



CHILD PARTICIPATION IN JUVENILE JUSTICE IN UGANDA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en Uganda

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile à Uganda

Rapport national pour la recherche comparative et collaborative de l'AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Uganda.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Uganda

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice à Uganda

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

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To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

The responses to the questionnaire are as below:

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1. GENERAL DESCRIPTION OF THE PROCEDURE AND THE SYSTEM

1.1 . What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?

Article 257 (1) of the Constitution of the Republic of Uganda, 1995 as ammended and Section 2 of the Children Act, Cap 59 as amended define a child to means a person under the age of eighteen years.

In Uganda, the court with jurisdiction to handle wrongful acts committed by children is the Family and Children court as per **section 93(a) and (b) of the Children Act as amended**. However, where the offence committed is a capital one for example; one punishable by death and where the child has been jointly charged with an adult, the court with jurisdiction is the high court (**Section 104(1) of the Children Act as amended**). There are however, circumstances where, the Magistrate's court has jurisdiction where a child has been jointly charged with an adult as per **Section 103 of the children act as amended**.

a) The Family and Children Court (FCC)

The Justice, Law and Order Sector in a bid to enhance access to justice for vulnerable groups, the Chief Justice then the Hon. Benjamin Odoki granted jurisdiction to all Grade I Magistrates in the country to preside over Family and Children's Courts with appeals from the Grade I courts going before the Chief magistrate in the Legal Notice no. 2 of 2012.

The court was established under **section 13 of the Children Act**. It is established in every district and any other lower government unit designated by the Chief Justice by notice in the Gazette. Under **section 14 of the Children's Act**, the jurisdiction of the Court is to hear and determine criminal charges against a child subject to sections 93 and 94; and (b) applications relating to child care and protection. (c) any other jurisdiction conferred on it by this or any other written law.

Section 15 of the Children's Act provides that a Family and Children Court shall, whenever possible, sit in a different building from the one normally used by other courts. This is one of the ways of ensuring that proceedings are child friendly.

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b) Local Council Courts.

These are established at the village level in accordance with the **Local Council Courts Act 2006** and their jurisdiction in cases of children is however defined in the **Children Act, Cap 59 as amended**.

Section 92(2) of the Children Act, Cap 59 as amended is to the effect that a village LCC shall, in addition to any jurisdiction conferred on it by the LCC Act, 2006, have criminal jurisdiction to try a child for cases such as affray, under section 79 of the Penal Code Act; an offence against section 167 with the exception of paragraph (b) of the Penal Code Act; common assault, under section 235 of the Penal Code Act; actual bodily harm under section 236 of the Penal Code Act; theft, under section 254 of the Penal Code Act; criminal trespass, under section 302 of the Penal Code Act; malicious damage to property, under section 335 of the Penal Code Act.

Section 92(3) of the Children’s Act, Cap 59 as amended stipulates that the village local council court shall be the court of first instance in respect of the criminal offences specified in subsection (2) involving children.

1.1.1 Does the name vary among different regions of your Country?

The name does not vary.

1.1.2 Does this Court also have jurisdiction for other matters? Which one?

Yes.

As explained above the magistrate court sits as the family and children court save for cases that should be handled by the high court. The two courts have jurisdiction to hear other matters for instance divorce, land, theft, property disputes, cases on recovery of money etc.

The Magistrate’s court tries all cases except those (criminal cases) whose maximum penalty is death- **Section 161 (1) (a) of the Magistrate’s Court Act** and those whose pecuniary jurisdiction is above their civil jurisdiction is limited to matters where the value of the subject matter does not exceed twenty (20) million Uganda shillings; notwithstanding subsection (1), where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a magistrate Grade I shall be limited.

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The High Court of Uganda has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude as per **section 14 of the Judicature Act, Cap 13**.

1.2. What is the minimum age of criminal responsibility (MACR)?

Section 88 of the Children Act as amended provides the age of criminal responsibility of children to be 12 years. However, **Article 257 (1) (c) of the Constitution of the Republic of Uganda, 1995** and **Section 2 of the Children Act** define a child to mean a person under the

age of eighteen years. In addition, the **Penal Code Act, Cap 120** protects a child below the age of 12 stating that they cannot be held criminally responsible for their criminal acts.

