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# NATIONAL SCOPING STUDY ON APPROPRIATE JUVENILE JUSTICE MODELS FOR UGANDA

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**RESEARCH FELLOW**

**JULY 2017**



## **FOREWORD**

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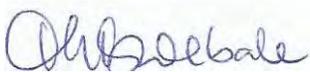
Undertaking this study on the Juvenile Justice Models has profoundly stimulated my imagination around plausible legal and social models for Uganda. In particular, how much there is that has gone undocumented and in some instances isolated and intermittent efforts.

I am honoured to have been selected as a Research Fellow to conduct this study following an understanding with AfriChild Centre, Makererere University. The study was supported with funding from Wellspring Advisors LLC. I am elated that what started as a conversation on the state of juvenile justice in Uganda and a couple of countries in East Africa together with South Africa progressed into a concept note and eventually culminated in this study, code named “National scoping study on appropriate juvenile justice models for Uganda.

Suffice it to say, of particular interest to the study was the existing legal and policy frameworks and possible models that can effectively translate into treatment with dignity and without prejudice of juvenile offenders. This conversation remains critical and continues to put in shape ideal and practical ways in which international and regional standards can be upheld.

The study reveals compelling evidence of the tireless but fragmented efforts in improving the handling of juveniles in the Justice delivery system amidst financial and human resource challenges. It can also be argued that very little information has been gathered in terms of research to make a compelling case for ensuring better funding to the sector and well-coordinated training of the human resources managing juveniles.

Worth noting in Uganda are the strides that have been made towards improving juvenile justice and yet equivalently the milestones that still need to be attained. The study will provide contributions to the status quo while providing innovative ways of handling juvenile offenders by actors in the sector.



.....  
**Theodora Bitature Webale**  
Research Fellow Juvenile Justice

**Disclaimer**

This study was commissioned by AfriChild Centre in partnership with Wellspring Advisors. The use of this report therefore shall be limited to parties expressly authorized by the named organisations. Any interpretation of this report must therefore be done in the context of the ToRs

## **ACKNOWLEDGMENT**

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We are highly indebted to all stakeholders for their invaluable input into the research that made the study worthwhile.

Most profound appreciation goes to the children who were very instrumental in giving feedback that shaped our thinking in the course of this study.

Special gratitude goes to the respective Staff of the Parliament of the Republic of Uganda, the Justice Law and Order Sector Secretariat, Ministry of Gender Labour and Social Development, Ministry of Justice and Constitutional Affairs, Kampiringisa National Rehabilitation Centre, and the Remand Homes in Mbale, Fort Portal, Arua, Masindi and Gulu.

Specific Members of Parliament, Magistrates and staff of the Judiciary, Officers of the Uganda Police Force, District Local Government officers, Probation and Social Welfare Officers, Fit Persons, community leaders, individuals and groups in the study districts, you provided useful information that form the basis for this report. The cooperation you accorded the research team cannot go without reckoning. To mention in particular the Deputy Inspector General of Police and the Chief Registrar, Courts of Judicature.

The technical guidance provided by AfriChild prior to and in the course of the research cannot go without mention. Utmost appreciation goes to Wellspring Advisors LLC for the financial and technical support that culminated in this study.

Lastly, we owe this great work to the research team led by Mrs Theodora Bitature Webale; Dr. Richard Asaba Bagonza for the technical guidance, Mr. Solomon Webalearaali for editing the report as well as Ms. Hilda Akabwai and Mr. Richard Muganzi for support through the entire research process.

The successful accomplishment of this study is entirely owed to all mentioned above and others who though may not be listed here, made a tremendous contribution.

## **EXECUTIVE SUMMARY**

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### **Background**

Over the last couple of years Uganda has been undergoing reforms to improve handling of children in conflict with the law through establishing legal and policy regimes that promote their rights and dignity. These efforts have seen developments unfolding in the direction of innovation on how justice delivery can be improved. Some of these models owe their origin in tradition where values and norms governed the management of affairs of children. Having inherited the British legal system, justice delivery followed more appeasement of the aggrieved through punitive measures that were intended to deter, rehabilitate, and restitution.

Social dynamics dictate trends, in this respect occasioning the need for appropriate models to respond to the going concern around child offending. The system as it were treated children and adults alike, a course that has over a couple of decades raised concern calling for the international community to cause reforms on the treatment of child offenders. Member states are called upon to own up to their international obligations by conforming to the treaties and conventions.

Uganda is a signatory to the UN convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the African Child (ACRWC). Acclaimed for being one of the first African Countries to embark on reforms to promote and protect the rights of the child which were championed by establishing the Constitution of the Republic of Uganda (1995) and the Children Statute (1996) later coded Children Act (Cap 59). These have since been cemented by an elaborate institutional framework to handle child rights. However, these laws, policy and institutional frameworks still bear the hallmarks of unending struggles amidst challenges of limited response capacity in the face of overwhelming numbers of children in need of support. The Diversion Programme, is a juvenile justice model is being rolled out as an alternative to the court system that departs from the custodial sentencing.

The study was undertaken against the background that in as much as Uganda has an elaborate child protection legal and policy framework and structures, children in conflict with the law remain clogged in the justice delivery system. Many a time the number of children in particular offenders overwhelm the system due to the limitations in the allocated human and financial resources.

The system as it is focuses on the criminal justice system which is more punitive rather than restorative oriented. As such the intended corrective outcome from the child's contact with the justice system is not realised; instead many children have become habitual offenders. The sentences handed to these children are intended to deter offending yet on the contrary more children are offending some as early as 7 years which is younger than the 12 years stipulated in the Children Act and the Penal Code Act. In the spirit and letter of Article 37(b) of the Standard Minimum Rules on Children Deprived of their Liberty<sup>i</sup> (Beijing Rules) approved by the UN in 1990 detention of children should be done as a last resort.

## **Study Objectives**

The overall objective of the study was to assess the Uganda's compliance with the UN convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the African Child (ACRWC) in order to develop appropriate juvenile justice models.

The specific objectives of the study were: -

1. To examine the current legal, policy, regulatory and institutional framework on juvenile justice in Uganda.
2. To analyse the implementation frameworks of existing laws and policies in comparison with the major provisions of convention in the CRC and ACRWC
3. To analyse the current laws and policies in comparison with the legal and policy regime governing child rights in South Africa.
4. To recommend models informed by gaps in policy, practice, good practices and lessons for improving the implementation of juvenile justice in Uganda.

The study followed a mixed method design and adopted a cross-sectional strategy in which a survey, key informant interviews and focus group discussions were conducted. Additionally, information was collected through a review of documents from courts, police, and remand homes. The study was undertaken in 18 districts of Uganda representing the Northern, Western, Eastern and Southern Regions in Uganda. The survey primarily targeted children aged 12 to 17 years who have offended the law particularly those in custody either at the Remand Homes or the Police Stations. Other categories of children included former child offenders and children at risk of offending such as street children, child prostitutes, children living along the border and among island communities, as well as those in post

conflict areas especially in northern and eastern Uganda. A total of 68 girls (24% of the respondents) and 221 boys (76% of the respondents) were interviewed.

The duty bearers included PSWOs, the Police, Magistrates, representatives from Civil Society and Non Government Organisations, Community Fit Persons, Local Council Leaders, Local Government officials, Civic and Political leaders, Religious leaders, parent and guardians of children, staff from the JLOS, MOJCA, the MOGLSD, Wardens from the Remand Homes and selected members of Parliament among others. Others were stakeholders working on juvenile justice in Pretoria.

## Findings

- ✚ Of the total number of offenders interviewed the majority were aged 16 years old (41%), followed by those of 17 years old (34%), and then 15 years old (15%). Some children aged 7, 8, 9, 10 and 11 were also on record for offending according to the data from the Uganda Police.
- ✚ Fifty six percent of the offences committed by children in custody were related to theft and robbery; 15 percent were defilement; 7 percent involved murder, arson, affray, and assault; while alcoholism, drug and substance abuse, idle and disorderly, unruly behaviour and traffic related offences account for 21 percent. In a few instances some children were detained for absconding from school.
- ✚ Our findings also show that handling of child offenders has generally become better due to the improved attitude of the staff in the justice delivery institutions which can be attributed to training and continuous capacity building. Ninety percent of the child respondents in custody said they were first arrested while 10 percent said they were either invited to the Police Station or taken there by a parent/guardian or aggrieved adult. Only one child said he went to the rehabilitation facility on his own volition. About 24 percent said they were arrested violently while 39 percent said they were treated with dignity and some 27 percent said they were tortured.
- ✚ About 85 percent had been taken to court while 15 percent said they have never been produced for a formal hearing. About 8 percent of the children taken to court said their matters were handled expeditiously compared to 78 per cent who noted several flaws in the system. While 52 percent were comfortable with the court setting, 48 percent said it was intimidating and unbending.

- ✚ Close to 22 percent of the children who had a chance of being taken to court said they were given priority to have their cases heard before the magistrate carried out a session for the adults. A number of children interviewed (83%) appeared before court without their parents or guardians although given support by various duty bearers. However, in 21 percent of such cases the children claim that no one gave them any form of technical or moral support during judicial proceedings.
- ✚ About 60 percent of the children in detention or remand said they had mandatory counselling, 12 percent said it is optional or provided to particular individuals deemed to benefit from such support while some twenty percent said it was boring and made no sense to them.
- ✚ Provision of welfare services and basic needs was found to be undeniable especially in remand homes. 90 percent said they receive water (but mainly untreated tap water), 90 percent said they get clothing (mainly from NGOs and uniforms from Government), 80 percent said they have medication, 83 percent said they acquire some form of education (though mostly skills based), all the girls said they get sanitary pads at least monthly, and 54 percent said they receive three balanced meals a day. None of the children said they went without a meal. However, it was by and large stated by wardens that maintaining a balanced meal to the internationally required standards is untenable for now. The children also receive beddings while in the remand homes and but this not necessarily apply for those in detention at the Police Stations. Even then, only 7% said they receive partial bedding.
- ✚ The attitude of the wardens in the remand homes ranged from good to rude with 75 percent of the children saying they were supportive and friendly. But 22 percent said that some personnel were indifferent and tough. About 3 percent of the children said the personnel were rude.
- ✚ On average, 20 percent of the children said they had been in detention for a period of more than 6 months, 70 percent had stayed for between 1 and 6 months, and about 10 percent had stayed for between 48 hours and less than one month. .
- ✚ Fifty nine percent of the children in the remand homes said they were in school at the time of their arrest and only 12 percent (especially in Kampiringisa National Rehabilitation Centre) said they were attending formal education. About 15 percent said they were previously involved in casual employment while 27 percent said they did not have any prior occupation.

- ✚ Of all the children in the remand homes who were formerly in school; at least 49 percent had attained secondary education while 51 percent had attained primary education.
- ✚ The caseload data gathered on 5,736 children handled by the justice institutions since 2010 indicated that information on the gender of 39 children was not recorded (i.e. 5 cases at the police and 34 cases at the court). Similarly, the age of 158 children was not stated by the remand homes (i.e. 38 male and 3 female); the courts (i.e. 59 male, 13 female, and 2 children whose gender was not stated); as well as the police (i.e. 35 male, 4 female, and 4 children whose gender was not stated). Similarly, the nature or course of action taken by the justice institutions was not recorded for 1,910 children they handled (i.e. 1,693 male, 204 female, and 13 children whose gender was not stated) while in another 27 cases (i.e. 21 male, and 6 female) the action as stated was not clear. The case records from the remand homes, police, and court also did not register the district of origin or address of the child offender for a total of 576 children. This was the case for 80 children (i.e. 65 male and 15 female) from remand homes, 395 children (i.e. 341 male, 46 female, and 8 children whose gender was not stated) from the courts, and 101 children (i.e. 74 male, and 27 female).

## **Challenges**

The major challenges in the juvenile justice sector are: congestion in the cells and dormitories; small and limited resource envelop, poor facilitation affecting the flow of cases; remand homes are catered for under a district budget and are constrained in that in reality they operate as regional centres catering for juveniles in nearby districts ; backlog of cases due to low disposal rates; management of prosecution of cases and the PSWOs are overwhelmed by the number of children entering the system.

## **Lessons**

The main lessons learned regarding juvenile justice in Uganda are giving children a chance and an equal opportunity to exploit their potential which when deprived, cannot be attained or is curtailed.; harnessing and exploiting the existing models which are creeping in the informal sector and improving those in the formal sector; and the indiscriminate manner in which cases are handled is worrying in that juveniles are arbitrarily charged with little consideration for their basic rights.

## Recommendations

Based on our findings, we recommend, inter-alia that the data capturing format used across the justice institutions which handle child offenders should be standardised and integrated; political attention must be given to the plight of children in conflict with the law by taking all necessary efforts to develop a responsive juvenile justice system; reforms are needed to streamline the roles and jurisdiction of various actors who interface with child offenders at different levels; measures have to be taken through prevention strategies that mainstream and integrate juvenile justice in schools and other related sectors so as to deter children from conflicting with the law; child protection training should be designated for specialized police, judicial officers, state prosecutors, probation officers, community development officers and local actors to ensure effective handling of juveniles with major focus on the best interests and welfare needs of every child by promoting alternative care and protection, proper investigation and supervision, effective resettlement and aftercare support, as well as contribute to and participate in implementation of a robust Monitoring and evaluation system. It is further recommended that although the proposed models may work more effectively as a combined system of interrelated synergies, the government is more likely to support these initiatives once they have been successfully tested. This was evident during previous efforts undertaken to popularise the community based approach to the diversion model. It is would therefore be useful to pilot one or two other models as a way of making a case for future scale up. Based on our findings three models are proposed:

**Early intervention models:** These have been proposed for preventing the children from coming into contact or conflict with the law through social protection and school based interventions.

**Diversion related models:** These have been identified in communities, at police, and court to offer a chance to marginalised, socially excluded and traumatised young people in conflict with the law for embracing healthy, alternative, and significant developmental opportunities that can turn children's lives around so as to become more productive and responsible citizens in the future.

**Rehabilitation related models:** These are designed to address negative consequences of children who have gone through the juvenile justice system but also provide constructive responses outside judicial proceedings that focus on rehabilitative outcomes and eventual reintegration into society.

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## **LIST OF ACRONYMS**

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<b>CAO</b>	Chief Administrative Officers
<b>CBO(s)</b>	Community Based Organisation(s)
<b>CDO</b>	Community Development Officer
<b>CSO(s)</b>	Civil Society Organisation(s)
<b>DLG</b>	District Local Government
<b>JCs</b>	Justice Centres
<b>JLOS</b>	Justice Law and Order Sector
<b>FBO(s)</b>	Faith Based Organisation(s)
<b>FCC</b>	Family and Children Court
<b>FCPU</b>	Family and Child Protection Unit
<b>FIDA (U)</b>	Association of Women Lawyers in Uganda
<b>KCCA</b>	Kampala City Council Authority
<b>LASPs</b>	Legal Aid Service Providers
<b>LC 5</b>	District Local Council 5
<b>MOGLSD</b>	Ministry of Gender Labour and Social Development
<b>MOJCA</b>	Ministry of Justice and Constitutional Affairs
<b>RDC</b>	Resident District Commissioner
<b>SPSWO</b>	Senior Probation and Social Welfare Officer
<b>UNICEF</b>	United Nations Fund for Children
<b>ULS</b>	Uganda Law Society

## **CHAPTER 1: INTRODUCTION AND BACKGROUND**

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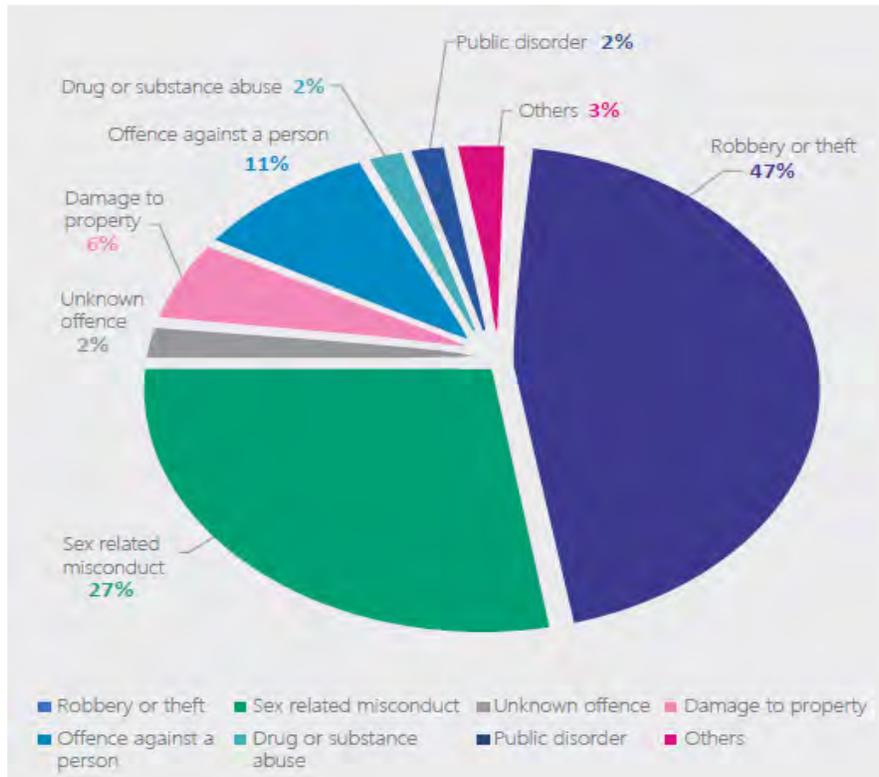
### **1.1 Background to the study**

Uganda has taken considerable steps in fulfilling its obligations as stipulated by provisions in the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) relating to the protection of children's rights against any form of violence, abuse and exploitation. But many of the children in Uganda are still facing violence – physical, sexual, or emotional – with over 8 million children, about 51 percent of the child population in the country, considered to be vulnerable (OVC Situation Analysis Report, 2009).

It is estimated that of the 17.1 million children below 18 years of age (over 50.7% of the population) in Uganda, at least 11.3 percent are orphans, 8 percent are critically vulnerable, while about 43 percent are moderately vulnerable with problems relating to malnutrition, abuse, inadequate access to education, commercial exploitation, and neglect (Uganda National Household Survey 2012/13). A number of children face specific protection risks at an early age of their childhood especially those whose families are poor. Their parents or guardians usually find it inevitable to send them to work instead of attending school or sometimes marry them off as part of a survival mechanism. They are often susceptible to living on streets, engaging in child labour, conceding to peer influence, and other risky behaviours putting these children in contact or conflict with the law (as victims and as offenders). A total of 4,781 cases where juveniles were the direct victims of crime were investigated by the police in 2010 as compared to 7,256 in 2014 reflecting an increase by 51.7 percent in 5 years (Annual Crime Reports, 2010–2014).

Many of these children typically encounter the justice system because the existing National Alternative Care Framework mandated to provide guidance to government and non-governmental actors in facilitating their access to appropriate care options is not adequately resourced to sustain a continuum of services required. In some cases, these children conflict with the law and mainly get arrested for robbery and theft, sexual misconduct, damage to property, and offences against a person that are increasingly becoming a serious concern for the juvenile justice system. The percentage of defilement cases reported to the police, for example, increased by 59.6 percent from 7,564 in 2010 to 12,077 in 2014, which translates to an estimated average of 33 girls being defiled every day and yet this data only captures the cases reported to the police (Annual Crime Reports, 2010–2014).

**Figure 1: Nature of offences as extracted from case data between 2010 and 2015**



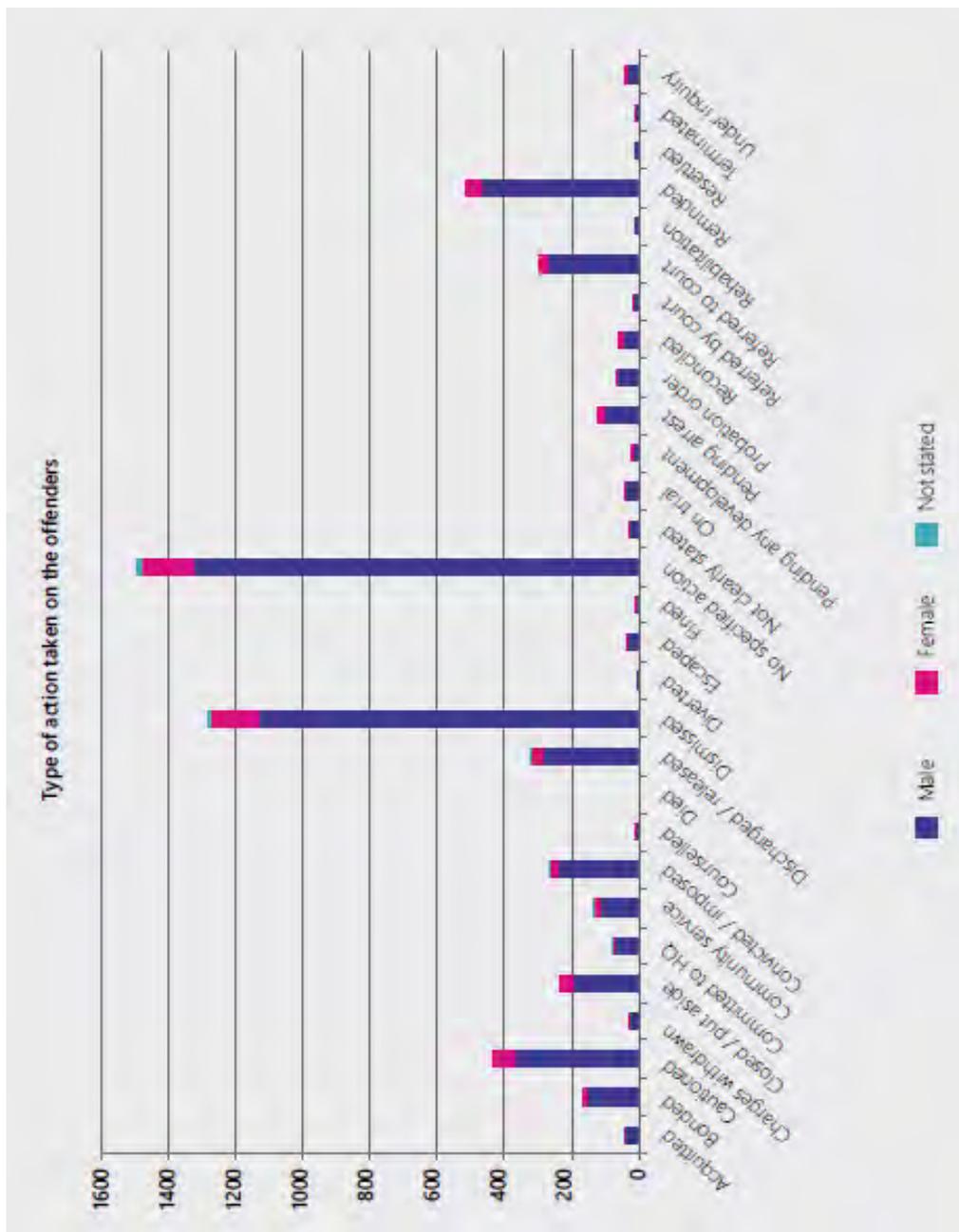
Unfortunately, there are also several occasions where children are arrested and charged with petty offences like absconding from school or being disobedient and unruly leading to deprivation of their liberty. Some law enforcement agencies do not understand that the arrest of a juvenile offender is a deprivation of their liberty and should only be used as an option of last resort.

The deprivation of liberty as the primary sentencing option often fails to take into account the needs and best interests of the child or address the root causes of conflicting with the law. Children come into conflict with the law for various reasons and therefore care should be taken to align the juvenile justice system to internationally-acceptable standards.

Reducing recourse to deprivation of liberty through the promotion of diversion programmes, restorative justice, and other alternatives should be the major focus of juvenile justice. Children need to be given a second chance in the course of addressing their offending behaviour because delinquent tendencies are inevitable during childhood development. But formal justice systems are usually ill-equipped to handle such cases in a non-retributive, child friendly, and age appropriate manner.

A number of child-related cases end up being dismissed or lost within the formal justice system since investigations into the cases are rarely comprehensively done due to the small resource envelop. This situation is mostly faced by children on remand whose cases are dismissed by court, or where charges are withdrawn, or where the issue is resolved at police. Probably, most of these cases would have been alternatively resolved through restorative or welfare approaches.

**Figure 2: Type of actions taken on offences as extracted from caseload data between 2010 and 2015**



Whenever there is a degree of specialisation in the handling of children either through the court system, the welfare system, or a local administrative system it is part of the juvenile justice system.<sup>1</sup> Juvenile justice often interchangeably referred to as child justice is the handling and treatment of

<sup>1</sup>The term juvenile justice system also refers to the laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment options specifically applicable to children in conflict with the law

children in conflict with the law in the justice delivery system. It is argued that this legal definition excludes child victims of abuse and neglect which the social definition may take into account.<sup>2</sup>

This national study on juvenile justice models in Uganda is therefore well suited because it is confined to children who offend the law. It is premised on the thinking that other than the conventional judicial system, there are other alternative ways by which juvenile offenders may be made to account and the bias is that these approaches are restorative with benefits of reforming the child. Hence the need to assess existing models of juvenile justice in both the formal and informal setting in order to highlight their operations and propose needed improvements.

Though the study has mainly focused on the juvenile justice system in Uganda, experiences from South Africa have been incorporated. Indeed, whilst specialised procedures for handling such juvenile offenders may already be in place, an effective juvenile justice system requires that the varying needs of children be continually and effectively assessed so that children in contact or conflict with the law are referred to appropriate services, and that they are offered care and assistance with specific focus on rehabilitation as well as the possibility of their reintegration into the community.

## **1.2 Objectives and Scope of the study**

The overall objective of the study was to assess the compliance of the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the African Child (ACRWC) with the current legal and policy framework governing children's rights in Uganda.

This will however be more focused on the handling of children in conflict with the law by the different institutions, duty bearers and caregivers in the juvenile justice system.

The specific objectives are:-

- To examine the current legal, policy, regulatory and institutional framework on juvenile justice in Uganda.

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<sup>2</sup> According to Richard Talagwa, former Juvenile Justice Advisor with Save the Children in Uganda

- To analyse the implementation frameworks of existing laws and policies in comparison with the major provisions of convention on the rights of the child ( CRC )and African charter on the rights and welfare of the child (ACRWC)
- To analyse the current laws and policies in comparison with the legal and policy regime governing children rights in South Africa.
- To recommend models informed by gaps in policy, practice, good practices and lessons for improving the implementation of juvenile justice in Uganda

### **1.3 Methodology and Approach**

The overall task as stated in the objectives was embedded in four key elements summarized as policy, legal and institutional framework, compliance with CRC and ACRWC, comparison to the South African juvenile justice system, and development of recommendation to inform adoption of appropriate models based on good practices and lessons. To do this the study followed particular steps.

#### **1.3.1 Overall Approach and Design**

The study was carried outdone in phases that included preparation of the inception report, developing and pretesting research tools, preparatory training for researchers and research assistants, conducting field work, data entry, complemented by a study visit to south Africa, as well as content analysis and reporting.

The study followed a mixed method design and adopted a cross-sectional strategy<sup>3</sup>, in which a survey, key informant interviews and focus group discussions were conducted. The cross-sectional strategy allowed the collection of the data at one point in time and also enabled the use of a variety of conventional quantitative, qualitative, child-friendly and gender-sensitive<sup>4</sup> methods of data collection. Additional information was collected through a review of documents from courts, police and remand homes among others.

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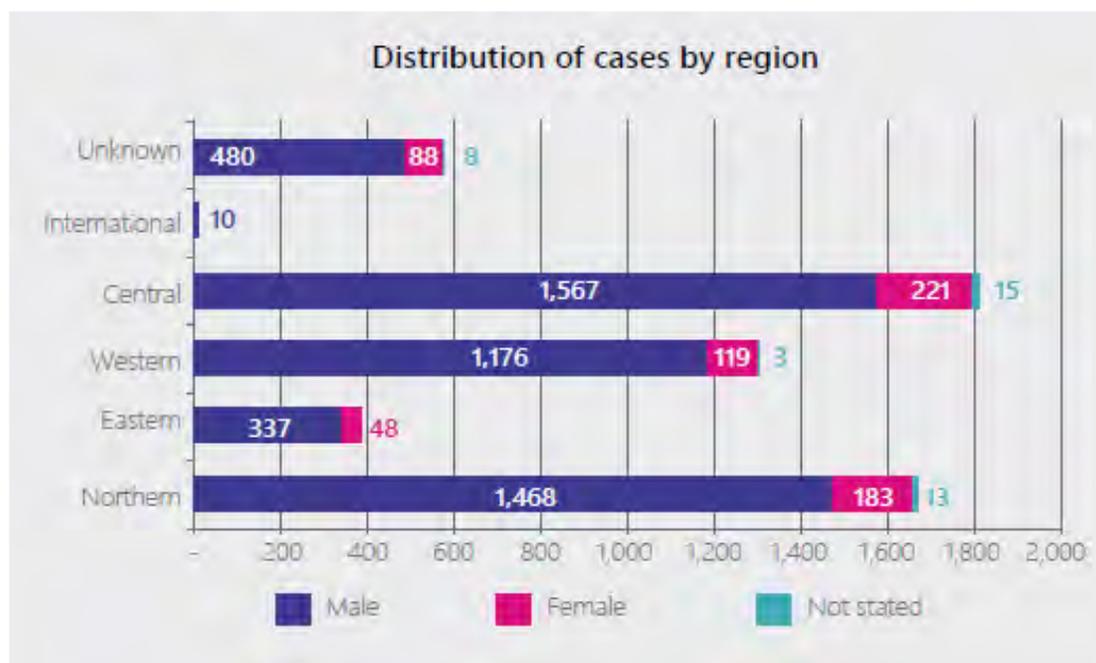
<sup>3</sup>See Creswell, J.W. (2014). *Research design: Qualitative, quantitative and mixed methods approaches*. Thousand Oaks, California: Sage, and Grbich Carol (2004). *New Approaches in Social Research*. Thousand Oaks. London: Sage Publications.

<sup>4</sup> As explained byHesse-Biber, Nagy Sharlene and Lina Patricia Leavy. 2007. *Feminist Research Practice*. California: Sage Publications, Inc.

### 1.3.2 Study area

The study was conducted in four regions of Uganda and covered 18 districts. The regions and districts that were visited included: central region (Mpigi, Kampala, Masaka, Mukono, Wakiso, and Kalangala districts); western region (Mbarara, Kabale, Kabarole and Masindi); northern region (Arua, Gulu, Lira, and Moroto); and eastern region (Iganga, Busia, Mbale, and Kumi). The districts were selected based on presence of juveniles or cases and accessible juvenile detention facilities. The number of child offenders handled was analysed using caseload data recorded between 2010 and 2015 (see Figure 3).

