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**COVID-19 AND JUVENILE JUSTICE: AN EXAMINATION OF THE  
MEASURES ADOPTED TO MITIGATE COVID-19 AT NAGURU REMAND HOME, UGANDA.**

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**COVID-19 AND JUVENILE JUSTICE: AN EXAMINATION OF THE MEASURES ADOPTED TO MITIGATE COVID-19 AT NAGURU REMAND HOME, UGANDA.**

*Davis Karashani\**

**ABSTRACT**

*The advent of Covid-19 saw the upheaval of political, social and even justice systems worldwide, and Uganda was no exception. This paper details the concept of juvenile justice, detailing the dynamics of children's criminal responsibility vis-à-vis their rights following a study on Naguru Remand Home. It looks both at the ways how and the reasons why the justice system has failed to uphold children's rights, and at how the system and its agents have worked to protect the rights of child offenders. Of priority to the author is the category of children in conflict with the law, whose offences and circumstances are discussed at length, highlighting the need for focus on restorative justice. The paper further examines COVID-19's impact on the dispensation of juvenile justice and finally, postulates recommendations to achieve a holistic and efficient juvenile justice system.*

**1.0 INTRODUCTION**

Criminal law globally and particularly in Uganda is a system of law concerned with the punishment of offenders as it is the body of law that relates to crime.<sup>1</sup> This branch of law seeks to achieve five widely accepted objectives for enforcement of the criminal law: punishment, retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each with retribution – criminals ought to be punished in some way is the most widely seen goal.<sup>2</sup> However, juvenile justice globally looks to

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\* Student of law at Makerere University and cricket national team athlete. My utmost gratitude goes to Judge Wilson Kwesiga (Head Criminal Division), Winnie Adukule (Free Child U) and Dr. Winnie Tarinyeba Kiryabwire (supervisor) for their relentless guidance while working on this paper. Special thanks to my research respondents and the Makerere Editorial Board for the key role they played in this work too. All errors and omissions remain my own.

<sup>1</sup> Smith, Hogan and Ormerod's *Essentials of Criminal law* (15<sup>th</sup> Edition Oxford University Press,) 201.

<sup>2</sup> Jason Swindle, "The Five Objectives of Criminal Laws", Available at <https://www.swindlelaw.com/2014/01/the-five-objectives-of-criminal-laws/> (Accessed February 10, 2021).

employ restorative justice approaches that merit particular attention as they seek to address the root causes of penalised behaviour, rather than simply examine the events surrounding an offence in isolation.<sup>3</sup> This paper undertakes a project study to understand the dynamics of juvenile justice through the measures adopted by the judiciary to mitigate the adverse effects of COVID 19 in Uganda. The paper seeks to access the findings from the variable under consideration and make recommendations on the same.

### **1.1 BACKGROUND OF THE STUDY**

The justice system in Uganda encompasses the rights of citizens and provides a remedy for the aggrieved person where an infraction exists. At the heart of this justice system lays founding constitutional principles such as observance of rule of law. International law, specifically the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child,<sup>4</sup> guarantee the right of every child alleged accused to be treated in a manner consistent with the promotion of the child's sense of dignity and worth further ensuring the protection of children's rights in Uganda.

This position is emphasized in Article 34(6),<sup>5</sup> which provides that a 'child offender who is kept in lawful custody or detention shall be kept separately from adult offenders. This constitutional provision is buttressed by S.91(5) of the Children's Act,<sup>6</sup> that recognises the importance of a split justice system as the former are a vulnerable group hence require protection. This is reinforced by Principal Judge Yorokamu Bamwine (as he then was) who observed that the judiciary has a policy on not remanding juveniles with adults.<sup>7</sup> However, despite increased awareness to separate children from adults in detention, the

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<sup>3</sup> George T. Patterson, *Clinical Interventions in Criminal Justice Settings* (Academic Press, 2018).

<sup>4</sup> A.17 of the UN Convention on the Rights of the Child.

<sup>5</sup> 1995 Constitution of the Republic of Uganda.

<sup>6</sup> Cap 59.

<sup>7</sup> Betty Ndagire, "Justice for children and realities of remand homes" available at

<https://www.monitor.co.ug>/2014/23/04 (accessed July 22, 2020).

lack of separate holding facilities in numerous police stations has created a logistical challenge of upholding the aforementioned principle.<sup>8</sup>

Children worldwide that are arrested and detained for alleged crimes seldom enjoy the protections they are entitled under the Convention on the Rights of the Child.<sup>9</sup>

Naguru Remand Home located in Kampala receives on average 200 children a month of two different categories - children in need of care and protection and children in conflict with the law.<sup>10</sup> This remand home was constructed to have a maximum capacity of 20 children at a time.<sup>11</sup> However, as indicated the reality is overwhelmingly more than 6 times beyond the planned number. The revelation by the Justice, Law and Order Sector (JLOS) criminal working group during one of its routine inspection visits to the remand home in 2014 expounded on the significant overcrowding of the children facility even after the Ministry of Gender, Labour and Social Development had planned to timely decongest the remand home but efforts had been futile with this problem only getting worse. By 9<sup>th</sup> July 2020, Naguru remand home had 138 children, 7 girls and 131 boys in conflict with the law having committed crimes such as aggravated defilement, robbery and theft As indicated in Appendix 1.

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<sup>8</sup> UNICEF, "Justice for children," *Developing a child-friendly and responsive justice system*, (Unicef) Available at <https://www.unicef.org/uganda/what-to-do/justice-for-children> (accessed on July 27, 2020).