1.3. Until which age is a child subjected to the jurisdiction of the Youth Court?

A child is subjected to a youth court and in this case the family and children's court up-to the age of 18 years.

A child in Uganda is one below the age of 18 years. This is as per **Article 257 (1) of the Constitution of the Republic of Uganda, 1995** and **Section 2 of the Children Act, Cap 59** as amended.

1.3.1 Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?

No. The laws in Uganda do not provide the possibility of treating a child below the age of 18 years as an adult.

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1.4. Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?

Yes. The fact that the person is above 18 years at the time of judgement does not affect the jurisdiction of the court as long as the offence was committed before the age of 18.

1.5. Can you describe the general steps of the procedure?

Section 16 of the Children Act, Cap 59 as amended provides for the procedure of the Family and Children Court (FCC), which shall be in accordance with rules of court made by the Rules Committee for the purpose.

The complaint.

The complainant therefore reports the act committed by the child to police. Arrest is not to be made until enough information is got to support the case. Arrest should be as a measure of last resort. Police should use maximum restraint during the arrest of the child – no torture, harsh

treatment, caning and violence. Handcuffs and other forms of restraint should be avoided as much as possible.

Arrest

On arrest of the child, the parents or guardians, Probation and Social Welfare Officer and secretary of children affairs at the local government should be informed.

The child is then called in at the police together with the complainant. If the crime is not grave, it can be sorted out on a community or LC level. This is a requirement Under **Section 89(3) of the Children Act**. The police try to resolve the matter and suggest alternative ways like diversion. However; for grave offences the child is taken to police in the company of an adult. The complainant's statement is taken.

After the officer in charge of the case has inquired into the case, the child maybe released on bond, (**Section 89(6) of the Children Act, Cap 59 as amended**) and where the case is of a serious nature, it is necessary in the child's interest to remove him from association with the public, releasing the child will defeat the ends of justice the child shall be detained for a maximum of 24 hours or until he / she is produced in court, whichever is shorter(**section 89(7) of the Children Act, Cap 59 as amended**)

Female children while in custody shall be under the care of a woman officer and no child shall be detained with an adult. (**Section 89 (8&9) of the Children Act, Cap 59 as ammended**).

Bail.

Upon being produced in court the judicial officer is mandated to inquire into the case committed and unless there is serious danger to the child release the child on bail (a) On a court bond on the child's own recognizance; (b) With sureties, preferably the child's parents or guardians, who shall be bound on a court bond, not cash and if the bail is denied inform the applicant of his / her right to for bail to a chief magistrate's court of higher court as per **section 90 of the Children Act, Cap 59 as amended** (The **Constitution of the Republic of Uganda, 1995 Article 23(6)** provides for the right to bail)

Section 14 of the Trial on Indictment Act, Cap 23 provides that the High Court may at any stage release an accused person on bail. **Section 15(1) (a) of Cap 23** provides for release on bail based on exceptional circumstances and sub-section (3) (c) defines exceptional circumstances to include infancy of an accused person. The reading of Section 14 of the Trial on Indictment Act does not stop a child from applying for bail directly to the High Court. However, based on **Rule 2 Judicature (Criminal Procedure) (Applications) Rules SI 13-8**, which provides that “all applications to the High Court in Criminal cases shall usually be in writing and, where evidence is necessary, be supported by affidavit,” a question arises as to whether a child can legally be allowed to swear or affirm an affidavit in support of his or her bail application bearing in mind the provisions of **Section 9 of the Oaths Act, Cap 19**.

Remand

Court may then make an order remanding or committing the child in the custody of a remand home to be named in the order, situated in the same area as the court making the order. After that, the child is taken to a remand home within that jurisdiction and admitted into the system (**Section 91(1) of the Children Act**).

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Separation from adult detainees and strict monitoring of the conditions of children detained pre- trial are imperative.

A cause list is then made of the trial proceedings and when the child’s matter comes up for hearing, he/she is called to the chambers/ courtroom by the probation and social welfare officer.