**Figure 3: Distribution of child offenders handled by region between 2010 and 2015**



### 1.3.3 Study methods

As stated in Sub-section 1.3.1, a combination of qualitative and quantitative methods was used in data collection. The main quantitative method used was a survey of juveniles or juvenile cases, while the main qualitative methods used were key informant interviews (KIIs) with persons with knowledge on juveniles (NGOs, Community Fit Persons, LCs, national and local government officials) and Focus Group Discussions (FGDs) with children at risk, community members, school-based groups and parents or guardians. The quantitative tool used was that of questionnaires for children, while the main qualitative tools were key informant guides and FGD guides. In addition, record forms were also used for extracting primary data from registers of the police, courts of judicature and the remand homes.

### 1.3.4 Population and sampling

**Study population:** This was a national study targeting juvenile offenders in Uganda. A total of 4,781 new cases involving children were reported in 2010, rising to 7,256 cases in 2014, and reaching an average of 8,000 cases by close of 2016 (Annual Crime Reports). The study gathered caseload data for child offenders handled by justice institutions in the targeted study area between 2010 and 2016 who included 1,491 children (remand homes), 2,008 children (court), and 2,237 children (police) giving an estimated total population of 5,736 children (i.e. 2,418 male, 279 female, and 39 children whose gender was not deducible from the caseload data gathered during the study).<sup>5</sup>

**Table 1: List and category of children from the caseload data sheets**

Target	Category	Male	Female	Technique	Instrument
<b>Case data from police, court and remand homes<sup>6</sup></b>	Theft and robbery	2,418	279	Data entry	Data form
	Sex related misconduct	1,363	193		
	Offences against a person	530	111		
	Causing property damage	288	31		
	Alcoholism, drug and substance abuse	110	1		
	Public disorder, rogue and vagabond	96	10		
	Various other offences	233	34		
<b>TOTAL</b>	<b>All categories in the caseload</b>	<b>5,038</b>	<b>659</b>		

**Sampling Procedures:** A total of 289 children (i.e. 68 girls and 221 boys) were interviewed as indicated in table 2 below. The key respondents targeted were children in conflict with the law, former child offenders and children at risk of offending the law.

**Table 2: List and category of child respondents**

Target	Category	Male	Female	Technique	Instrument
<b>Children</b>	Children in custody	26	15	KII	Questionnaires
	Former child offenders	34	11		
	Children at risk of offending	161	42		
<b>TOTAL</b>	<b>All child respondents</b>	<b>221</b>	<b>68</b>		

<sup>5</sup> It was however difficult to clearly track any given case record across the three justice institution making it impossible to ascertain the extent to which repetitions were made in reporting the number of child offenders handled

<sup>6</sup> A total of 39 children are not included in this category because their gender could not be established from the case data

Other stakeholders deemed crucial in the study were from the Uganda Children’s Parliamentary Forum, the Ministry of Gender, Labour and Social Development (MOGLSD), Ministry of Justice and Constitutional Affairs, the Justice Law and Order Sector Secretariat, the Uganda Police Force, the Judiciary, the Probation and Social Welfare Services, Wardens at the Remand homes, KCCA and the District Local Government (DLG), Non Government Organizations, Community Fit Persons, teachers, parents of children in the study category and other community leaders such as the village Local Council officials, religious and cultural/traditional leaders.

### **1.3.5 Data analysis**

The quantitative data obtained were entered into rows and columns using spreadsheets. Data cleaning was then undertaken as a process of correcting errors through record matching, identifying inaccuracies, improving quality of stored data, removing any form of duplication, and ensuring proper column segmentation, among others. The data was then exported to the Special Package for Social Scientists (SPSS) for subsequent univariate and bivariate analysis<sup>7</sup> in line with the study objectives stipulated in section 1.2 above.

### **1.3.6 Quality Control**

This study was carried out by the Research Fellow, M/S Theo Bitature Webale, a Lawyer and a Children’s or juveniles’ rights activist, an experience she has cultivated over the last 15 years. The research was undertaken in partnership with AfriChild, a distinguished research centre at Makerere University. Dr. Richard Asaba Bagonza, a Sociologist based at the School of Women and Gender Studies at Makerere University and in the Department of Sociology and Social Administration at Kyambogo University provided overall quality assurance. Street Law Uganda constituted the four teams of research assistants comprising of social scientists and lawyers who undertook field trips to the districts in the four regions of Uganda (north, east, west and central) with each team headed by a team leader.

### **1.3.7 Limitations and Delimitations of the study**

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<sup>7</sup>As explained by Grbich Carol (2004). *New Approaches in Social Research*. Thousand Oaks. London: Sage Publications.

The major limitations of the study included:

**Suspicion:** It was no easy accessing information on juvenile justice given that most of the records are kept by government institutions. Permission to access such information in its detail as required was sometimes treated with suspicion and often provided with restrictions. Child justice is a delicate matter that many are reluctant to tackle in its breadth and depth given the severity of the issues involved. Therefore, efforts were made to engage with the leadership of the institutions at the headquarters and district levels to ensure that the requisite permission was given to conduct the work. Although there were some institutions that refused to comply completely.

**Bureaucracy:** The process of accessing government institutions let alone permission to access information and records was bureaucratic. This slowed the pace of the survey bearing consequences on the financial, human and other resources as well as the time factor. The research team where possible tried to get allies from within the institutions to follow up the permission being requested for.

**Difficulty in tracing former child offenders:** Tracing former child offenders was difficult and in some instances proved futile given the distances between the remand home and where some of these children live. Although this factor did not substantially affect the study findings, the voice of this category of children was substantially low. The research team met only a few of them but based most of its deductions on earlier studies done in respect to this category of children.

**Difficulty in accessing respondents in the districts:** Some of the key respondents were district officials who at times failed to keep appointments because of their crowded schedules. At times the teams lost the opportunity to interview them or had to make additional visits to the respective districts.

**Expectations of financial rewards:** The respondents expected money or allowances from the research teams and its unavailability spurred suspicion that the team members kept it for themselves but the team built rapport with the respondents while underscoring the importance of the study.

**Limited literature for review on juvenile justice:** Availability of information about juvenile justice in Africa let alone in Uganda is limited because the existing systems, practices, and initiatives are not adequately documented. Many times even reviews on children laws and policies have either excluded or

covered very low content on juvenile justice. This has made reviewing literature very limited but the visit to South Africa provided useful insights for the study in this respect.

#### **1.4 Structure of the study report**

The first chapter describes the context of Uganda in ensuring the protection of children's rights against any form of violence, abuse and exploitation towards fulfilling its obligations as stipulated by provisions in the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). It further elaborates the study objectives and methodology.

The second chapter is a review of relevant literature on juvenile justice systems and interventions in various countries to underpin the major concepts and grounding theory for the study as a basis to justifying the research findings. Chapter three presents the findings from the study with an analysis of how these results can inform necessary improvements in handling child offenders.

The fourth chapter makes inference from the literature review, study findings, and learning visits to suggest needed reforms for Uganda's juvenile justice system through appropriate models.

Lastly, chapter five documents the identified good practices and lessons learned while chapter six makes several recommendations and conclusions relevant to the study followed by a list of major reference materials used and relevant appendices attached.

## **CHAPTER TWO: LITERATURE REVIEW**

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### **2.1 Introduction**

In this study materials and online resources on juvenile justice were reviewed. The review focused on national issues and the juvenile justice realm beyond Uganda'

In today's world, the word "juvenile" is being seen followed by the word "delinquency" to a disturbing degree. Clearly adolescence is an uncertain period that can put some young people in conflict with the law and endanger their health and wellbeing. Moreover, there are global trends that are exacerbating those risks, including rapid population growth and urbanization, social exclusion and the rising incidence of drug abuse. Yet juvenile crime or violence is only part of the story. It is important to recall that many adolescents come into contact with the law as victims.<sup>8</sup>

### **2.2 Juvenile justice systems in various countries**

Most adolescents who come into conflict with the law are still children, and they need to receive special treatment from the criminal justice system that reflects their status. There are still too many countries where adolescents are simply absorbed into the adult justice system, both to be tried and serve any eventual sentence. Adolescents who spend periods of pre-trial detention or serve prison sentences alongside adults are much less likely to be reintegrated into society when they are released and much more likely to revert to criminal behaviour.<sup>9</sup>

While incarceration is clearly unavoidable in some circumstances, it is essential to explore alternatives to custodial sentencing wherever possible, including counselling, probation and community service, as well as restorative justice that involves the child, family, community and victim and promotes restitution and reconciliation. The ultimate aim must always be that of reintegration, of encouraging young people towards responsible citizenship. Below are examples from selected countries.

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<sup>8</sup> The state of the world's children 2011. Adolescence, an age of opportunity. UNICEF page 52, 55

<sup>9</sup> Ibid page 55

### **Family group conferences in New Zealand**

The Family group conferences in New Zealand are regarded as a very successful means of diverting young people away from the formal justice system (Skelton, 1999 and , Zehr) In fact, they are central to decision-making for all moderately serious and serious offences (excepting murder and manslaughter) in New Zealand.

The Children, Young Persons and their Families Act, 1989, sets out the objectives and principles to govern state intervention with regard both to children and young people who are abused or neglected, and to those who commit offences. The primary aim is to involve communities directly in the decision-making process through negotiated, restorative resolution. The Act diverts all juvenile cases, except those involving a very serious crime such as murder, away from the police and court system to family group conferences. The importance in this method is that an offender in the company of his/her parents/guardians is enabled to meet the victim and chart away forward. Bearing in mind the reasons for commission of the offence in the first place and developing strategies to ensure non recurrence.

### **Pre-trial community service in South Africa**

The Pre-trial community service was officially introduced in 1992 to children older than 14 years. It is a diversion option that obliges the participant to serve a predetermined number of hours at a community based structure in his/her free time without any form of payment. Charges are withdrawn on condition that the service hours are completed within a stipulated time and the individual concerned had adhered to all other conditions stipulated by the court. Upon referral to pre-trial community service, a Probation Officer at the National Institute for Crime prevention and Reintegration of Offenders(NICRO) assesses the child to determine the number of hours that are to be served at the placement organization. A contract is drafted that binds the participant to complete the program. Breach of this contract could result in immediate referral back to the court for formal prosecution.

### **The Youth Empowerment Scheme (YES) South Africa**

This program is offered as a pre-trial diversion or a sentencing option by the National Institute for Crime prevention and Reintegration of Offenders(NICRO) in South Africa since 1993. Parents or guardians are expected to attend the first and last sessions. It consists of eight sessions crafted in a manual referred to as “Mapping the future.” The manual is a guide and can be adapted to suit the needs of individual groups. It deals with the self-concept and an understanding that children are responsible for their choices and

actions. A participant is made aware of the effects of having a criminal record, helped to discard negative stereotyping and provided a space to believe in oneself.

### **The Community Based Correction Program (CBCP), Ethiopia**

This is a community based form of diversion run by the Child Protection Unit (CPU) of Ethiopia in collaboration with the police but brings on board various actors to share in the program. These actors include NGO's, families, schools and communities. Local communities provide facilities for the programs such as halls and open grounds, elders in the community participate in program as well as community volunteers. Volunteers are selected based on their ability to communicate with children and their potential to act as role models. Community volunteers assist children in learning. Training is given to these volunteers on children's rights. Families also participate in the programs to help in the process of correcting juveniles. Juveniles are usually reported to the CPU by police officers, parents, neighbours and members of the public. The parents of the juveniles are contacted while investigations on the case are carried out and a subsequent report provided by the police in charge of the CPU. The case of the juvenile is assessed and referred to the CBCP where necessary and case is processed to determine if it can be handled. A treatment plan is drawn after the juvenile has been referred to the centre.

The treatment plan is a written agreement signed by the juvenile, parent or guardian and a community worker. The plan states and explains the nature of the activity that is to be undertaken by the child participating in the program. There is follow up on the juveniles' behaviour by volunteers, community workers, police officers and counsellors. Special interests of juveniles and talents are identified and encouraged. For example, playing football and playing musical instruments (Save the Children 2012).

### **Community Based Prevention and Diversion Program-Cebu City, Philippines.**

The community based prevention and diversion program in Cebu City in the Philippines aims at preventing juvenile crimes and reintegrating juveniles who have already committed crimes. It comes in two fold in the form of victim-offender mediation for juveniles who have already committed a crime and a crime prevention program to prevent crimes and assist juveniles who have been diverted.

The program brings together a number of actors and partners. The main actors are a non-profit organization which is an umbrella organization composed of; government organizations, community based organizations and academic and civil minded individuals who work together to achieve a common

aim. The other actor is the Child Justice Committee (CJC) which was set up as a community based structure to settle, reconcile and mediate in cases involving juveniles

### **The at-risk paradigm and alternative frameworks**

In terms of prevention, the idea is to negate or reduce risk factors and bolster protective factors as early as possible in the young person's development. These factors are thought to work at different levels for example, individual level, family level, neighbourhood level, society level – and interventions are co-ordinated accordingly. Rutter et al (1998) is the most comprehensive meta-analysis of such research, and evaluations of promising interventions to date.

The countries which tend to frame early intervention initiatives within the crime prevention context have done so within the theoretical framework of risk and protective factors. This paradigm, in research and policy, has developed from the USA to the UK and then mainly other English-speaking countries over the past 40 years, e.g. it's now firmly established in Australia [Cunneen and White, 2006]. It is based on scientifically robust identification of background factors associated with youth offending.

Youth justice workers in England and Wales carry out a risk assessment on young people who come to their attention, completing an electronic version of *Asset*. Similar risk assessment tools exist elsewhere, including *Asset* also in Scotland (McAra, 2006), and the Youth Level Service Case Management Inventory in Australia and Canada. However, these tools have been criticized for being subjective and culturally biased rather than being about objective and scientific analysis (Cunneen and White, 2006).

### **Family-focused initiatives**

In England and Wales, the most co-ordinated parent focused initiative has been the Parenting Programmes which provided parenting skills training for children seen as at risk (as well as parents given Parenting Orders. This has followed examples in the USA and in Australia. Such schemes have been criticized for making families responsible for youth crime and diverting attention from structural and wider social problems (Muncie and Goldson, 2006).

In Sweden (based on a US programme), the Community Parent Education Program is focused on families with pre-school children showing problematic behaviour. The intervention consists of group sessions

with parents aimed at promoting positive child behaviour, boundary setting and conflict avoidance. It is also common to have universal services for the whole community, but with a particular emphasis on parenting support. An example of a community level initiative in England and Wales is the On Track programme. This was targeted at deprived communities, known to both have a number of risk factors themselves (e.g. high crime rates, high drug use, etc) but also have a high proportion of families with risk factors (e.g. low income, unemployment, large families). An increasing trend is to combine such early intervention with early years screening for behavioural risk factors in young children.

In Holland and Germany, for example, doctors look for behavioural problems in pre-schoolers and babies, and advise parents appropriately (Schmetz, 2004). The Dutch initiative, Starting Together, includes early screening for social problems to go alongside early parenting support (Anker, 2004).

### **School-focused initiative**

Schools have been seen as a useful resource for early intervention initiatives, to tackle exclusion, promote rights or opportunities, highlight responsibilities or prevent crime, these initiatives are widespread. Although England and Wales has developed skills and cognitive behavioural education programmes for use in custodial institutions, other countries have focused more on their use as an early intervention tool on the mainstream school curriculum. Teaching may include conflict resolution, negotiation training, assertiveness, problem-solving, moral education and various other fundamental social skills.

In Austria, teachers teach 'Communication, Cooperation and Conflict resolution' in a set lesson every week (Bruckmuller, 2004). Another prime example is the Beccaria Model Project in Hungary, running since 2004, which provides training for teachers and material for students<sup>10</sup>. An Austrian project (translated as 'I'm strong' or 'Out – the Outsiders') has a slightly different emphasis on developing skills specifically to resist negative peer pressure, which we know is a key risk factor in youth offending (Öffentliche Sicherheit, 2000; Bruckmuller, 2004).

Following the demand for restorative principles, there has been a trend recently to develop positive peer relations, teach conflict resolution and tackle signs of anti-social behaviour in schools through mediation

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<sup>10</sup>Crime Prevention in Hungary, 2005

projects<sup>11</sup>. School students are trained up as mediators, helping their negotiating and leadership skills as well as the social skills of those involved in the conflict. There has been significant progress on this in England and Wales (see Baginsky, 2004; or [www.mediation.org.uk](http://www.mediation.org.uk)), including an unevaluated part of the Youth Justice Board's Restorative Justice in Schools Programme<sup>12</sup>. There are similar programmes across Europe and beyond, including Belgium, Italy, France, Austria, Scotland, Hungary, USA, Canada and Germany (Stevens et al, 2006; Shaw, 2001). It is particularly common for police to be involved in school-based initiatives. This has been best developed in North America, but is increasing in Europe, for a good guide to cross-national practice in this area. England and Wales initiated the Safer Schools Partnerships, which saw police officers being stationed in secondary schools, with mixed results. Some other countries have tried this 'permanent' presence approach, including Canada, the USA (e.g. COPS in Schools Programme and School Resource Officers.)

However, in most countries, the role of police tends to be more educational, systematically organising visits and discussions, etc in schools (including Sweden, Denmark, Norway, Finland). The USA has used this approach to deal with particular problems there, such as drug offences and, for instance, gang-related violence (e.g. GREAT Project [Esbensen et al, 2001]). One of the most widespread examples in Europe is the School Adoption Plan (Poland, Belgium, Slovakia, the Netherlands, Estonia), in which police teach primary students twelve classes. In Poland, such discussion-based projects have included 'Police for children-children for the police', in order to try to build positive relations between the two groups (a problem identified cross-nationally [Hazel, 2005]). An extended version of this exists in Western Australia (Police Schools Involvement Project) (Sutton, 1998) and Austria (Bruckmuller, 2004), where police teach, organise activities and work with the staff.

Like the family-focused initiatives, schools can also be used not just for support but also to monitor or track potential offenders. For example, in France 'school monitoring' involves educational and social services agencies to note young people at risk of truancy and dropping out. Again, the main principle is welfarist and educational, but with crime-prevention implications (Wyvekens, 2004).

### **Initiatives directed towards at risk children**

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<sup>11</sup>see [www.mediation-eu.net](http://www.mediation-eu.net)

<sup>12</sup>Youth Justice Board, 2004

Some projects have focused resources more specifically on children considered to be at risk. Examples of these targeted programmes in England and Wales include Youth Inclusion Programmes (YIPs), for 13 to 16-year-olds, and YISPs, for 8 to 13-year-olds, although they may also include universal services. Some initiatives try to shock the child in order to deter them from getting involved in further anti-social behaviour or going down a pathway into crime. The most cited example of such a programme is Scared Straight, which is used widely in the USA. Young people at risk of offending are taken into prison to be shown the negative implications of such a course (Roth, 2004).

A number of projects in England and Wales have focused on giving at risk young people organised leisure activities to both divert them from offending, and engage them in positive interests (e.g. Splash, some YISP and YIP activities). This has been a particular focus in the early intervention practice of some other countries, such as Prevention Clubs in France [Wyvekens, 2004], and is particularly favoured as a first resort of prevention in Eastern Europe, for instance, Hungary, Lithuania, Slovenia (Stevens et al, 2006). Morris et al (2003) provide a useful summary of the hundreds of leisure projects in Australia (and good practice guidance), the majority of which have the primary aim of diverting at risk children from antisocial behaviour and crime. A more fundamental change in the life of a young person who is at risk is placing them in therapeutic foster care as a preventative measure.

Like most of the activities above, this is done across countries alternatively within the crime prevention or welfarist agenda. Schemes are particularly well developed in the USA<sup>13</sup> and are starting to develop elsewhere, with examples now in England and Wales, such as in Kent (Kent County Council, 2006). Indeed, overall, research has indicated that the best programmes for dealing with those involved with, or at risk of criminal activity is intensive support of one kind or another. In the USA, this has been shown with the results of multi-systemic therapy programmes (normally staying with their own family). Despite the fact that it involves intensive treatment from professional therapists available 24 hours a day, they have been shown to be cost-effective (Rutter et al, 1998).

### **Child panel in Ghana**

The Ghanaian children's act (5600f 1998) provides for child panels at district level. It has non judicial functions and the panel is composed of members from relevant government departments (social welfare

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<sup>13</sup>Task Force on Community Preventive Services,2004

and justice), district officials, traditional council and community. A child panel assists with victim offender mediation in minor criminal matters involving a child. A child panel may impose the following orders apology, restitution, or service by the child to offended person. (Child justice in Africa, Julia Sloth-Nielsen and Jacqui Gallienti 2004).

## **PART THREE: FINDINGS AND ANALYSIS FROM THE STUDY**

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### **3.1 Introduction**

The study findings were drawn from the documentary review, and empirical findings from questionnaires, key informant interviews and focus group discussions as outlined in chapter two. The findings are presented in line with the stated objectives. The analysis of the data was designed to assess juvenile justice systems in Uganda against their compliance with international guidelines, particularly the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child as well as other relevant standards, rules, and guidelines.

### **3.2 The International Standards, Rules and Guidelines**

#### **3.2.1 The UN Convention on the Rights of the Child**

The UNCRC 1989 is the primary instrument that provides guiding principles against which children in conflict with the law among others are protected and access justice as follows:–

**The best interest of the child:** Article 3 states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**

**Non-discrimination:** Article 2 obliges state parties to respect and ensure the rights of each child within their jurisdiction **without discrimination of any kind**, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**Participation:** Article 12 provides that a child who is capable of forming his or her own views should be accorded the right to express those views freely in all matters affecting him or her, whereby these views are given due weight in accordance with the age and maturity of the child. So, children have the right to

participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard within the family, the school or the community.

**Survival and development:** Article 6 recognises that every child has the inherent right to life requiring his or her survival and development to be ensured. Article 20 guides that a child in detention is deprived of his or her family environment and is vulnerable. As a result, the state has an obligation to ensure special protection and assistance focused on the wellbeing of the child in terms of health, welfare and social services, recreation and leisure, protection from violence and harm, education, among others. This is based on the need to maintain physical and psychological wellbeing of the child. It further advises on monitoring of places of detention through inspection visits as being an extremely important way for the state to ensure that the needed protection and assistance is provided in practice.

However, article 37 maintains that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Every child deprived of liberty has to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, it is important that every child deprived of liberty is separated from adults unless it is considered in the child's best interests not to do so. States parties must also seek to promote the establishment of child appropriate laws, procedures, authorities and institutions specifically intended to support children alleged as, accused of, or recognised as having infringed the penal law.

Similarly, article 40 requires states to establish a separate system of juvenile justice for children. At a minimum, states must set a minimum age of criminal responsibility, provide measures, where appropriate, for children in conflict with the law without resorting to judicial proceedings, and provide a variety of alternatives to institutional care. Whatever the degree of specialisation, a juvenile justice system should at least have regard to these requirements.

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

The ACRWC was adopted by the Organisation of African Unity (OAU) in 1990 to localise the provisions of the UNCRC in Africa. The Charter recognises the key principles of the UNCRC as a means to ensuring that all actions and decisions by individuals or authorities are taken in the best interests of the child. It

further requires that every child, regardless of his or her race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status, has the right to: live; be named and registered at birth; adequate health care, nutritious food and safe drinking water; education and play.

Article 4 obliges that actions concerning the child undertaken by any person or authority give primary consideration to the best interests of the child.

Article 17 states that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.

### **3.2.3 Other relevant international guidelines and rules**

- UN Guidelines for the Prevention of Juvenile Delinquency promotes the prevention of juvenile delinquency as an essential part of deterring crime because children can develop non-criminogenic attitudes by engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, (Art. 1).
- UN Standard Minimum Rules for the Administration of Juvenile Justice state that the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period (Art. 19(1)). Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home (Art. 13(2)).
- UN Standard Minimum Rules for Non-custodial Measures provide for use of pre-trial detention as a means of last resort in criminal proceedings based on proper investigation of the alleged offence and focused on protection of society and the victim (Art. 6(1)).
- UN Guidelines for Action on Children in the Criminal Justice System require juvenile courts to have primary jurisdiction over juveniles who commit criminal acts and with special procedures to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate (Art. 14(d)).
- UN Rules for the Protection of Juveniles Deprived of their Liberty advise that denial of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary

period and should be limited to exceptional cases (Art. 2). All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release (Art. 79).

- UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters stipulate that restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations (Art. 7).
- UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime call for specialised strategies in supporting child victims and witnesses who are particularly vulnerable to recurring victimization or offending (Art. 38).

### **3.3 The national regime governing juvenile justice**

#### **3.3.1 The legal, policy, and strategic framework**

The government of Uganda having signed, ratified and domesticated the CRC, the ACRWC, and other international instruments relevant to juvenile justice, is duty bound to promote the human rights standards and principles enshrined therein. These various obligations are reiterated in the different national legal, policy, regulatory and other related frameworks below as a demonstration of the state's commitment to protect, respect and fulfil them.

**The Constitution of the Republic of Uganda 1985** embodies the international standards and principles which have further been operationalised by other national legislation, policy, regulatory, institutional, strategic, and implementation frameworks. Article 34 specifically provides for the following rights of children: (1) The right to know and be cared for by their parents or other people; (2) The right to basic education which must be provided by the Government and the parents of the child; (3) The right not to be denied medical treatment or other social or economic benefits; (4) Protection from all exploitation; (5) Children who are below the age of 16 years must not be employed or do work that is harmful to their health or that interferes with their education; (6) A child offender shall not be detained with adults; and (7) Orphans and other vulnerable children must be accorded special protection by the law.

**The Children Act Cap 59** consolidates the law relating to children to provide for the care, protection and maintenance of children; to provide for local authority support for children; to establish a family and children court; as well as to make provision for children charged with offences and for other connected purposes. Part 4 of the Act (i.e. Sect. 13 to 18) institutes the Family and Children Court while part 10 (i.e. Sect. 88 to 105) provides for the necessary safeguards relating to age of criminal responsibility, detention pending trial, and the revocation of a death sentence on any person who at the time of committing an offence punishable by death was below eighteen years of age. The new provisions that stand out in the **Children (Amendment) Act, 2016** are prohibition of the death penalty for offenders who are below 18 years, powers high court to sentence without reverting to children's court and the reduction of the remand periods.

**The Probation Act 1963** permits the release on probation of offenders in certain cases especially those involving children. Once due inquiry has been made with regard to the circumstances of the case which include the nature of the offence, the character of the offender, and securing the supervision of the offender, the court can decide to make a probation order instead of sentencing an offender.

**The Births and Deaths Registration Act 1973** requires the father or mother of a live child to register the particulars concerning that birth. This helps to ascertain the age of a juvenile especially when in conflict with the law so that the necessary safeguards are put in place to ensure his or her best interest.

**The Penal Code Act Cap 120** provides for offences against child victims like desertion of children, neglecting to provide for children, child stealing, defilement of girls under the age of eighteen, It also provides for other offences like theft, robbery, defilement, assault, and affray commonly committed by children. It is also important to also note that children under the age of 12 cannot be held criminally responsible for their actions, because they do not have the mental capacity to initiate such offences

**The Magistrates Court Act Cap 16** details the provisions in a criminal trial and manner in which offenders will be handled, but the main mandate to hear children's cases is provided for by a magistrate's court that is duly converted into the Family and Children Court for that purpose.

**The Magistrates Courts (Amendment) 2007 Act** provides for the privacy of a child in defilement proceedings from the media.

**The Local Council Courts Act 2006** establishes local council courts for the administration of justice at the local level, to define the jurisdiction, powers and procedure of the established courts and to provide for other related matters. The Local Council Courts have jurisdiction over the determination of matters specified under the Children Act. In addition, this court has criminal jurisdiction to handle some offences commonly committed by children, such as affray, common assault, actual bodily harm, theft, criminal trespass, and malicious damage to property. Notwithstanding any penalty prescribed by the Penal Code Act, the Local Council Court may make the following orders reconciliation, compensation, restitution, community service, apology or caution.

**The Community Service Act 2000** regulates the non-custodial punishment by which after conviction the court makes an order for the offender (including juveniles) to serve the community for a specified period of time rather than undergo imprisonment with the consent of the offender.

**The Prisons Act 2006** provides for the organisation, powers and duties of prison officers, and for matters incidental thereto. It clearly stipulates that a juvenile prisoner should not be imprisoned with adults or be put in a prison for adults.

**The Prosecutions performance standards and guidelines of 2014** provide guidance for the Director of Public Prosecutions in child related cases under s.2.2, such concern about the age of the juvenile, prioritise juvenile cases, ensure that they are accompanied by PSWOs/parents and develop child friendly skills among others.

**The Orphans and Vulnerable children's policy 2003** provides the overarching national framework in Uganda for ensuring that the rights of children and the general population are protected. Furthermore, there are a number of complementary policies and programme strategies that impact on the welfare of children. These include the National Health Policy, the Gender Policy, the Universal Primary Education Policy, the National Child Labour Policy, and various sections under the National Development Plan. However, there is no specific juvenile justice policy which guides the continuum of services needed by children in contact or in conflict with the law as well as bridging the disjointed processes among existing institutions that handle issues of children (e.g. schools, local council courts, the police, the judiciary, and remand homes). Nonetheless, there are several ongoing efforts to address these challenges.

The **National Framework for Alternative Care (2014)** takes into consideration the UN Guidelines on Alternative Care to reduce the number of children in institutional (orphanage) care; to provide actors at different levels with clear guidelines and placement options for children in need of alternative care, based on a defined continuum of care principle; as well as to put in place effective mechanisms that can comprehensively support existing government structures to carry out their statutory responsibilities for overseeing the care of children in alternative care.

The **National Strategic Programme Plan for Orphans and Other Vulnerable Children (2011)** provides strategies, guidelines and systems to guide stakeholders in providing wide-ranging and high-quality services to orphans and other vulnerable children (OVC) to improve socio-economic security, food and nutrition security, health issues such as treatment for HIV, education, legal protection services for children as a result of the Children Act, and the needs of children affected by war. The programme was revised to address the various gaps made evident from the evaluation processes with emphasis on economic strengthening of OVC households in Uganda. It outlines categories of vulnerable children to include children in contact with the law, children experiencing various forms of abuse and violence, street children, abandoned/neglected children, out-of-school children, among others.

The **joint government strategy on child protection** is still being developed with crucial engagements relating to child-sensitive social protection, the national strategy to eliminate child labour, policy reforms on juvenile justice, equity-based mapping, law enforcement, as well as creating linkages between formal and informal systems for ensuring protection of children's rights.

