



**PAPER ON SPECIAL RULES FOR
DETENTION OF JUVENILES
BY PHEONA NABASA WALL, LLB,
DIP.LP, MBA, ICMC
PRESIDENT**

INTRODUCTION

Children are a special group of persons and are prone to crime in our societies, either as victims or perpetrators. As perpetrators, children find themselves performing crimes that are not necessarily meant for home disciplining but for state disciplinary measure. It is upon this premise that this paper looks at the international legal regime, regional legal regime as well the domestic legal regime in regard to detention of Juveniles.

DEFINITION

A juvenile is any person below the legal age¹ in Uganda the legal age is 18 years so a child means a person under the age of eighteen years as per the 1995 Constitution of the Republic of Uganda.²

¹ "Juvenile Law legal definition of Juvenile Law - Legal Dictionary." <https://legal-dictionary.thefreedictionary.com/Juvenile+Law>. Accessed 20th September 2021.

² "CONSTITUTION OF UGANDA - ILO." <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>. Accessed 20th September. 2021.

The International and Regional Perspective.

The convention of the rights of children

Article 37 Of the convention on the rights of children provides 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;

(c) Every child deprived of liberty shall 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, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.³

³ "Convention on the Rights of the Child - OHCHR."
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Accessed 20th September. 2021.

International convention on civil and political rights

Article 10 (b) of the international convention on civil and political rights provides that Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

The united nations standard minimum rules for the administration of juvenile justice also known as the Beijing Rules

Rule 2.2 states that a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult; (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

Rule 2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed: (a) To meet the varying needs of juvenile offenders, while protecting their basic rights; (b) To meet the need of

society; To implement the following rules thoroughly and fairly.⁴

The rules also go ahead to discuss the age of criminal responsibility under rule 4 as 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.⁵

Rule 7 discuss the rights of juvenile offenders and states that the basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings. Commentary 5 Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. The presumption of innocence, for instance,

⁴ "Standard Minimum Rules for the Administration of Juvenile Justice"
https://en.wikipedia.org/wiki/Standard_Minimum_Rules_for_the_Administration_of_Juvenile_Justice.
Accessed 20 September. 2021.

⁵ "United Nations Standard Minimum Rules for the Administration of"
<https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>. Accessed 20th September. 2021.

is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights. Rules 14 seq. of these Standard Minimum Rule⁶

African charter on human and peoples' rights

This chapter provides that in spite of the fact that everyone is entitled to personal liberty in case it is taken away then Every individual shall have the right to have his cause heard. This comprises: The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force, The right to be presumed innocent until proven guilty by a competent court or tribunal, The right to defense, including the right to be defended by counsel of his choice, The right to be tried within a reasonable time by an impartial court or tribunal, no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed.

⁶ "United Nations Standard Minimum Rules for the Administration of" 29 Nov. 1985, <https://www.ojp.gov/pdffiles1/Digitization/145271NCJRS.pdf>. Accessed 20 September. 2021.

Punishment is personal and can be imposed only on the offender.⁷

The Ugandan Perspective (Domestic Legal Regime)

Rules for detention of juveniles

Uganda performs well internationally in terms of its approach to children in conflict of the law. It has ratified the main international treaties, enshrining their key principles in the Uganda Children Act cap 59, which includes a comprehensive outline of the rights of such children⁸.

Article 34 of the constitution⁹ clause 1 Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up clause 6 states that A

⁷ "African Charter on Human and Peoples' Rights." <https://www.achpr.org/legalinstruments/detail?id=49>. Accessed 20th September. 2021.

⁸ Review of Ugandan Remand Homes and the National Rehabilitation Centre by Marianne Moore, October 2010.

⁹ "CONSTITUTION OF UGANDA - ILO."

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>. Accessed 20th September. 2021.

child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

The age of majority in Uganda is 18 years. However, the age determination and terminology used in reference to a child differs from statute to statute, although **the Children's Act 2016**, defines a child as any person under the age of 18.