If the trial is to take place somewhere else other than the remand home, the child is transported to the court.

If there is no remand home within a reasonable distance of the court, the court shall make an order as to the detention of the child in a place of safe custody as it deems fit. Unfortunately such “places of safe custody” do not exist at the moment, leaving the Courts and other agencies

in a quandary regarding what to do with children. The DPP and other JLOS agencies should work with civil society child rights organisations to advocate for the government of Uganda to prioritise the need for more places of safe custody of children.

Voir dire.

Before a child below the age of 14 years can testify, the judge or magistrate must be satisfied that the child is ‘competent’ to testify. An inquiry or voir dire must be conducted by the court and the court must be satisfied that: the child is possessed of sufficient intelligence to testify, understands the duty of speaking the truth and or, the nature of the oath child below 14 years of age has to answer general questions asked by court to determine the competence of such witness to testify the **Magistrates’ Courts Acts, Cap 16 provides in section 101 (3).**

If such a child gives unsworn evidence, corroboration of child’s testimony is a requirement for conviction (section 101 (4) of the Magistrate’s Courts Act, Cap 16). An example is the case of **Kizza Samuel v. Uganda, Criminal Appeal No. 102 of 2008**, where the uncorroborated evidence of a child of tender years was deemed insufficient to sustain a conviction.

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Section 1 of the Children Act provides for child friendly procedures in handling children in the Family procedures in handling children in the Family and Children Court (FCC). However, no specific provision exists in the law regarding the application of child friendly procedures in the Chief Magistrates’ courts, meaning that children who appear there as witnesses are more often than not subjected to the same standards and processes as adults. Regarding Children in the High Court, **section 104 (3) of the Children Act** provides that: ‘In any proceedings before the High Court in which a child is involved, the High Court shall have due regard to the child’s age and to the provisions of the law relating to the procedure of trials involving children.’

This provision mandates the High court to apply among other standards, **section 16 of the Children Act and Rule 4 (2) of the Children (Family and Children Court) Rules (SI 59-2)**



Section 100 (3) of the Children Act is to the effect that the High Court does not have powers to issue orders regarding children. This should be done by the FCC.

Section 101 Children Act puts restrictions on use of the words “conviction” and “sentence.” It says these words shall not be used in reference to a child appearing before a Family and Children Court; and instead, the words “proof of an offence against a child” and “order” shall be substituted for conviction and sentence respectively.

Section 102 Children Act protects the child’s right to privacy and restricts publication of the child’s name, school, photograph or other matter likely to lead to the identification of the child. This shall be respected throughout the court proceedings in order to avoid harm being caused to him or her by undue publicity.

section 95(1) of the Children Act, after a charge has been admitted or proved, when court is considering making a detention or probation order, a written social background report shall be prepared by a probation and social welfare officer and shall be taken into account by the court before making the order.

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Section 94(4) of the Children Act emphasizes that detention of children should only be used as a matter of last resort. This is one of the ways in which diversion can be applied, in recognition that it is alright to initiate diversion at any stage of the criminal proceedings.

Paragraph 50 the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 is to the effect that when making an order against a child offender, the court shall consider the following—

- a) the degree of participation of the child;
- b) best interests of the child;
- c) protection of the community from harm and ensuring people’s personal safety;
- d) rehabilitation of the child;
- e) any non-custodial options provided for in section 94 of the Children Act;

- f) the shortest appropriate period of detention where that is the only appropriate sentencing option; or
- g) detention as a last resort if in all the circumstances it is the most appropriate sentence.
- h) consider the effect of a custodial sentence on the child;
- i) where the appropriate sentence is clearly non-custodial, determine the sentence bearing in mind the interests of the child;
- j) (c) use of the welfare principle as a guide in determining the appropriate sentence to impose;
- k) (d) ensure that the appropriate sentence is the least damaging sentence to the interests of the child.

