

INDUCTION COURSE FOR REGISTRARS AND MAGISTRATES 2024

CHILDREN IN THE JUSTICE SYSTEM

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PRESENTATION OUTLINE

- ▶ INTRODUCTION
- ▶ HOW CHILDREN GET INTO THE JUSTICE SYSTEM
- ▶ THE RATIONALE FOR SPECIAL LAWS AND PRACTICES FOR CHILDREN
- ▶ THE LEGAL FRAMEWORK ON CHILDREN
- ▶ JUVENILE JUSTICE/CHILDREN IN CONFLICT WITH THE LAW
- ▶ JURISDICTION OF COURTS AND OTHER ACTORS
- ▶ CHILD VICTIMS AND WITNESSES
- ▶ CONCLUSION

INTRODUCTION

- ▶ Under the Uganda Children Act a child is a person below the age of 18 years. Children are globally recognised as a vulnerable group of persons.

HOW CHILDREN GET INTO THE JUSTICE SYSTEM

- ▶ **Children get into the justice system:**
 - When they get in conflict with the law (juvenile offenders);
 - when they get in contact with the law to testify in civil cases e.g custody;
 - when they get in contact with the law as victims or witnesses in criminal cases like murder, robbery, child sexual or physical abuse, property related crimes, or in crimes relating to mental/psychological harm e.g pornography.

RATIONALE FOR SPECIAL LAWS FOR CHILDREN

- ▶ **The need for child friendly laws and practices is informed by :**
- ▶ **Age - The tender age and immature reasoning capacity of children**
- ▶ **Vulnerability - Children depend on adults for their welfare**
- ▶ **Child development process and needs**
- ▶ **The nature of the Justice Delivery Process**

LEGAL FRAMEWORK ON CHILDREN

- ▶ While some laws and Instruments/legislation cover issues relating to children in general, some of them specifically provide for Children Rights; Children Welfare; Child Care; Child Victims and Witnesses; and Children in Conflict with the Law/Juvenile Justice.
- ▶ Uganda domesticated the international and regional instruments on children mainly through:
 - The Constitution of the Republic of Uganda, 1995 as amended;
 - The Children Act (as amended by Act 9 of 2016);
 - The Judicature (Visual - Audio Link) Rules, which permit the use of technology in conducting court proceedings relating to Sexual or violent offences - a Judiciary ICT Innovation.

IMPORTANT GUIDING PRINCIPLES IN CHILDREN CASES

- ▶ The Best Interest of the Child - The overriding factor in decisions taken in respect to a matter involving a child is the best interest of the child.
- ▶ The Welfare Principle - the Welfare of the child shall be of paramount consideration in determination of questions relating to children.

JUVENILE JUSTICE

- ▶ Juvenile justice refers to the system or manner of dealing with cases of children who get in conflict with the law i.e when they are suspected of committing offences, or when they are charged in court (accused).
- ▶ The emphasis of the juvenile justice system is to rehabilitate the young offenders, to reform them into useful and responsible members of society, rather than become bigger problems to the community.

DIVERSION IN CHILDREN CASES

- ▶ Diversion simply means turning something away from one course or system to another course; in this context it refers to turning juvenile cases away from the formal criminal justice system to the informal system e.g police caution, or LC courts, and child friendly orders by courts.
- ▶ Diversion can be done at various case stages.

JURISDICTION OF THE COURTS

- ▶ The Family and Children Court (FCC) has jurisdiction to hear and determine all criminal charges against a child except an offence punishable by death; and an offence for which a child is jointly charged with an adult.
- ▶ The law provides for child friendly procedures and court orders by the FCC and even the Higher courts.

POWERS OF POLICE IN JUVENILE CASES

- ▶ Section 89(6) of the Children Act:
 - Where a child who is arrested cannot be immediately taken before a court, the police officer to whom the child is brought shall upon inquiry into the case, shall release the child on bond on his or her own recognisance or on a recognisance entered into by the parent of the child or other responsible person.
- ▶ Where release on bond is not granted the child can only be detained for a maximum of 24 hours, but not with an adult; and a female child in custody must be under the care of a woman officer.

JURISDICTION OF LCs

- ▶ A village Local Council (LC) Court has jurisdiction to hear and determine the offences of Affray; Common Assault; Actual Bodily Harm; Theft; Criminal Trespass; and Malicious Damage.
- ▶ When the offence is proved against a child the LC court can make orders of Reconciliation; Compensation; Restitution; Community Service; Apology; or Caution, and a guidance order for a maximum of six months in addition.

