the appellant had been convicted of the murder of his wife and the sole question on the appeal was whether the trial judge was wrong in refusing to bring in the verdict of the guilty but insane. The appellant had given evidence that when he killed his wife he did not know what he was doing. A psychiatrist gave evidence that he thought the appellant was very depressed and thought he was justified in killing his wife but that his belief as to what was right was colored by the belief that his wife was practicing witchcraft on him. Held: it was held inter alia "to establish the defense of insanity it was necessary for the appellant to prove that at the time when he killed the deceased he was; (a) suffering from a disease affecting his mind (b) through such disease incapable of (i) understanding what he was doing, or (ii) of knowing that he ought not to kill the deceased. To establish the defense must be proved that the accused, if he was capable of understanding what he was doing, was incapable of knowing that his act was contrary to law. Ignorance of the law is no excuse unless it is shown that the ignorance was the result of disease affecting his mind."

[49] (1956)23 EACA 622

2.3.2 Phrenology

Following the type theory of crime causation and deviating somewhat from it was the approach known as phrenology. This approach took into account the physical makeup of humans, that is, the anthropometrical aspects, but the concentration was on the head and particularly on the skull. Although not the originator of this theory, Cesare Lombroso an Italian physician was a strong advocate of this theory and fostered much study concerning it as a cause of crime. Lombroso is known as the father of modern criminology. He first became interested in man's conduct while acting as a medical doctor for the Italians. He noted that the more troublesome soldiers seemed to have similar physical characteristics, whereas the less troublesome soldiers did not possess any outstanding characteristics. He also noted that the more hardened soldiers' piers their body with crude and indecent types of tattoos, whereas the reliable soldiers had inoffensive and simple types of tattoos. As a result of these observations, Lombroso became interested in human behavior. He began to question if any of these characteristics could be crime causation.

To further his study, he visited prisons in Italy, where he noted that a number of inmates had peculiarly shaped heads or odd facial features. He concluded that if one's cranium were of a specific shape, that person was born a criminal, and there was little control over his or her destiny. Although a number of criminologists accepted Lombroso's theory, it finally fell by the wayside early in the twentieth century. This was bound to happen since his theory had one major weakness: the fact that there were just as many persons with misshaped heads who did not commit crimes as there those who did. Although phrenology has been the subject of criticism, Lombroso is given credit for concentrating on the individual as a possible cause of crime, rather than trying to fit the violator into a type of crime. Thus his name goes down in history for his contribution in this respect.

2.3.3 Endocrinology

This is another theory based upon the physical aspects of humans followed the phrenology called the endocrinology approach; it was based upon the science of the doctrine, or ductless glands. The advocates of this theory concluded that because of the malfunctioning of one or more of the ductless glands, a person was compelled to behave a

certain way, and that way was often antisocial. As other theories have been propounded in recent years, the endocrinology approach has received less and less acceptance. However, it has not been entirely discarded. Medical and-psychological studies have established that people do react in certain ways as the result of physiological weaknesses. It is well known that a glandular imbalance can cause tensions and that many children are hyperactive because of neurological impairment. As a result, they act impulsively, but with proper medication they are able to control them and adjust to their surroundings and others, if this control were not achieved, their continued hyperactivity could develop into real social problems. Studies are being made on human chromosomes in order to determine their effect, as they relate to criminal tendencies. So the physical makeup of humans should not be overlooked as having some effect on the causes of crime.

2.4 ENVIRONMENTAL FACTORS OF CRIME

Contemporary studies on crime causation approach emphasized the subject more from the psychological aspects than from the physiological. These studies have led to the belief that all behavior is caused from environmental experiences and not from seine physiological weakness or peculiarity. This approach has been referred to as the orthopsychiatry theory. It emphasizes the fact that in early childhood certain traumas are experienced that often lead to emotional and social maladjustment in later life.

In order to thoroughly understand this approach consideration may be given to human mental makeup. We come into the world with the basic instincts necessary to satisfy our needs for survival, but all other things must be learned, including adjusting properly to the demands of the society in which we live.[50]

Our introduction to society begins in the womb. If we experience feelings of acceptance, love, security, and controlled discipline from the beginning, adjusting to society will be an easy task, and the chances of becoming wholesome citizens are good. On the other hand, if we are met as children with rejection, cruelty, and insecurity, we may find that conforming to the demands of

[50] John E. Conklin, 6th Edition, pg 275 (cited in Benh, 1977: 60

society is difficult, if not impossible to attain.[51] Also it is very likely that one may develop hostility toward society and that will cause the reaction of striking out violently against it. Frequently, the victims of this violence have no relationship to the aggressor, but are merely members of the society with which he or she is endeavoring to get even with. Thus we see that the home environment and parental guidance, or lack of it, are major contributing factors in the future behavior of each individual.[52]

Most parents do a satisfactory job rearing by their children, which accounts for the fact that most people are law-abiding citizens. Some parents have a sincere desire to raise their children properly, but fail in many aspects because of a lack of knowledge of human behavior. Parents often unintentionally cause heartaches, frustrations, and insecurities in a child. These reactions do not always result in the child becoming a criminal offender. For many, these feelings make adjustment to society difficult, and the more sensitive child could develop into a behavioral problems.[53] In the following paragraphs, I offer a few examples of mistakes that parents make in their treatment of children.

Parents often hold up the academic accomplishments of one child to another by saying, why don't you get good grades like your brother? There may be reasons other than laziness why one child does not achieve as well as another. Not all children within a family have the same mental capacity for learning. Also some undetected physical impairment, such as a sight or hearing problem, may handicap a child in learning. Such a comparison may cause the child to develop a feeling of insecurity and rejection. No two persons, not even identical twins, come into the world with exactly the same mental, physical, and temperamental attributes. This explains one child in a family may become an offender, whereas the other children adapt well to society.[54]

In many homes, the evening meal is the only time when the entire family is together. Instead of this being a happy social gathering, it sometimes becomes a court session. Dad becomes the judge and metes out the sentencing, including promising Junior a beating after dinner for scratching the new car with his bicycle. In vivid anticipation of what is to come, he loses his

[51] John E. Conklin, 6th Ed, p 265-275
[52] Rogers, 1977: 45-49
[53] John E. Conklin,6th Ed, p 265-275
[54] Nail C. Chamelin, Vernon B. Fox and Paul Introduction to Criminal Justice 2nd edit pg 4-8

appetite, whereupon dad tells him to sit up and eat.[55] When Junior cannot do so, dad "belts' him one then and there, not realizing that Junior's stomach is in no more condition to receive food than Dad's would be if he had just learned that the tax bill had doubled.. Furthermore, parents often severely punish a child for wetting the bed at the age of eight or nine, thinking that he or she is too lazy to go to the bathroom, not knowing that because of some physical or emotional disturbance the child and has no control over the ailment and that the punishment creates only greater anxiety and less control.

