

Deprivation of Children's Liberty as the Last Resort: A global conference on child justice in Africa

7th – 8th November 2011

Speke International Conference Centre, Kampala, Uganda

CONFERENCE REPORT



DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI
DEFENSE DES ENFANTS INTERNACIONAL DEI
DEFENCE FOR CHILDREN INTERNATIONAL DCI
the worldwide movement for children's rights

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ABOUT THE ORGANISERS

Defence for Children International (DCI)

DCI is an independent non-governmental organisation that has been promoting and protecting children's rights on a global, regional, national and local level for over 30 years. When the movement was founded in 1979, few international structures were dedicated to using a human rights-based approach in addressing the many problems faced by the world's children. DCI was established in direct response to this void. DCI has more than 40 national sections (in Africa, the Middle East, Asia, Pacific, Latin America and Europe) and associated members who carry out concrete programmes to promote and protect the rights of children.

At the DCI International Conference held in Bethlehem in 2005 under the theme "Kids Behind Bars", A Child Rights Perspective and at the most recent International General Assembly held in Brussels in October 2008, on "Violence against Children in Conflict with Law", DCI confirmed its commitment to maintaining juvenile justice as its priority concern. In the Brussels Declaration, DCI reconfirmed its commitment to the guiding principles of the UN Convention on the Rights of the Child, General Comment No.10 on Children's Rights in Juvenile Justice.

The African Child Policy Forum (ACPF)

ACPF is an independent, not-for-profit, pan-African institution of policy research and dialogue on the African child. ACPF was established with the conviction that putting children first on the public agenda is fundamental for the realisation of their rights and wellbeing and for bringing about lasting social and economic progress in Africa. ACPF believes that *knowledge* of the problems, of what can be done, and of how, that *advocacy* for policy and legal reforms, and that *policy dialogue*, *partnership* and *collective action* are key for effecting change in Africa.

Over the past five years, ACPF has undertaken an audit of national laws and policies in several African countries. The studies have revealed gaps and weaknesses in the domestication and harmonisation of national laws.

ACPF's work on harmonisation of laws focuses on facilitating law reform and assisting governments in the harmonisation of their laws with international and regional instruments on children. And in a bid to move from rhetoric to action in the next five years, ACPF plans to engage partners and experts in the development of guidelines for policy and legislative changes that enhance the legal protection of children.

A recent international and comparative report published by ACPF - *Children's Legal Protection Centre: A Good Practice Report* - has confirmed the important role such initiatives can play in promoting and upholding legal protection of children. Building on the experience of the Children's Legal Protection Centre in Addis Ababa, ACPF aims at promoting the implementation of such programmes in Africa.

Other partners

In organising the Conference, ACPF and DCI collaborated with the Government of Uganda, through the Ministry of Gender, Labour and Social Development, Plan International, UNICEF, International Child Support, and Republic Et Canton De Geneve.

MESSAGE FROM THE ORGANISERS

The issue of managing or dealing with children coming in conflict with the law has historically haunted nations, and Africa is no exception. Although there have already been important headways, much remains to be done in ensuring child justice in Africa.

Often the basic rights of children are not respected by national legal, social welfare and justice systems and security institutions. Justice standards that are designed for and mainly fit adults seldom cater to their needs. In one word, their basic human rights of access to justice are footnoted in a predominately adult-oriented justice system.

Children come in contact with the justice system in many ways: they may be involved in civil proceedings (for example in family affairs); they may be dealt with by a Juvenile Justice System when they come in conflict with the law (and too often, even when they are not in conflict with the law since a Juvenile Justice System intervenes while a child is in need of care); they may be witnesses of crimes or, and, this is even more common, they may be victims of crimes. They may also be involved in administrative, social and other kind of proceedings.

Children in conflict with the law may be dealt with through the formal justice system or court system, by the welfare system, or, for minor offences, by an administrative system. Such systems may function within the context of the adult criminal justice system, or may operate largely outside the judicial system through committees, commissions or administrative panels. Whether the system contains a degree of specialisation for children – whether the system is based on courts, the welfare system, or an administrative system – it is frequently known as a juvenile justice system. It is to be noted that the term *juvenile justice system* has, in most recent legislative reforms, been replaced by a less stigmatising term, *child justice system*.

