



Child-friendly Justice in Unfriendly Environments? A call for practical solutions for vulnerable young people on the Day of the African Child, 2020

Introduction

It's 44 years since black South African students from Soweto protested the 1953 Bantu Education Act (also known as Education of black people), a predatory law that 'legalised' enforcement of racially separated education in South Africa. Commemorated every year since 1991, this day reminds Africa of the need to step up the protection of its children, an important day in the quest for a free and fair world for children.

The theme for 2020 commemorations "Access to Child-Friendly Justice Systems in Africa" reminds Africa of the multiple abuses children directly and indirectly endure as suspects of crimes and as victims of ill-enforced legal systems. Uganda's DPP defines Child-friendly justice as; *"A justice system which guarantees the respect and the effective implementation of all children's rights. It is justice that is accessible, adapted to, and focused on the needs and rights of the child..."* Key considerations are; best interest, life and survival, without discrimination, and resource availability.ⁱ

Policy and Legislative Progress

At continental level, Africa has made commendable progress in adopting norms and standards promoting access to justice for children: 1) The Munyonyo Declaration on Child Justice in Africaⁱⁱ in November 2011 focused on among others, on children's rights in child justice in Africa, 2) The AU's 'Agenda 2040: Fostering an Africa fit for children' focuses on *"An effective child-friendly national legislative, policy and institutional frameworks..."*ⁱⁱⁱ and 3) the 32nd Ordinary Session of the Assembly of the African Union^{iv} (February 2019) described the age of criminal responsibility at 12 and above for all States Parties.

Uganda is not behind in this noble cause. Besides legislative and policy progress including but not limited to the Penal Code Amendment Act 2007, and The Children Act (as amended) 2016, notable progress has been recorded including the launch of a handbook titled "Prosecuting Child-related Cases in Uganda" in 2016 for child-friendly and gender-responsive criminal justice systems.^v

Children come into contact with the justice system for various reasons. The 2019 Situation Analysis on Children in Uganda shows that 27% of children have been exposed to a crime. Despite the UN Convention on the Rights of the Child (CRC) position that ‘putting children in prison should only be the last resort and for the shortest time possible’, there are children in many of Uganda’s detention facilities.

Children as offenders: Children are detained for an array of offenses ranging from ‘minor crimes’ to capital offenses. During arrest, some children are tortured by both community members and law enforcers.^{vi} Children are kept beyond the permitted 48-hour in police custody as well as the permitted 6 months on remand. Some children have reportedly died while in custody – in 2017 in Dokolo, an 11 year-old-boy died at police^{vii} while in July 2019, High Court Judge Musa Ssekaana ordered Government to compensate a woman^{viii} whose child had died in police custody at Nabbingo in Wakiso District.^{ix}

Children as victims: Whereas many children come into contact with the law, many more suffer at the hands of adult abusers. UNICEF’s 2018 situation analysis shows that 44 percent of girls and 59 percent of boys aged 13-17 years had experienced physical violence in 2018. The outbreak of COVID-19 has further heightened the challenges as reporting and response mechanisms are temporarily affected.

Who is responsible and operating under what circumstances? Answering such questions demands critical reflection on current contexts and, above all, on how friendly the justice system is for children in Uganda and Africa at large. Herein, we explore the Ugandan dynamics basing on what we see;

1. **Children in adult detention cells.** There are few holding facilities for children in police posts and stations across the country forcing security operatives to lock children in cells with adult suspects. Whereas a lot of effort has been employed thus far, children are still confined together with adults, some of whom are accused of child-related offenses including defilement and child-trafficking. The experience of being locked up with adults can do long-lasting harm to the children, with some coming out of detention worse than they went in due to lessons picked from adult suspects.

In September 2014, Justice for Children conducted an age verification exercise for 53 suspected juveniles detained in adult prison. 23 of the 53 were found to be juveniles. A report on girls in conflict with the law in Uganda published by Chance for Childhood in 2017 found 77 children detained in seven adult prisons, with 90 percent on remand.

2. **Few remand homes.** Currently, there are 6 remand homes in Uganda (Fort Portal, Gulu, Naguru, Mbale, Masindi, Arua), with 1 holding centre for those sentenced at the National Rehabilitation Centre in Kapingisa (which also holds street children picked off the streets). As such, children are transported long distances to the few remand homes and sometimes miles away from their families – all of which breeds emotional distress as family members can rarely afford frequent visits or attend court sessions.

3. **Limited financial support to the children holding facilities:** Child detention in Uganda is not about to end. It is therefore important that the existing holding facilities meet basic standards of detention for children. From Naguru Remand Home in Kampala to Gulu Remand Home in northern Uganda, poor budgets, correspondingly poorly sustained food stocks, and the resultant situation of children therein have made news headlines. Gulu remand home for example has since 2014 been on the news for children ‘wasting away’ to a point that they threatened to close the centre.
4. **Protection concerns at the children holding centres:** In February 2020, the country was shocked by news headlines that 30 out of the 69 children from Gulu remand home *succeeded* in a dramatic prison break and escaped incarceration.^x Besides demonstrating the *ingeniousness* of these children, a lot remains to be discovered about how such an escape was possible if the proper protections for children were in place.
5. **Children tried in adult court systems:** This can be both physically and emotionally damaging for some children, with minors struggling to stand tall in docks built for adults, and undergoing cross-examinations designed for mature suspects
6. **Expensive justice:** In the context of refugee-hosting areas, only a handful of children can afford legal representation as complainants or accused given that 23% of children in Uganda live in households below the poverty line, with 56% suffering from multiple deprivations.^{xi} Children and their guardians/parents thus have limited choices besides queueing for free legal services offered by only a handful of Civil Society Organisations
7. **Language and interpretation challenges in courts:** The majority of refugee children are from non-English speaking countries and as such struggle to express themselves to rule of law actors, and in courts due to limited court-employed interpreters. The lack of interpreters sometimes forces many to keep/stay? locked up at Police or on remand for days as interpreters are sourced.
8. **Few law enforcement personnel:** Uganda struggles with limited number of law enforcers vis-à-vis the number of people in and around the refugee-hosting districts, a situation aggravated by multiple influxes of refugees from countries with somewhat different legal systems.