On the other hand, permissive parents feel that the only proper way to raise children is to grant them complete freedom and to deny them nothing. Little do the parents realize that they are doing both the children and society a disservice? The earlier study has revealed that members of a society must be regulated and controlled in order to exist. Children who have never been controlled or denied a desire find adjustment to society most frustrating, and too many times they are unable to cope with the situations and may strike out violently to release their frustrations. To fit into our society, children must be taught control, discipline, and the need to share with others at an early age.

Our real behavioral problems come from those families who do not raise their children properly. This failure by parents may be as the result of a combination of reasons. Many parents are completely ignorant concerning the raising of children.[56] Perhaps no career is more important to the existence of society than parenthood, yet in no other occupation do we send into the world individuals less equipped to handle the job.

What's more, many parents have no moral or social values, so they impart none to their children. Parents are often hostile toward society and frequently release to hostility by acts of cruelty upon their children. The responsibilities of parenthood are much for sonic parents to handle, so children are abandoned, leaving them with feelings of rejection and insecurity. Children of such parents often develop behavior problems at early ages, causing them to lead a life of crime.

[55] John E. Conklin, 6th edition
[56] John E. Conklin, 6th edit, pg 275-8

2.4.1 Poverty

Poverty has been considered by some to be a factor in criminal acts. It cannot be denied that it is miserable to be poor. The child who experiences these comforts of the elements because of improper shelter, the pains of hunger from the lack of food, and the piercing cold from inadequate clothing may find it difficult to overcome the temptation to rid himself or herself of these miseries by committing a crime, if there is no other way out, the child may continue to satisfy his or her desires by a life of crime.[57] This theory fails, however, to explain why many children rise out of poverty and achieve success, and some rich children commit crime.

2.4.2 Broken Homes

Broken homes are also alleged to be a contributing factor in causing crime. Many criminal offenders are from broken homes. This is understandable because the parent raising a child in a broken home must do double duty. He or she must be both father and mother, and often must also be the family breadwinner. Frequently this leaves insufficient time to devote to the child and add his or her needs.[58] Many times children are left to their own resources, which are inadequate in meeting their needs and they often get into trouble. Recent research seems to indicate that it is not the fact of a broken home that counts, but the quality of the relationship that a child has with the parents.

2.4.3 Slum Areas

This is understandable since slums are the gathering places of many persons of little or no income. Many are unemployed, and some have no incentive to be employed. They may have a hopeless outlook on life, believing the future presents little relief for their miseries. Yet they desire some of the common material things that make for a better life as well as some of the pleasures that luxuries can bring when these things cannot be acquired legitimately, many see crime as the only solution.[59]

In addition, slums are a haven for the criminal since few questions are asked about one's background, character, or identity, and the criminal is generally accepted.

[57] John E. Conklin, 6th Ed, pg 275, (cited in Benh 1977: 60)
[58] Ibid
[59] Ibid

2.4.4 Drugs

Narcotic offenses have been widely publicized in the media. This publicity ranges from multi-million drug busts to stories of drag overdoses by young children. These crimes are relatively simple to define; however, debate rages on both the causes and cures of drug-related offenses.

2.4.5 Gangs

Not all gangs or gang members are prone to crime, but many are. It is well to consider why someone joins a gang. It is normal to belong to a group, and most people at some time are part of a group, such as a social or hobby club or a service organization.[60] Such groups provide companionship, common interests, and recognition. The boys or girls who do not belong to a family, school, or community group may turn to the gang to satisfy these desires. The gang supplies to the member a common bond with others who may be in conflict with family, school, and, too often, the police. The gang provides security in a dangerous world and protection from rival gangs. The gang enables the member to commit acts of vandalism, destructiveness, and crime without the social disapproval of his peer group. Learning to commit crime often occurs within groups or gangs, but many adolescents learn not to be delinquent from the peers. Those who are concerned with their reputation and believe they have an investment in abiding by the law cite the influence of their peers as a major reason for not violating the law.[61] The adolescents who do not have a stake in conformity sometimes join gangs and criminal motives and skills from peers who encourage and reward violation of the law.

In Gangs, adolescents gain respect for older criminals, develop specific skills such as car theft, learn to cooperate with other offenders, and become aware of offences, shady lawyers, bondsmen, and corrupt politicians and the police officers.[62] One professional robber reports that he first got involved in an adult robber gangs because as an adolescent he had reputation as a skilled care thief. One of the gangs approached him to steal a gateway car for robbery, and he was gradually accepted into the gang on permanent basis.[63]

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[60] Rogers, 1977:45-49
[61] Rogers, 1977: 45-49
[62] Rettig, Torres, and Garret, 1977
[63] John E Conklin, 1972

A study of a New York City gang found that the integration of different age group generates crime. This group of young adults provided a setting where even young delinquents gathered. The young boys were on trial by the older boys, who occasionally took them along to "case a job". Many of these gang's exploits were planned by an adult criminal who collected information on places to burglarize, planned the crime, and contacted fences for the disposal of stolen goods. In such a highly integrated set of age groups, learning criminal motives and techniques is made easy for the gang members and for the young delinquents or pre-delinquents who interacted with them.[64]

2.5 CONCLUSION

Additional causes of crime could be listed, but those already set forth could give some idea of the magnitude of crime causation in South Sudan. There may not be just one factor that causes an individual to commit crime but a combination of factors. If it was necessary to establish a single cause of crime, lack of proper parental guidance probably would be the choice. It must be remembered, however, that the child who is reared in poverty or who is the product of a broken home is not committed to a life of crime. Many people have overcome these conditions to become outstanding citizens.

[64] Bloch and Niederhoffer, 1958:198-201

CHAPTER THREE

SOUTH SUDAN CRIMINAL JUSTICE SYSTEM

3.1 origins of the criminal justice system

Perhaps the most important thing to remember in this research about the South Sudan system of justice is that there is no even thing as Criminal Justice "System". That is no mention of a Criminal Justice System appears in constitution or any statutes. In reality the Criminal Justice System is a string of more than independent government agencies set up to deal with different aspects of crime and the treatment of offenders.

The agencies of criminal justice have no legal obligation to cooperate with one another and they all deal with the same clientele: Crime suspects, people accused of crime, and offenders. For example, governments through the ministry of internal security may hire more police officers which will contribute to an increase in the overall number of arrestees. This result in more cases being brought to court, more adjudication of guilt and more offenders sentenced to probation and prison. The need for more prosecutors, defense lawyers, judges, probation officers, and prison space created by the increase in police and arrests is rarely accounted for. This lack of "system wide" thinking has hurt both efficiency and effectiveness of criminal justice system in the Republic of South Sudan throughout the nation's history.