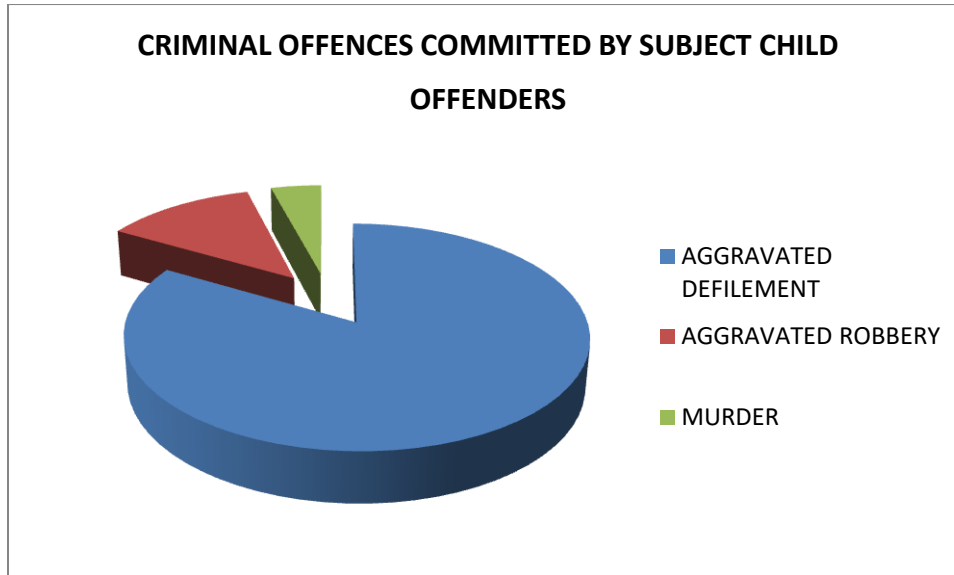
<sup>9</sup> Human Rights Watch "Where Do You Want Us to Go?, *Abuses against Street Children in Uganda*", July 2014, available at <<https://www.hrw.org.html> > (accessed July 27, 2020).

<sup>10</sup> Esther Nshakira, 'Naguru Remand Home', available at <[www.somanystories.ug/blog/features/2019/07/naguru-remand-home-reading-to-rebuild](http://www.somanystories.ug/blog/features/2019/07/naguru-remand-home-reading-to-rebuild)> (accessed March 9, 2021).

<sup>11</sup> *ibid.*

### **Appendix 1: Categories of offences**

An illustration showing a summary of the categories of offences adjudicated upon shows that out of the 48 cases heard, 40 were cases of Aggravated defilement, 6 cases of aggravated robbery 6 and 2 cases of murder.



The emergence of the novel Corona Virus Disease (COVID 19) has had a disruptive effect on the entire globe bringing world economies and operations to a standstill.<sup>12</sup> COVID 19 is a respiratory illness in people and animals that can spread from person-person through sneezing and coughing droplets.<sup>13</sup> This means that it's easily spread more so in overcrowded areas.

With the emergence of this disease, Uganda declared a lockdown.<sup>14</sup> However, for the judiciary, the Chief Justice issued guidelines for mitigation to be taken

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<sup>12</sup> Kalungi, "The socio-economic impact of COVID-29 in Uganda", available at [www.unicef.org/uganda/reports/socio-economic-impact-covid-19-uganda](https://www.unicef.org/uganda/reports/socio-economic-impact-covid-19-uganda), accessed (March 9, 2021).

<sup>13</sup> UNICEF, "Coronavirus (COVID-19): What you need to know and learn, protect yourself and your loved ones" available at <https://www.unicef.org/uganda/coronavirus-covid-19-what-you-need-to-know-and-learn>- (accessed March 9, 2021).

<sup>14</sup> Isaac Mukama, "The expected outcomes of the post-COVID-19 Lockdown in Uganda", available at <https://www.orfonline.org.html> (accessed July 27, 2020).

by the judiciary in response to the pandemic, such as suspension of open court hearings, appearances and conferences except for only urgent cases requiring bail.<sup>15</sup> Unfortunately, even with these efforts in place, some prisoners and prison officials recently tested positive for the disease.<sup>16</sup> The declaration of a lockdown by the government automatically suspended several to live. This then put the juveniles in detention rights as discussed in the next section in limbo.

## **2.0 JUVENILE JUSTICE**

Juvenile justice is a system of laws, policies and procedures intended to regulate the processing of child offenders for violating the law and provide legal remedies to protect their interests in situations of conflict.<sup>17</sup> A child is a person below the age of 18 years,<sup>18</sup> whereas a child in conflict with law is one whose actions result in a criminal law being broken and hence are subjected to criminal justice processes.<sup>19</sup> The Children's Act, <sup>20</sup>defines remand to mean a circumstance where a child is not released on bail, and henceforth sent to a remand home to be named in the order, situated in the same area as the court making the order.

### **2.1 History of Juvenile Justice**

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<sup>15</sup> Doreen Ainembabazi, "Justice In the Era of A Pandemic: An Analysis of the Impact of the COVID-19 Pandemic on Uganda's Court Operation", 6/30/2020 (accessed July 27, 2020).

<sup>16</sup> WHO, "Uganda: Ministry of Health and WHO respond to COVID-19 cases spike in prison" available at <https://www.who.int/news-room/feature-stories/detail/uganda-ministry-of-health-and-who-respond-covid-19-cases-spike-in-prison>, (accessed March 10, 2021).