### **3.3.2 The institutions and key actors handling the juveniles**

Uganda has an Integrated Child Protection System, which has adopted a holistic programming approach to protect all children. It is building stronger linkages between a number of relevant sectors (social welfare, education, health, and justice) and stronger working relations with the various actors at the national, sub-national and local community levels.

The **Justice, Law and Order Sector (JLOS)** secretariat provides a major policy and strategic framework to guide coordinated interventions for the different institutions and key actors especially through the Justice for Children (J4C) programme. The JLOS institutions include the Ministry of Justice and Constitutional Affairs, the Judiciary, the Centre for Arbitration and Dispute Resolution, the Directorate

of Citizenship and Immigration Control, the Directorate of Public Prosecutions, the Judicial Service Commission, the Law Development Centre, the Ministry of Gender, Labour and Social Development (with emphasis on juvenile justice), Ministry of Internal Affairs, Ministry of Local Government (with emphasis on Local Council Courts), the Tax Appeals Tribunal, the Uganda Human Rights Commission, the Uganda Law Reform Commission, the Uganda Law Society, the Uganda Police Force, the Uganda Prison Service, and the Uganda Registration Services Bureau.

The **Justice for Children Task Force under the J4C** programme is the task force under the JLOS charged with crafting a unified strategy for improving services for children in the sector. Currently, JLOS has adopted the global justice indicators in its Strategic Investment Plan (SIP3) that integrate with the strategies of the Uganda Police Force, the Directorate of Public Prosecutions, and the Judiciary, although these have not yet been reflected in the action plan of the Ministry of Gender, Labour and Social Development which is the major government agency mandated to handle issues relating to juvenile justice across the country. Some strategic linkages also exist with other institutions like the Ministry of Health, the Ministry of Education and Sports, as well as civil society players (e.g. Legal Aid Providers, the academia, research institutions, and development partners).

The key actors at community level include the Family and Children Court, the Probation and Social Welfare Officers, the Community Development Officers, the police officers (especially Child and Family Protection Unit, the Criminal Investigations Department, and Community Liaison Office), the Local Council members, the J4C Coordinators, the FIT persons, and the community volunteers.

### **3.3.3 The handling of juveniles and their access to the justice system**

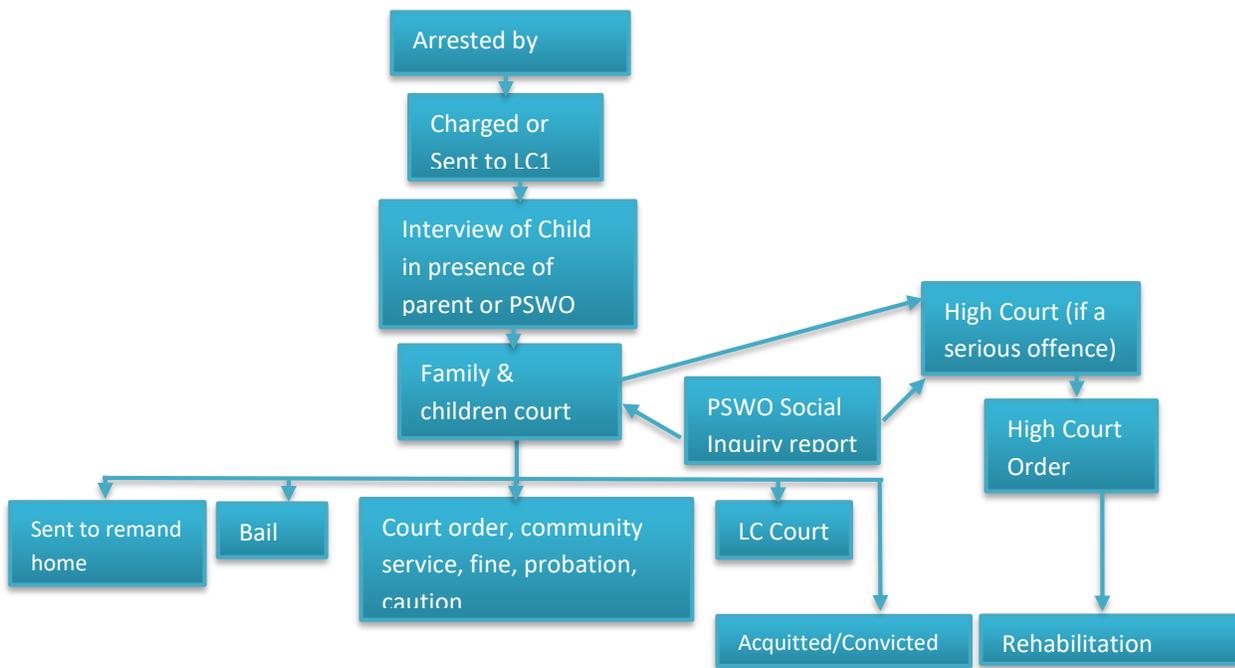
Juvenile justice is one of those nascent yet adversely affected phenomena in the children's rights realm in the wake of the increasing number of children involved in offending the law. This may to a large extent be about offending the law but there are also several other factors influenced by societal attitudes, norms and values. Often a concept centred on criminal justice, it is becoming obvious that the social and economic elements in it cannot be ignored.

Although the country has a robust legal and policy framework to minimise these influences, many of the interventions by government institutions and other key actors handling juveniles are not effectively feeding into each other across the child protection related sectors. As a result, enforcement tends to be

weak especially where children who need support from the National Framework for Alternative Care tend to be the victims of arrest.

Even though there is a provision for caution and release, a number of children especially who have not got a proper family support linkage will be detained and where they are taken to court it is more likely that the case will be dismissed.

**Figure 4: Pictorial presentation of the current child justice system**



It is conspicuous that poverty is among the causes of children offending the law. This is supported by the findings in this report and other similar studies. In a survey conducted by Retrak, street children are reported to constitute the highest number of child offenders with poverty-related factors as the greatest trigger for driving children to live and work on the streets.<sup>14</sup>

According to the UNICEF Situation Analysis Report (2013), there are approximately 100 million street children globally; 10 million of these are in Uganda. The Retrak 2015 Survey also found that the child influx to the streets of Kampala alone is 16 per day. As is often the case, street children usually commit crime in order to survive. In the same vein appreciating causes and conditions under which such vulnerable and most-at-risk children offend the law is critical. Child prostitutes, children in border areas,

<sup>14</sup> Pg 10 ReTrak Resource Book, 2015

islands and post conflict areas such as Northern Uganda and the Karamoja region are most at risk of offending the law given the conditions in which they live. Children orphaned by HIV/AIDS and civil war as well as other related factors similarly find themselves in situations where they have to fend for themselves and in some instances risk offending the law as they eke a living.

The social dimension has a relationship with social norms which draw a standard for “socially acceptable behaviour let alone preventing child offending. Some children have been apprehended for refusing to go to school or in a Police swoop sometimes with no charges preferred against them but for engaging in a socially unacceptable behaviour. Children do not only offend the law but also social norms which are governed by the law. This consideration lays credence to the need for child justice models that are appropriate to the specific country context of Uganda.

Arguably, Uganda operates a dual child justice regime comprising of the formal system on one hand such as the Probation and Social Welfare Office (PSWO), the Police and Judiciary are mandated to handle child and related affairs in the justice delivery system; while on the other hand is the social justice mechanisms like Local Council committees mandated to evoke their administrative roles and buttress the formal justice system as a quasi-judicial institution. Similarly, the role of the Fit Persons in the community is also recognition of the interplay between these two systems. The Children’s Act prescribes procedures through which both the legal justice system and quasi-judicial system operate emphasising retribution and punitive measures as well as caution for child offenders.

### **3.3 The grounding theory on juvenile justice**

The obtaining juvenile justice system remains largely driven by a conventional model though with a few innovations embracing preventive and diversionary approaches. This has prompted the need to identify emerging alternative models drawing from good practice and lessons learned which will be explained in subsequent sections of the report. The conventional model was inherited from the English Legal System where juveniles are apprehended, taken to the Police, and either cautioned, granted bond, detained pending investigations or prosecution.

In Court, according to the law applicable and at the discretion of the judge or magistrate the juvenile is, prosecuted, cautioned; fined; remanded; bonded or sentenced to community service. However other than the conventional model, central focus is mainly placed on a few alternative models based on the diversion

approach. There is little emphasis put on other critical approaches such as prevention, reintegration, and rehabilitation through alternative models other than the conventional model which tends to be non-reconciliatory and non-rehabilitative.

**Figure 4: A diagram illustrating the diversion model in Uganda<sup>15</sup>**



In Uganda, the Diversion Program was initiated way back in 2001 by the Law Development Centre’s (LDC) Legal Aid Clinic (LAC)<sup>16</sup> with the rationale to diverting and reversing child offenders from the formal justice system back to the community. This was intended to reduce reliance on institutionalized approaches to juvenile justice, overcrowding at the remand home and Police cells some of which are lacking in separate facilities for juveniles.

It was considered as one of the effective way of reducing stigmatization of children by the rigorous criminal justice system, loss of education opportunities by children in conflict with the law, criminal engineering occasioned by mixing of children with senior criminals and leading to recidivism, as well as disruption of social and family ties.

<sup>15</sup>Internal Evaluation Report on Diversion, Legal Aid Clinic of Law Development Centre, 2002

<sup>16</sup>Diversion Evaluation Report, 2011

Draft Guidelines for its operations were developed in 2014 and are in the process of being institutionalized in the justice delivery system. It is therefore the kind of approach that can be effectively tailored to develop alternative models that ensure responsive handling of child offenders. The diversion programme in Uganda has been designed to take place in the community, at the Police and Court. These have been categorized as community-based diversion, police-based, as well as pre-trial diversion and post-trial diversion respectively. The model was developed from the provisions of the Children Act and to guarantee dignity and restoration of the child's image.

The structure under which diversion operates in Uganda is both formal and informal. The guidelines provide for the roles of the Police, the Magistrates, the Local Councils (LCs), the Fit Persons and Family in facilitating diversion. It allows for sessions to be carried out in both the informal community arrangement and the formal setting at court or police. The principles that govern diversion include the best interest of the child, participation, non-adversarial, restitution, restoration, rehabilitation, non-custodial. Although diversion is implied in the Children Act, it needs to be specifically remodelled if it is to have effect in its operations across the entire spectrum of actors around child justice.

A review of relevant documents on the Juvenile Diversion programmes was undertaken to inform a comparative analysis of research findings relating to the Ugandan model with similar innovations under other jurisdictions like the NICRO in South Africa, Screening in Namibia, pre-trial diversion in Nebraska (USA), and the Community Service programme in Zimbabwe.

### **3.4 Child Rights in Uganda: Empirical Evidence**

The study findings were drawn from key informant interviews and focus group discussions using questionnaires and question guides respectively. The analysis of the data was designed to assess juvenile justice systems in Uganda against their compliance with international guidelines, particularly the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child as well as other relevant standards, rules, and guidelines. A total of fifteen measurable juvenile justice indicators were chosen to assess the extent to which juvenile justice systems in Uganda are in place and functioning as required by international standards and guidelines. The study findings provide information on what happens to children who come into conflict with the law while indicators help to assess policy and other reforms needed to ensure the protection of such children.

### 3.4.1 The nature of arrests

In this study, juveniles were asked to state whether they were arrested and how they were arrested. The survey respondents reported to have been arrested by police (39%), reported by their own family (17%), intercepted by the public (15%), or apprehended by the victim (10%). Others were either not arrested (10%) or they did not provide a clear response (10%).

#### Box 1: The case of South Africa on categorisation of offences

The Child Justice Act 75 /2008 divides the offences into three schedules according to seriousness of the offences whereby a child may not be arrested for schedule 1 offences unless there are compelling reasons for the arrest in the best interest of the child. **(SA study trip march 2017)**

The survey respondents indicated that they were handled gently (39%), but some others were handled violently (12%), and a considerable number (27%) claim to have been tortured and/or assaulted during arrest. It was noted that those who were tortured and assaulted mostly included children suspected of offences like murder, theft, robbery, and defilement.

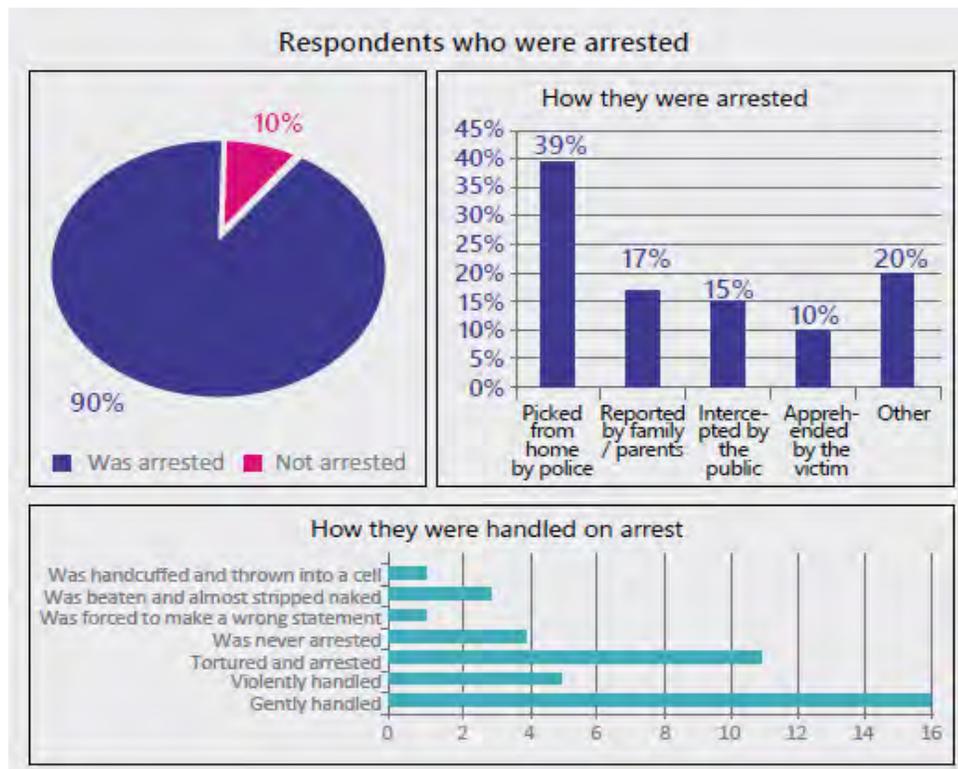
“I was accused of killing my neighbour’s daughter with a hoe. She had beaten my younger brother and I hit her in the stomach but not intending to murder him. I was intercepted and beaten by a mob that tore my clothes and almost stripped me naked before taking me to the police.” *Interview response from a survey respondent, 13 years, female from central region, detained at Kampiringisa.*

On a very positive note, none of the juveniles interviewed reported to have been held with adults in the same police cell. The police make an effort to transport a juvenile(s) to neighbouring Police Stations with juvenile cells or grant them bond.

“I was arrested from Napak and brought here since they refused to grant me a bond yet there were no juvenile cells at the police station. I am a senior four student ...accused together with my adult relatives for involvement in mob justice and taking

revenge on someone (murder) who had also killed my mother.” Interview response from a survey respondent, 17 years, male from northern region, detained at Moroto Police Station.

**Figure 5: The nature of handling child suspects on arrest**



As soon as possible after arrest, the police are required by law to inform the child’s parents or guardians and the secretary for children’s affairs of the local government council for the area in which the child resides but this is not done especially for street children who have weak or no family relations.<sup>17</sup>

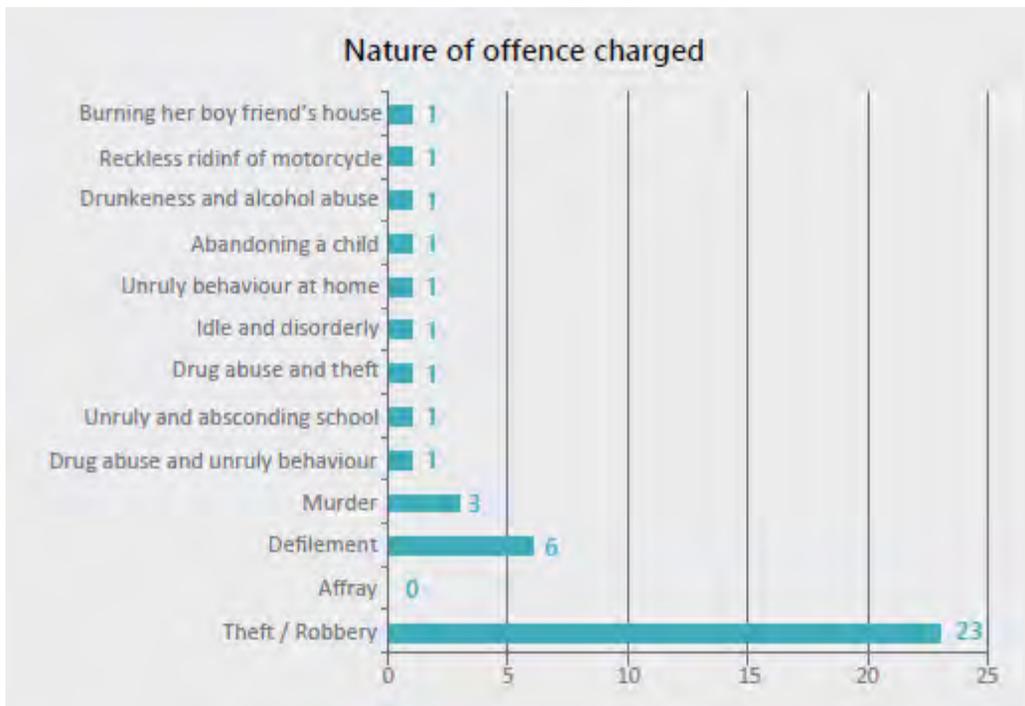
### 3.4.2 The type of offences

In this study the survey respondents were asked the offence they were charged with. An analysis of the offences indicates a grey area arising from the criminalisation of children at risk of offending as well as children found in an irregular situation sometimes regarded as being idle and disorderly while others are charged with offences like rogue and vagabond. Children who spend the majority of their time on the streets may or may not technically commit an offence but are sometimes, if not often, arrested on the

<sup>17</sup> Where a child’s parent or guardian cannot be contacted, a probation officer or an authorised person has to be informed as soon as possible after the child’s arrest so that he or she can attend the police interview.

pretext that they might commit an offence. Either way, these children find themselves in a place of detention as a result of being arrested by the police. From the point of view of the protection of the child, such situations or behaviour ideally should not be criminalized but rather regarded as children in need of care and protection and subject to the concern of a social welfare officer.

**Graph 1: The type of offences the respondents were charged**



The survey respondents were asked to state the offence they were charged with and 56 percent of them were related to theft and robbery whereas, 15 percent of them were charged with defilement and 7 percent with murder. Although, consensual sex between minors is categorised as defilement the children involved do not cooperate therefore making it difficult to prosecute. Most of the cases brought in respect of a child revolve around theft and robbery, specifically defined in the charge sheet as possession of stolen property/house breaking instrument, obtaining goods by false pretence, conspiracy to commit theft, and intention to commit theft.

In South Africa, the handling of offences depends on the seriousness of the offences. Schedule 1 contains the least serious offences and Schedule 3 the most serious offences. These schedules then have different implications for children charged in terms of one of them. For instance, children charged with Schedule

3 offences (the most serious) can only be diverted in exceptional circumstances. If a child is charged with more than one offence and these are all dealt with in the same criminal proceedings, the most serious offence must guide the manner in which the child must be dealt with in terms of the Act. This enables the effective handling of petty offenders in a manner suited to their offence without necessarily having to interface with more serious or habitual offenders who are likely to negatively influence them.

**Box 2: The case of South Africa on offences under schedule 1**

Schedule 1	
<ul style="list-style-type: none"> <li>• Theft (incl. receiving stolen goods) below value of R2 500.</li> <li>• Fraud, extortion, forgery and uttering or offence referred to in the Prevention and Combating of Corrupt Activities Act 12 of 2004 below value of R1 500.</li> <li>• Malicious injury to property with value below R1 500.</li> <li>• Common assault.</li> <li>• Perjury.</li> <li>• Contempt of court.</li> <li>• Blasphemy.</li> <li>• Compounding.</li> <li>• <i>Crimen iniuria</i>.</li> <li>• Defamation.</li> <li>• Trespass.</li> <li>• Public indecency.</li> <li>• Engaging sexual services of persons 18 years or older [section 11 of the Sexual Offences Act 32 of 2007].</li> <li>• Bestiality [section 13 of the Sexual Offences Act 32 of 2007].</li> </ul>	<ul style="list-style-type: none"> <li>• Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault) [sections 15 and 16 of the Sexual Offences Act 32 of 2007].</li> <li>• Possession of illicit dependence-producing drugs below value of R500, but excluding any statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act 101 of 1991.</li> <li>• Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act 101 of 1991.</li> <li>• Any conspiracy, incitement or attempt to commit any offence referred to in Schedule 1.</li> </ul>

**Box 3: The case of South Africa on offences under schedule 2**

## Schedule 2

- Theft (incl. receiving stolen goods) above value of R2 500.
- Fraud, extortion, forgery and uttering or offence referred to in the Prevention and Combating of Corrupt Activities Act 12 of 2004 above value of R1 500.
- Robbery, other than robbery with aggravating circumstances.
- Malicious injury to property above R1 500.
- Assault, involving the infliction of grievous bodily harm.
- Public violence.
- Culpable homicide.
- Arson.
- Housebreaking (common law or a statutory provision, with the intent to commit an offence).
- Administering poisonous or noxious substance.
- The abandonment of an infant with the intention to kill it (Crimen expositio infantis).
- Abduction.
- Sexual assault, compelled sexual assault or compelled self-sexual assault [sections 5, 6 and 7 of the Sexual Offences Act 32 of 2007 and grievous bodily harm was not inflicted].
- Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation [section 8 of the Sexual Offences Act 32 of 2007].
- Exposure or display of or causing exposure or display of child pornography or pornography [sections 10 or 19 of the Sexual Offences Act 32 of 2007].

## Schedule 2 (continued)

- Incest and sexual acts with a corpse [sections 12 and 14 of the Sexual Offences Act 32 of 2007].
- Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person ("flashing") [sections 9 or 22 of the Sexual Offences Act 32 of 2007].
- Violating a dead body or grave.
- Defeating or obstructing the course of justice.
- Any offence referred to in section 1 or 1A of the Intimidation Act 72 of 1982.
- Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act 121 of 1998.
- Any contravention of section 2 of the Animals Protection Act 71 of 1962.
- Possession of illicit dependence-producing drugs above the value of R500 but below R5 000, but excluding any statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but below five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act 101 of 1991.
- Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act 101 of 1991.
- Any conspiracy, incitement or attempt to commit any offence referred to in Schedule 2.

### Box 4: The case of South Africa on offences under schedule 3

### Schedule 3

- Treason.
- Sedition.
- Murder.
- Extortion, where there are aggravating circumstances present.
- Kidnapping.
- Robbery, where there are aggravating circumstances or it involves the taking of a motor vehicle.
- Rape or compelled rape [sections 3 and 4 of the Sexual Offences Act 32 of 2007].
- Sexual assault, compelled sexual assault or compelled self-sexual assault [sections 5, 6 and 7 of the Sexual Offences Act 32 of 2007] involving the infliction of grievous bodily harm.
- Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography [sections 17, 18 and 20 of the Sexual Offences Act 32 of 2007].
- Exposure or display of or causing exposure or display of child pornography or pornography to children [section 19 of the Sexual Offences Act 32 of 2007], if that exposure or display is intended to facilitate or promote
  - the sexual exploitation or sexual grooming of a child [sections 17 or 18 of the Sexual Offences Act 32 of 2007].
  - the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography [section 20 of the Sexual Offences Act 32 of 2007].
- Trafficking in persons for sexual purposes referred to in section 71(1) and involvement in trafficking in persons for sexual purposes referred to in section 71(2) of Sexual Offences Act 32 of 2007.
- Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004.
- Any offence relating to racketeering activities referred to in Chapter 2; or the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act 121 of 1998.
- The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 .
- Any offence under any law relating to the dealing in or smuggling of ammunition, firearms, explosives or armament; and the possession of firearms, explosives or armament.
- Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act 140 of 1992 .
- Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
- Any offence under any law relating to the illicit possession of dependence-producing drugs, other than an offence referred to in the following item of the Schedule, where the quantity involved exceeds R5 000 in value.

### Schedule 3 (continued)

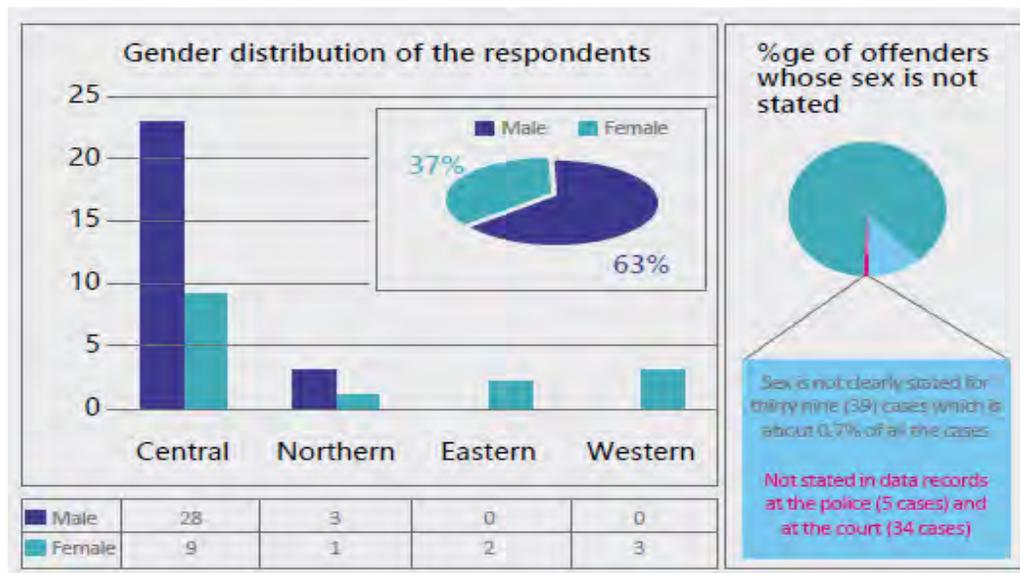
- Compelling or causing children to witness sexual offences, sexual acts or self-masturbation [section 21 of the Sexual Offences Act 32 of 2007].
- Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom [sections 23, 24, 25, and 26 of the Sexual Offences Act 32 of 2007].
- Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act 101 of 1991.
- Any conspiracy, incitement or attempt to commit any offence referred to in Schedule 3.

### 3.4.3 The gender of offenders

In this study there was emphasis on recording the gender of the survey respondents. The findings indicate that 63 percent were male and 37 percent were female. The majority of offenders were male charged with robbery and theft related offences. It was however noted during the analysis of caseload records collected

from the police (5 cases) and court (34 cases) that some records did not specify the gender of child offenders in their register as indicated in Figure 6 below

**Figure 6: The gender distribution from respondents and caseload records**



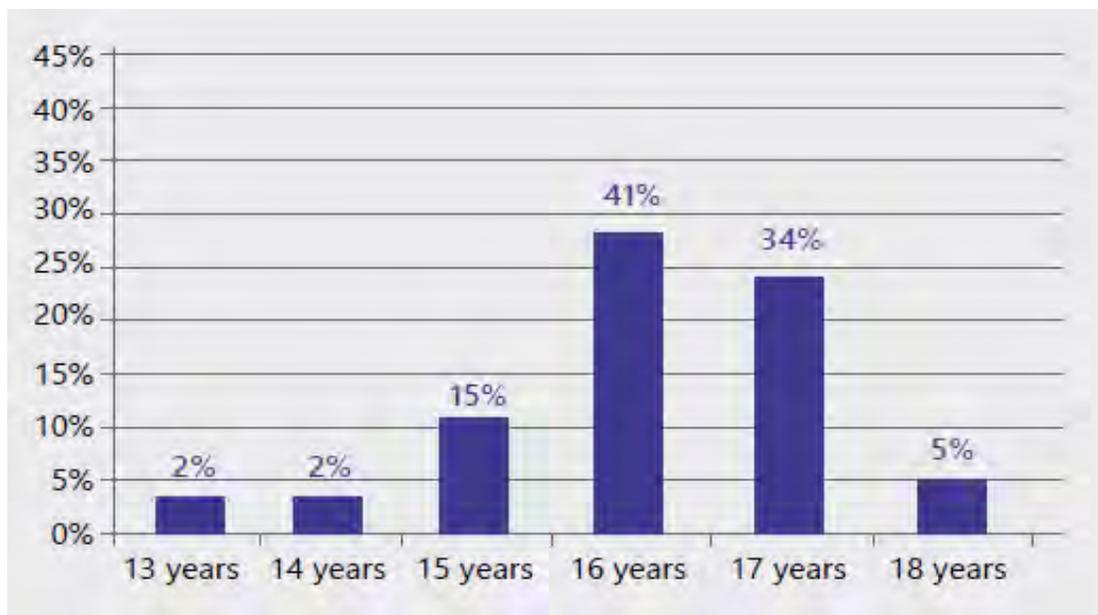
The gender disparities in offending were further corroborated from caseload records reviewed at the police, the court, and remand homes. These records indicated that the percentage of male juveniles is even higher at 88 percent compared to female juveniles at 12 percent.

On the other hand, the remand homes (especially in Gulu and Arua) demonstrated higher capacity in managing a gendered case record than the police and courts. This raised concerns on the synchronicity of case related information across the institutions in the juvenile justice system. There are a number of gaps in the data records making it difficult to track a case from time of arrest by police, through to court, right to the remand home or National Rehabilitation Centre. Most of the coding systems used seem to have a file or case number but there is no common variable to create a synergistic linkage other than the CRB reference which is in most cases omitted from the available registers. In that way, a lot of information relating to the same case may not easily be rectified and most likely there is a lot of duplication in utilising such data for decision making purposes.

### 3.4.4 The age of offenders

In this study the survey respondents were asked to state their age. The majority of them were 16 years of age (41%), followed by those of 17 years (34%), and then 15 years (15%) among others (see Figure 7). It is noteworthy to mention that there is no clear national framework for assessing a child's age and in order to establish the age of children, the police usually contact his/her parents or ask for a birth certificate. In a number of cases the police assess the child's bone structure or in more complex situations they check the child's teeth. Whereas in South Africa the final determination on age is done by magistrate at the preliminary inquiry within 48hours. (SA study trip report 2017). The case load data see graph 2 indicates a similar picture but of concern is the number of children whose ages are not recorded and could be subject to abuse in the handling.