It is important to keep the idea of a "system" in mind; because we see that anything done by one Criminal Justice Agency invalidly affects the others. Therefore despite the fact that various Criminal Justice Agencies were not set up as a system, they must attempt to work together if justice is to be achieved. In fact many of the problems of criminal justice are caused by failures of various justice systems which were not set up as a system. Therefore throughout this research, the term Criminal Justice System is used to emphasize the importance of cooperation among Criminal Justice Agencies.

Over the cause of history, societies have been fairly consistence to place authority in the hands of government to act on their behalf. When some members do not follow the codified rules that are

the laws, government often establishes an agency that is responsible for making sure that the laws are obeyed. In the South Sudanese society this enforcement function is performed by police. Next, societies often set up agencies to arbitrate this matter that is; if a person has an excuse or justification for violating the law, how do we determine whether it is a valid one? In South Sudanese society this arbitration function is performed by courts.

Finally when the assessment of blame or responsibility is made, a penalty or punishment is administered to the offender and compensation is sometimes given to the victim. In South Sudan society this is carried out by correction system (prison) thus it is rather easy to see how a system of justice evolves in a society to resolve dispute. The need for rules and methods to enforce those rules together with a way to evaluate justification for rule violations and administration of penalties, are all necessary to serve the common good. These fundamental components of criminal justice are required to resolve the sometime conflicting interest of individual citizen in ways that serve the wide public interest. The agencies of law enforcements, the courts and corrections comprise what loosely can be called the Criminal Justice System.

3.2 Justice at the colonial period

Our modern system of criminal justice is a product of evolutionary changes such as those just described. It has evolved as South Sudanese society has developed mechanism for establishment of rules, enforcing them, determining responsibility for violation and deciding the appropriate remedies.

3.3 The evolution of the due process

The criminal justice process is no longer a symbol run by amateurs. The many legal steps and procedures that have been added are designed to achieve two goals; accuracy and fairness. These are essential elements of the due process of legal protection included in the 2011 South Sudan constitution that guarantees all citizens that the right to be adjudicated under the law[65]. This protection from arbitrary and unjust treatment becomes more important as those enforcing and adjudicating laws increasingly become strangers in more populated and urban areas. Accuracy is a fundamental goal because confidence in the outcome is pivotal if a criminal justice system is to

[65] Article 20 of the Transitional Constitution of the Republic of South Sudan

survive.[66] If the public do not believe that the findings of the criminal justice process were accurate, they would lose confident in the system and turn to private form of justice eventually look for new form of government.

Fairness is closely related to accuracy. Fairness in the justice process refers to the balance between the government interest in apprehending crime suspects and public interest in avoiding unnecessary government interference in the life of individual. The establishment of threshold for government intervention, such as the probable cause, is designed to achieve a fair balance between the same times conflicting interest of the government and individual citizen.[67]

Some have held that the criminal justice process has other functions besides accuracy and fairness. They claimed, for example crime control is an important function. However there is little reliable evidence to suggest that criminal justice system deters offenders or inform those who pass through it. It has also been argued that over emphasis on accuracy and fairness interferes with system ability to deter or prevent crime. Not only is this a speculative view but it is impractical as well since it is unlikely that a nation born 2 years ago of violent revolution under the bloody struggle of SPLA guerilla fighters would be willing to lower legal threshold established to preserve accuracy and fairness in the balance between citizens and government.

This suspicion dates back to the revolution and to the philosophy of John Locke which holds government exists not only by divine right or by force, but wily by the consent of the government who may alter if it acts in a manner inconsistent with the natural rights of the citizens.[68] It should be remembered that an important cause of the struggle for South Sudanese independent was wide spread based on perception that Arab or NCP government procedures were arbitrary and unfair to the citizen of this nation.

The relative emphasis placed on the goals of accurate, fairness, or crime control remains relevant today. Contemporary criticism about police misconduct, unfairness in judicial system and sentencing disparities, illustrate that neither Law enforcement whose criminal justice is a simple concept. They both involve the rights and interest of the innocent, the guilty, those

[66] Jay S. Albanese, Criminal Justice (Allyn & Bacon 1999). Pg 136
[67] Ibid
[68] John Lock, Concerning True Origin Extend and End of Civil Government (Chicago: Encyclopedia Britannica, 1952)

victimized, and those empowered to enforce the law. These competing consensuses are highlighted throughout this research.

3.4 Criminal justice system in South Sudan

The criminal justice system is a process with various stations in the system that handle the flow of offenders into, through, and out of the system, beginning with police actions and ending with correctional procedures and a return to the society. The initial stage that is, the point of entry is exceptionally important since many of the recent court cases have involved actions at this point fail procedures, right to counsel, and care of the indigent are matters of concern. The later judicial process involving the courts again is a step-by-step procedure leading to that and to sentencing all important decisions. There are numerous individuals involved in the judicial process, from the judge and jury members down to the court reporter, each having a distinct role to play in the proceedings. These court proceedings are prescribed and the patterns in courts are essentially the same for most countries. Tide of this chapter reflects a systemic approach within the operations of criminal justice. Processing a case through the judicial system must begin with an input element and conclude with output. The term input as used here refers to the knowledge that a crime has been committed. Most often, this identification of input is the role of the police. The process element is that portion of the flow involving judicial aspects of a case, and output refers to the correctional component.

Input occurs when a crime is committed and its commission is somehow made mow. The reporting of crimes can be accomplished in a variety of ways. A crime may be observed by a private citizen who reports its commission to the police; a police officer may observe the commission of a crime; police may discover the commission of a crime based upon an investigation undertaken of its own initiative; or it may be discovered in a variety of other ways. Regardless of the manner in which a crime is made known, that fact must occur before the Criminal Justice System even becomes involved. Yet, not all crimes are reported to governmental authorities.

The exact time sequence involving the commission of an offense, the identification of the probable offender, and the initiation of the process can frequently be a crucial legal issue due to the statutes of limitations. These are legislative enactments specifying a length of time after the

commission of a crime within which proceedings must be commenced against an offender.[69] Failure to take action within that time period will bar the state from subsequent prosecution. There is statute of limitations applicable to crimes except capital offenses or murder in non-capital-punishment. The lengths of the statutory provisions may vary but usually specify two or three years. If the processes are not begun within that time, which starts to run at the moment of the commission of the crime, the offender cannot later be prosecuted. The rationale underlying statutes of limitations is that after a period of time, witnesses forget, die, disappear, or otherwise are of little value; evidence is lost or destroyed; and, in general, it becomes a waste of time, effort, and money to attempt to prosecute.

The initiation of process against one identified as the offender is the only thing that can prevent the statute of limitations from running out. Once the process is initiated, the time stops running (statute is tolled). When an indictment is issued, immediately an arrest warrant is issued charging a named person with the crime or the offender is taken in custody. It can be seen that the essential ingredient of commencing the processes of criminal justice is identification of one who is believed to be the culprit.