IMPORTANT DECISIONS AND CONSIDERATIONS FOR COURT

- ▶ Age Determination - Child or Adult?
- ▶ Court Setting/Atmosphere - Wear your Robes?
- ▶ Pre-Trial Detention or Release on Bail?
- ▶ Decision to remand - Where?
- ▶ Maximum Remand Period!
- ▶ Duration of Children Cases!

IMPORTANT DECISIONS/CONSIDERATIONS CONT.

- ▶ Mode of trial - inquisitorial, not adversarial.
- ▶ Privacy at Court Hearings of children cases!
- ▶ Probation and Social Welfare Officer's Social Inquiry Reports?
- ▶ Court Language/Words!
- ▶ Court Orders upon proof of the offence against a child - Custodial Vs. Non Custodial Orders.

ORDERS BY COURT IN JUVENILE CASES

- ▶ Detention for a maximum of 3 years for an offence punishable by death, in respect of any child.
- ▶ Before making a detention order against a child, the court must be satisfied that a suitable place is readily available.
- ▶ Detention of a child in an adult prison is prohibited.
- ▶ The period spent on remand must be taken into account

CHILD VICTIMS AND WITNESSES

- ▶ Just like the rights of children in conflict with the law are protected under the Children Act, child victims and witnesses are also entitled to protection in the justice system, including the courts.
- ▶ Where the child is a victim or witness to violent crime this may result into emotional pressure, intimidation or threats by the offender or his/her family or the community.

CHILD VICTIMS OF SEXUAL OFFENCES

- ▶ The law specifically provides for protection of victims of sexual offences by court in cases of ordinary (simple) defilement:
 - Sec. 40(1)(1a) of the MCA - “In particular, the court shall, when conducting a trial of the offence of defilement, consider the need, in the interest of the child, to exercise its power under article 28(2) of the Constitution, to exclude the press and the public from the proceedings before the court for reasons of morality and to protect the victim of the offence”.

PROTECTION OF CHILD VICTIMS & WITNESSES

- ▶ Judiciary ICT Innovations - Including the Judicature (Visual - Audio Link) Rules.
- ▶ The Rules permit the use of technology in conducting court proceedings relating to Sexual or violent offences - Section 5(b); hence victims do not necessarily have to be physically present in court, or even the accused person(s).
- ▶ Rule 15(1) - Court to adopt child friendly procedures, including examination being done through an intermediary if necessary.
- ▶ Rule 15(2) - Court may direct that examination be done in a manner appropriate for the age or mental ability of the child.

BEST CHILD FRIENDLY PRACTICES BY COURT

- ▶ At court the child should be kept in child friendly environment.
- ▶ Do not keep the child waiting for long before his/her testimony.
- ▶ Ensure that the child has eaten before giving his/her testimony.
- ▶ The child's attention span and pace should be taken into account.
- ▶ Allow the child to be accompanied by a support person in court, to maintain his/her confidence and a feeling of security, and to take care of the child's other concerns.

BEST CHILD FRIENDLY PRACTICES CONT.

- ▶ Develop rapport with the child victim/witness to build her/his trust/confidence, in the court.
- ▶ Refer the child for psychosocial or other support that is necessary.
- ▶ Avoid intimidating commands to the child or to other people in the presence of the child.
- ▶ Protect the child from unfair and embarrassing questions.
- ▶ Disallow victim blaming statements or questions to the child.
- ▶ Use anatomical dolls where necessary e.g sexual offences.

BEST CHILD FRIENDLY PRACTICES CONT.

- ▶ In cases of young children the voire dire is a good opportunity for court to develop rapport with the child victim/witness.
- ▶ Court must conduct a voire dire before a child of tender years (a child below 14 years) testifies, for the purpose of determining whether:
 - The child understands the nature of the oath; or
 - The child understands the duty of telling the truth; and
 - The child is possessed with sufficient intelligence to justify the reception of his/her evidence.

THE LAW ON CHILD'S EVIDENCE

- ▶ Where a child gives unsworn evidence court cannot base a conviction on it unless it is corroborated - This is a statutory requirement under S 40(3) of the TIA.
- ▶ Whether a child testifies on oath or not, s/he must be cross examined.

CONCLUSION

- ▶ Child Centred Procedures and Decision Making are key tenets of children rights in the administration of justice in cases involving children in the justice system. Where no child friendly laws exist, best practices should be applied.

THANK YOU!

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