In Uganda, children in conflict with the law are principally the responsibility of the Ministry of Gender, labor and social Development. However, the Uganda Police Force and the Judiciary of the Uganda are also important partners. Detained children are placed in one of the four remand homes in fort portal, Gulu, Naguru, or Mbale. In addition, the Kampiringisa National Rehabilitation Centre detains sentenced children from the whole of Uganda.

Rules for Arrest

When a child is arrested, the police have the discretion to caution and release the child or dispose of the case without recourse to formal court. A child who is arrested should be accompanied by the parent, guardian or probation officer at the time of police questioning. The

child has a right to be represented by either a friend, next of kin or legal counsel in the court process.

Rules for Remand.

In Uganda children are principally the responsibility of the Ministry of Gender, Labor and Social Development. The Uganda Police Force and the Judiciary of the Republic of Uganda also play an important role.

Section 96 of the Children act provides for Rehabilitation Centres for Children Children in conflict with the law.

Detained children are placed in one of four remand homes if awaiting trial or in the national rehabilitation centre if they have received orders or sentences. There are currently four operating remand homes serving their local districts:

- Fort Portal Remand Home
- Gulu Remand Home
- Naguru Remand Home
- Mbale Remand Home

The Kampiringisa National Rehabilitation Centre serves children from the whole of Uganda. All of the homes and the centre contain young males and females in conflict with the law from the ages of 12 to 18.

Remand homes and the national rehabilitation Centre children have children either detained for capital or minor, petty offences. Capital offences include

murder, manslaughter, rape, defilement, and aggravated robbery¹⁰

The Children Act cap 59 sets out that remand in custody should not exceed six months in the case of an offence punishable by death, and should not exceed three months in the case of any other offence. The majority of children are not remanded beyond the time limits. However, a minority, mostly charged with capital offences, are being remanded for a longer period. The conditions in the remand homes are very poor and they lower the child's self-esteem and development, and put their health in grave risk.

Rules for Bail.

At present there is no provision for bail as court bond, but only by way of a financial surety. As a result bail is not readily accessible to children. When a juvenile, is arrested or detained or appears or is brought before a board, such person shall, notwithstanding anything contained in the **Code of Criminal Procedure, 1973 (2 of 1974)** or in any other law for the time being in force,

¹⁰ The Penal Code Act Cap 120

be released on bail with or without surety or placed under the supervision of a Probation Officer.

Where the case of a child appearing before a family and children court is not completed within three months after the child's plea has been taken, the case shall be dismissed, and the child shall not be liable to any further proceedings for the same offence.¹¹

Where, owing to its seriousness, a case is heard by a court superior to the family and children court, the maximum period of remand for a child shall be six months, after which the child shall be released on bail. However, where a case is not completed within twelve months after the plea has been taken, the case shall be dismissed and the child shall be discharged and shall not be liable to any further proceedings for the same offence.

Rules for children's court.

Every district will have a family and children court which will be the court of first instance for all cases other than those where an RC court has jurisdiction and where a

¹¹ Section 99 of The Children Act Cap 59

juvenile is charged with an adult. The procedures in this court shall be informal in approach and the trial should be in camera, and the child should be given the opportunity to express his or her interpretation of events to ensure that the child receives a fair hearing. No person is allowed to publish information that may lead to identification and harm caused by undue publicity in respect of a child before court.

The maximum age of criminal responsibility shall be 12years.

Rule 29 of the Children (Family and Children Court) Rules S.I 59-2 provides for Detention in National Rehabilitation Centre for Children where the court promotes reconciliation between the complainant and the child and If after careful consideration the court is satisfied that all other reasonable alternatives have been tried, and that offence warrants the order, as a last resort, the court may order detention in the National Rehabilitation Centre for Children with such conditions as may be recommended by the probation and social welfare officer.

Release from detention

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.¹²

Conclusion

In conclusion, the protection of the rights of children is key when undertaking any kind of juvenile justice and the laws put in place to do so should be implemented without any due regard to technicalities . I strongly believe that penal systems should be streamlined and focused on rehabilitating juveniles rather than punishing them for the crimes they have committed. This will help transform them into responsible citizens rather than habitual offenders.

¹² Section 98 of the Children Court Act Cap 59

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