3.5 conclusions

A system of justice evolves in society in order to enforce rules, resolves disputes, and administers punishment. In South Sudan this occurred in the colonial period (both Arabs and British), as small, religiously similar communities evolved into larger towns and cities with more diverse population. The criminal justice has two fundamental goals: fairness and accuracy. The main type of criminal justice agencies are law enforcement agencies, courts (including trial and appeals courts), and correction system. All these types are at all levels of government.

[69] Article 55 (4) of Transitional Constitution of the Republic of South Sudan

CHAPTER FOUR

CHALLENGES AND WEAKNESS FACING THE SOUTH SUDAN CRIMINAL JUSTICE SYSTEM

4.0 Introductions

Contemporary criticism about South Sudanese police misconduct, unfairness in South Sudanese judicial system and sentencing disparities illustrates that neither was enforcement whose criminal justice is a simple concept. They both involve the rights and interest of the innocent, the guilty, those victimized, and those empowered to enforce the law. These competing consensuses are highlighted throughout this research paper.

4.1 Problems in the criminal courts

As with every stage of the justice system, the South Sudanese court process is plagued with problems and challenges that defy easy resolution. Some of the challenges are, such as the best mechanism for the provision of defense counsel, the effects of judicial selection of judges. Four additional issues have been identified for further consideration in this research:

4.1.1 Right to fair trial

4.1.2 Speedy trial

4.1.3 Illegal detentions and Arrests

4.1.3 Lack of provision of Bail

With the issue of fair trail being the biggest problem in our criminal system more need to be with severe overcrowding in the national prisons, the right to a speedy trial is an important practical and constitutional issue. The role of the press in trials is also still unresolved.

4.1.1 Speedy trial

The issue embodied-in the phrase "speedy trial" is most often thought of as court delay. That is, speedy trial is the solution to the problem of what some perceive as unacceptable delays in the processing of criminal cases from arrest to disposition. The concern over court delays is founded on three related, but different, perspectives:-

(1) Some advocate speedy trials for the protection of the rights of the defendant;
(2) Some see speedy trials as the solution to some of the mistreatment of crime victims by the justice system; and

(3) Some propose speedy trials as a crime-control strategy.

Lengthy delays between arrest and trial or between charging and trial can be to the disadvantage of criminal defendants. Especially in those cases in which the defendant is unable to make bail, denial of a speedy trial amounts to incarceration prior to conviction. By virtue of their inability to obtain pre-trial release, defendants awaiting trial for long periods of time are likely to suffer further losses, such as loss of income (if not loss of job), possible loss of residence, separation from family and friends, and (upon conviction) higher rates of incarceration. Thus, at least one group proposes speedy trial as a protected right of the defendant.

Crime victims frequently are ignored by the justice system. The role of the victim in the justice process is generally that of witness, if anything. The justice system is not designed to alleviate the suffering of crime victims. Lengthy court proceedings, especially those in which the victim is involved as a witness, result in lost work days, mental anguish while awaiting resolution of the case, delays in recouping stolen property, and other costs to the victim. While speedy trials act to the advantage of the accused (especially the innocent accused), it has been suggested that the crime victim has a stake in the early resolution of a criminal case.[70] A more quantifiable effect of case processing delays on crime however, may be the amount of crime committed by criminal defendants who are free on bail and at large in the community.

[70] Walker, S. Sense and Nonsense About Crime. Monterey, CA: Brooks/Cole. Pg 141

It's reported that 14 percent of felons granted pretrial release were rearrested while awaiting trial. The longer a defendant is at liberty on bail, the greater the likelihood that he or she will commit a new crime while awaiting trial. Speedier trials and convictions (especially those resulting in incarceration would reduce at least this one aspect of Grime.[71] Finally, the longer the period between when a crime occurs and when the trial is held, the more difficult it is to secure a conviction. Witnesses sometimes move or die, memories fail, outrage at the offense lessens and general interest in the case wanes. indeed, defense counsel often use delay strategies to win cases, that is, they seek repeated continuances in the hope that witnesses eventually will fail to appear to present information on case processing time and the right to a speedy trial. In spite of the relatively widespread support for speedy trials, this is not a reform likely to be easily realized. Speedy trials are not in the best interests of the guilty defendant, nor are they always in the best interests of the prosecutor. Especially when the defendant is incarcerated and awaiting trial, the length of time between arrest and trial serves as an inducement to the defendant to engage in plea bargaining, thereby assuring conviction.

Nearly two-thirds of prosecutor's offices operated diversion programs or deferred prosecution for first offenders. Prosecutors have also adopted what is known as vertical prosecution for specific types of cases. In large prosecutor's offices, the tradition was to assign different assistant prosecutors to different stages of the court process. Thus, one assistant would handle bail hearings, another deal with charging, yet another take care of arraignment, and so forth. No single prosecutor followed a case from the initial appearance up through sentencing. Vertical prosecution, on the other hand, refers to the practice of assigning responsibility of a case to a single prosecutor who then follows that same case throughout the entire court process. It is reported that more than 40 percent of prosecutor's offices use vertical prosecution for all cases. Some offices use this management technique for specific types of crimes like sexual assault, drug offenses, homicide, and child abuse. One potential benefit of vertical prosecution is that with specialization, prosecutors develop greater consistency in their handling of cases so that defendants and victims are treated more fairly.[72]

[71] Walker, 1985:53
[72] Kingsnorth, R,R. Machtosh& J. Wentworth, (1999)

4.2.1 Fair trail

Early attempts to apply system analysis to criminal justice planning ran afoul of the nature of the justice process. Criminal justice does not seem to be the holistic entity envisioned in the system approach. According to the provision of the Transitional Constitution of the Republic of South Sudan, every accused person is presumed innocence until his guilty is proved according to the law.[73]The effectiveness of the system or the mission and priorities of the system are to be viewed differently by the policemen, the trial judge, and the prosecutor! The defense attorney, the correction officer, administrator, the appellate tribunal isolated and antagonistic within their traditional responsibilities, each component analyses its problem from its own point of view and each vies with the others for public funds. Each is jealous of its authority and each proceeds according to a different set of priorities. This attitude reflects a lack of guidance oriented towards a single justice system. This is in line with the provision of the criminal procedure which provides that "whenever any person is convicted by a High Court or a County Court of a Magistrate of the First or Second Class, of any offence involving or likely to cause a disturbance of the public of the public tranquility or breach of peace and such court is of opinion that, it is expedient to require such person to execute a bond for keeping peace and good behavior, such court may, at the time of passing sentence on such person order him or her to execute a bond for a sum proportionate to his or her means and with or without sureties for keeping peace and good behavior for a period not exceeding one year, make an order for police supervision.[74]

According to Rubin the federal government, the district of Colombia and the fifty states each have a sub-system of justice. Indeed, it can be argued that every municipality represents a system of justice. It is axiomatic that police, prosecutors, judges, and correctional personnel differ among themselves about what strategies best control crime, and each group seeks to protect and enhance its position. Finally, the inefficiency of the system has been presented as evidence that it is, in reality, a non-system.