<sup>17</sup> Donald J. Shoemaker, "Juvenile Justice", available at <https://www.britannica.com/html>(accessed July 27, 2020).

<sup>18</sup> ibid (n5) A.257(c) S. 2 of the Children's Act

<sup>19</sup> UNICEF, 'Prosecuting Child-related Cases in Uganda: A Handbook for Directorate of Public Prosecutions'<sup>6</sup> Available at <https://www.unicef.org/uganda/reports/prosecuting-child-related-cases-uganda> (Accessed March 10, 2021).

<sup>20</sup> S. 91(1) Children's Act (amended) Cap 59.

Administration of juvenile justice has varied over time in society with the concept of delinquency and as special institutions for controlling youth being established in the mid-19<sup>th</sup> Century in Great Britain where courts acquired the authority to intervene as *parens patriae* (parent of the land) to protect property rights of children. Juveniles were tried in the same courts as adults until the Juvenile Court of Law was founded in Chicago in 1899 as the first court dedicated to cases involving child offenders. This latter model was very successful and thus other juvenile courts were adopted in other countries worldwide.<sup>21</sup>

Early common law made no special provision for child offenders so long as the child was above the age of criminal responsibility (7 years at the time) and possessed the ability to tell right from wrong. Such a child was fully liable as an adult to penalties under the law including a sentence to death seen as early as the bestiality cases of Claudine de Culam (1584) and Thomas Graunger (1642).<sup>22</sup> However, the reformatory movement of the 19<sup>th</sup> Century established training institutions for child offenders as an alternative to confinement in adult prisons and advanced the need to treat child offenders differently from adult criminals. Progressively, the Children's Act of 1908 created a special justice system for child offenders called the Juvenile Court later renamed in 1991 the Youth Court,<sup>23</sup> that are evident signs of international recognition of child rights.

The focus of this project will be on children of this category that have suffered from the marginalization resulting from the limited application of a children's rights-based approach by relevant institutions charged with child justice and inadequate systems and procedures for justice for children.

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<sup>21</sup> *ibid.*

<sup>22</sup> National Research Council and Institute of Medicine, "Juvenile Crime, Juvenile Justice", Washington, DC: The National Academic Press. available at <https://doi.org/10.17226/9747> (accessed July 30, 2020).

<sup>23</sup> Donald *ibid*(n17).

## **2.2 Administration of Juvenile Justice**

The Children's Act Cap 59 provides for crucial guarantees and mechanisms for child care and protection such as Family and Children's Courts, Police, a national rehabilitation centre and the Local Council Courts, the effectiveness of these guarantees has left a lot to be desired. The same Children's Act also activates the jurisdiction of Probation Services in matters involving children at risk. Several laws, regulations and statutory instruments have also been made to guide the implementing institutions in the Administration of Children Justice as elaborated upon below

### **2.2.1 Local Council Courts**

The Local Council system was formalized in the 1995 Uganda Constitution to function at the village (LC 1), Parish (LC 2), sub-county (LC 3), County or municipality (LC 4) and District (LC 5) level to allow communities to expeditiously handle children's issues. This power allowed these courts to make an order for any reconciliation, compensation, restitution, community service, an apology or caution reliefs in respect of a child against whom the offence is proved. This power however has not been utilised as discussed in This prevailing challenge was elaborated on by High Court Judge in his *obiter dictum* in *Uganda v. MM (minor)*,<sup>24</sup> where the child offender had been on remand for 9 months for aggravated defilement but the victim's mother stated she had been willing to forgive the juvenile even before he was arrested.

### **2.2.2 Uganda Police Force**

The Uganda Police Force is mandated to keep law and order in Uganda. This role includes preventing harm from occurring to

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<sup>24</sup> *Uganda v MM (minor)* 008/2019.



children, detecting harm and diverting children away from the formal justice system through non-custodial and non-adversarial measures. It also includes mediation and community policing. The Police are the first point of contact with the criminal justice system in its investigative and protective role however the Police have further instead been a factor leading to challenges in the juvenile justice system.

The 'trigger hungry' perspective of Police to arrest immediately even before carrying out thorough investigations has accounted for numerous child offenders being held in remand way beyond the provided time for remand.<sup>25</sup> The Police has been reluctant to use the power provided to it in the Children's Act,<sup>26</sup> that gives them the power to caution, release and dispose of cases at their discretion without recourse to formal court hearings per criteria laid down by the Inspector General of Police.

### **2.2.3 Family and Children's Court**

The Children's Act Cap 59<sup>27</sup> stipulates every district have one family and Children's court in line with the UN Convention for the Rights of the Child together with General Comment No. 10 that recommends state parties to establish juvenile courts as either separate units or as part of existing regional / district court.<sup>28</sup> However, these courts haven't functioned due to inadequate funding and understaffing such as few probation and welfare officers which have further worsened the access to justice by child offenders in Uganda. This inefficiency in this

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<sup>25</sup> Jim Gash, *Divine Collision*, (Oasis Audio; Unabridged Edition, March 1, 2016).

<sup>26</sup> *ibid* (n.20), S.89.

<sup>27</sup> *ibid*, S.13.

<sup>28</sup> UN Convention on Rights of the Child General Comment 10: Children's rights in the juvenile justice.

agent of administration of juvenile justice has meant that even criminal cases not punishable by death have to be heard.