1.6. What are the opportunities for the child hearing in the whole proceeding?

- Apart from the procedure being child friendly as described in 1.5 above, during the hearing, the child is given an opportunity to speak and be listened to.
- Judicial officers allow the children to ask them questions to make them feel comfortable.
- Plea bargaining to a less charge or sentence.
- Legal representation and the presence of a probation and social welfare officer to ensure their welfare during the pendency of the proceedings.
- Privacy; children's cases are not heard in open Court but in chambers.
- Priority; children's cases are usually heard first then other cases afterwards.
- A child is allowed to sit during the proceeding.

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1.7. Are there differences on how to proceed according to the age or other criteria? Please specify.

The differences in proceedings arises from the magnitude of the offence as described in 1.1 and 1.6 herein above. For instance: Juvenile cases are heard in chambers unlike the adults; Child witnesses on taking oath are taken through the procedure of *voir dire* to ascertain their credibility to testify or give evidence; It is a requirement for the parent of the child or probation and social welfare officer to be present in Court during the trial.

2. JUDICIAL HEARING

2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

Usually, children take part in their judicial hearings so that they can be heard and accorded a fair hearing as per **Article 28 (3d) of the constitution of the Republic of Uganda, 1995 as amended.**

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

Section 89(4) of the Children’s Act requires that when the child is summoned, the parent / guardian is present except where it is not in the best interest of the child. However, in actual practice, what happens is that the child is simply arrested by the police and taken to the police station without informing their relatives/ guardians and probation officer immediately.

The child is therefore summoned individually, the parent just accompanies the child.

There are general summons used by the courts to summon witnesses / people and the same are used for children.

Sec.87, Cr.Proc.Code.

THE REPUBLIC OF UGANDA

In the Magistrate's Court of Magisterial
Area Holden at

CRIMINAL CASE NO.....OF

TO:.....
.....
.....WHEREAS your attendance is necessary to answer to a charger of
.....
.....
.....You are hereby commanded by the Ugandan Government to appear in this Court on the
.....day of2021.....ator so soon thereafter as the
case can be heard.

Herein fail not.

DATED thisday of2021, at

This summons has been issued on the application of
....._____
MAGISTRATE GRADE I/II:

Figure 1: Copy of a court summon

2.3. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses to the room where the child is heard)?

No.

There are no entrances designated for the child in conflict with the law separate from those used by the general public. All persons accessing the courtroom / chambers use the same entrance. However, in some courts, the judicial officer usually has a separate entrance to the court room.

2.4. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any?

There are no specific waiting rooms assigned to the child offender at most of the courts. While waiting for the hearing session to commence, in most courts the children sit in a designated open place or waiting area.

However, some courts like the high court in Kampala, Fortportal, Gulu and Arua have put in place waiting rooms for children.



Figure 2: Children waiting area at one of the courts.

2.5. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?

In the remand home, the children sleep in “dormitory” kind of rooms. The child to be heard waits in the dormitory before the case is fixed for hearing. Upon fixing of the case, they are transported to the court separately from the adults.

The police try as much as possible to transport the children separately but sometimes they are constrained with resources.

The children brought to court wait in groups at their waiting areas until the court is ready to hear the cases then taken to the court room.

2.6. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?

There is no designated space for the children to meet with their support persons.

However, they do meet around the court premises before and after the court session upon request from the probation and social welfare officer or the police officer/ remand officer.

2.7. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?

The hearing of a child usually occurs in chambers, but sometimes it occurs in a courtroom. **The Prosecution Performance Standards and Guidelines of 2014** provide guidance for the DPP in child-related cases under section 2.2 for the prosecutor to always request the presiding judicial officer for the trial involving a juvenile to be heard in chambers. Most times prosecutors are reluctant and it calls for judicial activism to have the cases heard in chambers.

2.8. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?

Yes.

There are a few differences in the types of hearing environments involving a child and the normal family hearing environment.

One is that the judicial officer/ judge in a hearing environment involving a child does not dress in the traditional courtroom attire for example the wig and robe but rather dresses just like a lay person.

Additionally, such hearings are usually conducted in chambers and not open to the entire public.

The hearings are always attended by the probation and social welfare officer in charge of the child's case.

If the case is going to be heard in open court, the public and press are excluded.

Child friendly questions and style are used in court, including using inquiries rather than interrogations.