While these arguments are persuasive, they do not refute the systemic nature of the criminal justice process. It cannot be denied that the criminal justice is complex, contradictory, inefficient

[73] Article 19(1) of the Transition of the Republic of South Sudan
[74] Section 140 of Criminal procedure (laws of Southern Sudan)

and decentralized; criminal justice is not a 'model' system. Yet, crime control is a manifest function or goal of each agency. Moreover, the inter relatedness of a component of the justice process-and the resistance of criminal justice to change also cannot be easily refuted.

4.1.2 Illegal Detention and Arrests

The legacy of civil war, the guerilla reflexes, and the absence of legal provisions on the security forces mandate, certain loopholes in the Code of criminal Procedure Ac (2008) and impunity, creates conditions for unlawful behavior for SPLA members, police officers and intelligence services, notably arbitrary arrests and detentions contrary to the provisions of 2011, Transition[75] Constitution which grants every person accused presumption of innocence until proved guilty.

The relative weakness of the judiciary which is under-staffed and under trained leads to a lack of effective oversight over the conduct of security forces. Even though the Code of Criminal Act states that "the Public Prosecution Attorney (...) shall inspect places of custody and detention daily, check the arrests register and verify the validity of the procedures and advise on the treatment of the arrested persons, in accordance with law", this rarely happens. The Deputy Minister of Justice stated in an interview that the judiciary regularly visits provisions, yet the study established that the prisons and other detention centers are full of individuals arrested without a warrant, detained without being charged without any prospect of trail.

Moreover, detention facilities are out of date, and most of them not formally recognized by law as official places of detention. They are also precarious and are generally overcrowded. Ill treatment is common are reported. Dozens of mentally-ill person have been detained at a prison in Juba.

[75] Article 19 (1) of the Transitional Constitution of the Republic of South Sudan

4.1.3 Lack of provision of bail

Bail[76] means release of a person arrested on his giving security or accepting specified conditions. A person arrested may be granted bail under a duty to surrender to custody. He may be required to provide a surety to secure his surrender.

Benjamin J. Odoki[77] defined bail to mean an agreement or reorganization between the accused (and his sureties, if any) and certain sum of money fixed by court he or she fails to appear to attend his trial on a certain date. He further notes that the object of bail is to ensure that the accused person appears to answer the charge against him, without his being detained in prison on remand pending his trial and that the effect of bail is therefore to temporary release the accused person from the custody of the court or police. However, the author does not analyze how bail can be used in capital offences to access criminal justice, neither does he point out the limitations to bail nor does he show the extent to which the law of bail has been used in access criminal justice in capital offences.

Akin Ibidapo and Clement Nwankwo[78] argued that society needs to strike a delicate balance between individual[79] freedom or bail and the need to ensure that the offenders do not escape punishment and continue to play on society. This therefore calls for the need to protect the society from the offenders who apply for bail and be granted the bail as mandatory or automatic right which increases the crime rate in society. However regard should be had to the presumption of innocence.

John Mortimer[80], point out the rationale for bail. He notes that it is the duty of the prosecution to prove the innocence of the accused and as such, an accused person should not be denied bail merely on the ground of the gravity of the offence charged. This is relevant to the study insofar as it accords with the presumption of innocence and burden of proof as laid down in the criminal law. However, the author does not explain how bail can be used in capital offences to access

[76] The Longman Dictionary of law, 7th Ed
[77] Benjamin J.Odoki, a guide to Criminal Procedure in Uganda
[78] Akin Ibidapo and Clement Nwankwo, (1992) the bail process and Human Rights in Nigeria, Constitutional Project.
[79] John Mortimer, 'Judicial Commission of South Wales Criminal Trial Bench Book'.
[80] John M. Scheb, (2010). ' Criminal law and procedure', 7th Edition Wadsworth learning Inc pg 544

criminal justice. The author does not also discuss the limitations or circumstances that may make court to refuse to grant bail other than the gravity of the offence.

Oloka Onyango[81] notes that the misuse of the offences of treason and terrorism and extension of the jurisdiction of military courts to civilians is really the modern-day detention without trial, to charge a person and basically throw away the key. He notes that bail in military court is almost unheard of and should be left for civil courts. It should be pointed out that this analysis is very useful; however, the author's work only related to a single person and did not consider the larger part of the public who may have been charged with similar offences.

Considering also the defined of the authors, it is in line with the provision of our constitution which provides person that arrested by the police, may be as part of an investigation, may be held in detention, for period not exceeding 24 hours and if not released on bond to be produced in court. The court has authority to either remand the accused in prison or to release him or her on bail.[82] Bail is a right not a privilege.

The fundamental principles of liberty are involves in the law of bail, an illustration of which was fortified by **Justice Ogoola in Kiiza Besigye vs. Uganda**[83] where he stated that the liberty is very essence of freedom and democracy. The liberty of individual must never be curtailed lightly, wantonly or arbitrarily. An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released. The right to bail is that right which every accused person has the personal liberty and freedom until the completion of his or her trail. Bail is a right and not a privilege. It is inherent, inalienable and granted by the state.

4.3 THE IDEOLOGICAL ENVIRONMENT OF CRIMINAL JUSTICE

As a social institution, and particularly as institution of social control, perhaps the most important aspect of the environment in which the criminal justice system operates is ideological rather than material. The criminal justice system is rife with value conflicts, political and social

[81] Oloka Onyango, (2005), the legal implication of the arrest and detention of RTD. Col Kiiza Besigye, Paper delivered at Makerere Law Society, (MLS) public forum; November, 28 2005
[82] Article 19 (4) of the Transitional Constitution of the Republic of South Sudan
[83] Kiiza Besigye vs Uganda. 2001

controversies and inefficient organization. These attribute of criminal justice reflects our deep ambivalent about social control. The gang enables the member to commit acts of vandalism, destructiveness, and crime without the social disapproval of his peer group. Learning to commit crime often occurs within groups or gangs, but many adolescents learn not to be delinquent from the peers. Those who are concerned with their reputation and believe they have an investment in abiding by the law cite the influence of their peers as a major reason for not violating the law.[84]

4.3.1 Value conflicts and inter-ethnic clashes

Perhaps the most fundamental value conflict characteristic of criminal in South Sudan is that between individual freedom and social regularity. In his discussions of policy, Richard Lundman in 1980 footnote determined that this conflict was one between liberty (freedom) and civility (order)[85]. Ethnic clashes for territorial control, Local political leadership and economic subsistence are a common phenomenon throughout South Sudan. But the recurrence of heavy fighting in almost all the ten states of South Sudan is the result of ideologies between the groups, with its high death toll and massive human rights violations, is a serious concern and need to be urgently addressed by fair and equal dispensation of justice.[86] These include competition due to dire poverty, the absence of a national development policy; there has been significance rise in the cost of dowries, the vicious cycle of attack and retaliation and lack of law to prosecute the perpetrators. "We demand that the police apprehend suspects, that our courts convict the accused, and that our correctional systems in some way punish the convicted we demand order. The task involved in ensuring order would be relatively straight forward where it is not for our simultaneous demand that the police, courts and correctional agencies operate within the constraints placed upon them by the law."[87]