#### **2.2.4 Probation and Welfare**

Probation and Social Welfare Officers monitor children on remand. Whereas their role is very pertinent in the administration of juvenile justice matters, they have also not been able to perform this function effectively and to appear in court when required. This is aggravated by the lack of information from the police on children under remand, inadequate staffing in the department, and limited funding.

### **2.3 Legal principles relating to Juvenile Justice**

The judiciary survey, Roundtable on Juvenile justice (May 23 2013) to review the law and policy on juvenile justice addressed some of the legal challenges faced in administration. However, many of the challenges still exist and continue to hamper juvenile justice as expounded on below. Several fundamental rights provided for in the Constitution have been not been adhered to leading to several legal issues arising.

#### **2.3.1 The fundamental right to a fair and speedy trial of an accused person.<sup>29</sup>**

The Children's Act<sup>30</sup> as amended provides the duration alleged child offenders ought to spend on remand. The urgency principle provided for in the Constitution<sup>31</sup> and further in the Children's Act<sup>32</sup> is of absolute importance and ought to be paramount in juvenile justice that strives to attain restorative justice. This principle ought to be applied expeditiously to protect the best interests of the child while

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<sup>29</sup> *ibid*(n5)A.28(1).

<sup>30</sup> *ibid*(n20) S.91(5).

<sup>31</sup> *ibid* (n29).

<sup>32</sup> *ibid*(n30).S.99.

respecting the rule of law as delays in the trial proceedings only have a negative effect on the child's psychosocial state and affect child offender's development as justice delayed is justice denied.

### **2.3.2 Children's right to bail**

The Constitutional right to bail,<sup>33</sup> together with the Children Act,<sup>34</sup> is to the effect 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 unless there is a danger to the child, release the child on bail. This is a right that has not fully been upheld due to challenges in tracing parents or guardians of child offenders that are legally expected to be present at bail applications of child offenders.

The importance of bail is furthermore reinforced by Penal Reform International by emphasizing that children should where possible, be released into the care of their families to await trial in their own homes. Bail and other forms of conditional release should be accompanied by measures to support and supervise the child offender and their family. Bail rights have further been hindered by challenges of a bureaucratic and inefficient court system<sup>35</sup>.

Further principal legislation, the Trial on Indictment Act Cap 23,<sup>36</sup> provides that the High Court may at any stage release an accused person on bail. However Section 14 of the Trial on Indictment Act does not stop a child from applying for bail directly to the High Court even concerning Rule 2 Judicature (Criminal Procedure) (Applications)

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<sup>33</sup> *ibid* (n5) A.23(6).

<sup>34</sup> *ibid* (n30) S.90.

<sup>35</sup> Marianne Moore, *Juvenile Detention in Uganda* Available at <https://resourcecentre.savethechildren.net/sites/default/files/documents/3994.pdf> (Accessed March 10, 2021)

<sup>36</sup> S.14 of the Trial on Indictment Act Cap 23

Rules SI 13-8, which provides “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.<sup>37</sup> This challenge to acquiring bail results in the direct contravention of the UN Standard Minimum Rules of Non-custodial Measures (the Tokyo Rules) in particular rule 6 that strongly discourage pre-trial detention.

### **3.0. FINDINGS**

As earlier stated this study analysed the measures adopted by the judiciary in Uganda to mitigate the effects of COVID 19 on juvenile justice particularly Naguru remand home as a case study.

#### **3.1 Position of Naguru Remand home during COVID-19**

Research figures showed that out of the 138 children held at Naguru remand home, 92 were being held for capital offences committed before the COVID 19 pandemic.<sup>38</sup> The pandemic accelerated what had only been a shelved suggestion by the judiciary of conducting trials at the remand homes. For the first time, the High court under Justice Wilson Kwesiga successfully heard a total of 48 juvenile cases from different jurisdictions of which more than 50 child offenders were released. The Justice Law and Order Sector-JLOS initiative on conducting court sessions at remand homes starting with Naguru

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<sup>37</sup> UNICEF *ibid*(n19).

<sup>38</sup> Hafitha Issa, “Minor offenders to stand trial in remand homes” (Uganda Radio Network) Available at <https://ugandaradionetwork.com/story/court-to-try-minor-offenders-in-remand-homes> (Accessed March 10, 2021).

remand home was to avoid exposing minor offenders to COVID-19 infections while seeking justice.<sup>39</sup>

In a bid to solve the congestion, Ms Mary Kyomugisha Onoria, the Probation and Welfare officer wrote an official request to the principle judge after the first session that focused on Kampala cases requesting Justice Wilson Kwesiga to hear cases from different jurisdictions of Jinja, Mukono and Mpigi which request was upheld. The result was 24 cases were heard of which 17 were dismissed, 5 sentenced to Kampiringisa rehabilitation centre and 2 adjourned to next sessions as seen in Appendix 2. “Because the judge is present here at Naguru yet I have children in the ‘hostel’ from other jurisdictions, I thought it would be helpful to explore the possibility of him hearing their cases too so they can also go home”, expressed an enthusiastic Ms Mary Kyomugisha Onoria, a Probation and Welfare officer at Naguru remand home.