Figure 7: Age of the survey respondents in custody



There are very few officially registered births in Uganda and that makes it difficult to concretely identify the ages of children in conflict with the law. Although the law considers a child to be a person under the age of 18 years and the age of criminal capacity to be 12 years old, determining a person's age is usually a subjective process where an experienced or qualified person is not available.

The failure of the system to authentically determine the age of criminal responsibility is further exuberated by entry of younger offenders into a system that is ill prepared to handle them. There is no regulatory framework to guide those handling child offenders so as to categorise them in ensuring age-appropriate interventions.

**Box 5: The case of South Africa on categorisation of children by age**

Children below 10 years at time of commission of the crime cannot be processed in the criminal justice system because there is a rebuttable presumption that children between 10-14 years are presumed to lack criminal capacity. These children are referred to children’s court as in need of care and protection or counselling.

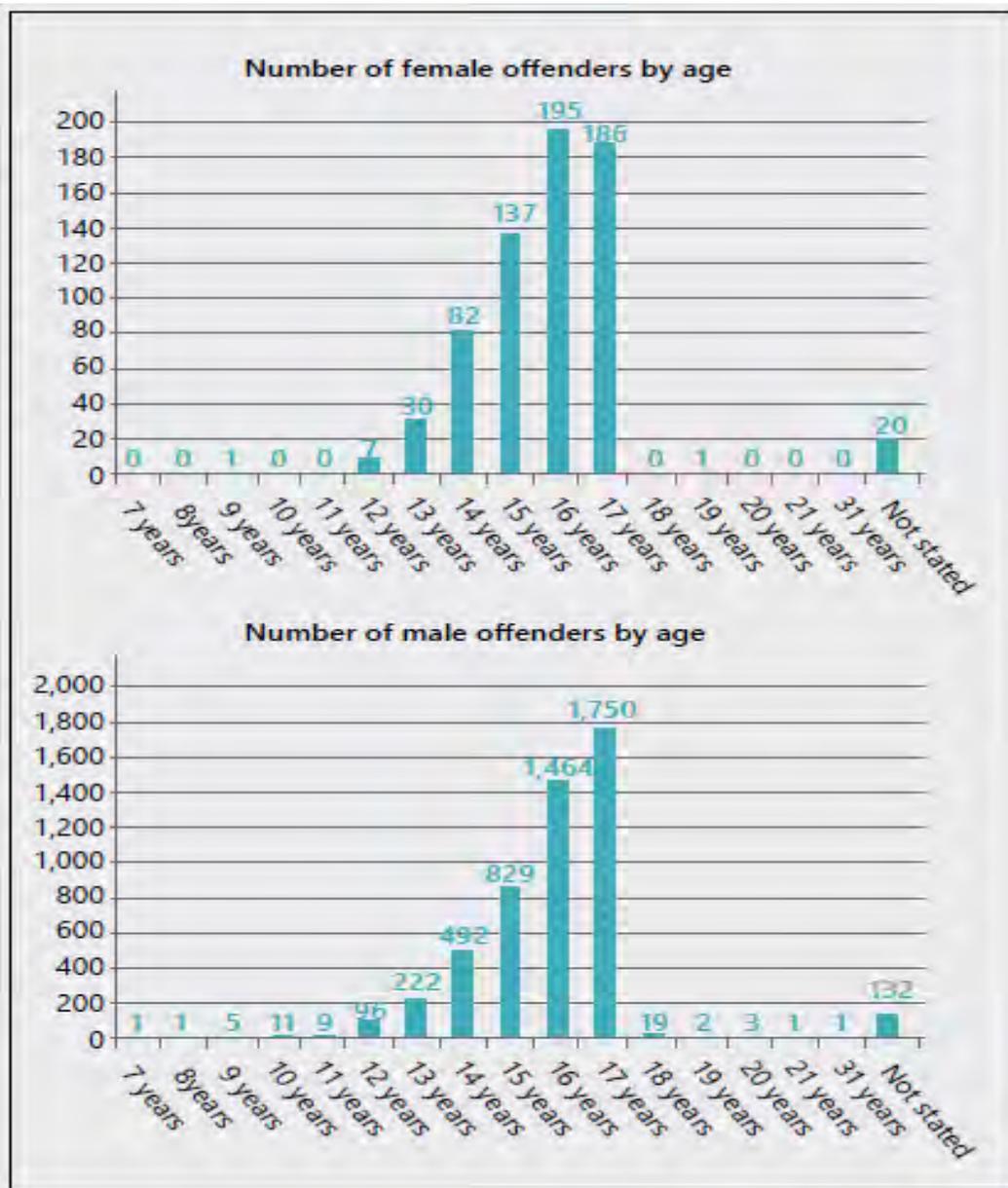
Children aged 10 years and older but younger than 18 years at time of arrest are further protected by several provisions in the law. They are assessed by a probation officer before the preliminary inquiry and may even be diverted or sent to child justice court for an appropriate remedy in their best interests.

Children who are 18 years or older but under 21 years and who committed the offence when under 18 years of age also benefit from these provisions but subjected to the national director of public prosecution. **(SA study trip march 2017)**

The analysis of caseload data from police, court and remand records also shows more or less the same age ranges among the juvenile offenders as found among the survey respondents. But these data give a more intriguing picture as explained by some duty bearers who are concerned that these days the children are offending at a much earlier age than they were in the past.

“It is observable that the male child offenders tend to conflict with the law at an early age as low as 7 years while their female counterparts mostly start offending at 12 years and above. The diminishing role of family units in upbringing of children may be responsible.” *Interview response from a male FIT person based in Masindi District.*

Graph 2: The number of female and male offenders from caseload data



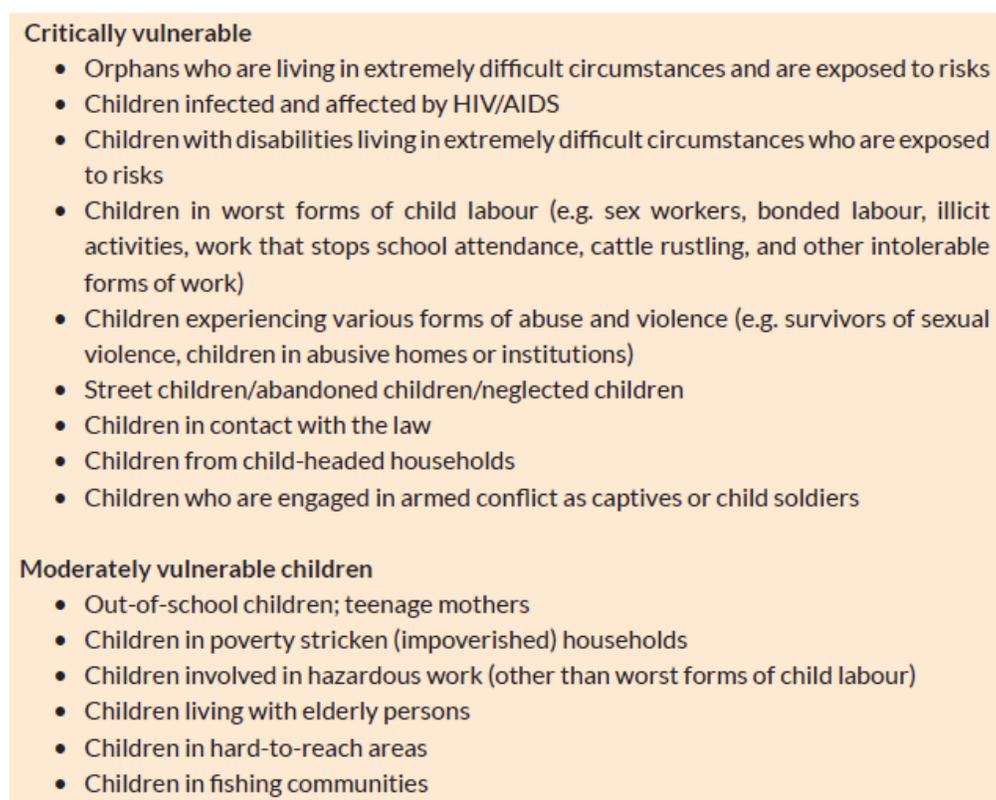
### 3.4.5 Most at risk children

In this study the survey respondents were asked to state their occupation and whether they had dropped out of school. It was found that 41 percent of the respondents were school drop outs. Out of these, 65 percent were unemployed, 18 percent were house maids, 6 percent were hawkers, 6 percent were

carpenters, and 6 percent were scrap collectors. However, all of them had attended primary level education with several of them (51%) having attended secondary school as their highest level.

It was difficult to establish a correlation between the school dropouts and their susceptibility to offending but there are indications from the data that most of the children who have engaged in aggravated robbery or theft are dropouts with primary education as their highest level.

**Figure 8: Categories of vulnerable children from the NSPPI-2**



All the children identified to be at risk of getting in contact with the law had various categories of vulnerability such as being teenage mothers, victims of domestic-related violence, living with elderly persons, coming from impoverished or child headed households, abandoned or neglected, staying on streets, while some of them were orphaned. These vulnerabilities exposed the life of these children to extremely difficult circumstances and risks of engaging in delinquent behaviour.

“The government should protect and care for street children instead of just arresting us. We become hardened with life whenever police detain us. They want us to go back

home but some of us do not have homes and others have even lost their parents.”

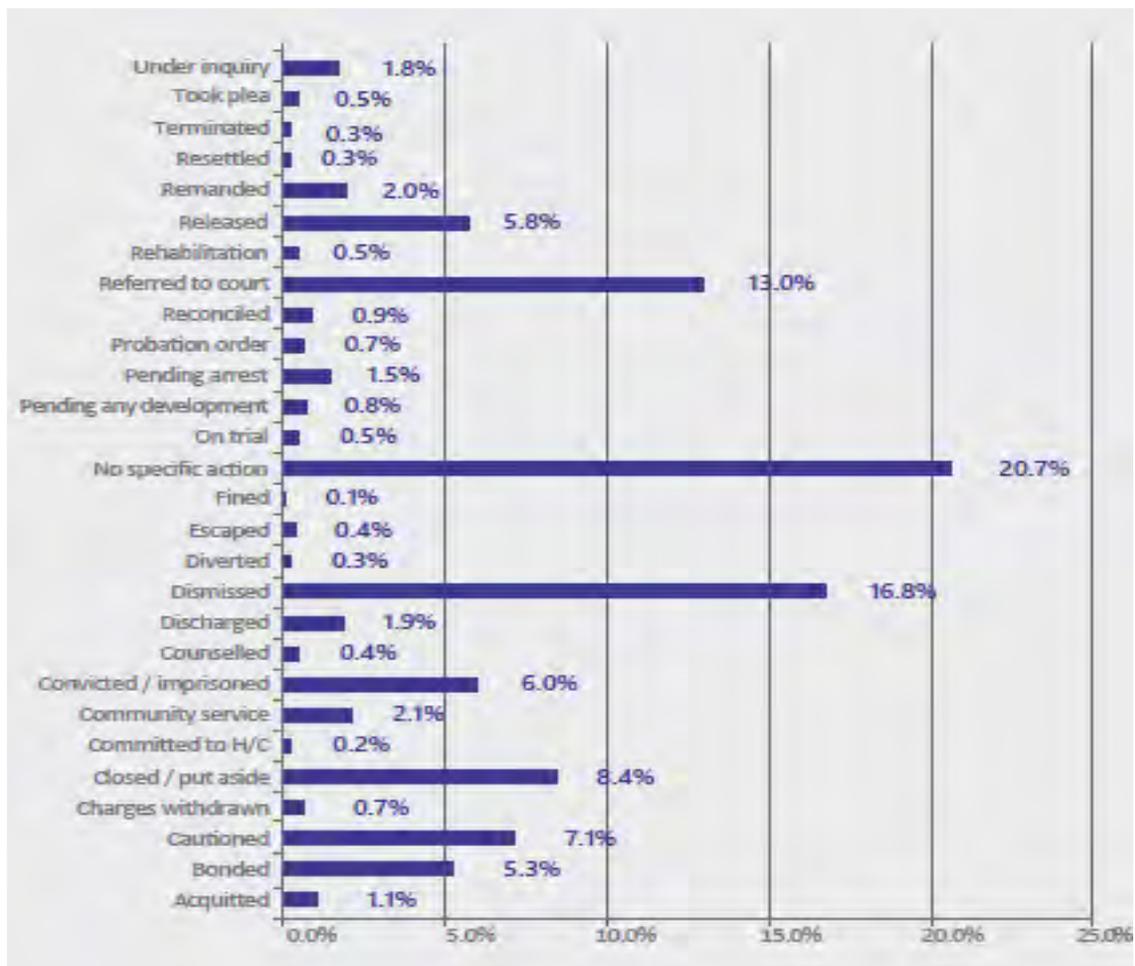
*Interview response from a male street child, 15 years, found in Masaka town.*

### **3.4.6 The pre-trial process**

In this study an analysis was undertaken of the case records for juvenile offenders handled by the police stations. But the record did not clearly show the number of children deprived of liberty while awaiting or undergoing a final decision on their case. However, it often happens that only a small minority of these children (6%) are finally sentenced to detention, about 17 percent are dismissed and many may be acquitted, charges withdrawn, or case put aside constituting total of close to 8 percent.

At point of arrest, many of the children who find themselves under pre-trial detention are especially vulnerable to its negative influences, including loss of liberty and separation from the usual social environment and are more exposed to abuse.

#### **Graph 3: Actions taken against child offenders as extracted from police records**



The figures do not necessarily mean that there is an improvement in police compliance with the regulation of resolving juvenile cases through various alternatives but rather lack of resources to carry out investigation of the cases. This can be inferred from the records in the Police Criminal Record Books which indicate that some of the child suspects were either arrested, and eventually their cases dismissed with or without cautioning; arrested, charged and bonded with or without cautioning; or arrested, charged and put on trial or the case being dismissed altogether.

**Box 6: The case of South Africa on handling children under pre-trial detention**

**Pre-trial detention** emphasizes keeping a child out of custody for minor offences. If inevitable he or she is placed in youth care centre, police cell (following the strict procedures in place) or prison. However, greater emphasis is put on reducing the time spent under detention and the possibility of utilizing other options e.g. home care but under the supervision of probation officer.

**Pre-trial assessment** is done by probation officers to determine family circumstances, nature and critical issues surrounding the offence, impact on victim, and attitude of alleged offender. This is used to determine whether the arrested child is in need of care and protection and this will be included in the report.

**Preliminary inquiry** is also done to ensure that children are not lost in the system and an individualized approach is used to get as much information as possible while involving both parent and child.

The police have testified that they find it difficult to process some cases for trial because most people who register complaints lose interest during investigations and, in other instances, there is little logistical support or facilitation to undertake complex forensics.

“It often becomes very difficult to release the child on bond yet he or she has to be protected from an angry complainant. While the law provides that a child shall be detained in police custody for a maximum of twenty-four hours or until the child is taken before a court, it is usually challenging to meet these standards in such cases where a proper investigation has not been completed on time.” *Interview response from a female police officer working with the CFPU found in central region.*

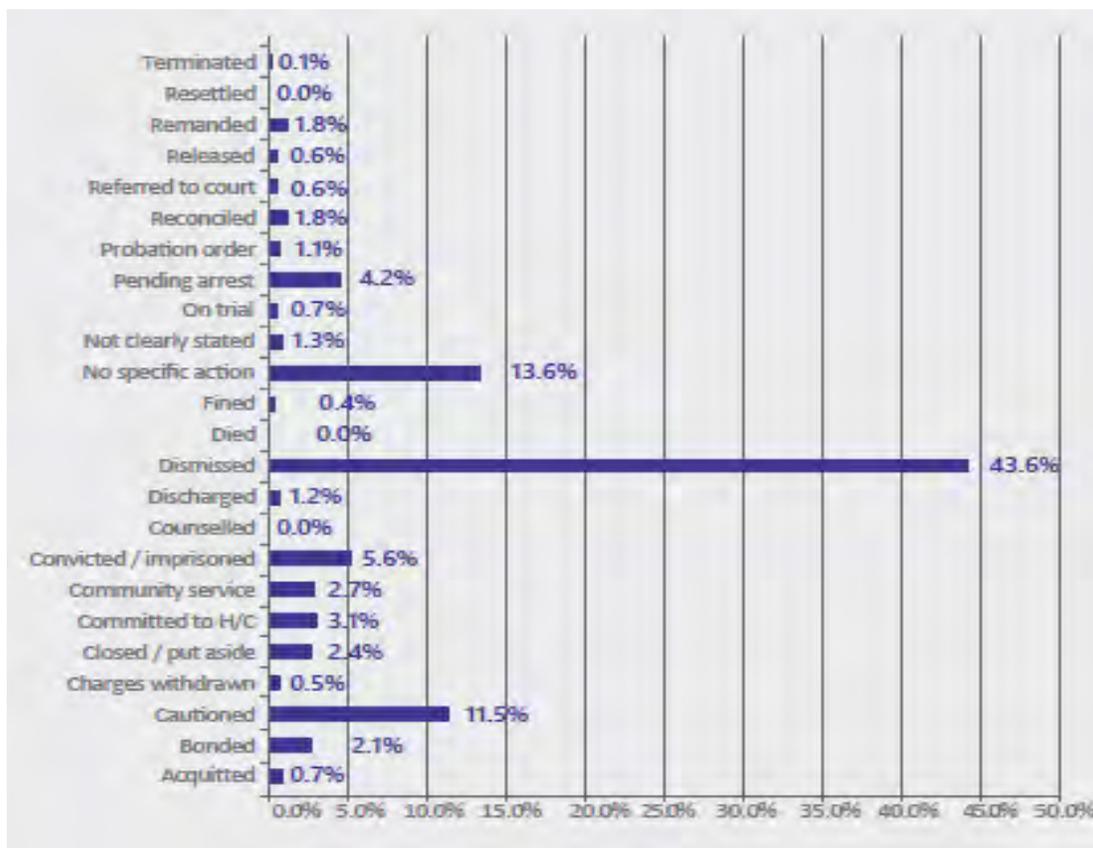
### 3.4.7 The court experiences

In this study, the survey respondents were asked how often they had been taken to court. At least 59 percent of the respondents had attended court once or twice a month and 24 percent had been rarely taken to court. About 15 percent of the respondents had never had an opportunity of going for a court hearing while one of the respondents claimed to have been taken only once in three months.

“Many cases against children are not processed because of lack of interest from especially the adult relatives to pursue the matter with court.” *His Worship Imalingat, Senior Grade I Magistrate in Mpigi court.*

Based on the data accessed during this study (see Figure 9), there is concern that as the FCC handles matters involving children, many cases of child offenders are not fully processed and therefore end up being dismissed (43.6%) while others (13.6%) do not have a clear record of action taken.

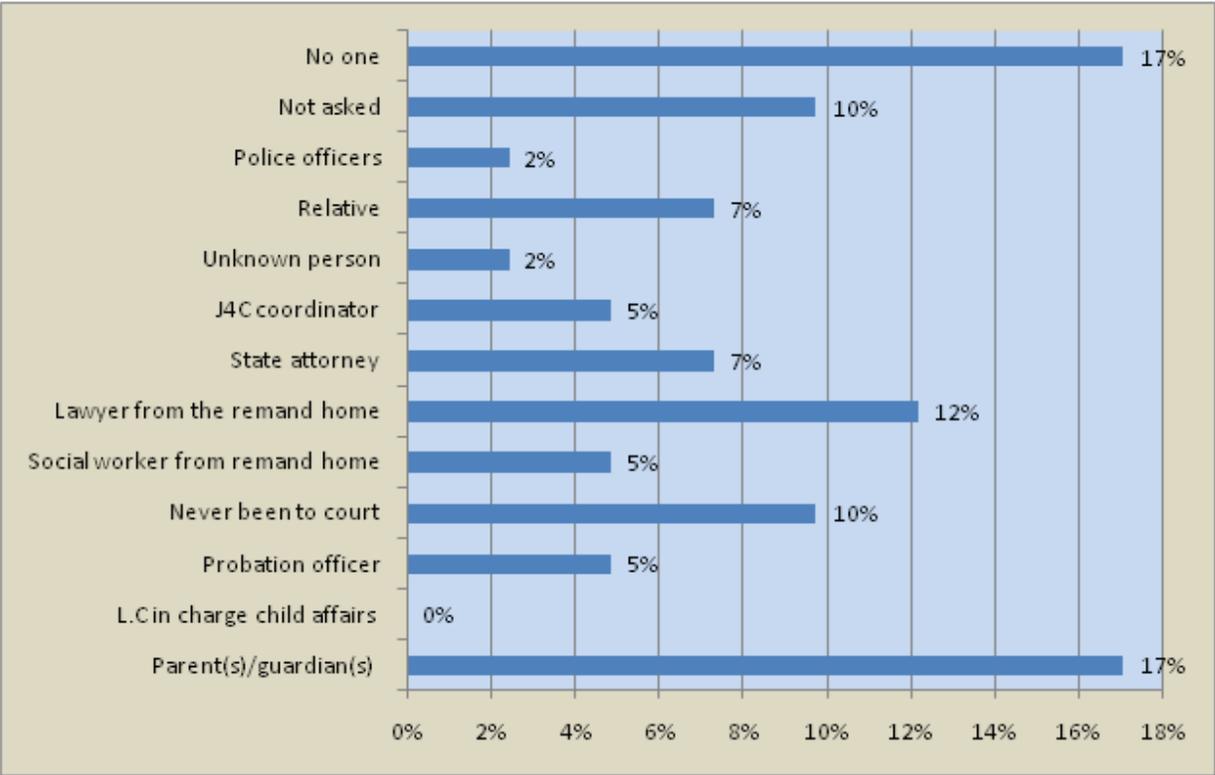
**Graph 4: Actions taken on child offenders as extracted from court records**



“I was arrested and charged with defilement but still believe that my girlfriend’s father only wanted to take revenge on my father. He never appeared in court during the trial process. They both had a land dispute and the LC court ruled in my father’s favour which stirred a long feud between them. I was the ransom. Fortunately the court dismissed the case for want of prosecution.” *Interview response from a former male child offender, 16 years, found in Gulu town, northern region.*

In this study the survey respondents were asked who provided support to you while in court. A list of duty bearers was given including the PSWO, but only 5 percent of the survey respondents reported to have benefited from probation services while in court. There is only one officer in every district (with the exception of Kampala where each division has an officer) making the child to officer ratio far much higher than the expected international standard of at least 1:6. Notably, 17 percent of the survey respondents felt that they were not supported at all by anyone while in court. Even those supported by their parents or guardians were less than 20 percent.

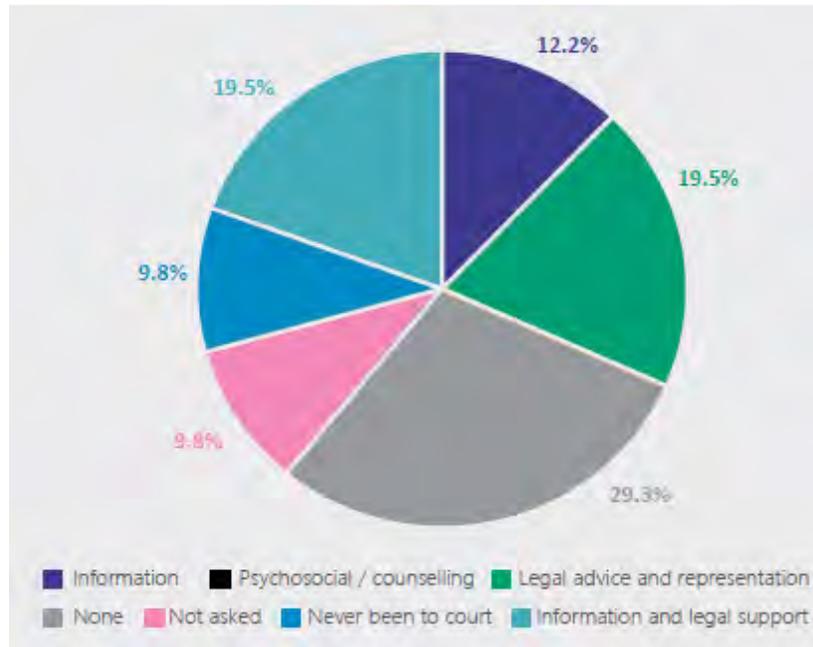
**Graph 5: The people who support child offenders while in court**



**3.4.8 Access to legal counsel**

In this study children in remand homes were asked whether they accessed legal services. Some of them (19%) said they accessed legal advice and representation while others (19%) received information and a bit of legal support. None of the children reported to have accessed psychosocial support or counselling at court with the exception of the available services at the remand facilities. But 29 percent of the respondents clearly indicated that they have never received any legal support especially at court.

**Chart 1: The access of child offenders to legal counsel**



Whenever appropriate it is desirable that measures are taken for dealing with child offenders without resorting to judicial proceedings, provided human rights and legal safeguards are fully respected. This means that those keeping children in custody must give consideration, wherever appropriate, to options of dealing with juvenile offenders without resorting to formal trial but instead devise ways of handling especially the petty cases by way of an alternative competent authority.

“I was arrested following a fight with my boyfriend. He was upset with our broken relationship. So, he influenced the police and I was charged with assault.” *Interview account from a former female child offender, 16 years, found in Mpigi town, central region.*

The police, the prosecution, and other judicial or quasi-judicial agencies dealing with juvenile cases have been empowered to dispose of such cases, at their discretion, without recourse to formal hearings but there seems to be a weak mechanism for enforcing the use of alternative remedies once the child offender has already been processed into the justice system pending trial.

“I wish the police could promote reconciliation between the child offender and the aggrieved parties because most of the charges against us do not really warrant going

through a formal trial. Actually, even the custody at police for long hours is just enough punishment because the conditions are horrible and there is no one available or willing to provide free legal support. So, the police can even decide to hand over your file for trial ...with so many wrong accusations.” *Interview account from a former female child offender, 17 years, found in Masaka town, central region.*

**Box 7: The case of South Africa on diverting children under pre-trial detention**

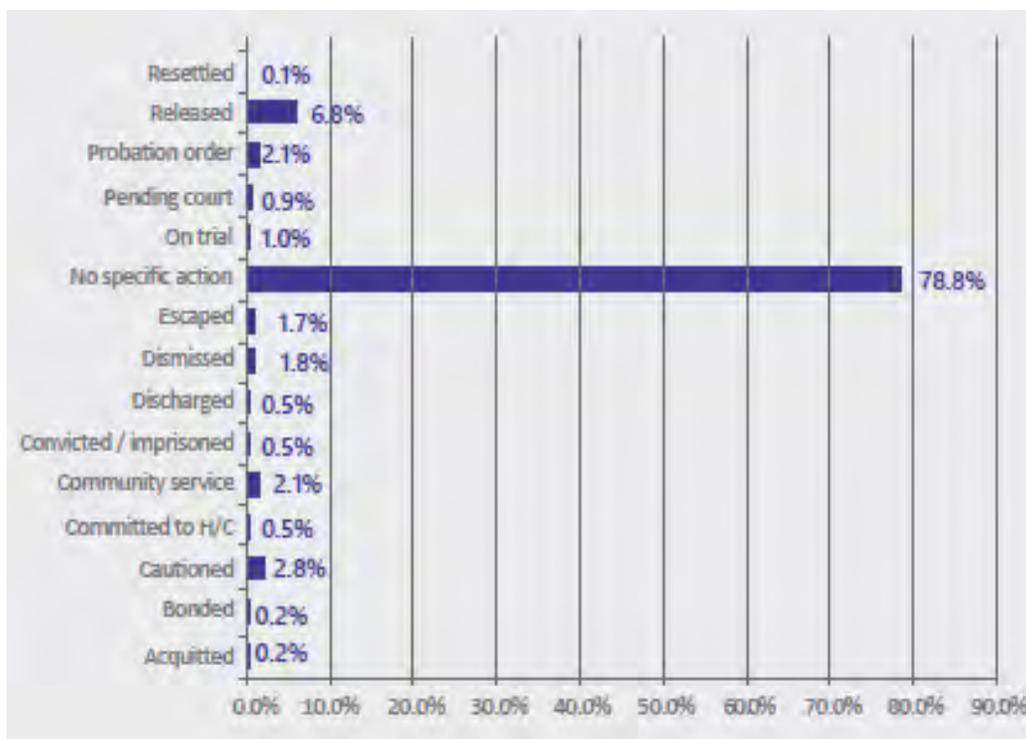
The Child Justice Act formalized the use of diversion options so that the decision to use alternatives to the formal judicial process would not be solely dependent on the prosecutor. The Act provides that diversion services will be offered to children by accredited service providers and monitored by the department of social development. In this way, the services are standardized and available to many child offenders.

The Act requires that there is (a) prosecutorial diversion for minor offences, (b) at the preliminary inquiry, through an order of the inquiry by a magistrate, and (c) during the trial in the child justice court.

**3.4.9 The nature of orders given**

In this study the research team collected case data of child offenders to assess the extent to which deprivation of liberty is opted for albeit other alternative orders. The analysis of case data from remand homes indicates that many children (78%) are usually in the system without clear action taken on them by court. It was not clearly shown whether children are held in pre-sentence detention for a period equal to, or even longer, than the length of custodial sentences. This is a signal to suggest that pre-sentence detention may sometimes be used as or become a punishment in itself.

**Graph 6: Actions taken on child offenders as extracted from remand homes**



While the courts are normally in position to dispose of these cases, the remand homes generally find it difficult to transport the child offenders whenever needed for hearing due to some logistical limitations (e.g. lack of fuel for the vehicle) but most often because the remand facilities are far away from the courts yet the required means of transport themselves are not in place. Notwithstanding this situation, the majority of respondents (61%) reported to have gone to court at least once. These mostly included those charged with murder, aggravated robbery, theft-related offences and defilement.