With some degree of irony, it could be stated that South Sudan is constitutionally unsuitable for criminal justice. Our emphasis on individual liberty and constrained governmental authority require that a certain level of inefficiency be tolerated. We generally do not allow potentially effective crime control practice such as random wire taps, warrantless searches, censorship of

[84] Rogers, 1977: 45-49
[85] David Fablanic, Journal of Criminal Justice 25(1997)p.200
[86] RichardLundman in 1980
[87] Herbert Packer, The Limit of the Criminal Sanction(Stanford, CA: Stanford University Press (1968) p 233

mail or the use of 'truth serum' during interrogation. We do provide defense counsels, pre-trial release, and appellate review of trials and sentence in most cases. In an effort to preserve individual liberty we not only constrain justice agencies from engaging in many activities, but we also actively impose barriers to the agency's swift and simple operation. Dean Spader (1987) remarked that criminal justice practice represents a 'golden zigzag' between social protection and individual rights.

As we can see the criminal justice system is designed for crime control, but the control of crime must be consistent with our social and political heritage. The justice system must achieve a balance or equilibrium (as do all systems) between competing values of vengeance and assistance, and differing political persuasion, as well as between individual actors and social regularity, it is the balance of these opposing systems that renders the justice system so complex.

4.4 Conclusions

The criminal justice system as it has been presented in this research paper appears as an enormously complex organization whose operations and their accompanying problems seem unending. It is one of the most dynamic, volatile, and frequently the most frustrating system in the public service galaxy. The burgeoning crime problems of the inner cities like Juba, Bor Town, Torit and nearby suburbs, and most especially among juveniles; the uncertainties of the really role of policing in modem society; the unhappy circumstances of presentence pleading; the gross disparities in the sentencing process; the overcrowding of jails and prisons; the uncertainties of community as a base for assisting offenders; and public demands for swift and sure justice and the vigorous control of career criminals-all have conspired to bring into sharp focus the unique complexities of the system that often does not appear functioning as a system.

CHAPTER FIVE

CONCLUSION AND RECOMMADATIONS

5.1 Conclusions

Some of the most persistent problems in the criminal justice system involve the courts component. There is a great need for court reform particularly in the High court and Magistrates' courts where most criminal case activities are concentrated. And this reform measures must come through legislative action based on sound studies of the current inadequacies of the court system. Action in court reforms should be concentrated in the following areas; improvements in court management and administration improvements in the quality of the judiciary through better selection procedures; and re-examination of the plea bargaining process, bail procedures, and sentencing practices. Such actions normally would have a favorable impact on the criminal justice system as a whole. The courts are a vital component of our Criminal Justice System, yet they constitute only one segment of an interdependent whole.

The reforms needed includes facilitation of administrative unification, management modification, increased financial responsibility, improvement of quality of judges and creation of standards for these positions, improvement of the bail system, development of better sentencing practices and alternatives, and establishment of a closer working relationship between the High court and Magistrates' courts. There is also a need to treat the system as a whole by recognizing the interdependence of the police, prosecution, courts and correctional components even though custom, tradition, and other factors tend to accentuate and perpetuate the separateness and autonomy of these functions. The first is that crime in South Sudan is seriously interfering with the Nations ability to attain economic, political, and social wellbeing for all its citizens. The second is that no attempt to alleviate this problem can succeed unless dramatic improvements are made in the ability of courts to perform their critical role in the criminal justice system.

Magistrates' courts and high courts systems are operating under an increasingly severe threat of collapse due to overwhelming case loads, lack of full-time judges, overlapping jurisdictions, and numerous administrative problems. The state is ultimately responsible for all the scattered courts,

whether their authority comes from constitutional provisions, statutes, or from the powers delegated to local units of government; lines of authority become crossed and blurred. The problem, although existing on a nationwide basis, is most overt in urban areas where residents, magistrates, and high courts with overlapping jurisdictions may hear similar types of cases. This often imposes an unnecessary burden upon an arresting police officer by compelling him to make a choice between two or more different courts in which he may seek prosecution. And in some instances, because of the shortage of state prosecutors practicing in the lower courts, the police officer may end up prosecuting his own case.

5.2 RECOMMENDATIONS

5.2.1 Judiciary wing of criminal justice

Law reform

The first step in the reformation of courts must be initiated by legislative action. The problem of overwhelming case loads that confront the courts at all levels is compounded by the necessity to litigate or at least take action on offenses that realistically should be decriminalized, legalized, or disposed of by administrative rather than judicial action. This action alone can contribute much to increasing the effectiveness of court systems by relieving some of the case load and forcing the judiciary to concentrate on realistic and contemporary problem areas of criminal activity.

Need for better administration

The deficiencies existing in the quantity of judicial manpower particularly in the lower courts in the states and counties, along with weak administration and the increase in case volume, tend to increase the backlog of cases and the already lengthy periods between arrest and disposition, in those courts in which high volume interferes with the orderly movement of cases and creates tremendous pressure to dispose of business, one may observe concomitant delay in the disposition of cases and hasty consideration when these cases come to be heard. Delays in our court systems not only diminish the deterrent effect of the entire criminal justice system in the eyes of the potential offender but also undermine public confidence in the system's effectiveness. In most pans of the county, traffic, drunkenness, and drug abuse cases clog up the

judicial system far more than felony cases. These types of cases place heavy demands not only on the police and the prosecutors but on judicial personnel as well. Moreover, the sanctions and remedies that the criminal justice system provides are frequently inappropriate, ineffective, and to some degree, counterproductive, thus contributing to the overbearing volume of cases necessitating court appearances. Inflexibility in criminal procedures often excludes the use of more appropriate remedies.

The qualities of a good judge do not necessarily coincide with the skills of a good administrator. One of the major movements toward court reform in this country should be the establishment of administrative offices in state court systems headed by a professional whose function is to assist in the administrative supervision and direction of the entire court system. The purpose of court administrators is to decrease the non judicial functions previously falling upon the shoulders of members of the judiciary, thus leaving them with greater freedom to perform their functions as judges.

The functions that court administrators are able to perform should include superintendence of court calendars, assignment of physical and personnel resources, collection of judicial statistics, management of the fiscal affairs of the courts, furnishing of supplies and equipment, and supervision of court personnel. The independence and autonomy of the judiciary creates a problem of resistance to change that has to be overcome. It has thus become obvious that the answer to court reform lies not safely n terms of shillings or in the quantity of judges. Efficiency through the use of court administrators promotes more effective use of manpower and greater productivity through improved methods, improved machinery, improved management, and trained administrative personnel.