**Appendix 2: Cases heard by the High Court at Naguru Remand home during the COVID 19 period.**

CRB	COURT NO	AGE	OFFENCE	D.O.A	REMAND	WHEN	O
200/2020	003/2020	16	AGGRAVATED DEFILEMENT	25/6/2020	LEGITIMATE	20/7/2020	D
141/2020	003/2020	14	AGGRAVATED DEFILEMENT	19/5/2020	LEGITIMATE	20/7/2020	B D
107/2020	003/2020	16	AGGRAVATED DEFILEMENT	11/3/2020	OVER STAYED	21/7/2020	D
48/2020	002/2020	12	AGGRAVATED DEFILEMENT	24/3/2020	OVER STAYED	30/7/2020	D

<sup>39</sup> *ibid.*

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2094/2020	001/2020	15	AGGRAVATED DEFILEMENT	9/1/2020	OVER STAYED	22/7/2020	D
186/2019	001/2020	12	AGGRAVATED DEFILEMENT	10/3/2020	OVER STAYED	10/8/2020	B D
1009/2020	012/2020	14	AGGRAVATED DEFILEMENT	12/2/2020	OVER STAYED	23/7/2020	D
933/2019	30/2019	17	AGGRAVATED ROBBERY	11/12/2019	OVER STAYED	23/7/2020	D
859/2020	005/2020	16	AGGRAVATED DEFILEMENT	2/6/2020	LEGITIMATE	23/7/2020	D
419/2019	001/2020	16	AGGRAVATED DEFILEMENT	20/3/2020	OVER STAYED	23/7/2020	D
851/2020	006/2020	16	AGGRAVATED DEFILEMENT	2/6/2020	LEGITIMATE	23/7/2020	D
1882/2019	107/2019	16	AGGRAVATED DEFILEMENT	28/11/2019	OVER STAYED	27/7/2020	D
278/2019	14/2019	17	AGGRAVATED ROBBERY	26/9/2019	OVER STAYED	30/7/2020	D
278/2019	14/2019	15	AGGRAVATED ROBBERY	26/9/2019	OVER STAYED	30/7/2020	D
845/2019	007/2019	16	AGGRAVATED DEFILEMENT	26/11/2019	OVER STAYED	30/7/2020	D
953/2020	010/2020	14	AGGRAVATED DEFILEMENT	27/6/2020	LEGITIMATE	14/8/2020	D

989/2020	75/2020	17	AGGRAVATED ROBBERY	27/1/2020	OVER STAYED	30/7/2020	D
234/2020	003/2020	16	AGGRAVATED DEFILEMENT	20/2/2020	OVER STAYED	17/8/2020	C
841/2020	009/2020	16	AGGRAVATED DEFILEMENT	19/6/2020	LEGITIMATE		A
1230/2019	61/2019	17	AGGRAVATED ROBBERY	29/8/2019	OVER STAYED	19/8/2020	C
17/2020	002/2020	17	AGGRAVATED DEFILEMENT	21/1/2020	OVER STAYED	19/8/2020	D
263/2020	004/2020	17	AGGRAVATED DEFILEMENT	12/3/2020	OVER STAYED	19/8/2020	D
849/2020	007/2020	15	AGGRAVATED DEFILEMENT	2/6/2020	LEGITIMATE	24/8/2020	D
	005/2019	17	AGGRAVATED ROBBERY	29/3/2019	OVER STAYED	24/8/2020	D
427/2019	198/2019		AGGRAVATED DEFILEMENT	28/9/2019	OVER STAYED	18/2/2020	C
1645/2019	41/2019	13	AGGRAVATED DEFILEMENT	10/12/2019	OVER STAYED	14/8/2020	D
100/2020	002/2020	17	AGGRAVATED DEFILEMENT	27/1/2020	OVER STAYED	13/8/2020	D
609/2019	78/2019		AGGRAVATED DEFILEMENT	5/12/2019	OVER STAYED	20/8/2020	D

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46/2020	89/2020		AGGRAVATED DEFILEMENT	4/2/2020	OVER STAYED	20/8/2020	D
764/2019	40/2019	13	AGGRAVATED DEFILEMENT	22/11/2019	OVER STAYED	13/8/2020	D
248/2020	004/2020		AGGRAVATED DEFILEMENT	26/2/2020	OVER STAYED	13/8/2020	D
1224/2019	36/2019	15	AGGRAVATED DEFILEMENT	13/9/2019	OVER STAYED	18/8/2020	D
161/2020	008/2020	16	AGGRAVATED DEFILEMENT	16/4/2020	LEGITIMATE	18/8/2020	A
84/2019	27/2019		AGGRAVATED DEFILEMENT	23/11/2019	OVER STAYED	20/8/2020	C
13/2019	001/2020	17	AGGRAVATED DEFILEMENT	13/1/2020	OVER STAYED	17/8/2020	D
452/2019	57/2019	17	AGGRAVATED DEFILEMENT	10/10/2019	OVER STAYED	17/8/2020	D
160/2020	007/2020	17	AGGRAVATED DEFILEMENT	16/4/2020	LEGITIMATE	18/8/2020	D
137/2020	42/2020		AGGRAVATED DEFILEMENT	24/6/2020	LEGITIMATE	26/8/2020	D
90/2019	54/2019	17	MURDER	5/8/2019	OVER STAYED	19/8/2020	C
163/2019	008/2019	16	AGGRAVATED DEFILEMENT	11/12/2019	OVER STAYED	24/8/2020	D