**Box 8: The case of South Africa on sentencing of child offenders**

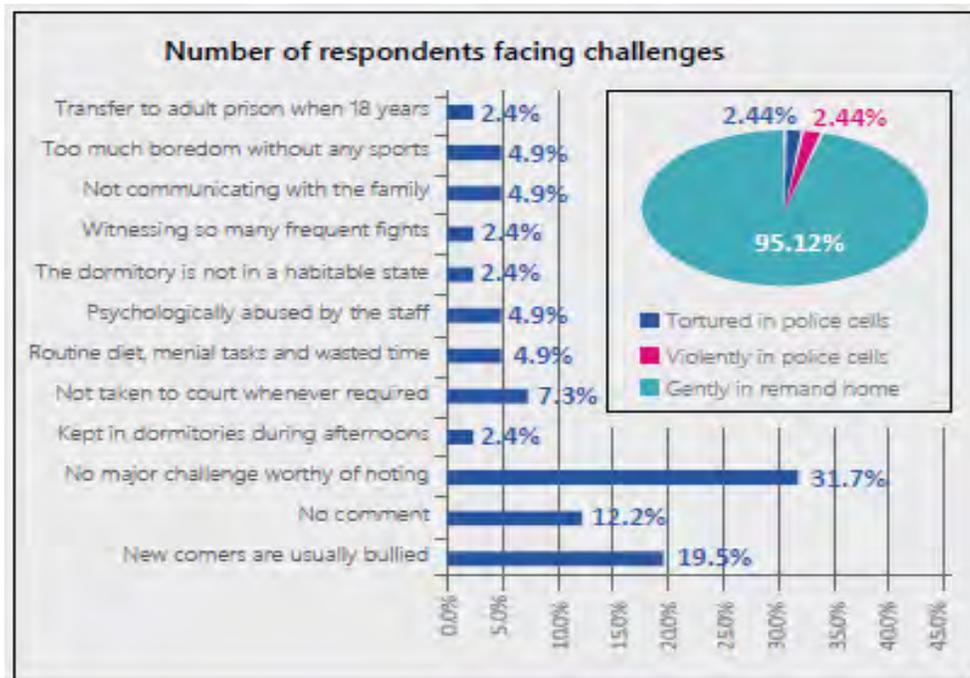
The sentencing options are aligned to international standards with the use of detention as a last resort and emphasis on restoring family and community relations. This is bearing in mind that children are susceptible to outside influences and therefore may make poor choices. The options are Community based sentences including diversion, Restorative justice sentences like the family group counselling, Correctional supervision, Suspended sentences with or without conditions, Penalties of a fine or imprisonment, as well as Custodial sentence to a child and youth care centre or prison

**3.4.10 Remand conditions**

In this study the children in custody were asked about the conditions in the facilities. It is undisputable that a child in detention is deprived of his or her usual environment and hence is in a particularly vulnerable situation. As a result, the state has an obligation to ensure that special protection and assistance are provided during the period under detention, whether at the police station, in a remand home or while serving a custodial sentence. 90 percent said they receive untreated tap water, 90 percent said they get uniforms for clothing, 80 percent said they have medication, 83 percent said they acquire some form of education (though mostly skills based), all the girls said they get sanitary pads at least monthly, and 54 percent said they receive three balanced meals a day. The children stated as their challenges the fear of being transferred to an adult’s prison once they turn 18 years.

Other challenges included routine meals, psychological abuse by staff in the justice delivery institutions, confinement in the dormitories in the afternoon, witnessing frequent fights among fellow children, boredom from lack of extracurricular activities and social amenities, none or irregular communication with family, delays in disposal of their cases, menial tasks, and bullying of new comers. The inspection of facilities is still needed to ensure that necessary protection and support are given in practice.

**Chart 2: The challenges faced by child offenders during detention**



**Box 9: The case of South Africa on detention of child offenders**

The Correctional services act 111/1996 contains provisions which deal specifically with children and provides that detainees who are children must be kept separately from adults and in accommodation appropriate to their unique needs. It also provides significant detail around education and training opportunities which have to be provided as well as a wide range of stipulations relating to the well-being of the child in correctional facilities. The White Paper 1998 on correctional services states that children under the age of 14 years should not be detained in correctional centres but either be diverted, given alternative sentences or taken to detention facilities and centres, as administered by the Departments of Social Development. The judicial inspectorate was further established to oversee and report on the treatment of offenders and the conditions in the correctional centres.

The survey respondents were asked to state the difficulties they found while on remand and 32 percent of them reported no major challenges. Close to 20 percent were concerned that new detainees are bullied by those they find already on remand and about 12 percent preferred not to make any specific comment on the subject. However, others made several observations.

“I do not have any major problem but my complaint is about keeping us in the dormitories during the afternoons yet this would be a great time for many of us to chat and relax in spite of being kept on remand. *Interview account from a female child offender, 16 years, found in Naguru, central region.*

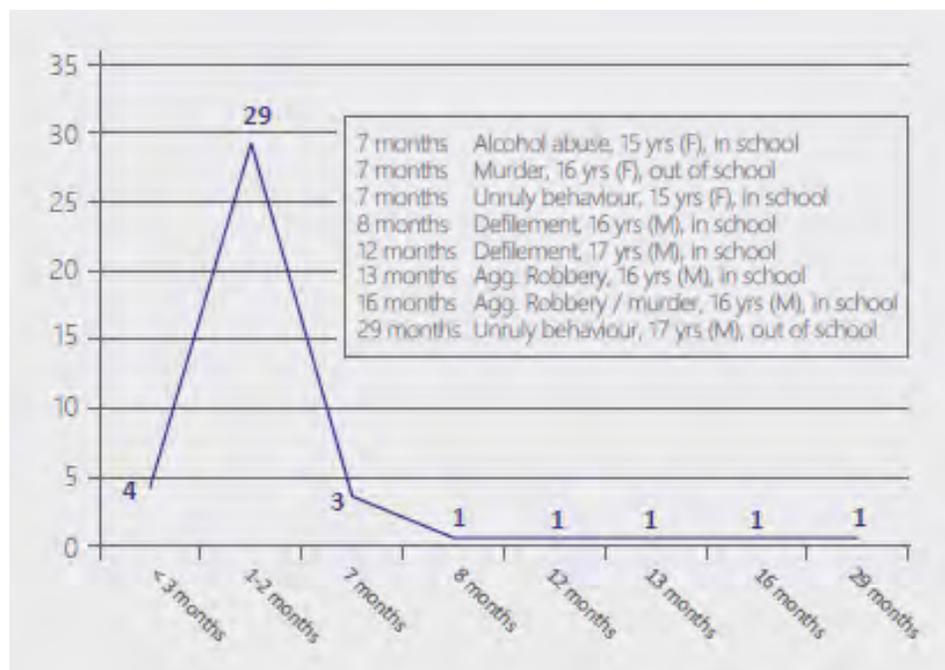
“I am bothered for not being taken to court whenever there is a hearing. Worse still, we are fed on a routine diet of posho and beans. This is accompanied by so many menial tasks. I look back at the time wasted in this place and get worried. *Interview account from a male child offender, 17 years, found in Naguru, central region.*

“There is too much boredom here, we rarely communicate with family, and the peers are sometimes hostile. At least we should be given sports equipment. *Interview account from a male child offender, 15 years, found in Ihungu, Western region.*

### **3.4.11 Detention period**

In this study, the survey respondents were asked the length of time spent in detention. 80 percent of the respondents reported less than six months. But it was more critical to assess the detention times by category of offence for those who have been detained for more than six months to determine whether detention is used as a disposition of last resort and for the minimum necessary period.

**Graph 7: The length of time spent in detention by respondents**



It is worrying to note that some school going children are detained for more than six months on offences such as alcohol abuse and unruly behaviour. One particular case, involves a 17 year old boy who was taken told by his parents that he was going for a rehabilitation camp for a few days or weeks.

“They told me that I was going to a camp for a few weeks because I had become unruly and disobedient to them. But I am surprised that they have never come to visit me ever since then. I have been abandoned here for 29 months and now I am definitely convinced that my own family does not love me ...though they could have been able to sort this out with me somewhat differently. *Interview response from a male child offender, 17 years, found in Kampiringisa, Central region.*

The study could not estimate the number of detained children under pre-trial, pre-sentence and post-sentencing but there are indications that the detention facilities (including police cells) are fully occupied due to long stay of the detainees. Unfortunately, this detention period is often not utilised to help these children acquire additional skills needed after their release.

“I have been detained here for more than 8 months. Now I cannot attend school because compulsory education is only provided at primary level but selective for us at secondary level. In fact, boys generally go to school but girls only attend if their parents can afford to pay the school fees.” *Interview response from a female child offender, 16 years, found in Kampiringisa, Central region.*

**Box 10: The case of South Africa on support to children in the system**

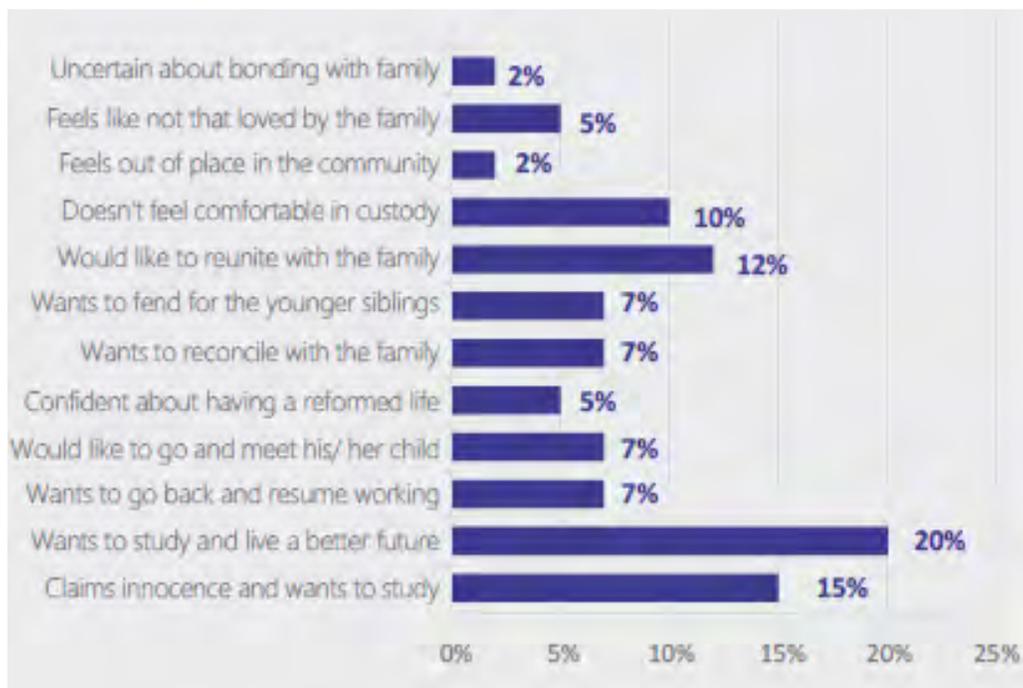
The Regulations of the Children's Act (2005) provide that programmes should meet the developmental, therapeutic and recreational needs of children who are accommodated at child and youth care centres with clear focus on teaching or equipping children with life skills so that they can develop life and social skills, and engage in income-generating initiatives. The therapeutic interventions for children at the child and youth care centre include: developmental assessment, psycho-social support, individual counselling, group counselling, trauma counselling, grief counselling, play therapy, family therapy, stress management, conflict resolution, positive communication, positive discipline and behaviour change. It seems that the aim of recreational programmes is to promote rest, relaxation and creativity amongst children. All these are to ensure that children are able to learn and utilise the skills once they are released - for securing employment and/or for income-generation initiatives.

“We need to rethink our support to juvenile offenders because a lot of innovations are needed to decongest the remand facilities. The probation services may have to be directly managed by central government under the MoJCA. This will improve on budget allocations in supervising diversion, remand conditions, trial processes, and court orders as well as liaising with the other justice delivery institutions.” *Interview response from a male senior PSWO, found in Masindi, Western region.*

### 3.4.12 Aftercare support

In this study the survey respondents were asked whether they feel comfortable to go back home after the case is concluded. The responses indicate that they need assistance in re-establishing themselves in society and to lessen any likely prejudice against them. These study findings show that many of the juvenile seek to be assisted so as to bond with the family (40%) or have a place of suitable residence (10%), continue with education or other alternative training prospect (35%), resume employment in a safe working environment (7%), and be guaranteed of sufficient means to maintain him or herself upon release in order to facilitate successful reintegration (8%).

**Graph 8: The responses of child offenders about returning home**



“All children released from detention need some form of structured arrangements in place for a given period that are designed to assist them in effectively returning to society, family life, education or employment after incarceration. The community and family usually do not know how to reintegrate a former offender. *Recommendation drawn from a FGD held with parents, in Kawempe, Central region.*

There was no clear evidence of a well-structured aftercare arrangement in the places of detention visited during the study. This means that while the child's needs may have been assessed on release it was not likely that he or she is referred to a particular aftercare service provider.

“We try our best to ensure that the children have a self-reflection towards accepting their blameworthiness in the first place ...but also that they are enthused to begin a new phase in life by behaving more responsibly and embracing opportunities for resourcefulness in society after leaving a remand or rehabilitation facility. *Interview held with an official in the MoGLSD, Department of Youth and Children Affairs.*

The challenge is that the juvenile justice system does not have the capacity to provide aftercare support in all the cases but some non-state service providers have been able to intervene and help a number of former child offenders by facilitating their access to job placements and training programmes.” *Interview response from a child rights activist, in Kampala, Central region.*

“I only remember being counselled and then transported back home to reunite with my family but there was no other support given.” *Interview account from a former female child offender, 17 years, found in Mbarara town, Western region.*

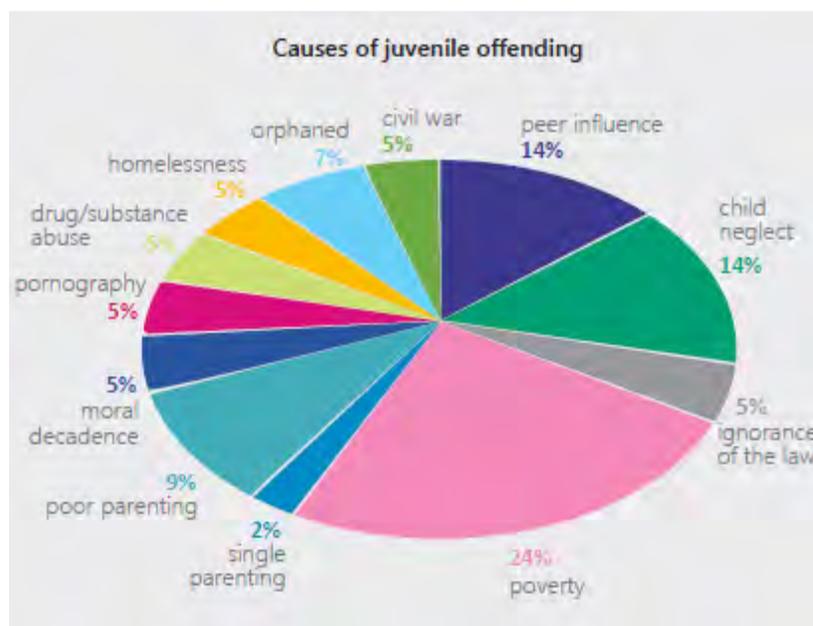
It is also necessary that the child's progress and/or needs after release are monitored for a continuing period of time but there is still a lot to be desired across the country on this particular requirement because the personnel are to some extent available although the logistics are not in place.

“The entire budget line for children under Children and Youth Sector in the district is around 19,000,000/= per year, which is very little, so the district partners with other CSOs and NGOs which also try making contributions to the same, otherwise the Government or Ministry needs to allocate a bigger budget line if we are to do our work smoothly. We are usually constrained by finances, the human resource is there but if not facilitated, they cannot do much.” *Interview with the Principal Assistant Secretary to the CAO held in Lira, Northern region.*

### 3.4.13 Causes of offending

In this study the survey respondents were asked to state the causes of child offending. 24 percent said that poverty is a high contributory factor to children getting exposed to the risk to conflicting with the law because many impoverished households cannot look after their children. As a result, these children start living and working on the streets which predispose them to the risk of offending or being found in irregular situations typically regarded as being idle and disorderly. This is corroborated by other surveys showing that poverty accounts for 75 % of the children living and working on the street.<sup>18</sup> Other respondents (14%) identified peer influence as the key factor in escalating offending behaviour among children. Similarly child neglect was highlighted by 14 percent of the respondents considering that it manifests in various ways ranging from failure to provide for the child's basic needs (food, clothing, shelter, medication, education etc) to lack of supervision.

**Graph 9: The causes of child offending identified by the interviewees**



<sup>18</sup>Retrak report and handbook on handling street children in conflict with the law, 2015.

Others noted factors like being orphaned (7%), the effect of poor parenting (9%) and moral decadence (5%) in communities, among others. It was also observed that many are just disadvantaged children in need of care and protection though charged with offences like rogue and vagabond.

On analysis of the above factors, it is clear that most of these factors due to weak early interventions during the child development process among communities and at family level where prevention strategies, diversion mechanisms, and therapeutic programmes are critical.

Although the juvenile justice system may be effectively designed to address child offending behaviour through judicial processes, it is difficult to implement the court orders without involving the victims and offenders themselves through alternative needs-tailored programmes.

**Box 11: The case of South Africa on alternative programmes to support children**

**The Journey:** This is a 3 – 6 month intensive programme for youth at risk. It includes a life skills phase, outdoor Eco Therapy Phase for five days. It encourages self-expression, commitment, accountability. It is a programme for more serious offenders, repeat offenders, and early school leavers. Community mentors are used to support the children, and an individual plan is devised for each participant.

**The Positive Parenting Programme:** The target is the parents of children referred for Diversion. It has eight parents' group sessions and the outcomes of the programme are: increased positive parenting experiences, decrease in destructive parental attitudes, increase in self-control, and ultimately the decrease in involvement of young people in high risk behaviour.

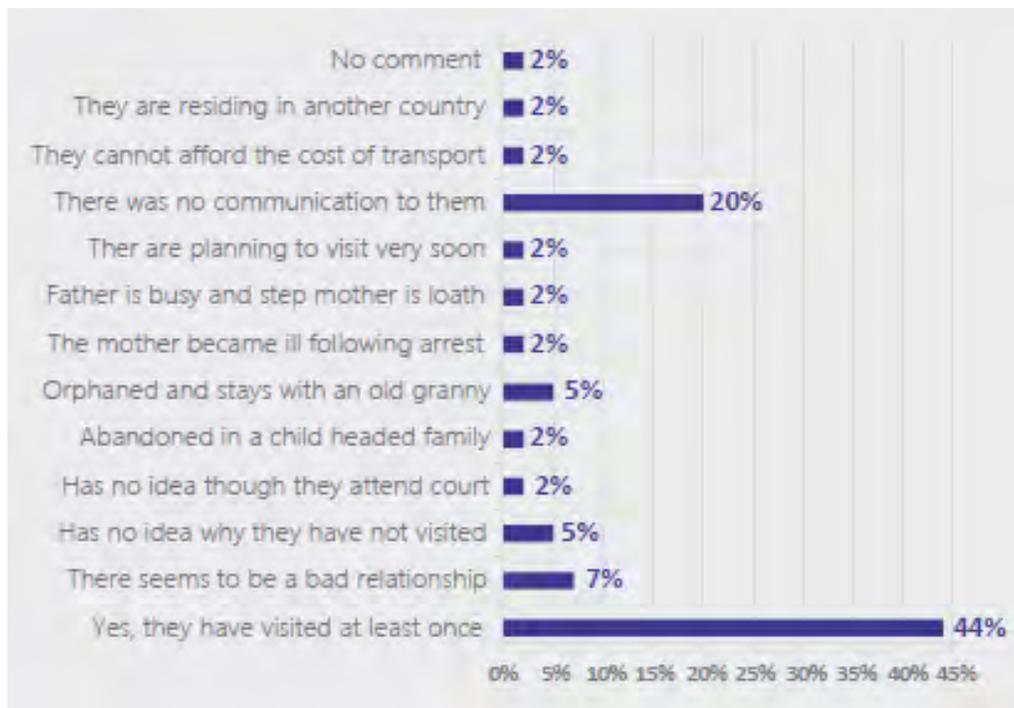
**Safety Ambassador:** This is a school based programme and has six phases. This programme empowers young people to deal with trauma and crime. Young people are used in this programme to support their peers. It aims to reduce crime in schools and improve safety, boost the morale of the community when anti-crime projects are implemented, as well as provide the opportunity for business sector and the community to participate in the fight against crime.

**The Adopt programme:** This is a psycho-social group and the focus is on drugs. It has a series of 14 sessions on the following topics: consequences of drug use, why people use drugs, deciding to quite, knowing myself, quitting - how do I decide, how to quit - stating my goals, conveying the message, living without drugs, get real. The programme is a prevention and treatment programme.

### 3.4.14 Role of the family

In this study the survey respondents were asked whether their parents know that they were arrested and kept in a place of detention. The parents of 71 percent of the respondents knew that their children were imprisoned while 29 percent did not. The study further investigated whether the parents visited their children in custody. It was found that 44 percent of the child offenders were visited by their parents, guardian or a member of their family during the period of detention. However, of those who were not visited, 20 percent reported that their parents, guardian, members of their family, or village local council officials were not given any communication on arrest. Some family members could not even afford the cost of transport while others were either too old or too young to travel.

**Graph 10: The reasons why parents may not visit their detained children**



It was noted that detention facilities for juveniles were not adequately decentralized at the sub national or district level. Many of them lacked such amenities as to facilitate access and contact between the juveniles in custody and their families causing an infringement on their rights. Such rights are clearly stated in a number of international standards relevant to the promotion of juvenile justice.

“Every juvenile should have the right to receive regular and frequent visits, in circumstances that respect his or her privacy, as well as unrestricted communication with the family and the defence counsel.” *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Article 60.*

The child’s right to regular and direct contact with his or her parents and family can be seriously challenged during deprivation of liberty. Denial of such contact can have serious adverse consequences especially with respect to their integration of the child back into his or her family following release, and the wellbeing as well as the psychological health of the child during the period of detention.

“States shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” *The United Nations Convention on the Rights of the Child, Article 9(3).*

“States shall ensure that a child has the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.” *The United Nations Convention on the Rights of the Child, Article 37(c).*

“In the interest and well-being of the institutionalised juvenile, the parents or guardian shall have a right of access.” *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Article 26(5).*

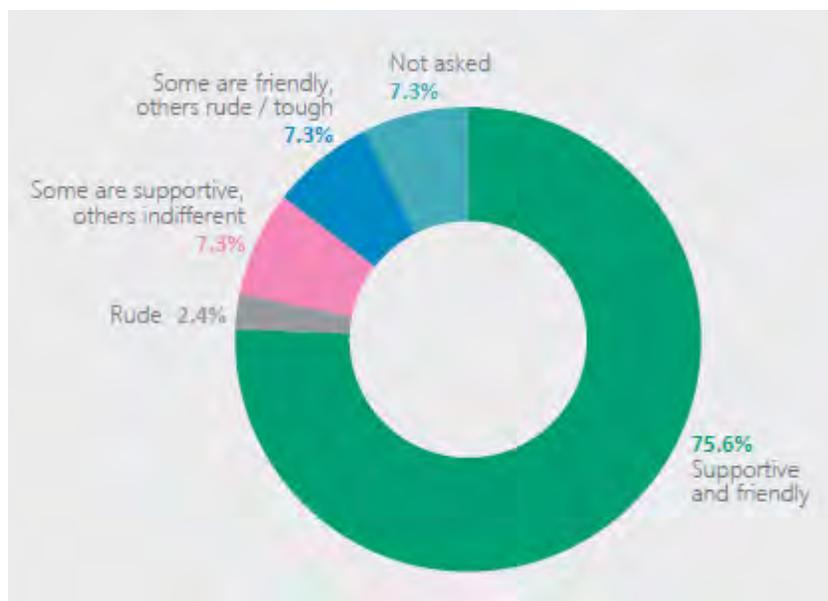
“Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families.” *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Article 30*

“Juveniles (deprived of liberty) should be allowed to leave detention facilities for a visit to their home and family.” *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Article 59.*

### 3.4.15 Competence of staff

In this study the survey respondents were asked to rank the quality of personnel. The findings show that close to 80 percent of the children on remand considered the staff in the detention facilities to be supportive and friendly. This was mainly in reference to the PSWO who in most cases are the wardens in charge of the other support staff at the facilities. The district PSWO role is to supervise the remand facilities, a role that is difficult to fulfil because of their role is open ended.

**Chart 3: The ranking of staff conduct by detained children**



It was noted that recent restructuring exercises by government did not cater for the staffing at remand homes and this leaves the district PSWO as the focal point for other functions and assignments by the DLG Community services and the MoGLSD. These many tasks jeopardize the proper functioning of the PSWO towards juveniles since they are ill resourced both in personnel and finances.

“The budget for remand homes should be increased because they serve beyond a single district. Moreover, the restructuring of local government should consider creating staff more positions for remand homes. There is urgent need to recruit support staff such as caterers, security guards, para-medics, and wardens.” *Interview with the Chief Administrative Officer held in Masindi town, Western region.*

The skills of police and judicial officers on handling of juvenile offenders range from general trained to apprenticeship or on-job training. Among the Judicial officers interviewed, it was only His Worship Kenneth Lubogo Gimugu, Grade One Magistrate Kiira Magistrate’s Court who had attained specialized training on handling juvenile offenders. However many have had access to training workshops on handling children in contact with the law in general. It was further observed that the roles of key duty bearers be clearly articulated to ensure there is compliance to the standards.

**Box 12: The case of South Africa on roles of the key duty bearers**

**Probation officers:** These serve as investigators, supervisors, crime preventers and implementers of programs e.g. convene family conferences as mediators. They are charged with home based supervision of children awaiting trial this enables a child to continue going to school or help find jobs for out of school children. They are expected to provide a pre-sentence report.

**Magistrate:** These play a proactive role in screening children before diversion. They try and ensure that all children below 14 years are not incarcerated. A lot of judicial activism is used in the interpretation of child sentences bearing in mind the international norms and standards. A magistrate presiding over a preliminary inquiry has the duty to inform child about the proceedings; consider the pre-sentence report; encourage participation of the child, parent or appropriate adult in proceedings; as well as confirm that there is sufficient evidence to refer case to the child justice court and determine if the child is in need of care and protection.

**Prosecution:** These take a lead role in proposing diversion as an option to prosecution. However if the prosecutor notes that case cannot be diverted it will be processed and sent to child justice court. He

or she is charged with ensuring input from victims and others involved in case is received. The prosecutor is further expected to review recommendation of the probation officer to divert.

**Police:** These ensure that children are not mistreated as they go through the justice system. They make first contact with probation officers, make effort to release children to their parents, and may detain children as a last resort. In addition they take care of medical, food and transport issues once the child is ready to leave facility as well as appear at an assessment if invited by probation officer.

## **CHAPTER 4: PROPOSED REFORMS FOR EFFECTIVE MODELS**

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A juvenile is an individual who is legally able to commit a criminal offence owing to being over the minimum age of criminal responsibility, 12 years in the case of Uganda, but who is under the age of criminal majority, 18 years, when a person is legally considered an adult. In the ordinary sense, the sentencing of an individual who is convicted of a criminal offence is largely driven by considerations of retribution (punishment), as well as deterrence and rehabilitation but the principle of rehabilitation is often assigned the greatest weight in the case of juvenile offenders.<sup>19</sup>

This partly explains the provision for special treatment of children who come into conflict with the law, using a number of needs-tailored justice delivery models. In some countries a ‘welfare’ model prevails, which focuses on the needs of the child, diagnosis, treatment and more informal procedures, whereas other countries favour a ‘justice’ model, which emphasises accountability, punishment and procedural formality. Within either a welfare or justice model, under the juvenile justice system, a child may at some point be ‘deprived of liberty’ in a public or private location which may include police stations, detention centres, juvenile or adult prisons, secure remand homes, work or boot camps, penitentiary colonies, locked specialised schools, educational or rehabilitation establishments, military camps and prisons, immigration detention centres, secure youth hostels and hospitals.<sup>20</sup>

These models typically interface with the three conventional subsystems of the juvenile justice system which include the police (to enforce the law and maintain order); the juvenile court (to dispose of cases referred to them by public prosecution and probation departments, make judicial decisions, and keep a track record of the performance of juveniles who have been convicted); as well as the correctional services (to take care of juvenile offenders sentenced by the courts). More reforms are proposed in this study focused towards intervening early to deter adolescents from engaging in criminal behaviour as adults alongside the conventional approaches with the goal of protection, treatment, and rehabilitation while embracing accountability and public safety through more effective, balanced, age appropriate, restorative and system-tailored justice models.

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<sup>19</sup>Piquero A, Steinberg L. Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States. MacArthur Research Network on Adolescent Development and Juvenile Justice, 2008.

<sup>20</sup>Stevens A, Kessler I, Gladstone B. Review of Good Practices in Preventing Juvenile Crime in the European Union. University of Kent & European Crime Prevention Network, 2006. Available at <http://www.eucpn.org/library/index.asp>

## **4.1 Early intervention models**

The early intervention models are proposed for preventing the children from coming into contact or conflict with the law. At the central government level, the legislation and policies as well as standards and guidelines should be checked for the existence of a plan for the prevention of conflict with the law amongst children. The National Children Authority (NCA) under the Ministry of Gender, labour and Social Development is suitably positioned to oversee these proposed early intervention models in its implementation frameworks for child protection and prevention of child abuse.