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2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?

No.- this is because the family and children court does not have separate court rooms / chambers from the magistrate's court. The same premises are used.

However, in an article written by daily monitor published on 22nd April 2014, titled **Justice for children and remand homes, Justice Margaret Mutonyi**, a former Deputy registrar of family and children's court stated that children were not supposed to be arraigned in a court dock like adults but rather sit on a round table and discuss issues with the trial judge or magistrate.

However; in reality, we find children being arraigned in docks.

Even where the cases are heard in chambers, these are not any different from the ones where cases for adults are heard from as already stated above.

2.10. Are hearings sound or video recorded? Does such option exist?



Proceedings involving children are not recorded in Uganda due to the need to protect the children's privacy.

2.11. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

The persons present at the hearing include the state prosecutor, the child in conflict with the law, witnesses, the probation and social welfare officer, parents or guardians of the child and his/ her counsel. The parents / guardian will be asked to wait outside court if their presence makes the child feel uncomfortable.

In 2012, JLOS and UNICEF piloted a program known as justice for children. As a result, good practices in regards to children in conflict with the law were adopted. These include, the child to be asked which persons they want present at their trial.

2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)



Figure 3: This is a picture of one of the court rooms in Kampala. The Judicial Officer sits at the front while facing the court room. The witness utilizes the witness box / dock and the counsel for the respective parties sit on the maroon chairs while the other court users sit on the brown benches behind the counsel sitting area.

2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

There is no written material to explain to the child who may be available at the trial and how it is to occur. However, the probation officer and legal representative of the child prepares the child for the trial proceeding. They tell the child what to expect in court and the court environment, tell them about the different court officials, their roles and how to address them, the plea taking process and their rights among other things.

2.14. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?

The magistrate/ judge hears the child in trials involving children. **Section 13 of the Children Act As amended** provides that a family and children court is presided over by a magistrate not below grade 11. However, Magistrate Grade 11's have since been phased out in Uganda. The Judge hears the child in the cases that heard by the high court like aggravated defilement and all cases whose sentence is the death penalty.

The family and children's court is not in itself a separate court. It is simply the ordinary court but which assumes roles of a family and children court when dealing with children matters.

2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

Section 101 of the Children Act prohibits use of certain terms such as conviction and sentence in child criminal trial proceedings and instead substitutes them with “proof of an offence against the child” and “order”.

Further, **Section 102 of the Children Act**, prohibits publication of information likely to lead to the identification of the child except where the court has allowed so.

There are also manuals and handbooks to guide on prosecuting child related cases in Uganda(https://www.unicef.org/uganda/media/1776/file/Prosecuting_child_related_cases_in_Uganda.pdf), child friendly legal aid which describe how to interact with the child in conflict with the law.

The Children Diversion Guidelines for police officers, 2019 (Issued under section 89(1 and 2) of the Children Act, Cap.59) also provide some a criterion for how police officers should handle children in conflict with the law. These guidelines provide parameters for the exercise of discretion by police officers handling cases involving children, in accordance with section 89 of the Children Act. Detention of children in police custody should be avoided as much as possible and should only be a measure of last resort

Not everyone interacting with the children in conflict with the law has been trained to, however, some of the members of the Judiciary, Probation and social welfare officers in several districts,

legal practitioners, local council leaders, police have been trained by different civil society organisations and the government on how to interact with the children.

2.16. CAN YOU PLEASE DESCRIBE THE RITUAL? (SOME GUIDING QUESTIONS ARE BELOW)

2.16.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?

During the hearing, the Judge does not wear the traditional attire worn in other court proceedings for example; the wig and gown. The courts are aware that criminal proceedings can be quiet intimidating even for adults, and therefore, it takes a more informal and child friendly trial proceeding.

Some of the efforts to achieve this include avoidance of the use of complex legalese, and intimidating court attire.

Unable to share a photograph of a judge.

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2.16.2. Does the prosecutor and the defence attorney have to wear a gown or to use special clothes?

In child matters, the courts usually take a less tense environment. The prosecutors and defence attorneys are dressed in a formal suit /dress.