Despite the most modern administration and the most generous of funding, court cannot on its own function effectively as part of the criminal justice system if it is staffed by incompetent or unqualified judges. Among the most basic requirements characterizing a competent judge are that he should have basic knowledge of the law and that he should be able to devote full time to his judicial functions. In sparsely populated areas of the nation, the problems related to the use of unqualified and part-time judges are most apparent because it is in these regions that it is most

difficult to find adequately trained individuals and sufficient judicial business to employ them on a full time basis.

Expeditiousness

There is also need for quick police investigations in capital offences. Most offenders stay remand for long period of time because police investigations have not been completed in the case. This makes the offenders who are committed to the High court remain on remand for long period of time, police should recruit highly skilled personnel in its investigation department who will assist in the completion of the investigations first before court proceedings commences hence avoid keeping of the offenders on remand for long period of time than it is constitutional provided.

Dropped charges

Overburdened courts have come to rely upon these informal procedures for dealing with overpowering case loads. As a result, some cases are not prosecuted supply because of insufficient of resources to pursue the trial process.

Procedural regularity does not exist to any great degree in these informal dispositions. Fact bearing both on the offense and on the character of the offender is not systematically presented before decisions are reached in these non trial dispositions: Non punitive alternatives (with the exception of dismissal of the case) are not often considered. Thus, one of the major difficulties in the present system of non trial dispositions is that when an offender is dropped out of the criminal process by dismissal of charges, lie usually does not receive the help or treatment needed to prevent recurrence of his prohibited conduct. Because of the absence of social agencies or the inability of these agencies to deal with the offender, such an individual is often discharged without prosecution in the expectation that his conduct will not be repeated. Yet, there is little assistance given by the community to insure that this expectation will become a reality. People who come in contact with the criminal process because of mental illness, and who are processed through the criminal justice system rarely are given any follow-up. Of course, these faults cannot be attributed entirely to failures of the judicial system because any practical solution to these problems would require a great deal of additional manpower and financial resources.

Recruitment

There is need to recruit more judges in the judiciary. There have been complaints from the judiciary that there is limited number of serving judges to handle the backload cases that are before of law. That some judges have retired others are died and others have resigned, and others have decided not to work because the system which operates involve a lot technical interpretation of law compare to old Sudan system. These are what led the offenders charged with offence being committed to high court and it take years without these offenders being produced in court for their cases. The way forward for this problem is for the government to recruit more judges in the judiciary. When the number of judges is increased, it will enable the judiciary to handle the backload of cases that have hampered court process in short period of time giving effect provision of the article.

Plea bargaining

A large percentage of guilty pleas are the product of negotiations between the prosecutor and defense counsel or the accused. Plea bargaining involves discussion to reach an agreement by which the accused will enter a plea of guilty in exchange for a reduced charge or a favorable sentence recommended by the prosecutor. The propriety of offering the defendant an inducement to surrender his right to trial becomes a fundamental problem with plea bargaining. The informality and wide variation in practice among prosecutors and trial judges regarding plea bargains often cause bewilderment and a sense of injustice among defendants. It often happens that the result may be excessive leniency for professional, habitual criminals who generally have expert legal advice and are best able to take full advantage of the bargaining opportunity. Equally true are the cases of marginal offenders who may be dealt with harshly and left with a deep sense of injustice, having learned too late the manipulations possible in the system. There is also the possibility that an innocent defendant may plead guilty because of the fear that he will be sentenced more harshly if he is convicted or that he will be subjected to damaging publicity because of a guilty charge.

Plea bargaining is not recognized, in most jurisdictions, as a valid method of ensuring justice in criminal cases. Yet it does happen. It is widely practiced and accepted. The plea bargaining

system can be an effective and meaningful tool for easing the problems of the judicial system, provided certain procedural guidelines are established that would guarantee due process (fairness) in the disposition of cases and treatment of offenders. Of first magnitude would be ensuring that adequate counsel is given a defendant who faces a potentially significant penalty, that the plea is made voluntarily and indifferently, and that any promises made to the defendant be kept. Second, plea bargaining discussions between prosecutors and defense attorneys should deal explicitly with dispositional questions and the development of appropriate treatment programs for the offender. These priorities are by no means exhaustive and of course, would require additional manpower, money, and interagency cooperation and dedication.[88]

Plea bargaining does serve a number of important purposes. In reality most courts could not handle the increased caseload if they were required to try all cases upon which arrests were made and which normally would lead to ultimate judicial determination. In addition, it relieves both the prosecution and the defense of certain risks of going to trial and injects a degree of certainty and flexibility into the judicial system Frequently, plea bargaining serves law enforcement needs by providing leniency in exchange for information, assistance, and testimony about other offenses and offenders. Plea bargaining is not used and should not be used simply as a means of disposing of criminal cases at minimal cost.[89]

Until plea negotiations are eliminated as recommended in this standard, such negotiations and the entry of pleas pursuant to the resulting agreements should be permitted only under a procedure embodying the safeguards contained in the remaining standards in this chapter.

The manner in which this should be accomplished is by:

(1) Keeping records of all agreements reached in plea negotiations, the reasons for such negotiations and the basis for the pleas;

(2) Establishing uniform policies' and practices in prosecutors' offices for engaging in plea negotiations;

[88] Nail C. Chamelin, Vernon B. Fox and Paul M. Whisenand, Introduction to Criminal Justice 2nd edition pg 316
[89] Ibid

(3) Prohibiting consideration of weaknesses in the prosecutor's case as the basis for plea bargaining,

(4) Establishing time limits within which plea negotiations may take place as a basis for freeing the trial docket;

(5) Requiring the defendant to have representation of counsel;

(6) Prohibiting the prosecutor from inducing guilty pleas by improper charging overcharging, or threatening more severe sentences if the defendant chooses to exercise his right to trial;

(7) Prohibiting the prosecutor from failing to disclose- information which may be exculpatory to the defendant;
(8) Ensuring that all pleas are voluntary, knowledgeable, and based on facts pointing to the defendant's guilt; and

Sentencing

Judicial problems in the area of sentencing of convicted offenders should be addressed. Among the issues of concern are sentencing authority, disparity of sentences, legislative direction, and review of sentences.

To overcome some of the disparities in sentencing that do exist, several proposals have been made to promote more rational sentencing policies, including the establishment of sentencing councils where judges discuss planned sentencing with each other prior to imposition, sentencing institutes to provide a forum for the exchange of new ideas and the development of criteria for the imposition of sentences, orientation sessions for new judges, and regular visitation of custodial and non custodial facilities by judges.