Typically, a prevention plan may include programmes or policies for:

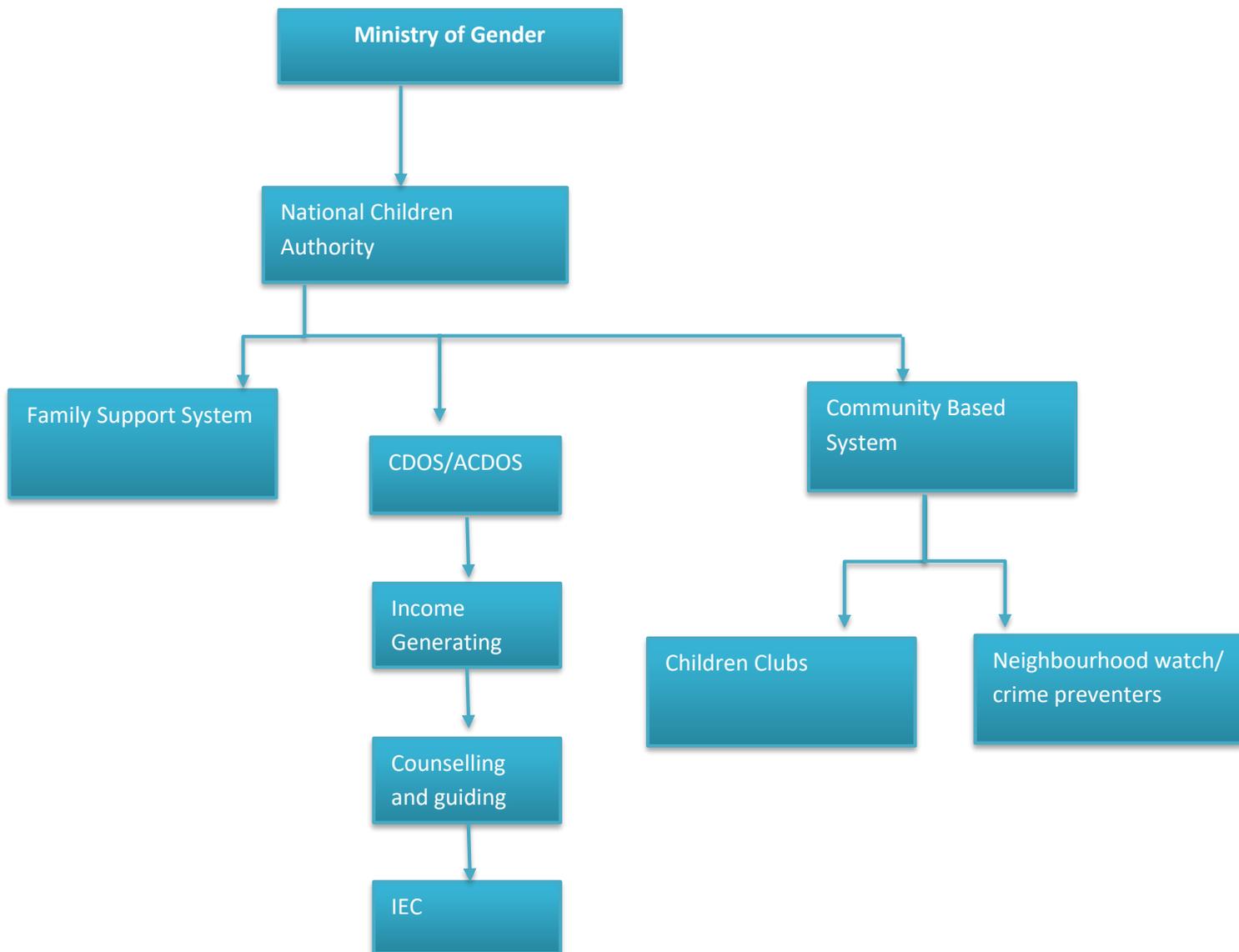
- Supporting families in bringing up children;
- Development of community-based networks for vulnerable children;
- Advising on flexible working patterns for parents and guardians;
- Enhancing social protection services for low income families;
- Abolition of corporal punishment and reduction of domestic violence;
- Prevention of drug, alcohol and substance abuse among children;
- Reducing the risk situations in which young people commit crimes;
- Providing sports and cultural activities for children; and
- Dissemination of educational information on children's rights.

### **4.1.1 The social protection model**

At national level, the Ministry of Gender, Labour and Social Development (MoGLSD) under the Directorate of Social Protection, which comprises the Department of Youth and Children Affairs is responsible for the care, protection and empowerment of children and youth through the formulation and review of relevant guidelines, programmes, policies and laws bearing on children and youth; coordination of, and networking with duty-bearers on issues related to children and youths; promoting participation of children and youths in national development programmes; capacity development of children and youth service providers; and ensuring that initiatives, programmes, policies and laws address concerns of children and youths. The study identified the need for MoGLSD to strengthen its oversight role through

the NCA in empowering communities and supporting the protection of the rights of vulnerable groups, with a specific focus on most at risk children.

### The Early Intervention Model

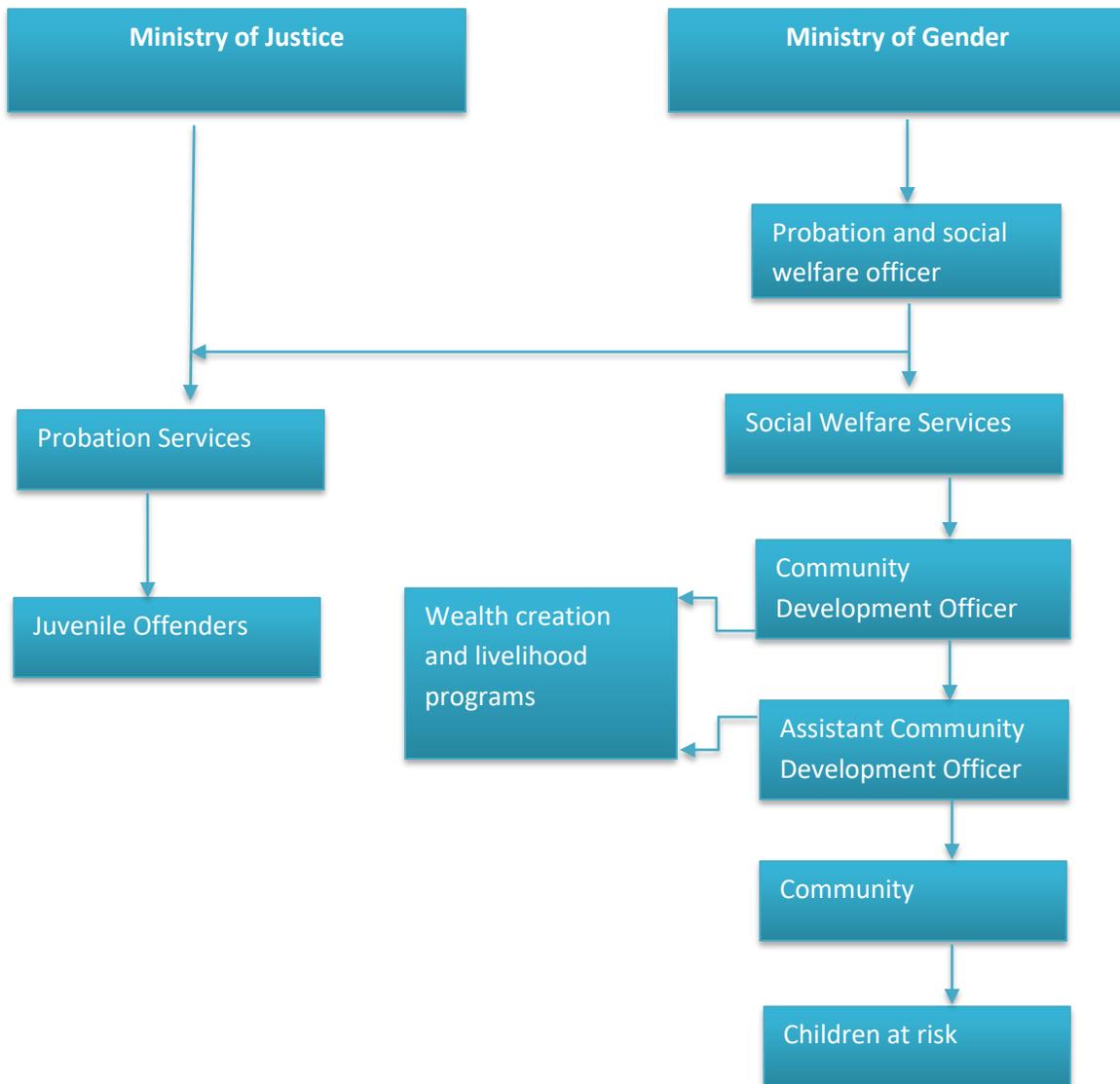


At district level, the statutory child protection responsibilities rest with the District Department of Community Services under the technical leadership of the District Probation and Social Welfare Officers (PSWO). The study picked on the recommendation by some respondents that since the PSWO are overwhelmed with work, their role should be split into two separate offices so that the Ministry of Justice and Constitutional Affairs (MoJCA) handles the probation related tasks while the MoGLSD retains the social welfare tasks. This means that the probation officers can be facilitated more adequately to focus on juvenile justice matters like supervision of arrests, remand conditions, trial processes, and court orders while the social welfare officers undertake child support services like investigation and reporting of abuse, establishment of paternity, location of relatives, distribution of assistance, and administration of placements in the community.

At the sub-county level, child protection responsibilities are divulged to Community Development Officers (CDO) and Assistant Community Development Officers (ACDO). However, the latter are also responsible for a wide range of other community development issues, and so, are over-stretched and mostly unable to focus effectively on child protection. Under this new arrangement the CDOs and ACDOs will assist the social welfare officers. It is anticipated that segregation of duties for the PSWO between the MoGLSD and MoJCA will not only provide stronger leadership at national policy level but also enable better supervision of service delivery at community level. This arrangement should eventually give birth to an effective social welfare system that provides assistance to needy individuals and families. Most of the challenges faced by children today are because the modern family units and community setting can no longer cater for their children amidst marital break ups, dysfunctional social support systems, child abuse and neglect, as well as many other economically driven difficulties which require the State's involvement. Such as provision of income generating activities.

The level of vulnerability among children will not be addressed unless measures are taken by the State to provide benefits to deserving child related cases through livelihood assistance, accommodation alternatives, medical care and more access to training or placements in occupational opportunities lest these children are exposed to the dangers of conflicting with the law that pose even greater social problems. This social protection model can start with a few components under existing wealth creation and livelihood programmes to be accessed by individuals, families, or organisations in order to give welfare support and protect the rights of vulnerable children that can demonstrate the potential or ability to embrace a crime-free way of life and work towards a productive future.

## The Social Protection Model



### **4.1.2 The school based model**

At national level, the Ministry of Education and Sports (MoES) under the Department of Guidance and Counselling (G&C) is mandated to provide strategic and technical assistance, leadership, regulation, and other related course of action, including HIV/AIDS mitigation, psychosocial concerns, and support services within the entire Education and Training Sector, in collaboration with the relevant organs and stakeholders. This requires the MoES to ensure training and retraining/refresher programmes for teacher counsellors and other stakeholders in both government and private educational institutions to develop their capacity so that G&C is effectively provided in schools in collaboration with Teacher Education, training institutions, districts, and the MoGLSD. In addition, the MoES has established a Department responsible for Special Needs and Inclusive Education to address the educational needs and rights of every learner with particular learning requirements as well as a Department for promoting business, technical and vocational training at all levels of the education system in Uganda. These structures are intended to uphold the right of all children to participate in a child-centred education system that meets individual needs but also enable those with temporary and permanent needs for educational adjustments to attend and thrive in school.

At district level, the statutory responsibilities for ensuring the provision of quality education and sports in the country rest with the District Department of Education Services under the technical leadership of the District Education Officers (DEO) with assistance from the District Inspector of Schools, and other officers. The district councils are required to prepare an education development plan in respect of such educational services to be administered by the local government, covering a period of three years as part of the comprehensive and integrated development plan of a district.

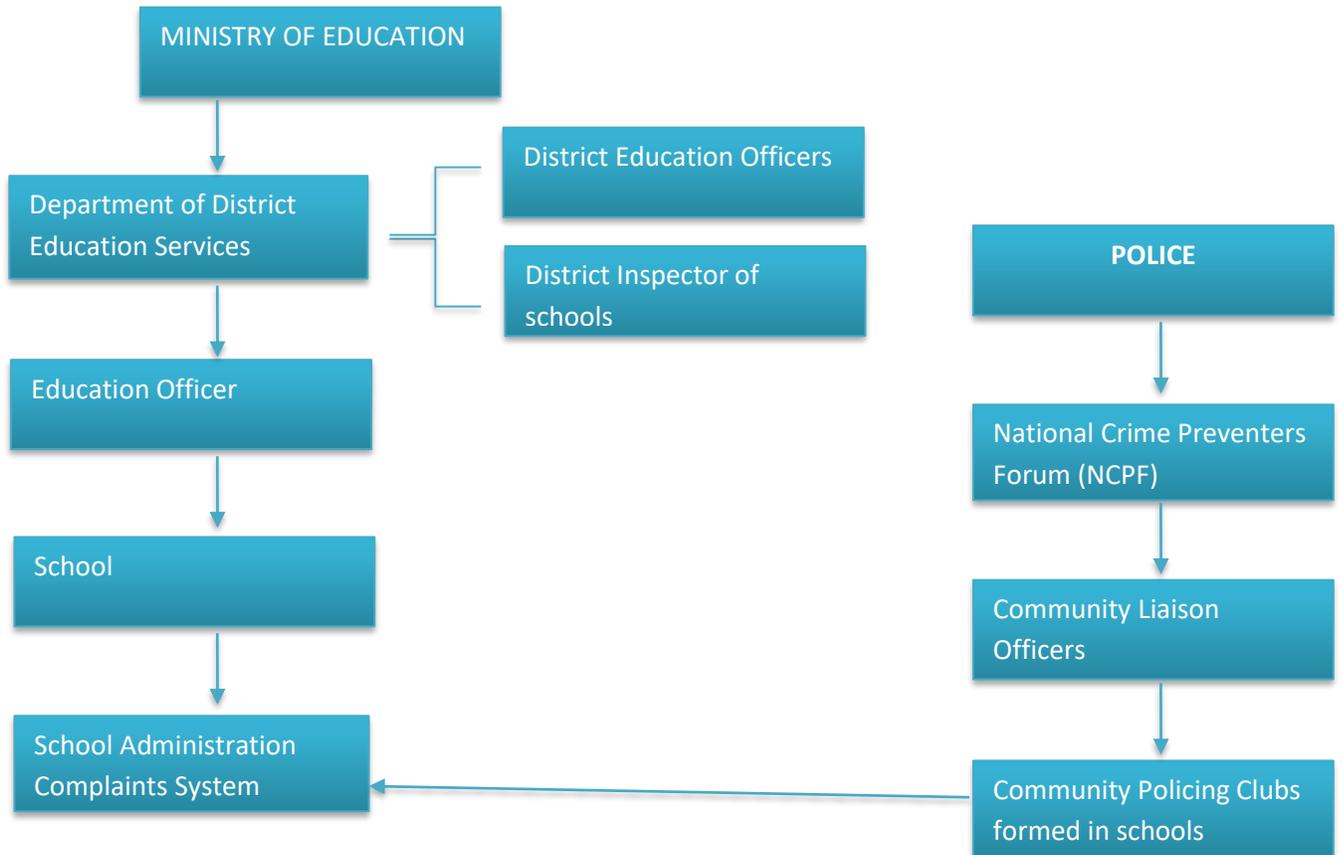
At sub-county, municipal, division, or town council level, an Education Officer is usually in place with the responsibility of promoting educational strategies under the district development plan. This office normally works closely with the head teachers in schools to conduct self-awareness sessions, provide career guidance and counselling, promote gender sensitive practices, etc. But the study noted that the most common crime related behaviour among children in schools includes defilement, drug abuse, affray, petty theft, pornography, arson, absenteeism, among others. Although the government strategies can be effectively designed to address these negative tendencies, it is difficult to implement them without involving the school children themselves through crime prevention programmes.

The National Crime Preventers' Forum (NCPF) was formed by the police in 2015 as an arrangement to enable community-policing experts traverse schools and form community policing clubs that promote strategies to fight and prevent crime amongst schools and in the surrounding communities. But the concern is not only about crime since there are other problems especially relating to the high levels in dropping out of school with more vulnerability among girls. The study found that economic factors were primarily to blame, early pregnancy was another, while the lack of proper counselling and career guidance also explain why many children left school for an alternative way of life.

School-based programmes for the prevention of juvenile crime need to be oriented towards students, teachers, curricula, administration, parents, law enforcement and security personnel, as well as the community and policy makers. The schools need to start providing a comprehensive and appropriate education curriculum where instruction is tailored to the varying individual interests and abilities so that special needs are addressed along with the academic requirements. The police can be involved through the Community Liaison Officers, the administration can enforce an independent complaints management system, the students and teachers can interact through club activities, and policy makers may have to think of establishing a framework for enforcing the use of crime prevention committees in schools. The office of the District Inspector of schools must be strengthened and facilitated to ensure that compliance is guaranteed on such issues from planning to implementation and review.

The schools must uphold the education and other developmental rights which include the right to education, play, leisure, cultural activities, access to information, as well as the freedom of thought, conscience and religion. The key measures relating to these rights include early childhood development (ECD), which aims at providing the optimal development and education of a child from conception to eight years, as well as business, technical and vocational education and training (BT/VET) that provides a comprehensive system ranging from basic training to diploma-level technical training through a large range of public and private institutions/enterprises. It is important to streamline these measures through the UPE and USE programmes so that even the most vulnerable children will benefit from their early school experiences to access the needed guidance and meet their special needs. These measures have been adopted at national policy level but there are a lot of technical gaps at sub national levels where support is needed by most districts, some of which are still embryonic, in order to streamline such crime prevention strategies in their development and action plans.

## The School Based Model



## **4.2 Diversion related models**

Diversion offers a chance to marginalised, socially excluded and traumatised young people in conflict with the law for embracing healthy, alternative, and significant developmental opportunities that can turn their lives around so as to become more productive and responsible citizens.

The aims of the diversion programmes are to:

- Identify and deal with underlying problems motivating juvenile offender behaviour before it can escalate into a series of reoffending patterns
- Provide psycho-educational and rehabilitative programmes to benefit all parties concerned such as victim, offender, and the community at large
- Offer young offenders the opportunity of taking responsibility for their actions and be accountable for these actions, in addition to providing an opportunity for reparation
- Prevent first time or petty offenders from receiving a criminal record and being labelled as criminals, as this may become a self-fulfilling prophecy
- Lessen the case-load of the formal justice system by using deprivation of liberty as a measure of last resort in dealing with child offenders
- Avoid the imprisonment of first-time or petty offenders who are exposed to criminal elements and may emerge hardened by the experience and all the more prepared to repeat their offending or criminal behaviour if not given proper treatment

### **4.2.1 The community focused model**

The Children Act provides that all causes and matters of a civil nature concerning children shall be dealt with by the village executive committee court where the child resides or where the cause of action arises. This court as a court of first instance has criminal jurisdiction to handle offences like affray, common assault, actual bodily harm, theft, criminal trespass, and malicious damage to property. Notwithstanding any penalty prescribed by the Penal Code Act, this Court may make an order through reconciliation, compensation, restitution, community service, apology or caution. In addition to these reliefs, this court may make a guidance order requiring the child to submit himself or herself to the guidance, supervision, advice and assistance of a designated person for a maximum period of six months but cannot make an order remanding a child in custody in respect of any child appearing before it. (Refer to s.92 children's act)

The matters will normally be resolved at the community level in almost all the cases handled by the village executive committee court so that the child is not taken to police. Apart from the formal sitting of the village executive committee court, a Fit person or the secretary for children's affairs of the village local council may hold a family meeting in an informal setting to resolve the matters that may not require involving the village executive committee court. In this case, the parties seek to reconcile where an apology or caution is made but a mutual agreement may also be reached towards having some form of compensation, restitution or fine within the means of the offending party.

The amendment to this form of diversion would be to utilise the services of a social worker or paralegal to witness the proceedings or offer technical guidance where the matter may require specialised interventions especially for the habitual offenders.

In either case, the victim and offender usually sit in the same meeting and the authority charged with overseeing the proceedings should ensure as much as possible that there is no blame or stigma for the child offender. This allows for the participation of the child in arriving at an order suiting his or her circumstances and within the available means. This approach has proved to be very effective because the community is at the centre of resolving the dispute between the victim and offender in an amicable way and this resonates with the traditional mode of dispute resolution. It also provides a strong supervisory mechanism for the offending party to comply to the agreement reached with little likelihood of recidivism. The community setting is also very important because it keeps the child offender in a familiar environment that is enabling for change and provision of basic needs.

#### **4.2.2 The police based model**

The Children Act provides that as soon as possible after arrest, the child's parents or guardians and the secretary for children's affairs of the local government council for the area in which the child resides shall be informed of the arrest by the police. In instances where a child's parent or guardian cannot be immediately contacted or cannot be contacted at all, the Probation and Social Welfare Officer or an authorised person shall be informed as soon as possible following arrest so that he or she can attend the police interview except where it is not in the best interests of the child. (see s,89 children's act )

In most cases where a child has been arrested, the police are expected under justifiable circumstances to caution and release that child. Unless the charges are serious, the police are empowered to dispose of any child related case at their discretion without recourse to formal court processes in accordance with criteria laid down by the Inspector General of Police.

However, even where the charge is a serious one, the police can release the child on bond unless it is necessary in the child's interests to remove him or her from association with any person or where the release of the child will defeat the ends of justice provided that he or she is not detained with an adult person and that a female child shall, while in custody, be under the care of a woman officer. In a bid to avoid detaining children with adult persons, the police force established reception centres for children at police stations like Masaka, Hoima, Gulu, CPS Kampala, Katakwi and Kumi. The police council passed a resolution that any architectural plans in new stations must provide for child reception centres especially designed for the Child and Family Protection Officers (CFPO).

Most of the CFPOs are female police officers with professional training and experience in managing family related matters. A child normally under their care is assured of getting appropriate support especially the girl children who are strictly put under the care of a female police officer while in police custody. This is designed to avoid abuse of such a child. The police have also taken measures to refer children accused of offences such as affray, idle and disorderly, criminal trespass, common assault and malicious damage to property, to the LC court, school administrators, non-government organisations, cultural and religious leaders for more suitable remedies.

The referral system is useful because police have few detention facilities and in some cases, children are detained with adults or at police posts where such detention is not allowed. The study has also had some reports of instances where children are remanded at police stations by courts due to lack of remand homes in some magisterial areas. In most instances, such cases are referred to the police by the village executive committee courts themselves and that makes it difficult sometimes to refer such cases back to the same community structures while in other instances such cases are referred to police by complainants who think that the executive committees are either compromised, or have personal interests in the case, or lack of the necessary training on how to handle such cases.

This leaves many children helplessly trapped in the justice system but the study findings indicate that a number of programmes exist like the Paralegal Advisory Services, the Community Service Programme, the FIT persons trained by the Legal Aid Clinic, and the Justice for Children Programme which can be effectively replicated across the country to support the CFPOs and PSWOs where they are inadequately resourced to divert cases that do not deserve to be taken to court.

### **4.2.3 The court based model**

The Children Act provides that where a child appears before a court charged with any offence, the magistrate or person presiding over the court shall inquire into the case and release the child on bail unless there is a serious danger posed to the child. In case that the child is not released on bail, the court may make an order remanding or committing him or her in custody in a remand home to be named in the order, situated in the same area as the court making the order. If there is no remand home within a reasonable distance of the court or other place of safe custody as it deems fit.

The police are required to complete investigations within 45 days, if the case concerning a child is before a Family and Children Court and a plea of guilty has been entered and where owing to the seriousness of the case, the matter is before the High Court, then the maximum period of investigation to be undertaken by the police officer shall not exceed three months. However, police investigations are in most cases hampered by several factors such as lack of resources and logistics, corrupt tendencies, poor appreciation of child friendly justice, and systemic delays by prosecution.

Whenever possible, court may consider alternatives to remand such as close supervision or placement with a fit person determined by the court on recommendation of a PSWO. The family and children court gives the following orders caution, absolutely discharge, conditionally discharge (for not more than twelve months), or bind the child over to be of good behaviour (for a maximum of twelve months), where the charges against a child have been admitted or proved. Similarly, compensation, restitution or fine, may be preferred while taking into consideration the means of the child so far as they are known to the court; but an order of detention shall not be made in default of payment of a fine. A probation order may also be issued with such conditions as may be recommended by the PSWO for not more than twelve months provided it does not require a child to reside in a remand home.

The court bond and community service order are also becoming a useful diversion mechanism but there is need for measures by the Judiciary to involve prosecutors in playing a more proactive role in deciding whether to prosecute or divert child. There is need to further reform the law in order to allow for preliminary inquiry so that magistrates can consider the assessment report and decide whether a child should be diverted or considered to be in need of care and protection as well as permit diversion of cases involving sexual offences committed between children.

### **4.3 Rehabilitation related models**

Despite the international standards set to ensure the best interests of the child are catered for, there is still that possibility that in transacting with the juvenile justice system could cause some harm to the child. There are many possible consequences of child involvement in formalised judicial proceedings including societal stigmatisation of children who have gone through the juvenile justice system which cannot be ignored. In light of these likely failings, children in conflict with the law are often better served by constructive responses outside judicial proceedings that can more effectively promote rehabilitation and eventual reintegration into society.

Most often, preventive and diversionary measures do not cover the continuum of children's support needs to ensure their best interests once in conflict with the law. Preventive strategies at times focus on a wide spectrum of issues and individual needs are not specifically addresses. In some cases, diversion can also fail to positively contribute to a child's growth or development, compared to a constructive, rights-based formal judicial intervention which may provide better access to the support and guidance needed to address the issues that underlie offending behaviour.

While appropriate judicial and non-custodial measures might be selected for a child based on the nature and gravity of their offence or situation and background there is need to put additional focus on measures that can further facilitate effective rehabilitation and reintegration.

Programmes and projects that focus on rehabilitation generally include the following features:

- training, education and awareness programmes on juvenile justice issues for key members of government, criminal justice agencies and civil society

- addressing the root causes of offending behaviour by counselling children in conflict with the law to understand the consequences of their actions
- assessing children who come into contact with the criminal justice system in order to ensure proper treatment, protection and preparation for reintegration back into society
- providing employment or vocational training opportunities for children through placement with entrepreneurs for skills building and mentorship
- developing a restitution plan directly involving the offender to be accountable for the losses their actions caused to the community and the victim

#### **4.3.1 The Aftercare model**

The Children Act provides that before a child is released from detention, the probation and social welfare office and the authorities in the detention centre shall discuss the period of aftercare with the child, but in all circumstances it shall not exceed twelve months after the child's release from detention although there is no specific mention of aspects to consider.

International standards specify that all children leaving detention should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Such arrangements can be in form of guidance and structural support designed to provide an important step towards rehabilitation and successful reintegration into society.

Competent authorities should provide or ensure that services to assist juveniles in re-establishing themselves in society are available to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with or assured of suitable residence, appropriate employment, adequate clothing, and sufficient provisions to maintain him or her upon release in order to facilitate successful reintegration. It is important to note that there are no cases identified during the study where children have reported to been clearly registered for any form of structured aftercare services upon their release from detention.<sup>21</sup>

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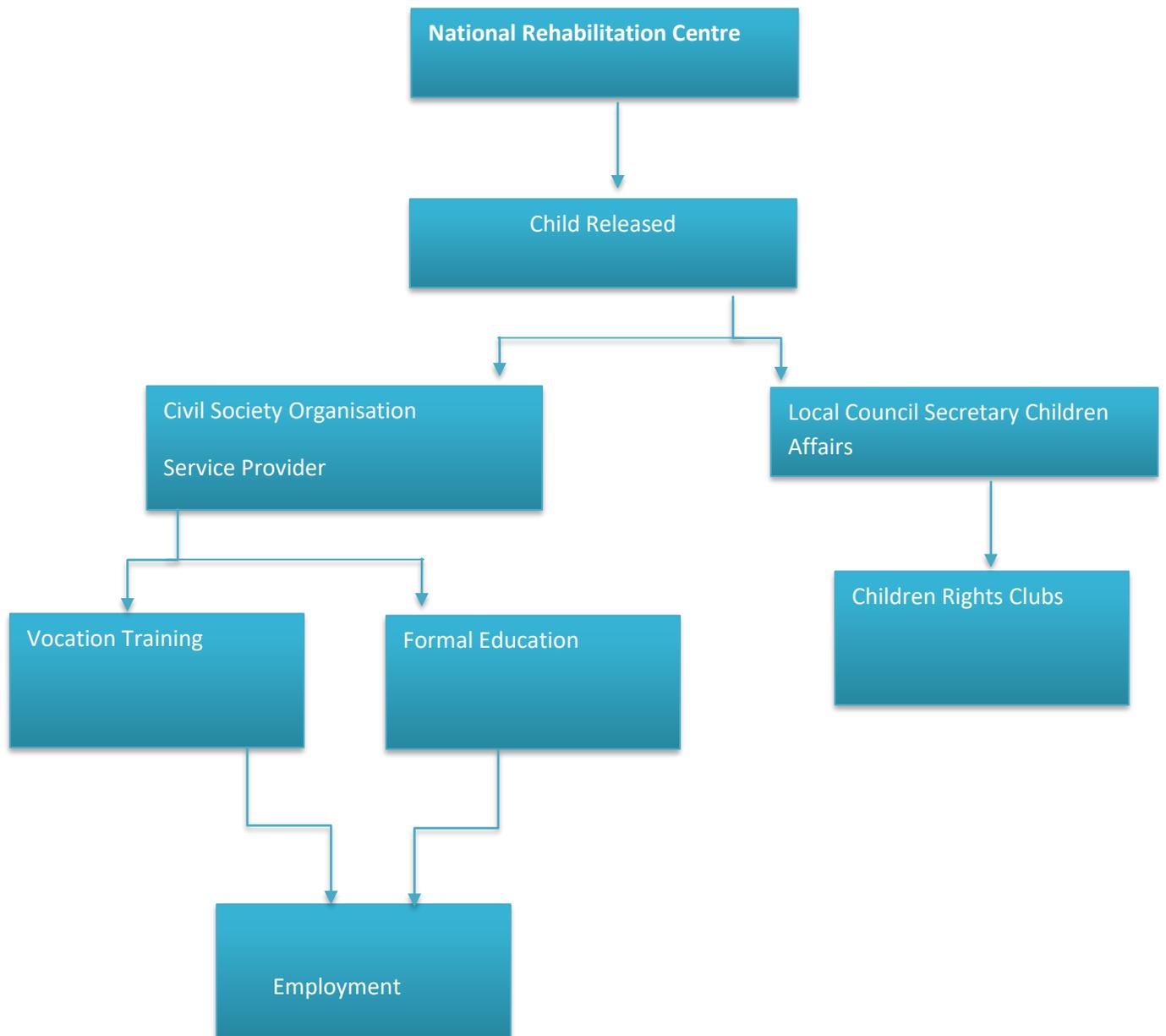
<sup>21</sup> However, some nongovernmental organisations like Retrak and the Uganda Youth Development Link identify children whom they temporarily enter into a half-way shelters or other semi-institutional arrangement to best deal with their reintegration problems after release from detention.

Structured aftercare means that:

- the child's specific needs are formally assessed on release and he or she is referred to particular aftercare service providers; or
- the child's progress and/or needs after release are monitored for a continuing period of time so that any concerns are addressed; or
- the child enters a formal educational, vocational or training scheme for children who have been detained that continues for a period of time;

The child once released from the detention facility is handed over to family members who are expected to welcome back and help the child settle in. The secretary for children's affairs or representative at LCI level will ensure that the family receiving child has received basic sensitisation on the steps to take while preparing to receive the child back into community. The secretary of children affairs will help monitor the child's progress in accordance with terms of release the child who is encouraged to join child clubs and peer activities to promote full reintegration.

## Aftercare Model



### **4.3.2 The Restorative model**

Restorative justice aims to address the root causes of offending behaviour by helping children in conflict with the law to understand the consequences of their actions. The restorative model asks children to take responsibility for repairing the harm they have caused, thereby encouraging them to show their capacity for change and positive action. Through guided interactions between these children and the community who have been negatively affected by their behaviour in an effort to restore harmony and find mutually beneficial solutions to avoid retaliation or recidivism.