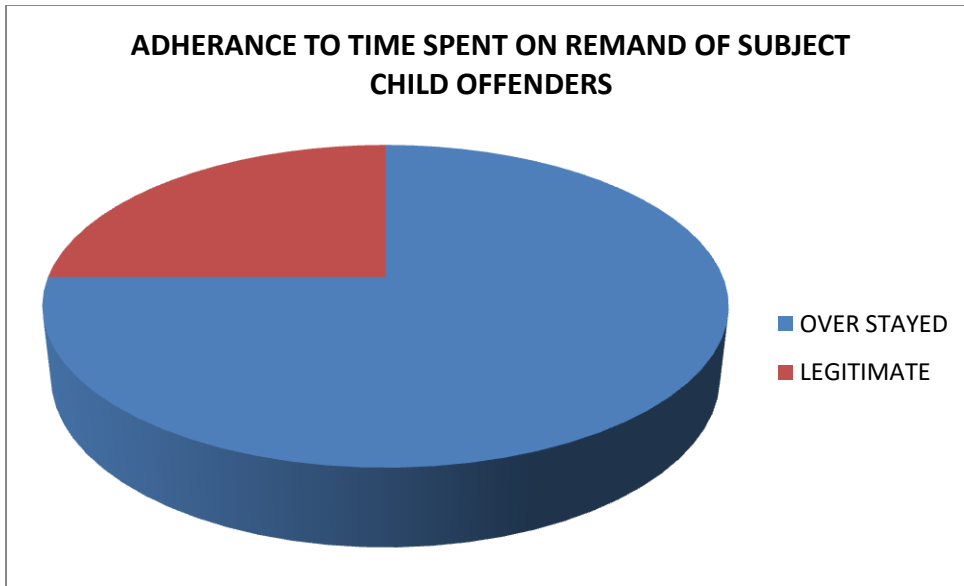
392/2019	006/2019	16	AGGRAVATED DEFILEMENT	24/10/2019	OVER STAYED	19/8/2020	D
143/2019	005/2019	17	AGGRAVATED DEFILEMENT	26/8/2019	OVER STAYED	19/8/2020	D
165/2019	004/2019	17	AGGRAVATED DEFILEMENT	5/8/2019	OVER STAYED	24/8/2020	D
007/2020	002/2020	17	AGGRAVATED DEFILEMENT	23/1/2020	OVER STAYED	20/8/2020	D
20/2019	004/2019	16	AGGRAVATED DEFILEMENT	30/4/2019	OVER STAYED	17/8/2020	C
234/2019	005/2019	16	AGGRAVATED DEFILEMENT	18/4/2019	OVER STAYED	17/8/2020	C
402/2020	003/2020	17	MURDER	17/6/2020	LEGITIMATE		A
		16	AGGRAVATED DEFILEMENT	10/1/2020	LEGITIMATE	24/8/2020	D

NOTE: CRB – Criminal Records Book

DOA–Date of Arrest

Secondly, the data collected showed that 36 child offenders were held on remand longer than what the law provides as indicated in Appendix 3. Out of the lot at Naguru remand home, only 12 were held within the statutory time of remand which could be explained through the fact that court sessions were brought closer to Naguru remand home.

### **Appendix 3: Time spent on remand**



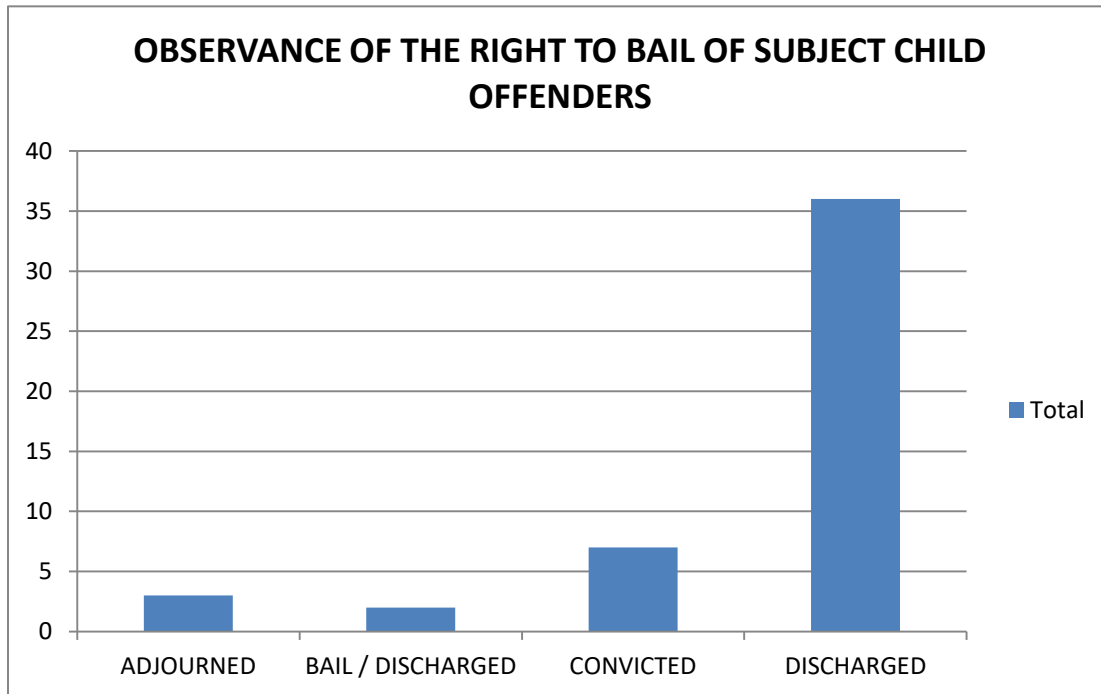
Thirdly, as regards the observance of the right to bail at Naguru Remand home, the realities are bizarre as indicated in Appendix 4. This glaring scenario is documented in the story of Tumusiime Henry a child offender that spent nearly two years on remand in Ihungu remand home in Fort Portal,<sup>40</sup> in atrocious inhabitable conditions.