Sentencing is not entirely the responsibility of the judiciary. At the outset, state legislatures must take the initial responsibility of establishing guidelines and parameters under which sentencing may occur. This statutory framework must take into consideration the basic purposes of correctional 'programs within the state as well as the needs of the offender and the welfare of society. It is urged that legislatures legislate, to some degree, the exercise of discretion in the

imposition of sentencing. There are both advantages and disadvantages to different types of sentencing programs. The system where the determinate sentence is used and maximum sentences are structured has the advantage of working beneficially in a true punishment sense where time served is the objective of the system. A final issue is appellate review of sentences. Appellate remedies practiced in our criminal justice system provide little opportunity for either the defendant or the state to appeal a decision solely based on the appropriateness of the sentence to the offense and the offender. If it is important to provide a review system of trial court proceedings to ensure the absence of prejudice, then opportunities for review of sentences must not be denied.

Sentencing cannot be relegated to an unimportant or inconsequential responsibility of the judiciary but, in fact, must be understood as the vehicle for smooth transition of a convicted offender from the courts to the corrections component of the criminal justice system.

Pretrial' detention—bail

Normally, bail is a procedure for releasing arrested persons on financial or other consideration to ensure their return for trial. Recent bail reform has shown that careful fact gathering for pretrial release decisions, experimentation with standards for release without bail, and the mobilization of broad public and professional interest can change long-established practices. The system's major fault is exclusive reliance on the posting of money to ensure the defendant's return. A defendant with means can afford to pay bail or buy his freedom. The poor defendant languishes in jail for weeks or more before trial. Detainees are often indiscriminately mixed with persons convicted of crime with the result that the detainee might come out with greater criminal inclinations. Unnecessary detention costs the community more than jail expenses; a central fault of the existing system is that it detains too many people, with serious consequences for defendants, the Criminal process and the community. The aim of reform must be to reduce pretrial detention to the lowest level without allowing the indiscriminate release of persons who pose substantial risk of flight or of criminal conduct. The present bail system fails to promote decisions founded on facts about the accused.

The first step toward reform must be to introduce fact-finding procedures that will furnish, immediately after arrest, verified information about the accused and his community ties. With

this information, a rational assessment of the risk can be made. Where there is no significant risk, the defendant can be released without bail.

Another step is to develop new methods to reduce the risk of flight where it is significant. The judge should be given authority to set certain conditions on release. The courts should clearly explain to him the defendant's duty to appear at trial at the time of his release and should notice him in advance of his scheduled return. The growing recognition of the need for re-inform of the bail system has led to impressive progress in many countries.

5.2.2 Police officers and prison wardens

Knowledge of Rules, Regulations and Expected Behaviors should be promoted within the police force.

Every police officer should be required to understand what they can and cannot do. The more officers know, the more able they are to conduct themselves as expected. As Field and Meloni once stated: "discipline helps officers meet their expectations and stay within reasonable performance and behavioral limits"[90]

To inform employees, managers should post rules on bulletin boards, distribute Standard rating Procedure manuals and discuss the rules at meetings. Indeed, as Ellman[91] once noted: "Written policies should have two goals: to keep everyone informed about operations and to support the supervisors in enforcing practices and procedures."

General Conduct

Officers should be expected to report for duty at the designated time and place. They should not engage in disorderly conduct or accept gifts from suspects, prisoners or defendants. Officers must refrain from using unnecessary force on any person. They should not act as newspaper, radio or television correspondents or reporters without authorization. Officers must object and refuse to obey an immoral or illegal order.

[90] Way W. Bennet and Karen M. Hess, Management and Supervision in Law Enforcement 3rd Edition pg 356-359
[91] Ellman, Edgar S. "put your policy in writing) Law and Order, Vol. 47, No.6,June, 1999,pg.146-147

Performance of Duty

Officers should preserve the law, protect life and property and enforce those state laws and city bylaws that the department is required to enforce. All officers should perform all other lawful duties as required by competent authority.

Officers are should be required to discharge their duties calmly and firmly, to act together and to assist and protect each other to maintain law and order. Officers should act promptly, firmly, fairly and decisively at crime scenes, disorders, accidents, disasters or when dealing with suspects or other situations that require law enforcement action. Any officer who fails to comply, by act or omission, with any order, procedure, rule or regulation of the department, or who fails to perform official duties or who acts in the performance of official duties in a way that could discredit himself or herself, the department or any other member of the department should be considered in neglect of duty.

Officers should at all times be courteous, patient and respectful in dealing with the public or convicts. Officers should respond promptly to all calls for law enforcement assistance from citizens or other officers.

Other Restrictions on Behavior[92]

Police officers and prison wardens should not knowingly make a false report, either oral or written. When on duty; officers should be neat and clean in appearance in public, in or out of uniform. Grooming and appearance are critical, and uniformity of appearance is a constant issue of concern and potential discipline.

For law enforcement organizations that are unionized, relevant provisions of the labor agreement must be considered as well. In fact, methods for dealing with problem behaviors and discipline in criminal justice departments are often guided by contractual obligations and guidelines entered into by the union and government officials. Some supervisors fear that with a union contract they cannot make discipline stick. This is not true. No union contract protects workers from discipline when a valid work rule is violated. Maintaining discipline is a fundamental management right.

[92] Way W. Bennet and Karen M. Hess, Management and Supervision in Law Enforcement 3rd Edition 358

Police officers and prison wardens should not congregate in the dispatch area or engage in horseplay or loud, boisterous conversations in public view or hearing. Officers should keep their quarters, lockers, vehicles and desks neat, clean and orderly. Officers should not read newspapers, magazines or similar matter in public view except in the fine of duty; Officers should not smoke while in direct contact with or serving the public. Officers should not loiter in cafes, drive-ins, service stations or other public places.

Recommendation

I would like to end the research recommendation with the words of Martha Graham (1894-1991), American dancer and choreographer once said "I believe one thing: that today is yesterday and tomorrow is today and you can't stop". Her quote reminds me that the future is shaped by what was accomplished in the past as well as today. Therefore, it is important to implement changes, to improve and further strengthen our criminal justice system in order to promote the effectiveness and efficiency in dispensation of justice.

Conclusion

The reforms needed includes facilitation of administrative unification, management modification, increased financial responsibility, improvement of quality of judges and creation of standards for these positions, and the improvement of the bail system, development of better sentencing practices and alternatives, and establishment of a closer working relationship between High and Magistrates courts. There is also a need to treat the system as a whole by recognizing the interdependence of the police, prosecution, courts and correctional components even though custom, tradition, and other factors tend to accentuate and perpetuate the separateness and autonomy of these functions. As we can see the criminal justice system is designed for crime control, but the control of crime must be consistent with our social and political heritage. The justice system must achieve a balance or equilibrium (as do all systems) between competing values of vengeance and assistance, and differing political persuasion, as well as between individual actors and social regularity, it is the balance of these opposing systems that renders the justice system so complex.

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