If we take Maaji, Kiryandongo and Palabek refugee settlements, for example, they have a combined population of 155,867 registered refugees and a total of 80 police officers (1 officer to 1,948 refugees). Furthermore, only 12 out of the 80 police officers are women, and each settlement has only one officer assigned to the Child and Family Protection Unit, despite the fact that children represent approximately 60% of the total refugee population.^{xii}

9. **Ill trained personnel:** Most personnel are not trained on the specific vulnerability of children let along refugee children and thus focus on retributive justice as opposed to rehabilitation of juveniles. From our trainings of law enforcement officers, only a

handful are aware of the diversion guidelines that provide for juvenile petty offenders to be rehabilitated rather than tried in formal courts.

10. **Accountability challenges for violations of rights of children:** Whereas mandated to protect all children against kidnaps, abductions, and trafficking among others, some children, especially in northern Uganda saw their future cut short as they became child soldiers, many forced into becoming child fathers and child mothers – some abducted from schools only to return with children after several years enduring physical torture and sexual violence. To this day, children transition into ‘adults’ and bear additional children even as they wait for apology and support from the Government for their own lost childhood

In the wake of COVID-19, the 2020 commemorations are unavoidably virtual. While we may not gather for conventional speeches, pledges, and performances, we still have to work towards realising sea-changes in the lives of children in Uganda and elsewhere.

As children or former children, may this day remind us to support future leaders to whom we shall hand the mantle for realising Africa’s Vision 2063 (The Africa We Want). Both the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child place obligations on member states to ensure that judicial, administrative, policy and legislative frameworks are supported for holistic development of all children. We cannot, however, leave this to states alone.

Recommendations

Ahead of this day, we implore everyone to re-imagine protection for all children, and specifically ask all concerned actors and individuals to join efforts as follows;

1. To avoid minors being locked-up with adults, establish child-friendly detention facilities in major regions and districts for children that unfortunately come to contact with the law.
2. Increase financial support to remand homes
3. Increase the number of police officers trained on child and family protection issues
4. Invest in community policing to strengthen the relationships between law enforcers and communities.
5. Translate relevant laws and guidelines into languages friendly to people in and around refugee-hosting districts
6. Promote dialogue between children, lawmakers, law enforcers, and communities through community dialogues, information sessions
7. Strengthen community protection mechanisms for preventive measures – child protection communities

8. Rethink accountability for violations against children – enforcements, tightening existing laws, especially in the context of COVID-19 Pandemic
9. Invest in district level helplines in appropriate languages to complement the national child helpline initiative for reporting and documenting of abuse of children
10. Support the reintegration and rehabilitation of children previously in holding facilities to minimize stigma and discrimination
11. Establish magistrates dedicated to handling children's cases to expedite hearing and disposal of pending cases against juvenile offenders
12. Support civil society organisations to monitor remand homes in ways that are complementary to but independent of the monitoring done by Ministry of Gender, Labour and Social Development.

Further Reading

- ⁱ <https://www.unicef.org/uganda/media/1781/file/Prosecuting%20child%20related%20cases%20in%20Uganda.pdf>
- ⁱⁱ https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/political_declarations/munyonyo_declaration.pdf
- ⁱⁱⁱ https://au.int/sites/default/files/newsevents/agendas/africas_agenda_for_children-english.pdf
- ^{iv} <https://www.acerwc.africa/Latest%20News/32rd-au-summit-ends-with-key-decisions-for-acerwc/>
- ^v <https://www.unicef.org/uganda/press-releases/government-launches-child-friendly-justice-handbook-protect-rights-children-contact>
- ^{vi} <https://www.unicef.org/uganda/what-to-do/justice-for-children>
- ^{vii} <https://www.monitor.co.ug/News/National/Juvenile-boy-dies-police-cell/688334-3881308-guvmuuz/index.html>
- ^{viii} <https://www.monitor.co.ug/News/National/High-Court-government-mother-Shs25mdead-son-Wakiso/688334-5179264-soqdti/index.html>
- ^{ix} <https://www.bbc.com/news/av/world-africa-49075353/ugandan-joyce-bikyahaga-namata-s-son-died-in-police-custody>
- ^x <https://www.monitor.co.ug/News/National/juveniles-escape-remand-home/688334-5486334-phmu3oz/index.html>
- ^{xi} [https://www.unicef.org/uganda/media/4846/file/Multidimensional%20Child%20Poverty%20and%20Deprivation%20in%20Uganda%20\(Volume%20one\).pdf](https://www.unicef.org/uganda/media/4846/file/Multidimensional%20Child%20Poverty%20and%20Deprivation%20in%20Uganda%20(Volume%20one).pdf)
- ^{xii} <https://data2.unhcr.org/en/documents/download/76877>