**Appendix 4: Bail application.**

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<sup>40</sup> Gash (n25).

Out of the 48 cases adjudicated on, only 2 child offenders successfully got bail.



### 3.2 Place of UNICEF in the Juvenile System of Uganda.

UNICEF –supported Justice for Children program has shifted focus from juvenile justice to an all-encompassing mandate of justice to all children including offenders, witnesses, missing children and child victims. Further, with UNICEF support, the judiciary recently appointed a magistrate to Naguru remand Home to help expedite the trial of minor offence cases.<sup>41</sup>

UNICEF has supported the government by standardizing child-friendly legal aid for children in conflict with the law, institutionalizing quality diversion standards across the justice sector, strengthening the institutional and technical capacity of the justice sector and its professionals to improve children's access, reinforcing national capacity in monitoring child justice indicators in annual child justice progress reports and finally advocating for, the ratification of international laws and treaties like the Hague Convention on

<sup>41</sup> UNICEF *ibid*(n8).

inter-country adoption and optional protocol on trafficking in persons especially women and children.<sup>42</sup>

### **3.3 Administration of juvenile justice.**

Probation and welfare officers responsible for the protection of children are inadequately resourced thus unable to carry out expeditious inquiries that would help establish the ages of child offenders while other districts don't even have.<sup>43</sup> This was posed as a challenge more so when the issue of trying to decongest the home came into issue.

Pursuant from the previous challenge, the judiciary faces is accumulated case backlog which has spilled over into Juvenile justice in Uganda. This is due to the abuse of due-process of rule of law regarding procedural protection by those mandated to uphold juvenile offender rights. These abuses have not only left the court system suffocated with case backlog but even worse, taken away valuable time from these children in conflict with the law.

### **3.4 Age of Criminal responsibility.**

The age of criminal responsibility in Uganda is 12 years as provided for in the Children's Act,<sup>44</sup> in line with the recommendation of the UN general comment No. 10.<sup>45</sup> However, with the child offenders on remand, only 4 per cent have birth certificates leaving the determination of the majority as subjective

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<sup>42</sup> ibid.

<sup>43</sup> UNICEF, "State Party Reports Uganda", Available at <https://www.unicef-irc.org/JuvenileJusticeInformationPortfolio-CommitteeontheRightsoftheChild.html> (accessed July 27, 2020).

<sup>44</sup> Ibid,(n20) S.88(1).

<sup>45</sup> UN (2007) 'Convention on the Rights of the Child General Comment 10: Children's rights in the juvenile justice' Available at: <https://www.refworld.org/docid/4670fca12.html>(Accessed on July 27, 2020).

through inquiries from parents, assess physical appearance or even checking children teeth.<sup>46</sup>

## **4.0 RECOMMENDATIONS**

### **4.1 Adoption of child-friendly principles by Juvenile justice stakeholders.**

"Child-friendly justice" refers to justice systems that guarantee the respect and effective implementation of all children's rights.<sup>47</sup> The Judiciary should adopt Child-friendly principles in the adjudication of matters relating to juveniles more specifically in circumstances such as these of COVID-19 where these principles could be flouted and hence putting the children's rights in question. The various principles that ought to be improved at Naguru remand home include;

#### **4.1.1 The Welfare Principle.**

This is a fundamental Principle in Children matters.<sup>48</sup> The welfare of a child is not to be measured by money alone nor physical comfort only but must be taken in its widest sense to include moral, religious and ties of affection. <sup>49</sup> Welfare is an encompassing term to include the sense of adequacy of resources for a comfortable standard of living and adequacy of care to ensure good health is maintained. Material considerations are secondary matters after stability, security, love, understanding care and guidance for the full development of a child's character and personality.

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#### **4.1.2 Participation**

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<sup>46</sup> Denis Anger, 'Uganda's Juvenile Justice System in Urgent need of Reforms.'(Foundation of Human Rights Initiatives) Available at: <https://fhri91.blogspot.com/2015/01/ugandas-juvenile-justice-system-in.html> (Accessed on July 27, 2020).

<sup>47</sup> UNICEF *ibid* (n19),2.

<sup>48</sup> *Uganda v WAK (minor)* LGZ-00-JA 78/2019.

<sup>49</sup> *Re McGrath (infants)* [1893] 1 Ch 143.

<sup>50</sup> *Walker v Walker & another* (1981) N2 Recent law 257 Also see, *Nakaggwa v Kiggundu* [1978] HCB 310.

This principle emphasizes that child offenders ought to be informed about their rights, given appropriate ways to access justice and to be heard or consulted in proceedings affecting them whereas respecting their opinions. This principle ought to be recognized right from arrest to taking plea before and during the trial, plea bargaining and sentencing.<sup>51</sup> This is because children are also bearers of full rights. In circumstances, such as COVID-19 some tenets of this are affected in a bid to ensure that a matter is hurriedly listened to.

#### **4.1.3 Dignity**

Children ought not to be subjected to torture, inhuman, degrading treatment or punishment.<sup>52</sup> Children are valuable human beings and as such their dignity, special needs, interests and privacy should be respected and protected. The vulnerable nature of children further requires them to be treated with care, sensitivity, fairness and respect throughout any procedure or case. In doing this, special attention has to be made to their situation, well-being and with full respect for their physical and psychological integrity.