2.16.3. Who else is allowed to attend the hearings?

In 2011, the Justice Law and Order Sector and UNICEF piloted a program known as justice for children. As result, good practices in regards to children in conflict with the law were adopted. These include, the child to be asked which persons they want present at their trial. Therefore, the child is supposed to decide on who they want to attend their hearing.

In practice however, the children do not get to have a say on who attends their trial and the court, their parents and legal representatives make such decisions for them. However, usually, the child in conflict with the law, their parent or guardian and a probation and social welfare officer do attend the court sessions.

2.16.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

No.

There are no cloth restrictions for persons attending the hearing.

2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

Where the child is remanded to a remand home, they wear uniformed clothes just like other children in the remand home. However, while appearing in court for hearing they wear regular clothes.

If the child is brought to court by the remand officers, it will definitely be visible that the child is deprived of liberty.

The security measure taken is that they are guarded by their probation and social welfare officer and a security officer who is not in uniform.

They are never handcuffed.

2.16.6. Is the judge/decision maker in the hearing room when the child enters?

It usually depends on whether the court is going to start with the hearing of children cases. The clerk and court orderly will ensure that all suspects are sited in court before judicial officer enters the court room if the session is going to be in open court. If the session is going to be in chambers, the judicial officer will be in his/ her chambers when the child enters. However, there are circumstances where court starts with other cases then calls in the children in conflict with the law, here the judicial officer will be in the court room when the child enters.

2.16.7. Does the child have to stand up?

During the hearing session, the child is seated at a designated seat and is required to stand up when called to do so / when the judicial officer enters the court room. It is part of court decorum for everyone to stand up when the judicial officer enters the court room unless if they are unable to for instance persons with disabilities in wheel chairs.

2.16.8. Does someone have to allow the child (or others attendees) to sit down?

The child/ other attendees stand up as and when they are required to. However, if the judicial officer enters the court room, everyone is required to stand up including the children and only sit after the judicial officer sits down.

2.16.9. Does the child have to remain standing during the hearing?

No. The child only stands up when requested to.

2.16.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

Yes. A *voire dire* is conducted on the child to ascertain his level of intelligence and whether he understands the duty of speaking the truth especially when they are going to testify. This is in addition to explaining to the child the charge against him or why he is in court, what is going to happen and anything that the judicial officer may deem fit.

2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?

Just like in other criminal proceedings, a child who is being tried may or may not swear an oath before speaking. The child is given an option of either swearing or not swearing.

2.16.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

The judge poses questions to the child. However; any other professional is free to ask the child any questions regarding the case.

2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

Yes.

During the hearing the child is allowed to consult his / her lawyers and their family.

2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

Both the judge, defense counsel (attorney) and prosecutor are allowed to address the child as and when it is necessary.

2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

The probation and social welfare officer

The probation and social welfare officer's role is to prepare the child for the hearing and to ensure the child's wellbeing is protected and welfare upheld.

Section 95 (1) of the Children Act as amended also mandates the probation and social welfare officer to make a report to be submitted to the court before a court decides on whether to detain the child or grant them probation.

This report shall detail among other things, the social and family background, the circumstances under which the child is living, the conditions under which the committed the offence. (**Section 95(2) of the children Act as amended**)

These reports are called "social inquiry reports" and they assist the family and children's court to make appropriate orders according to the circumstances of each individual case considering the background of the child and the conditions that led him/her to do what he/she did.

The probation and social welfare officer also informs the court how long the child has been on remand.

Fit persons

A fit person is not defined in **The Children's Act**. However, the act refers to a fit person in several provisions including in Part x of the act in relation to children in conflict with the law. For example, in **Section 91(9) of the Children's Act**, mention is made of placing the child found in conflict with the law with a fit person as an alternative to remand.

A fit person plays a number of roles in relation to children at the hearing. Some of these include; To provide information for social inquiry reports in order to enable the court to make an informed decision, to provide counselling to the child, to take part in diversion meetings aimed

at providing alternatives to the child offender. And to provide periodic case information to the judge or magistrate.

Fit persons are also in charge of ensuring that children facing the law are treated justly and fairly.