Appropriate restorative justice responses can be placed along a continuum from simple to complex, depending on the level of involvement. Apologies, directed reflections and open conversations are used in the informal setting while community gatherings and facilitated conferences offer a more structured approach. The specific interventions may include victim-offender mediation, family group conferences, and sentencing or open village healing circles. These restorative justice measures build on the strengths of traditional justice systems to provide effective, flexible and locally appropriate responses which guide the informal arrangements of administering justice even after the formal processes have taken place since judicial decisions may even create more tension requiring restitution of social harmony especially among the neighbours or relatives in the community and the offending child.

This means that even where national resources are scarce, for example to institute the village executive committee, the local communities in their tribes, clans, or family setting can build programmes that support the development, education, admonition, protection, treatment and reintegration of children in conflict with the law. Restorative approaches are particularly well-suited to non-custodial measures as they offer a means to address the offence outside the formal justice system.

A number of provisions in the national laws, policies and programmes support the use of restorative justice approaches where they do not contravene internationally accepted standards and once used appropriately to suit the individual circumstances of each case. Nonetheless, it is important to recognise that restorative justice processes directly involve victims, families, schools, peers and other members of the community. While this wider approach promises to more readily facilitate children's reintegration, it can come at the cost of children's rights and measures need to be taken to ensure that the best interests of the child offender are protected notwithstanding the needs of the victim.

This model is used in a number of child-related cases especially those involving child to child sex and sometimes resulting into undesirable consequences like early marriages. It is therefore important that mechanisms are in place to guide the process such as for the child offender to retain the right to consult with a lawyer; have access to the assistance of a parent, guardian or interested adult; and receive adequate information regarding their rights, the nature of the restorative justice process opted, and the potential consequences of accepting a restorative intervention.

The model typically uses restorative group conferences such as constructive alternative justice intervention through a face-to-face encounter between victim(s), the offender(s), individuals who are committed to supporting each of the parties, and others who have been affected by the incident. It operates as a decision-making forum that promotes the restorative justice principle of rebuilding disruptive relationships with focus on putting things right rather than punishment. This encounter seeks to identify, repair and prevent possible harm, based in restorative justice values including meaningful accountability but preferably led by an experienced or trained facilitator.

Thus restorative group conferencing provides interested victims with the opportunity to meet the offender in a safe and structured setting, with the goal of holding the offenders directly accountable while providing important assistance and/or reparation to victims. With the assistance of a trained or experienced facilitator, the victim is able to let the offender know how the crime affected him or her, to receive answers to questions, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses they caused.

The restorative model can enable the offenders to take direct responsibility for their behaviour, to learn of the full impact of what they did, and to become convinced about the need for making amends to the person(s) they violated. But it is important for the group conferencing to take place after the victim and the offender have been counselled and properly prepared.

There are no clear forms of restorative group conferences practiced in Uganda but those identified elsewhere include: victim-offender mediation, community reparative panels, family group conferences, healing circles, victim impact panels, and victim impact classes. The family group conferences, victim offender mediation, and victim impact panels are usually the most practised.

### 4.3.3 The Therapeutic model

A range of services and support measures should be provided to deal with the difficulties experienced by juveniles in the transition to adulthood. Such services should include special programmes for deviant young offenders charged with crimes related to murder, substance abuse, terrorism, etc which put more emphasis on psychosocial counselling and various therapy-oriented interventions. If it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence. It means that treatment should be conducted by professionals who have suitable training and practical experience in a given field.

The majority of interventions are designed to assess and treat non-addicted children in conflict with the law who present mental health problems and drug-related behaviour. They equip the child offender and experimental drug user with the knowledge and skills to make informed, healthy choices regarding drug use or criminal behaviour. Similarly, they prevent the onset and establishment of a pattern of drug use and to decrease the possibility for continuing with a delinquent lifestyle. This model has been used specifically for the assessment, prevention and treatment of children in conflict with the law who present sex or drug related behavioural problems. It requires a lot of specialised treatment but presents opportunities for addressing psychosocial disorders that may arise from the negative influences resulting from interactions with other child offenders during detention. Proposed components of programmes for meeting the therapeutic needs of children are: developmental assessment, psycho-social support, individual counselling, group counselling, trauma counselling, grief counselling, play therapy, family therapy, stress management, conflict resolution, positive communication, positive discipline and behaviour change.

On the other hand, most child victims also require restitution to regain their dignity and honour as well as find answers to the trauma inflicted on them. Sometimes it is about bringing a sense of closure, and rehabilitation to enable them so as to return to their homes or communities with a considerable measure of self-worth. Usually a victim's initial contact after a crime is with people who have limited expertise to deal with their post trauma experiences. It is important that appropriate training is given to those who are typically the first to come into contact with such victims. Additional victim support services and awareness campaigns focusing on victims' rights are needed, and witness protection policies must be developed and implemented, particularly with respect to organized crime and specific offences such as trafficking in persons, where intimidation or retaliation may be used against those who cooperate with the police in preventing, investigating or prosecuting offences.

## **PART 5: GOOD PRACTICES AND KEY LESSONS LEARNED**

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### **5.1 Evolution of Juvenile Justice**

#### **5.1.1 The traditional system in Uganda**

Juvenile justice dates back to time immemorial when moral upbringing of children and social values was central to societal fabric. It is a mechanism by which children who offend the law are handled. In Karamoja for instance, the Council of Elders known as “*Akiriket*” is responsible for administering traditional justice and discipline in children. In Acholi the “*Mat oput*” is a mechanism used by the clan to cause any wrongdoer to account for their actions and this practice extended to children as well. In Busoga, child justice was handled by the “*Batongole*.” One Fit Person from Iganga said, “The Fit persons have come on board to support the Batongole because in the past it was their duty to ensure discipline of children who had behavioural challenges.” These social models, though with a broader traditional justice focus, and other emerging innovations may be the foundation upon which appropriate models for juvenile justice may be built to buttress the legal justice system.

#### **5.1.2 The traditional system in South Africa**

In pre-colonial South Africa, children who offended were processed according to the customs and norms of their communities which promoted reconciliation by taking cognizance of the feelings of all parties concerned.<sup>22</sup> These traditional systems have gone through a series of reforms having interacted with western traditional justice system which ushered in formal justice system through establishment of laws and court to prosecute and penalize offenders. In South Africa the colonial reign ushered in the British and Roman Dutch legal system which grossly mishandled children that came into contact with the criminal justice system. The punishments included deportation to Robben Island, imprisonment and corporal punishment.<sup>23</sup> This was later transformed to allow for reformatory schools albeit with segregation between the Black and Whites.<sup>24</sup> The main mode of punishment being corporal, greater punishment handed to the Blacks more than the rest of the races. Child advocates continued to mount pressure on the government of the day, yielding in the drafting of the Young Offenders Bill in 1937.<sup>25</sup> The

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<sup>22</sup> Freedom in the making, Ann Skelton pg 238

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

1976 uprising of children in Soweto Township exposed the real horrors of apartheid regime and led to real agitation for change through action,

### **5.1.3 The extant modern systems**

These systems have since mutated from the pre-colonial traditional justice system to the neo-colonial and post-colonial systems which have almost replaced the traditional system. Critically evident is the absence of child justice specific models in the traditional justice systems which operated broadly.

However, riddles, fireside prattles, taboos and folklores were the medium by which traditional society communicated to children thereby instilling values and morals. In Acholi for instance they used the *Wang'o* where children and elders bonded in a fire tale that shaped their upbringing, increased bonding and channels of communication to inculcate societal norms and values in the children.

Ideally juvenile justice should be a system through which children who offend the law are reprimanded with dignity in order to restore the child's image and moral turpitude.<sup>26</sup> It is further argued that the African approach to conflict resolution does not take custody into account.

## **5.2 Good practices**

There are several other good practices that the team came across in the course of the study. However only a few outstanding ones will be highlighted as sourced from the responses of the duty bearers and service providers.

According His Worship Kenneth Lubogo Gimugu, Magistrate Grade One Kiira Court, "A model that prevents children at risk from offending should be developed. He proposed already existing efforts such as Ghetto sports like football and Boxing. He cited KUBAP, a community AIDS based project in NAKULABYE, a renowned slum in Kampala in where he retreats over the weekend to engage with children to make them aware of the social evils in a bid to keep them away from committing crime. "

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<sup>26</sup>Child Justice in Africa, A Guide to Good Practice

### 5.2.1 Dissemination of IEC materials

The Association of Women Lawyers in Uganda (FIDA) and the Law development Centre legal aid clinic has developed a number of informative and educative materials promoting the rights of children which are displayed across the country in several police stations, at the court premises and several remand facilities.

### 5.2.2 Support and training of the CFPU

The Child and Family Protection Unit has received support from organisations like PLAN Uganda and put in place separate offices and well-trained personnel to ensure that children who are either in conflict or contact with the law can be accorded age appropriate services at the police stations.

### 5.2.3 Caring for the most at-risk children

The Uganda Youth Development Link has, among other measures, established drop-in centres targeting disadvantaged youth who engage in a number of risky behaviours, including alcohol and drug abuse, fighting and weapon carrying, as well as prostitution and unsafe sexual conduct.

### 5.2.4 Access to free legal services

The Legal Aid Project of the Uganda Law Society provides free legal services and referrals to other service providers in protecting the rights of children through its physical presence in the districts of Gulu, Moroto, Arua, Masindi, Jinja, Kabale, Kampala, and Mbarara.

The Law development Centre legal aid clinic through its post graduate students program provides legal aid services to juvenile offenders, follow ups and referrals in over six districts.

***Arch Bishop Desmond Tutu of South Africa asserts; “Retributive Justice is largely Western. The African understanding is far more restorative- not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope for is restorative of the dianitu of the people.” (1998)***

### **5.2.5 Tracking of cases for juveniles**

The Justice Law and Order Sector with support from UNICEF has rolled out the Justice for Children Programme which is addressing systemic bottlenecks through the DCCs and overseeing the effective handling of juveniles in contact with the justice system, e.g. attending the suspects parade.

### **5.2.6 Making use of the Fit Persons**

The Legal Aid Clinic of the Law development has trained a number of Fit Persons who assist in rooting community-based diversion practices among the ordinary persons especially at the village, parish, and sub county levels in liaison with the local structures, e.g. facilitating victim-offender mediation.

### **5.2.7 Paralegal services at the police**

The Foundation for Human Rights Initiative assists many children, especially languishing in pre-trial detention, to trace their family or sureties in case of serious offences and secure a police bond where the release will not defeat the ends of justice or even pose more danger to the community.

### **5.2.8 Job placements for children**

Retrak Uganda has established a reception centre where disadvantaged children such as the school dropouts or the street and slum dwellers can undergo screening so as to benefit from various livelihood improvement schemes including skills training, job placement, and business financing.

### **5.2.9 Hearing of cases in chambers**

The magistrates have deemed it appropriate to sometimes handle juvenile cases from their chambers because the formal setting in the ordinary court has been more often than not described by child offenders as not providing a friendly environment for participatory judicial proceedings.

### **5.2.10 Use of a toll free child helpline**

The African Network for the Prevention and Protection against Child Abuse and Neglect, the Uganda Child Rights NGO Network, and Action for Children launched a helpline to report cases of child abuse which are left unreported due to gaps in the child protection system.

### **5.2.11 Early childhood development efforts**

The World Vision has a unique approach to addressing the rights of the child considering factors like education, welfare and other gender-related needs, which pose multiple vulnerabilities to minors (especially girls) due to disempowerment at the individual, household and community levels.

### **5.2.12 Support to remanded children**

The remand homes have received varying support from NGOs like Save the Children (kitchen stoves), Dwelling Place (medical services), Defence for Children International (vocational training), Jesus Cares for All (spiritual development), and Give Me a Chance (child resettlement).

## **5.3 Lessons learnt**

- ✚ The numbers of children offending the law are overwhelming and supersede the existing infrastructures that were designed to accommodate only a few. Some of the children especially in Kampirigisa and Naguru complained of congestion in the dormitories. The personnel in the juvenile justice sector are often stranded with children when required to be taken to court because of lack of transport or lack of funds for fuel let alone other logistical requirements for presenting the children in court. According to one Magistrate, it may take over a month before any children are presented before him in court and yet he is aware that there are many cases for consideration. Sometimes the means of transport are improvised by the individual officers at the district who may need to be given a moderate allowance to encourage such practical arrangements.
- ✚ Generally, trends indicate that there is improvement in the handling and attitude towards juvenile offenders in Uganda. In more than 90% of the interviews, the findings indicated that children are held in separate detention and remand cells from the adults. The hygiene, provision of meals, soap and pads to the girls as well as clothing and beddings has tremendously improved. Safety and security of the children is to a large extent guaranteed. Thus, many children reported to have proper treatment while on remand and a good number confessed that they were reformed.

- ✚ The remand homes are meant to be regional centres yet they are resourced by a district budget where the home is situated this making it financially difficult for them to handle juveniles referred to them from nearby districts. It becomes a vicious cycle that without financial resources, there is a clog in the system since the through rate of cases is slowed down causing backlog.
- ✚ The prosecution of cases poses a challenge because witnesses do not bother to follow up and believe that once a child suspect is detained the case is sorted out and hence do not show up. Subsequently many cases are dismissed for want of prosecution but proper investigation also need to be carried out before arrest.
- ✚ The PSWOs are overstretched with the number of children in the system. According to the international standards, the ratio of PSWO to children is 1:6. However, there is only one probation officer for every district save for Kampala where there is a Probation Officer in every division. In addition some of the remand facilities do not have support staff and this requires urgent attention.
- ✚ It is obvious from the findings that the justice delivery system is overwhelmed with the number of children of who never get to access the PSWO support in the course of handling their case. One PSWO said; “I am alone in my office and yet I have to attend to all matters of children in the whole district. I also have other roles to attend to including attending trainings and meetings which we are invited to at the district and the Ministry of Gender Labour and Social Development. “Another PSWO lamented that there are not enough funds for him to adequately attend to matters of the children. One District Official said; “How do you expect the PSWO to be glued to his/her desk or attend to matters of children when there are several projects that require their involvement, moreover projects from which they draw allowances.”
- ✚ There is a substantive number of children who were prior to detention were school going. Although the remand facilities provide for formal education and skills training, the mechanism for enrolment is lacking in ensuring that it is made mandatory for every child. Some of the children stated that access to education was optional and based on one’s interests but others also noted staff may choose those who will go to formal school or it may be determined by one’s discipline record. This implies that the education of many children is interrupted with likely adverse effects for their future.

## **5.4 Children's voices**

### **Perceptions for the future**

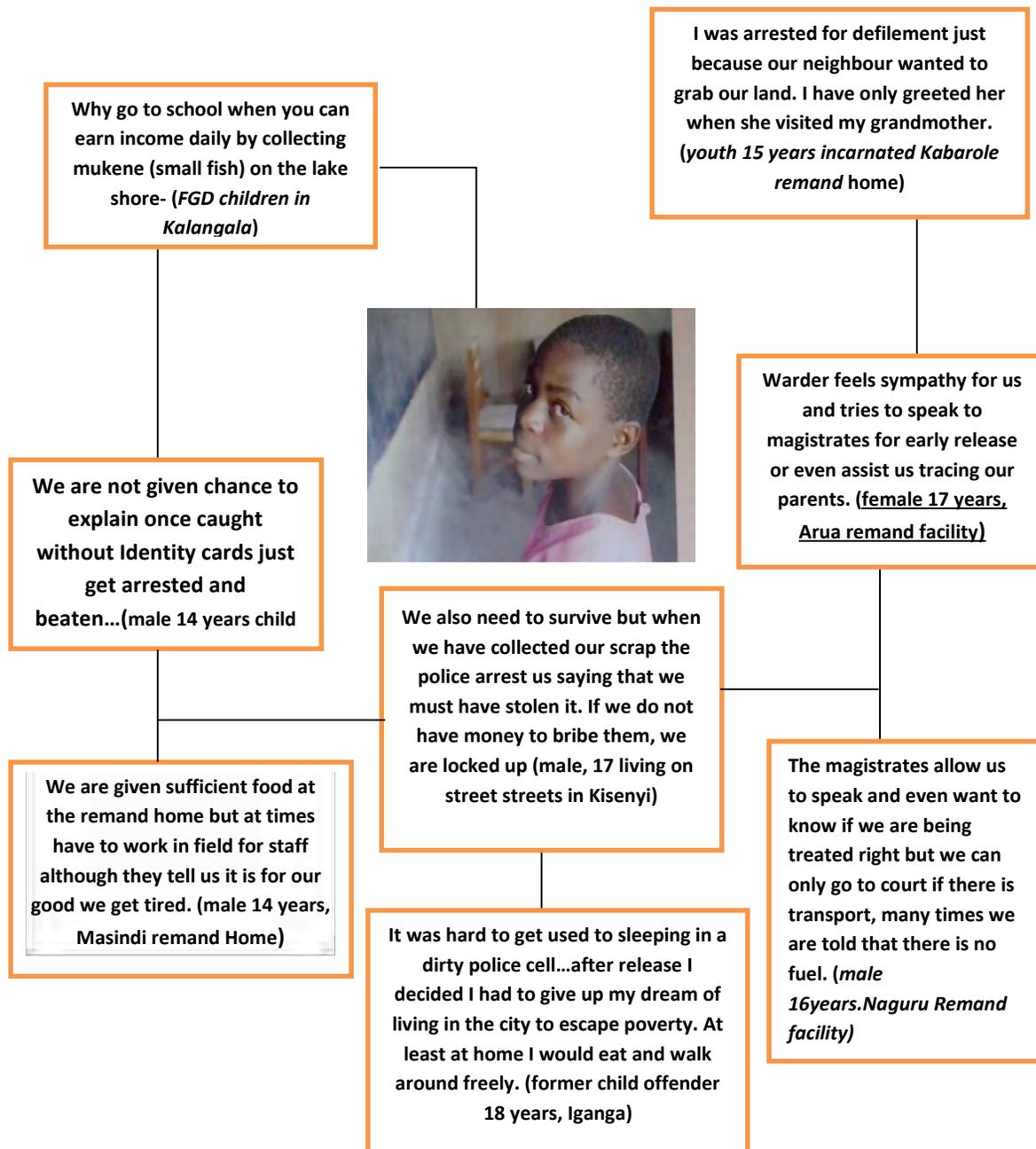
The children who were interviewed while incarcerated were interested in continuing with their life after release. On a positive note 20% of the children wanted to be released so that they could return to school; 15% said they were innocent and also wished to return to school once they are released; 7% wished to gain their freedom so that they would resume their work; 12% expressed the wish to be reunited with the families; 7% wish to be reconciled with their families; 7% wish to return to fend for their younger siblings; 7% wish to return to meet their children; 5% were confident of living a reformed life. 10% expressed their discomfort at being in custody.

Of the remaining 17% were pessimistic with 2% uncertain about their future; 2% said they would feel out of place to return to the community while 5% said they felt un loved by their families.

### **Difficulties faced**

The Children stated as their challenges the fear of being transferred to an adult's prison once they turn 18 years. Other challenges included routine meals, psychological abuse by staff in the justice delivery institutions, confinement in the dormitories in the afternoon, witnessing frequent fights among fellow children, boredom from lack of extracurricular activities and social amenities, none or irregular communication with family, delays in disposal of their cases, menial tasks, and bullying of new comers

# Children's voices about their experience with the juvenile justice system



## **PART 6: CONCLUSIONS AND RECOMMENDATIONS**

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### **6.1 The need for political goodwill**

The study has indicated that without political attention being given to the plight of children in conflict with the law all efforts being made to develop a responsive juvenile justice system are wasted. The government has often times failed to prioritise children's issues. There are limited services which directly benefit children, and services provided for children are poorly coordinated. If this position is to change for the better government should allocate more funds for juvenile justice programs. This would help reduce problems like lack of transport to take children to court and establish remand homes for some districts where they are non-existent.

Government needs to enforce compulsory education so that children are occupied and learn life skills that will help deter them from engaging in a life of crime. It should also ring fence budgets and monies earmarked for child based programs. At the district level district officials should be encouraged to budget appropriately for children's concerns.

### **6.2 Reforms in roles and jurisdiction**

The study recommends that continuous and specialized training for juvenile justice stakeholders at all levels in order to improve the handling of offenders. This training will enable Local Council committees that are courts of first instance to be more proactive in conducting their roles. The effect will be that more petty offenders will be tried at that local council level so that the formal justice system is decongested leaving it to concentrate on more serious offenders.

The Probation and Social Welfare Office should utilise the other officers under its supervision that is the community development officers and community liaison officers at police. This is based on the finding that the PSWO is over taxed with all district responsibilities leaving officers with almost no time or resources to handle juvenile cases.

The police force is equipped with a child protection unit specialised to handle children therefore it should be properly resourced to follow up on juvenile cases. The police force should expand holding facilities or reception, centres to avoid any interaction of the juveniles with adult offenders.

Additionally, the police should interact with the communities to jointly establish crime prevention and neighbourhood watch programs to monitor children at risk of offending and former offenders.

Whereas, judicial officers should be specifically trained to handle child offenders so that they can adequately respond to their needs and determine with efficiency their placement to referral institutes, programs or remand facilities.

### **6.3 Preventive programs**

It was noted that children resort to crime not only for survival but also to punish society that does not care about their needs and feelings. Therefore, if these children's needs could be captured earlier through preventive strategies then the likelihood of offending would be less. This entails improved parenting skills and empowerment programs, income generating programs at community levels, enforcement of bye laws on school attendance and neighbourhood watch programs.

The attitude of indifference among communities has to be reviewed for the greater good and development of the community. Every child is my child too slogan should be reinforced to reduce on individualism because it takes a village to raise a child.

### **6.4 Reforms in laws and policy**

The Children Act was recently amended but had little to offer in respect to the ongoing struggles in the juvenile justice sector. There is need for law and policy that will provide appropriate guidelines on what should be done in the sector since the lack leads to a guessing game that could be detrimental if challenged. The following reforms are proposed:

- ✚ To advocate for youth and child care centres that are properly staffed with trained personnel as alternatives to police cells and remand facilities and can be outsourced to the private sector
- ✚ Minimize residential care or juvenile remand facilities. To sort out the serious and habitual offenders from petty offenders and those children in need of care and protection.

- ✚ Differentiation and creativity in sentencing, which takes cognizance of age, seriousness of offence and other factors in the best interest of the child. These can be obtained through assessments being done for each child before sentencing. Thus avoiding the overuse of imprisonment due to poor conditions therein and lack of facilities.
- ✚ To adopt preliminary inquiry procedure to determine whether a child should be diverted or not.
- ✚ Diversion program should be expanded to allow greater participation nationwide and provisions made for serious offences e.g. defilement or child to child sex. To give guidance on when diversion is mandatory and when it is optional so as to ensure all decisions taken are appropriate and child friendly.
- ✚ All organisations intending to use diversion should be accredited by the Ministry of Gender, Labour and Social Development. This improves the standard of diversion being used and ensures accountability on the part of the organisation.
- ✚ To introduce monitoring of juveniles deprived of their liberty in prisons and police cells by a supervisory committee not attached to any of the facilities and to review decisions through the courts in case of any anomaly.
- ✚ Provide specialized juvenile courts at district level with increased jurisdiction to handle all child related matters.
- ✚ Categorisation of the levels of offences. This will assist in the sorting process to determine where and how an offender will be handled and thereby freeing up time for courts to handle more complicated cases.
- ✚ Provision of legal aid at all stages of the trial for serious offences.
- ✚ To discourage pre-trial detention except in exceptional cases and never for children under age of 14 years and emphasis on release to families or appropriate care or police bond.

## **6.5 Resettlement and after care support**

Juvenile offending has a negative effect on the family and may bring feelings of shame; hatred and disharmony within the family and sometimes families break up. Children often times lose out on their education and the process is traumatizing for the children. Parents should be educated to understand implications of their child being incarcerated so that they can give them the requisite support throughout and to ensure that their children are released in time. In addition, the communities are ignorant about the laws that affect children and feel that offenders are a menace to society, which stems from bad upbringing

when in the homes. Therefore, when the children are released back into the community adequate preparations should be made to re-enter into the community and prevent occurrence of anti-social behaviour. This means that the family should provide social support, whereas the community is expected to prevent reoffending and promote reintegration into the community through community based interventions, and lastly the secretary children's affairs will directly or through fit persons, peer leaders, religious leaders offer counselling and guidance.

## **6.6 Alternative care and protection**

Parents, guardian or any person having custody of a child has the duty to maintain that child and, in particular, that duty gives a child the right to education and guidance; immunisation; adequate diet; clothing; shelter; and medical attention as well as protection from discrimination, violence, abuse and neglect. Parents/ guardians should also be encouraged and guided to improve household incomes.

But where a child is found to have committed a criminal offence, a court or probation and social welfare officer can order that the child be removed from his or her parents into the care of another individual or institution. That individual may be a family member or a foster parent, but may also include a residential children's home. The period in this place is for a specified duration and all due process rights must be guaranteed. The child is kept in this care unit only if the criminal matter is proved and should only be removed from his or her family where it is necessary to do so to protect the child or to protect others from serious harm, and it is in the child's best interests.

## **6.7 Welfare in detention facilities**

Detention facilities should adequately provide for the offenders in their custody and this is made possible if they utilize international standards found in Beijing and Havana guidelines. The standard expected is that the conditions should fulfil all the requirements of health and human dignity. This requires States to have regard to the need of children in detention for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure activities. Sleeping accommodation should consist of small dormitories or individual rooms and should be unobtrusively supervised. There should be sufficient, clean bedding and adequate sanitary facilities should be installed. Adequate food and drinking water should be made available at all times.

## **6.8 Contact with family during custody**

One of the biggest concerns about placing children in detention is that they are taken away from their homes. In most cases, the family home is a centre of care and support for the child. It is essential that if a child is taken away from the family, he or she is given the right to maintain contact with the family from the detention centre. It would be important that every child should have the right to receive regular and frequent visits, in principle once a week and not less than once a month with their family. Telephone contact once a week would be good if the facility can provide that form of communication for all.

## **6.9 Investigation and supervision**

The police have been identified as a stakeholder that needs to improve the manner in which they conduct arrests and investigations. At arrest police should ensure that the child offender's parent or guardian is informed. Police should inform the juvenile their reason for arrest and acknowledge use of the same principles such as innocent until proved guilty etc. Police should also ensure that only those properly trained to handle children carry out interviews. This means carrying out sensitive questioning for a limited period, cognisant of the time and giving appropriate breaks, the police should also respect legal times stated to bring child before a competent court e.g. 24 hours and carry out the investigation within an agreed stipulated time line to avoid unnecessary harm on the juvenile offender.

## **6.10 Multi sector engagements**

To develop a responsive and child friendly juvenile justice system where all key ministries have a stake and work together. This improves peer accountability and enables the institutions present challenges and successes in a cordial manner. Furthermore, budgets and plans for children can be properly developed and defended.

## **6.11 To Pilot One of the Models**

It would be useful to pilot one of the models as a way of determining what would be required to make it work, given the background that made the community-based model of diversion popular. In addition, the government is more likely to roll over for expansion initiatives that work.

## **6.12 Data management and usage**

One cannot with certainty infer from the records the trends in the justice delivery institutions. This is because the data management systems were assessed to have the following gaps:

- Data capturing format is not standardized in all the justice delivery institutions with each facility depending on location using a separate format and varying classification of cases.
- Some data is lacking in essential information such as age of the complainant and the different stages a juvenile has gone through within the justice system.
- It is not easy to concretely gauge the Diversion system since records in this regard are not systematically kept..

There is no evidence that these records are instituted in the monitoring system for juvenile Justice

The evaluation of the LDC/LAC Diversion Project conducted in 2011 recommended establishment of a robust monitoring system comprising of a data capturing tool, an online virtual tool, as well as the involvement of communities, local leaders, and civil society organisations including NGOs, CBOs and FBOs. Other areas to accompany the diversion program should be counselling, livelihood improvements, child supervision, and monitoring.

The Arua Remand Home has a well-established data capturing and management system using their computers. Other Remand Homes, Police and Courts all employ the ordinary book recording and filing system. The records are kept for ease of reference.

## CONCLUSIONS

The mind set in the management of juvenile justice has improved over the years, to a more humane approach. Although a lot more has to be done to pave way for actual structural reform so that the gains are permanent and reliant on systems and not on the whims of those who wield positions of influence.

It was noted from study that effective juvenile justice programs should focus on addressing the causes behind the offending behaviour of juveniles. This would mean looking at the juveniles' environment at all levels including family, peer groups, or community. The use of preventive measures to stall young offenders from entering the juvenile justice system at school or community levels are more effective than waiting to divert or incarcerate the child after the commission of the crime.

Uganda's neighbours and those beyond have managed to make strides towards improving the juvenile justice sector through joint task forces and committees, prioritising and ring fencing budget allocations, reform in relevant laws and policies among others. Therefore Uganda should pick a leaf from its neighbours and uphold the provisions in the international treaties and conventions.

This sheds light on the thinking that improvements can be done at all levels if the necessary buy in is made. This also recognizes the need for proper planning and resource mobilisation.