#### **4.1.4 Freedom from discrimination**

Children being persons provided for by the supreme law of the land, ought to equally enjoy this right. They should not be discriminated against or marginalized on any grounds such as sex, gender, race, colour or ethnic background, age, language, religion, political or another opinion, national or social origin, socio-economic background, belonging to a minority group, property, birth, or another status.

Vulnerable children such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities,

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<sup>51</sup> ibid (n.5) A.28.

<sup>52</sup> ibid, 24.

homeless and street children, children from minority groups often end up being in conflict with the law and are thus more prone to recidivism.

#### **4.1.5 Child-friendly Environment.**

Criminal proceedings are complex and intimidating, children should be treated with consideration taking into account their age, vulnerability, maturity and level of understanding during trial proceedings. The trial process involving children should be dealt with in a non-intimidating and child-sensitive setting. Good practices of juvenile justice ought to be fully effected such as child-friendly language, 'dress down' by judicial officers, explanation of their rights to them, exclusion of press and many more should be observed.<sup>53</sup>

To ensure a child-friendly environment for child offenders, Naguru remand home has entered into a partnership with UNICEF (offered furniture), JLOS, Ministry of Gender, Labour and Social Development and the Ministry of Justice and Constitutional affairs (that will gazette the court) to transform an existing dining hall at the premises into a model courtroom for juveniles. "We are in talks with other potential partners to have a fully refurbished and functional court hall here at the facility to help expeditiously avail justice to the juveniles", observed Ms Mary Kyomugisha Onoria.

## **4.2 To the Judiciary**

JLOS should conduct more court sessions at remand homes to avoid exposing child offenders to COVID 19 infection while still ensuring access to justice. This is reiterated by Jane Stella Ogwang, the principle probation and social welfare officer at the first session at remand home,<sup>54</sup> where she asserts that court

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<sup>53</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010-2011

<sup>54</sup> Issa ibid (n38).

sessions are to be done at all remand homes as there is a need to ensure that justice prevails even amidst the lockdown while protecting inmates.

The Judiciary should ensure that the Family and Children Court (FCC) established under the Children's Act,<sup>55</sup> that everyone requires every district and any other lower government unit designated by the Chief Justice to become operational.

Judicial officers should have an understanding of the hidden forms of child abuse and the tendency of abused and neglected children to end up in the criminal justice system as perpetrators of crime. From a point of awareness, judicial officers can help to observe the blurring lines between social welfare and criminal justice systems. The children would then be dealt with appropriately per their background and circumstances.<sup>56</sup> This is more pertinent in the face of the circumstances being pandemic induced.

The Judiciary should adopt various approaches from other jurisdictions. For example, South Africa has introduced an innovative multi-disciplinary team approach to juvenile justice all under one roof. The "One-Stop" model is a juvenile justice centre with specialized police, court and probation officers all in the same location.<sup>57</sup> Arrested juveniles are taken to the centre to be processed by the police and assessed by a social worker. The centre has special separate cells for juveniles who are detained during the investigation as well as a specialized juvenile court.<sup>58</sup> Such procedures make curbing the spread of diseases like COVID-19 possible.

Besides, the United Nations has passed several guidelines geared towards enhancing justice for children which give further detailed guidance on promoting and protecting the rights of children who encounter the criminal

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<sup>55</sup>     ibid (n20) S.13.

<sup>56</sup>     UNICEF ibid(n19).

<sup>57</sup>     ibid, 39.

<sup>58</sup>     ibid.



justice system.<sup>59</sup> These practices should be benchmarked to launch a stellar juvenile system in Uganda that can withstand pandemic winds.

#### **4.3 To the Police**

The powers of the police on arrest should be sensitised to the people. For example, the Police, on arrest, have the discretion to caution and release a child offender without recourse to a formal court. Furthermore, if a child cannot immediately be taken to court, Police then ought to give them a release bond. This is more pertinent since the arrest of the minor could expose him to COVID-19.

The Police Child and Family Protection Unit (CFPU) is dedicated to handling children matters that ought to be made fully operational and functional per the law and interests of child offenders.

#### **4.4 To the Local Council Courts.**

Local Councils needed to be sensitized about their roles in resolving conflict in society.<sup>60</sup> This reduces the number of cases that make it to the police and hence saving the juveniles the opportunity of landing into the hands of the policemen that could lead them to places like Naguru Remand Home.

#### **4.5 Other Stake Holders**

While the judicial authorities have the ultimate competence and responsibility for making the final decisions, prosecutors, probation and social welfare officers, Local council courts, the family and children court and all other stakeholders should endeavour to work together and affect their statutory powers to assess the best interests of children in procedures involving them

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<sup>59</sup> The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990.

<sup>60</sup> Issa *ibid*(n38).

more specifically during the Pandemic time to benchmark for any other sort of occurrence.

## **5.0 CONCLUSION**

As the progression of juvenile justice continues on a slow and rigorous path to a model justice system that avails timely access to justice for this vulnerable group of human beings, the COVID 19 pandemic appears to have been a positive catalyst to this journey. Based on information attained from my research, coupled with remarks from interviewed key stakeholders, it is evident that the initiative yielded positive results and been praised by all stakeholders. One can only hope that the plans for having a fully-fledged juvenile court at the remand home can materialize and be replicated at all remand homes countrywide to ensure timely justice to juveniles and give them a chance to be rehabilitated.

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