2.16.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

YES. The child is allowed to interfere or correct the information

2.17. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

The hearing of a child in conflict with the law is structured in a less formal way. There is open interaction between the child in conflict with the law and the court in general.

2.17.1. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child's behaviour, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

The tone used in hearings involving children in conflict with the law is child friendly than in criminal proceedings involving adults. Where the child is remorseful, the tone used is even friendlier.

The child is required to answer the questions posed to them. However, they are also given an opportunity to freely speak about what happened.

The discussion is had considering the reasons as to why the child might have done what they did. While looking at this, the child's family history is also looked at, their social experiences, education background etc.

This is because a child's actions are more likely to be influenced by these rather than any other factors.

The dialogue is sometimes hampered by prosecutors and judicial officers who are not child friendly.

2.17.2. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behaviour as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

Yes

Each party in the courtroom has an opportunity to speak. For instance after the state has adduced evidence against the child, the child through his legal representative has an opportunity to cross examine the state witnesses on the evidence produced and also has an opportunity to testify, adduce his evidence and be cross examined and reexamined as well.

In practice the child is also reprimanded for their behavior and advised to change.

Sometimes the child is provided with counseling services where the court orders the probation and social welfare officer to place the child with a counselor for counseling.

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2.17.3. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

Yes.

During the hearing, the child who is being heard may be occasionally asked to present themselves in a certain way that is appropriate in case the child is not behaving in the desired way. Even while the court is giving its judgement it is usually done in line with transformative justice.

2.18. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

Yes. A child subject of a criminal trial is guaranteed the same safeguards as an adult in other criminal proceedings. The biggest difference is that all children matters should be heard in camera.

2.19. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults??

- **Section 101 of the Children Act** prohibits use of certain terms such as conviction and sentence in child criminal trial proceedings and instead substitutes them with “proof of an offence against the child” and “order”.
- Further, **Section 102 of the Children Act**, prohibits publication of information likely to lead to the identification of the child except where the court has allowed so.
- This is aimed at protecting children/ their family or friends from being traumatized by the public.
- The proceedings are child friendly as compared to adult courts.
- The way the judicial officer and lawyers dress is child friendly.
- The child in conflict with the law is allowed to sit just like any other person in Court.
- The child is asked in a child friendly language, they are not forced to say what they don't want to say for instance during cross examinations, the judicial officers have protected the children from cross examination that may be violent to the child or cause them trauma.
- Availability of anatomically detailed dolls for demonstrating what happened to them makes it easy for them rather than long explanations for instance during rape and defilement cases.
- The hearings are usually kept short and breaks are taken in between.

3. Generic questions concerning the improvement of Youth Courts

3.1. In your country, do the judges, prosecutors and defence attorneys benefit from specific initial and continue training on children's rights in juvenile justice and specifically on child hearing in this setting?

Yes

There are several trainings by mainly Non-profit organizations on how to handle children in conflict with the law.

The Justice Law and order section in Uganda has also released several articles and handbooks to act as guidelines / manuals to judicial officers, defense attorneys and prosecutors oh how to deal with children in conflict with the law.

The Office of the Director of Public Prosecutions also conducts regular trainings for state attorneys on how to handle cases involving children in conflict with the law.

3.2. Anything else you would like to add on this topic?

The Uganda Juvenile justice system is facing a series of challenges ranging from case backlog due to the overwhelming number of children entering the justice system to the limited facilities to accommodate and cater for those children while in the system, lack of transportation for juveniles to the courts or back to the remand home, limited or even no support from adults or responsible stake holders and inability to comprehend the court processes.

Limited facilities

Due to the high number of children entering the system, the limited facilities are overwhelmed thus causing congestion in the remand homes and detention facilities at police.

Due to the high number of children caught up in juvenile delinquency and the limited facilities available to accommodate them, many of the children end up experiencing very poor facilities in terms of accommodation, feeding, medical and health-care and so many other basic needs.

Case backlog

Also because of the high number of cases being registered, there is a problem of case backlog in the judiciary. As a result, cases take a relatively much longer time to be heard, thereby infringing on the child's right to freedom of liberty and the expeditious disposal of cases and causing a delay in the disposal of cases.