## **ANNEXURE 1: LIST OF REFERENCES**

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The Constitution of the Republic of Uganda 1985

Child Justice in Africa, A Guide to Good Practice

**Using Customary Law to enhance Children’s Right to Education, and Protection from Sexual Violence in Uganda**

The Africa Peer Review Mechanism Report, 2009

The UN Convention on the Rights of the Child 1989

The Children Act Cap 59 of the Laws of Uganda

The Local Government Act Cap 243 of the Laws of Uganda

The Penal Code Act Cap 120 of the Laws of Uganda

The Police Act

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

The African Charter on the Rights and Welfare of the African Child 1990

National Development Plan 2010-2015

The Social development Sector Plan

**A review of legislation pertaining to children, with particular emphasis on programmes offered to children awaiting trial at secure care centres in South Africa. Annie Singh and Vanessa Sing, university of Kwa Zulu –Natal , Durban**

Getting to know the child justice act , Jaqui Gallenti

<sup>1</sup> National policy framework on child justice 2010

<sup>1</sup>Child justice in south Africa under construction, child justice alliance 2006

Reforming the juvenile justice system in south Africa , policy, law reform and parallel developments. Ann Skelton

## ANNEXURE 2: LIST OF ADULT RESPONDENTS

### MBARARADISTRICT

NAME	ORGANISATION	DESIGNATION	CONTACT
Amumpiire Pheobe	Police	In-charge CFPU	0782720689
Steven Tumwine	Probation Office	Senior Probation and social Welfare Officer	0776923871 0703538995
Petua Tumuhimbise	Police	In – Charge, Child and Family Protection Unit. (CFPU)	0776923871 0703538995
Amutuhiire Pross	Mbarara women’s prison	In-mate	-
Derick Ninshuti	Mbarara Prison	In-mate	-
Akankwasa Seragio	Mbarara Prison	In- mate	-
Agaba James	Mbarara Prison	In-mate	-
Beinomugisha Peter	Mbarara Prison	In-mate	-
Johnson Tumushabe	Mbarara Main Prison	Inmate	-
Arthur Beyunga	Mbarara Main Prison	Inmate	-
Stuart Nareba	Mbarara Main Prison	Inmate	-
Dismvs Tusingwire	Mbarara Main Prison	Inmate	-
Celestine Sezibera	Mbarara Main Prison	Inmate	-

### KABALE DISTRICT

NAME	ORGANISATION	DESIGNATION	CONTACT
Tushabomwe Patrick	The Shepherds Centre	Project Director	0782859508
Owamaria Ruth	KIONONA ministries	Project Director	0777516150
Monica Muhumuza	Community based services, Local government.	Senior Probation and social Welfare Officer	0777959492
Mugarura Haruna	-	Street Child	-
Byamukama Junior	-	Street Child	-
Mugisha Amos	-	Street Child	-
Kukundakwe Adrew	-	Street Child	-
Ainembabazi Frank	The Shepherds Centre	Former Street Child	-
Kato Ivan	The Shepherds Centre	Former Street Child	-
Arinda Blair	The Shepherds Centre	Former Street Child	-
Akampa Mike	The Shepherds Centre	Former Street Child	-
Arinda Tony	The Shepherds Centre	Former Street Child	-
Arinda Gilbert	The Shepherds Centre	Former Street Child	-
Kakuru Happiness	The Shepherds Centre	Former Street Child	-

NAME	ORGANISATION	DESIGNATION	CONTACT
Muhumza Laban	The Shepherds Centre	Former Street Child	-
Omumpiire John Baptist	The Shepherds Centre	Former Street Child	-
Owamaani Brian	The Shepherds Centre	Former Street Child	-
Tukamushaba Silver	The Shepherds Centre	Former Street Child	-
Asiimwe Corode		Street Child	
Amon Twesigomwe		Street child	
Moses Amanyanya		Street child	
Enid Kembabazi		bailed.	0700142220
Davis Aifuka		Street Child	
Smith Nukwaha		Street child	
Sasira Elvis		Street child	
Timothy Ahereza		Street Child	

#### KABAROLE

NAME	ORGANISATION	DESIGNATION	CONTACT
Bachwa Theopista K. Mutooro	Fortportal Remand home	In-charge/Probation and welfare officer	0772373028
Shamillah Kakunguru	Kabarole District, Local Government	District Probation and Social Welfare Officer	0774705706
Kajumba Rose	Kagote	FIT person	0783356593
Mugenyi J. Bala	Nyakagongo East	FIT person	0777878332
Kahunde Irene	Bukwati East	FIT person	0788200601
Musana Ramathan	Nyabusozzi West	FIT person	0703090304
Karungi Priscilla	Booma West	FIT person	0773523892
Nakalema Betty	East Division	FIT person	0772373506
Mugisa Idi	Kitere West	FIT person	0774021539
Kanyunyuzi Perusi	Nyakagongo	FIT person	0785126848
Namara Yusta Achayo	Kagote	At risk	

Masindi

NAME	ORGANISATION	DESIGNATION	CONTACT
Jelaze Kahumuza	LDC/LAC	FIT person	0784071751
Linda Arombo	J4C/ JLOS	Regional Coordinator	0702910165
Longino Abbey	Masindi	RDC	0774030674
Mark Tiivi	Masindi DLG	Chief Administration Officer	0774030674
Omara Daniel	LDC/LAC	Legal Officer	0782154416
Mugisa Mugungu M	MoGLSD	Outgoing Senior Probation Officer	0782442523
Annet Karamagi	MoGLSD	Warden/PSWO	0772535426
Grace Mukonyezi	Uganda Police	CFPU	—
Atukunda Edwin	Uganda Police	OC Station	077915912

Northern Region

NAME	ORGANISATION	DESIGNATION	CONTACT
Oola Patrick Lumumba	Gulu District	Chairman LC3 Bardege Division	0772904253
Anena Jesica	Gulu	PSWO	0774010035
Ayella Denis Oryema	Gulu District	Assistant CDO Bardege Division	0782040733
Opio Denis		Social Worker	0779232824
Amony Rose		Farmer	0785417887
Akot Jacqueline		Farmer	—
Akao Mary		OC CFPU Lira District	0782374627
Ocen Tom	Child Restoration Centre Lira	Program Manager	0782926198
Ojara Patrick		State Attorney Gulu	0782510009
Avdama Wilfred		OC CID Arua District	—
Akello Evelyne	Gulu Remand Home	Assistant PSWO/Asst. Warden	0772984430
Harriet Adubango	Arua	RSA	0772999449
H/W Kiwanuka Hillary		Magistrate FCC Lira	0782951056
Otim Denis Otto	Lira CAO's office	Principle Assistant Secretary	0777930411
Okidi Moses	Gulu central police station	DCFPU	0784586331
Ocaka Nighty	Gulu	Peasant	—
H.W Mukoya Maureen	Arua	Magistrate	—
Komakech Victor	Lira	Centre Manager Justice Centre	0782396834
Atala Lillian Winnie	Lira	Legal Officer	0753616810
Hellen Edimu	Justice Centre Gulu	Legal officer	—
	Gulu Bus Park	L.C1c/person	—
	Laroo Division	Vice chairperson L.C 3,	—
	Lira	Senior PSWO,	—
H.W Julius Tumwesigye	Gulu	Magistrate FCC,	—
	Arua Remand Home	Assistant Warden	—

## Central Region

NAME	DESIGNATION	CONTACT
George Bigira	state attorney,RSA, LDC	0774472810
Itwaha Deborah	RSA,Nakawa	
Belly Angolaa	RSA,Makindye	
Saaka	councillor ,Makindye	
Annah Kalenzi	councillor ,Makindye	
Mahoro Danawensi	KCCA,Makindye	
Imagungate Robort	magistrate	0772682521
Mukalinzi Livingstone	D/CPL OLD KLA	
Batugeya Moses Mutumba	Magistrate	
Nkumbi Nelly	PSWO	0758889960
Juluis	SPSWO	0702453520
Annet	PIO/Mpigi	0772972481
Monica Nawaiguru	AIP,CFPU	
Amunyu Mary	PIO/Jinja Road	0757875933
Masika Annet	Jinja Road	
Opio William	OLD KLA	0782308717
Wasajja Kalule	Jinja ROad	0702366905
Nagawa Mawa	P/O	078245799
Immaculate	Probation officer,Rubaga	
Rose Egesa	Probation officer,kawempe	
Mariam Lusaili	Probation officer, nakawa	
Peter	Probation officer	
Byenkya Christine	Social worker	
Mwanja Hussein	Social worker	0774434483
Kyomugisha Mary	PSWO	0772591791
Aselo Baba	P/O /Kalerwe	0772084168
maalo edward semugenyi	NGO Forum	0776812762
taama gabmail	CAO, Kalangala	0778869095
Allan Mwesigye	councilor ,nakawa	

BUSIA

NAME	ORGANISATION	DESIGNATION	CONTACT
Wanayama chris		Sec child protection	787190018
Young charles		Sec LC1 children	785270815
Maanyi goreeti		Team leader vht	7822912
Hajuguju Grace		Cp womens affairs	789168972
Juma Paul		Cp lc1 madibird	782027634
Borrice Nakatukwasa	World vision		0702229724
Oris agnes Amidiong	Coordinator FSIW		0706997136
Emejje Joseph		Resource centre coordinator	0700920859
Wamyama Chris		CPC child protection coalition	0787190025
Mary Maanyi			0789733333
Nafuna Esther	Customs		0756889864
Arinaitwe Joyce	Customs		0703726008
Ogwal Andrew	Youth environment service		07756 83229
Hamis Rushid			0701691968
Achilu Alex			7821136110
Mijanya Juliet			7870537
Wandera Francis			772612811
Ojambo Eddy			0789178770
Kauta Alex			0774485667
Walmynor Ryanon			0706159737
Othieno Charles			0773633983
Akol Mary			0700675268
Erumbi Miria			0775871249
Adong Joyce			0701159055
Ojambo Bonnza			75990151
Wandera James			0701595308

Iganga

NAME	ORGANISATION	DESIGNATION	CONTACT
Kagejjta Ibrahim	Nakigosii	Fit person	0782742231/0702742231
Izimba Aisha	Namungalo	Fit person	0779276418
Nakadama Betty	Iganga central		7743338305
Wamimbi Stephen		Fit person	
Fabria Nangobi	Bulubadi buluku	Fit person	
Magaba Harriet	Busebatia	Women district counsellor	0772346221

Baleejjusa Paul	Nakigo	Lc1	0700156829
Kaudah Doreen	Centreal division		0703379527
Robert	Busemebatia		0705889611
MUKOTI SAIDI	Ibulanku		0702163535
Nyende Ivan		spswo	0784034926
Egylwiwa Emmanuel	Bulamagi		7723847069
Batuuka Samuel		DCDO	7724817438

MBALE

NAME	ORGANISATION	DESIGNATION	CONTACT
Masaba muhammed	Lwasoo sub county	parasocial	
Khainza Kasifa		Councilor pwd	
Nzagi Isima		o/a	
Wandera Mmicheal			
Walimbwa w Yusuf		Chais parasocial	
Haruna Wandega		Imam buwangolo	
Simboi Hassan		parasocial	
Zamu Masawi		parasocial	
Webisa Micheal		resident	
Mary Muhambwa		Chair women lciii	
Mafabi William		elder	
Wandera annet		Church leader	
Kimai kuraish		Para social	
Gurtaka Micheal		c/man lc1	
Waniale Paulo		elder	
Kainza Sarah		elder	
Areba Nagud		widow	
Wambede Janati		parasocial	
Mutonyi ji		councilor	
Wamammbi John		Para social	
Nabenae Siragi		Vht chairman	
Nambozo Zuaika		parasocial	781435543
Nzagi Samasfila		Para social	783367567

### ANNEXURE 3: LIST OF RESEARCH INSTRUMENTS

FORM 1
INTERVIEW GUIDE FOR CHILDREN WHO HAVE BEEN IN CONFLICT WITH THE LAW

<b>A. Background information</b>	
<b>Name:</b>	<b>Education:</b> In school .....out of school.....
<b>Age:</b>	<b>Highest level:</b>
<b>Sex/Gender:</b> Male.....Female.....	Primary.....Secondary.....Tertiary.....
<b>Religion:</b>	<b>Period spent in remand:</b>
(a)Catholic (b) Protestant (c) Muslim (d) Pentecostal (e) other (specify).....	(a)Less than one month (b) 1-6 Months (c) 6-12 months (d) More than 1 year
<b>Current location:</b>	<b>Previous occupation:</b>
<b>Contact Number:</b>	<b>Current Occupation:</b>

<b>B. General questions</b>
1. <b>Have the police ever arrested you?</b> Yes.....No.....
2. <b>If yes, how were you arrested?</b> (a) picked from the street (b) reported by victim/parent (c) intercepted by police (d) apprehended by the public (e) other (specify).....
3. <b>Why were you arrested?</b> a) Theft (b) affray (c) sex related (specify).....(d) Offence against a person (specify) .....(e) drug/substance abuse (f) public disorder (g) damage to property (f) Other (specify).....
4. <b>To which facility were you taken?</b> (a) Police (b) Court (c) remand home (d) prison (e) juvenile rehabilitation facility (f) other (specify).....
5. <b>Why were you taken to the custodial facility?</b> (a) Pending investigations (b) Orders of court (c) Police swoop (d) other (specify) .....
6. <b>When where you released?</b> (a) less than a month ago (b) between one and 6 months ago (c) more than 6 months ago (d) other (specify).....
7. <b>How long did you stay in other facilities such as?</b> (i) <b>Police</b> (a)Less than 48 hrs. (b)less than 1 month (c) 1-6 Months (d) 6-12 months (e) More than 1 year (ii) <b>Child reception center</b> (a)less than 48 hrs. (b) Less than one month (c)1-6 Months (d) 6-12 months (e) More than 1 year (iii) <b>FCC</b> (a)Less than one month (b) 1-6 Months (c) 6-12 months (d) More than 1 year (iv) <b>Other (specify)</b> .....(a)Less than one month (b) 1-6 Months (c) 6-12 months (d) More than 1 year

8. <b>How were the conditions in the facilities? Probe for hygiene</b> (a) very clean (b) average (c) dirty (d) other(specify).....
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**sanitation** (a) separate toilet facilities (b) shared toilet facilities (c) none (d) other (specify type and condition) .....

**sanitary pads** (a) provided monthly (b) once in a while (c) never (e) other (specify).....

**food and nutrition** (a) three balanced meals a day (b) two balanced meals a day (c) one balanced meal a day (d) none (e) other (specify).....

**Water** (a) clean drinking water (b) untreated (c) contaminated source (d) other (specify) .....

**Medical care** (a) good (b) average (c) None (d) other (specify) .....

**Education** (a) Formal (b) skills based (c) None (d) other (specify).....

**Counseling and psychosocial support** (a) mandatory (b) optional (c) None (d) other (specify) .....

**Personnel** (a) supportive & friendly (b) rude (c) indifferent (d) other (specify).....

**Accommodation** (a) children separated from adults (b) all bedding available (c) partial bedding (d) no bedding (f) other (specify) .....

**safety** (a) very secure (b) fair (c) insecure (d) other (specify) .....

**clothing** (a) regular supply (b) occasional (c) never provided (d) other specify .....

**religious and cultural development** (a) freedom of cultural/religious association (b) regular access to religious leaders (c) allowed to cultural education and speak language (d) once in a while access to religious/cultural practice (e) never (f) other (specify).....

**social amenities** (a) regular access to games, sports and entertainment (b) occasional access to games, sports and entertainment (c) Never (d) other (specify).....

challenges (a) bullied (b) physically assaulted (c) denied food (d) sexually abused (e) other (specify).....

Explain further

9. **How were you handled at the time of (i) arrest?** (a) Gently (b) violently (c) tortured (d) other (specify) .....

Describe further

ii) **Detention** (a) Gently (b) violently (c) tortured (d) other (specify) .....

iii) **Remand/police cells?** (a) Gently (b) violently (c) tortured (d) other (specify) .....

**Have you had an**

**opportunity to be taken to court?** Yes .....No..... (probe on regularity) (a) 1-2 times a month (b) rarely (c) Never (d) Other (specify) .....

10. Describe the setting of court (i) sitting arrangement  
(ii) duration of hearing process  
(iii) how were the interviews handled  
iv) involvement of child in arriving at decision

11. **Did you feel comfortable in court?** Yes...No... (Probe speed of handling, attitude of officials).  
If not, give reasons

12. **Who provided support to you while in court?** (a) parent(s)/guardian(s) (b) L.C in charge child affairs (c) Probation officer (d) other (specify) .....

13. **Did your parents/guardians visit while you were in custody?** Yes .... No.....If no, why do you think so?

**14. How are you being treated after your return?**  
**At home** (a) welcomed (b) rejected (c) indifference (d) stigmatized (e) other (specify).....  
**In the community** (a) welcomed (b) rejected (c) indifference(d)stigmatized (e)other (specify).....  
**At school if applicable**(a) welcome (b) rejected (c) indifference(d)stigmatized (e)other (specify).....

**15. What services were given to you during (probe for involvement of child at all stages): -**  
**(i) Arrest** (a) information (b) psychosocial/counseling (c) legal advice and representation (d) other (specify) .....  
**(ii) Detention** (a) information (b) psychosocial/counseling (c) legal advice and representation (d) other (specify) .....  
**(iii) Court** (a) information (b) psychosocial/counseling (c) legal advice and representation (d) other (specify) .....  
**(iv) Remand** (a) information (b) psychosocial/counseling (c) legal advice and representation (d) other (specify) .....

**16. What recommendations do you have to improve the handling of child offenders?**

**17. Additional recommendations**

**18. Additional Comments**

**Appreciation for input**

**Researcher's Observations**

FORM 2

INTERVIEW GUIDE FOR CHILDREN IN CUSTODY (REMAND FACILITIES AND POLICE)

<b>C. Background information</b>	
Name:	Location of Facility:
Age:	Occupation:
Sex/Gender:	<u>Home address</u>
Religion:	Village:
Highest level of Education:	Parish:
Tick one: In school .... or out of school.....	Sub County:
Period spent in remand/detention:	District:
Name of Facility:	Contact Number of the Facility:
<b>D. General questions</b>	
1. When were you brought to this facility and why?	
2. What offence were you charged with?	
3. How long have you stayed in the facility?	
4. How are the conditions in the facility? (remand / police cells)- <b>(Probe for hygiene, food, social &amp; educational services.</b>	
5. What challenges are facing during your staying this facility?	
6. How were you handled during time of? a) Arrest  b) Detention  c) Now while in remand/police cells	
7. Have you had an opportunity to be taken to court? (probe on regularity)	
8. How does the court sit? (probe for setting)	

9. Did you feel comfortable in court? (Probe speed of handling, attitude of officials). Give reasons for your answer	
10. Do your parents/guardians know you are in this facility? a) Did they visit? /Have they visited you? b) If not, why do you think they did not?	
11. Do you feel comfortable to go home after your case is concluded? Give reasons for your answer	
12. What recommendations do you have to improve the handling of children who are in conflict with the law?	
Additional recommendations	Comments
Probe for the offending pattern of the child from the warden/police	
<b>Appreciation for input</b>	
Research Assistant's Observations	

FORM 3

INTERVIEW GUIDE FOR DISTRICT & CIVIL LEADERS (RDC, LC5, CAO, S/C CHIEF COUNCILLORS, CDOs. DISTRICT PLANNER, RELIGIOUS & TRADITIONAL LEADERS & LCS), FIT PERSONS AND PARENTS, CBOs, COMMUNITY PERSONS

<b>E. Background information</b>	
Name:	<u>Address</u>
Age:	Village:
Sex/Gender: Male .....Female.....	Parish:
Religion: (a)Catholic (b) Protestant (c) Muslim (d) Pentecostal (e) other (specify).....	Sub County:
Designation:	District:
Occupation:	Contact Number:
<b>F. General questions</b>	
13. In your understanding, who is a child?	
14. What are the common offences committed by children in your district?	
15. What are the causes of offending in the district?	
16. What measures are taken on child offenders	
17. What alternatives do you have to custodial sentencing of juveniles ( <i>probe for caution, close supervision pending trial, release on bond, community service, psychosocial support/ counseling, placement with family/home, protection under intensive care, LC Court intervention</i> )	
18. Who handles children’s cases in your district?	
19. How are children’s cases funded in your district? Any budget (Take a picture if available)	

20. In your capacity what have you done to influence juvenile justice in your

a) workplace

b) community

21. Do children have a facility for remand in your district

a) If not where are the children remanded?

b) Are they separate facilities for boys and girls sure that the rights of children are not violated??

22. Do children have police cells for children in your district

c) If not where are the children held on arrest?

d) Are they separate facilities for boys and girls sure that the rights of children are not violated??

23. Do you have an understanding/knowledge of the National, Regional and International laws and policies on juvenile justice?

a) If yes, which national laws and policies

b) Name the regional and international laws and policies on juvenile justice?

c) How do these laws and policies relate to your work?

24. What social and legal safeguards are in place (for ensuring that the rights of children and offenders are not violated in your community/district

<b>25. What is the community attitude[s] towards child offenders?</b>	
<b>26. What can you do to prevent children from getting involved in crime?</b> a) By your Institution  b) In your community	
<b>27. What do you think can be done to improve justice for child offenders in our country?</b>	
<b>Additional recommendation</b>	<b>Comments</b>
<b>Appreciation for input</b>	
<b>Research Assistant's Observations</b>	

**FORM 4**

**INTERVIEW GUIDE FOR DUTY BEARERS (Police, PSWO, Court, Wardens/Warders, Fit Persons) AND NGO(s)**

<b>G. Background information</b>	
Name:	Designation:
Age:	Institution:
Sex/Gender:	Occupation:
Religion:	Contact Number:
<b>H. General questions</b>	
28. What is your role in ensuring juvenile justice?	
29. What are the common offences committed by children in your district?	
30. What are the causes of offending by children in your district?	
31. Who handles children's cases in your district?	
32. How does your institution handle juveniles during: -? a) Arrests  b) Period of custody (either in police cells or remand)  c) Corrective measures	
33. What other role do you play in managing juveniles in your care (Probe PSWO for their role in court; Probe for other roles of Police and Wardens/Warders other than their custodial role	
34. What training do you have on children's rights and where were you trained from?	

<p>a) Do you have any specific training on handling children in conflict with the law?</p> <p>b) Where was the training conducted from?</p>	
<p>35. How did the training /has the training enhanced your capacity to handle juveniles?</p>	
<p>36. Do you have an understanding/knowledge of the National, Regional and International laws and policies on juvenile justice?</p> <p>d) If yes, which national laws and policies</p> <p>e) Name the regional and international laws and policies on juvenile justice?</p> <p>f) How do these laws and policies relate to your work?</p>	
<p>37. What social and legal safeguards are in place (for ensuring that the rights of children and offenders are not violated in your district</p>	
<p>38. What can you do to influence juvenile justice?</p> <p>c) In your Institution</p> <p>d) In your community</p>	
<p>39. What do you think can be done to improve juvenile justice in our country?</p>	
<p>Additional recommendations</p>	<p>Comments</p>
<p><b>Appreciation for input</b></p>	
<p>Research Assistant's Observations</p>	

**FORM 5**

**INTERVIEW GUIDE FOR POLICY AND LAW MAKERS**

<b>I. Background information</b>	
<b>Name:</b>	<b>Designation:</b>
<b>Age:</b>	<b>Institution:</b>
<b>Sex/Gender:</b> Male .....Female.....	<b>Occupation:</b>
<b>Religion:</b> (a)Catholic (b) Protestant (c) Muslim (d) Pentecostal (e) other (specify).....	<b>Contact Number:</b>
<b>J. General questions</b>	
40. a) What is your role in ensuring juvenile justice?	
b) Who are the other actors with whom you collaborate?	
41. Do you have an understanding/knowledge of the National, Regional and International laws and policies on juvenile justice?	
g) If yes, which national laws and policies	
h) Name the regional and international laws and policies on juvenile justice?	
i) How do these laws and policies relate to your work?	
42. What training do you have on children’s rights and where were you trained from?	
c) Do you have any specific training on handling children in conflict with the law?	
d) Where was the training conducted from?	
43. How did the training /has the training enhanced your capacity to handle juveniles?	
44. What concerns does your institution have for juvenile justice?	

45. What do you envisage as the gap in?

- a) Policy
  
- b) Legislation
  
- c) Implementation
  
- d) Any other

46. What categories of children do you think are at risk of being in conflict with the law?

47. What do you see as the main challenge on handling of juveniles in conflict with the law or at risk?

48. What is your view of the handling of juveniles during: ~

- d) Arrests
  
  
  
  
  
  
  
  
  
  
- e) Period of custody (either in police cells or remand)
  
  
- f) Corrective measures

49. What are the social and legal mechanisms/safeguards known to you for handling of juveniles in conflict with the law? (probe for diversion and other models)

a) In your view how appropriate are they for your community

b) role do you play in managing juveniles in your care (Probe PSWO for their role in court; Probe for other roles of Police and Wardens/Warders other than their custodial role

50. What social and legal safeguards are in place (for ensuring that the rights of children and offenders are not violated

51. What are your plans for ensuring juvenile justice in terms of?

a) Policies

b) Legislation

c) Other (specify)

52. What can you do to influence juvenile justice?

e) In your Institution

f) In your community

53. What do you think can be done to improve juvenile justice in our country?

Additional recommendations

Comments

<b>Appreciation for input</b>	
<b>Research Assistant's Observations</b>	

**Form 7: Question Guide – Focus Group Discussion [Parents, Community, Opinion Leaders, Teachers, Fit Persons]**

**Objectives of the guide/questionnaire**

- 1. Examine the existence and carry out an analysis of the existence of formal and informal juvenile justice models/systems in the community and national/state institutions.
- 2. Review the juvenile justice framework, compliance with governing laws, policies and practices in Uganda.
- 3. Obtain recommendations, good practices and lessons to inform policy action.

**Particulars**

- 1. Geographical location
  - Village/Cell .....
  - Sub County/Division .....
  - Parish/Ward .....
  - District/Municipality.....
- 2. Composition of the group
  - Sex
  - Age
  - Total Number of participants

(Category of social strata such as Religion, Marital status, geographical set up if necessary)

- 1. Who is a child
- 2. At what age do children in your community start offending
- 3. How are child offenders handled in your community?
- 4. What social corrective measures do you have in place?
- 5. What are the advantages and disadvantages of these measure?
- 6. Who are the key persons responsible for children in your community?
- 7. What are the benefits of their role to the community?
- 8. What challenges do they face in handling child offenders?
- 9. How can we improve juvenile justice in your community?
- 10. How can children at risk of offending be protected in the community

## Form 8 A: Question Guide – Focus Group Discussion [Children in custody]

### A Background info/particulars

Geographical location

Facility: ..... (Court, Police/Reception Centre, Remand Home, Rehab Centre)

Location of facility: .....S/Cty or Division.....Dist/Municipality

Composition of the group

Sex: No of male.....No of female.....

Age: (indicate number of children in the FGD in the following age range)

Children between 8 – 12 (ii) Children between 12-15 (iii) Children between 15 -18yrs) Other age range (specify

Total Number of participants

(Category of social strata such as Religion, Marital status, geographical set up if necessary)

### B General Questions

3. Who is a child
4. Has anyone of you ever been arrested?
  - a) If yes why were you arrested (*indicate out of the no of chn in FGD*)
  - b) Describe how you were arrested
  - c) If no, why are you in this facility
  - d) Describe the circumstances under which you were brought to this facility (probe for handling, attitude of personnel and situation at time of arrest)
5. Were you taken to any other facility, if yes which one? (*indicate out of the total no of chn*)
6. How often are you taken to court (probe for frequency and categorize acc to no of children)
7. How are you treated in this facility (*probe for accommodation and clothing, safety, nutrition and hygiene, recreation and entertainment, educational and vocational skills, psychosocial, counseling and legal support, dental and medical treatment, religious and cultural development, availability and use of toilet facilities whether shared and pads for girls*)
8. *How long have you been in this facility (indicate no of children per given category of length of time i.e less than 48hrs, less than a month, 1-6months, 6-12 months, and specify other)*
9. What is your relationship with law enforcement officers (*probe the entire system-police, court, remand home, probation, LCs*)
10. What challenges do you have in the facility (*probe for bullying, sexual harassment and others*)
11. Do you have contact with family while in custody (*probe for frequency and forms of contact*)
12. How are child offenders handled in your community?
13. What social corrective measures do you know are in place for children
14. Who are the key officials responsible for you and how do they treat you

## **ANNEXURE 4: LIST OF RESEARCH ASSISTANTS**

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<b>Names</b>	<b>Tel no</b>	<b>Email</b>
1. Hilda Akabwai	0777060867	Hildaakabwai_twin@yahoo.co.uk
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13. Eric Hatanga	0782034220	erichatanga@gmail.com
14. Doreen Arinanye	0771857050	

## **ANNEXURE 5: TERMS OF REFERENCE**

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### **1.0 Background**

The Centre of Excellence for the Study of the African Child (**AfriChild**), is a multidisciplinary research Centre that contributes to the evidence base, knowledge building, skills development and influences policy and practice concerning the wellbeing of the African child. The Centre recognizes that promotion of children’s health and development must adopt a holistic approach to address a myriad of physical, mental, social and environmental factors that determine the wellbeing of the child.

Through the AfriChild Centre, Wellspring Advisors LLC has committed funds to support **Theodora Bitature Webale**, an Independent Researcher, to investigate the current legal, policy and practice regime governing children’s rights in Uganda, particular focus on juvenile justice. Findings from the study will provide practical guidance, steps and approaches to policy makers and child-rights practitioners in developing grounded programmes to address violence against children in different contexts.

## **2.0 Summary of engagement**

The purpose of the engagement is to carry out a study on the current legal, policy and practice regime governing children’s rights in Uganda, with particular focus on juvenile justice. The study intends to establish the current state of child rights laws in Uganda, drawing on the successful model of South Africa in order to inform legal, policy and practice change in Uganda.

The overall objective of the study is to assess the compliance of legal and policy framework governing children’s rights in Uganda, to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the African Child (ACRWAC). In addition, the laws and policies will be analyzed in comparison with the legal and policy regime governing children rights in South Africa. The Researcher will work in partnership with the AfriChild Centre under the guidance of the Programmes Director, Research Knowledge and Development.

## **3.0 Key Responsibilities of the Researcher**

Conduct research activities in support of generating information for child protection interventions. Specifically, the following activities are expected:

- a. Develop a study protocol, study guides and data collection tools
- b. Recruit and train research assistants
- c. Lead the data collection and field activities
- d. Carry out data analysis and report writing

#### **4.0 Key Responsibilities of AfriChild Centre**

- Act as a conduit for transfer of funds from Wellspring Advisors LLC to the Researcher as per the research timelines developed and agreed upon
- Introduce the Researcher to experts on traditional justice system

#### **5.0 Background**

The Centre of Excellence for the Study of the African Child (AfriChild), is a multidisciplinary research Centre that contributes to the evidence base, knowledge building, skills development and influences policy and practice concerning the wellbeing of the African child. The Centre recognizes that promotion of children's health and development must adopt a holistic approach to address a myriad of physical, mental, social and environmental factors that determine the wellbeing of the child.

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#### **6.0 Summary of engagement**

The purpose of the engagement is to carry out a study on the current legal, policy and practice regime governing children’s rights in Uganda, with particular focus on juvenile justice. The study intends to establish the current state of child rights laws in Uganda, drawing on the successful model of South Africa in order to inform legal, policy and practice change in Uganda.

The overall objective of the study is to assess the compliance of legal and policy framework governing children’s rights in Uganda, to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the African Child (ACRWAC). In addition, the laws and policies will be analyzed in comparison with the legal and policy regime governing children rights in South Africa. The Researcher will work in partnership with the AfriChild Centre under the guidance of the Programmes Director, Research Knowledge and Development.

#### **7.0 Key Responsibilities of the Researcher**

1. Conduct research activities in support of generating information for child protection interventions. Specifically, the following activities are expected:
  - e. Develop a study protocol, study guides and data collection tools
  - f. Recruit and train research assistants
  - g. Lead the data collection and field activities
  - h. Carry out data analysis and report writing

#### **8.0 Key Responsibilities of AfriChild Center**

- Act as a conduit for transfer of funds from Wellspring Advisors LLC to the Researcher as per the research timelines developed and agreed upon
- Introduce the Researcher to experts on traditional justice system