Lack of specific court facilities to handle children matters.

Since there is not specific structure restricted for sessions involving child offenders, sometimes proceedings end up being conducted in the ordinary courtroom chambers which are open to the public and do not ensure the protection of the child's privacy.

Criminalisation of child to child sex in the Penal Code Act, cap 120 by bringing it under defilement (Section 129A) coupled with the lack of comprehensive sexuality education in schools. Uganda does not have the close in age defence. This has contributed to the number of children in conflict with the law in the different detention facilities in Uganda.

3.3. Any reform proposals in progress on any of the above issues?

Implementation of the children diversion guidelines by the police officers.

One of the major developments in the child justice system is the promotion of diversion as a way of disposing of cases of children on conflict with the law. This was after the enactment of the children Diversion Guidelines for Police Officers in 2019.

Diversion involves a mechanism by which children in contact with the law are reverted to other actions other than remand. Some of these diversion activities include community service. The Guidelines are aimed at supporting the Uganda Police Force to protect and preserve the rights of children by ensuring that juveniles are diverted from the formal justice system. Emphasis of the guidelines is put on ensuring participation of a child, safeguarding the best interests of the child principle, protection of the community from harm, rehabilitation of the child, avoidance of cruel, inhuman and degrading punishment, application of alternative sentencing options, consideration of the proportionality of child's circumstances and seriousness of the offence in determining a course of action to be taken, as well as use of detention only as a last resort.

Waiting rooms for children at all the courts.

Some of the courts have adopted the good practices in relation to juvenile offenders. These include The High court of Uganda at Kampala and also at Gulu that each have separate waiting rooms allocated to juveniles. Arua has gone an extra mile by having a specific juvenile court that only handles child offenders.

Specific days designated for hearing juvenile cases

Many courts have since set aside a specific day for hearing cases of juvenile offenders. In some instances, these are the only cases heard on that day whereas in other cases they are given priority on that day as compared to any others that may have been cause listed.

3.4. Any suggestions for improvement from your side?

Handling of children in remand homes

There is also need to attend to children in remand homes on an individual basis rather than as a group. Each child has their personal specific issues and challenges. Some of these issues/ challenges can only be noticed after interacting with a child one on one. Therefore; attending to them with others reduces the impact of rehabilitation.

After remand counseling

Children should be accorded counselling after they live the remand homes, this should be aimed at rehabilitating the child and bringing them back into society. This could avoid post remand trauma which affects children as a result of living in harsh conditions in remand homes. Therefore; counselling centers should be set up for such counselling.

Reduction of the scope of roles of the Probation and social welfare officer.

The laws in Uganda specifically the children Act Cap elicit a number of roles to be performed by the probation and welfare officer. Some of these include supervising proceedings involving children and being available during their trials. However, due to the so many roles attached to their office, it is sometimes impossible for the probation and social welfare officer to be available in all these proceedings thus leaving children unsupervised while facing the justice system. This makes them vulnerable to abuse by the courts of law and also other stake holders.

Introduce comprehensive sexuality education in schools.

Uganda is a member state to the **2013 Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa** and it encourages member states to provide comprehensive sexuality education because evidence suggests that it promotes the delay of initiation of sex, and safe sex behavior. This seems imperative since the dominant message of abstinence has obviously not succeeded in keeping the youth from having sex among their group hence the continued child to child sex.

CEHURD vs. Attorney General & Family Life Network [Miscellaneous Cause No. 309 of 2016], in November, 2021 Hon. Justice Mugambe upheld the fundamental human rights of all Ugandans to access health information on their sexuality and directed the Government of Uganda through the Ministry of Education and Sports to develop a Comprehensive Sexuality Education Policy within two years.

Create waiting rooms for children at all the courts.

Children's trials should be concluded within the required time frames.

Section 91 of the Children Act, cap 59 as amended stipulates for court to conclude cases involving children within 3 months for an offence punishable by death and 45 days for any other offence which is not being done hence the case backlog and delayed justice for children.

Children should as well be detained in separate cells from the adults at all police stations.

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