In countries that do not have any degree of specialisation, children in conflict with the law are dealt with in largely the same way as adults. But adult criminal justice systems and child justice systems may frequently use deprivation of liberty as the primary sentencing option. Both may also fail to consider the needs and best interests of the child and to address the root causes of conflict with the law. Indeed, whilst a country may operate ‘specialised procedures’ for children in conflict with the law, an effective child justice system requires that the varying needs of children be assessed, that children in conflict with the law are referred to appropriate services, and that they are offered care and assistance with reintegration into the community. Moreover, such a system should operate in a ‘child-friendly’ environment, using appropriate and simplified language and with the minimum possible employment of physical restraints.

But the problem arises when children come in contact with a justice system that is unresponsive to their needs, which not only deprives them of their liberty, but also accentuates their vulnerability to abuse, violence, exploitation, and health-related risks such as injury and HIV/AIDS infection. Such a system also isolates children from society, particularly where the child’s welfare, education and reintegration needs are not integrated into the formal justice system.

This is further compounded by the very little understanding children have of the justice system and their rights which makes it unlikely for them to challenge any mistreatments and abuse perpetrated within the system. Further, most institutions dealing with children in conflict with the law are notoriously child-unfriendly and their physical conditions are often in the grimmest of states.

Thus, there is an urgent need to develop new tools to help States to adapt their justice systems to the situation of children, to bring their procedures up to speed with international standards, and to properly implement them.

In 2005, the United Nation Economic and Social Council adopted The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005). On the 17 November 2010, the Committee of Ministers of the Council of Europe on child- friendly justice made a constructive headway with the adoption of Guidelines on Child-friendly Justice. Similar guidelines are, however, still lacking in Africa and most countries have to cope with their weak child justice structures, procedures and limited resources.

DCI and ACPF believes that there is an urgent need to develop new tools to help African States to adapt their justice systems to the situation of children, to implement existing standards as well as adapt procedures that exist elsewhere.

The Kampala Global Conference on Child Justice is aimed at bringing together justice actors globally and mobilising effective follow-up actions of national and international legislation policies and practices, with regard to implementing child friendly justice systems in Africa. The conference will draw lessons from Europe, Latin America and Asia and foster learning for Africa.

By the end of this conference, DCI and ACPF will have initiated the development of guidelines for the implementation of child-friendly justice in Africa and drawn a follow up programme to the conference to ensure the endorsement of the guidelines by the African Committee of Experts on the Rights and Welfare of the Child and the guidelines' approval and adoption by the African Union.

1. INTRODUCTION

In recent years, human rights activists are increasingly focusing on stemming the various violations of rights and abuses children suffer on a daily basis. Although various international and regional instruments have been adopted to protect and promote the rights of children, in many parts of the World the instruments have not been implemented. Indeed, although the United Nations Convention on the Rights of the Child has received near universal ratification, the violation of children's rights is prevalent and occurs in many parts of the world. In Africa, a number of countries have ratified the African Charter on the Rights and Welfare of the Child, an instrument which draws on the United Nations Convention and adapts the universal standards to the African context. These instruments are buttressed by a number of international and regional instruments including the general human rights treaties and instruments which set out a number of standards for the protection and promotion of the rights of children.

Nonetheless, in Africa armed and ethnic conflicts, breakdown of law and order, decay of public institutions, the absence of monitoring mechanisms and challenges in managing resources has resulted in the violation of several of the rights of African children. Child justice systems have broken down, which has led to the violation of the rights of children in both judicial and non-judicial proceedings. Children come in contact with the justice system in many ways: they may be involved in civil proceedings (for example in family affairs); they may interact with the juvenile justice system when they come in conflict with the law (and too often, even when they are not in conflict with the law since a Juvenile Justice System intervenes while a child is in need of care); they may be witnesses of crimes or, and, this is even more common, they may be victims of crimes. They may also be involved in administrative, social and other kind of proceedings.

In many countries, children in conflict with the law spend long periods in pre-trial detention, are denied access to legal representation and are sometimes detained in horrible conditions and with adults under whose hands children suffer physical, psychological and sexual abuse. Punishments such as long periods of detention, corporal punishment and the death penalty have been used in some countries. These violations usually have an impact not only on the child but on their families and members of the community. In the proceedings, in some cases the principle of the best interests of the child and principle of child participation have not been observed.

At the same time, a number of African countries have exhibited a number of good practices. Many countries have through law reform harmonised their laws with the regional and international instruments. In some contexts, diversion has legally been entrenched and specialised child courts have been established. One practice that cuts across all African countries has been the use of informal justice mechanisms, including traditional mechanisms, to resolve children's cases. Indeed, in many countries, as much as 80% of the cases involving children are resolved through these mechanisms. At the same time, in many of the countries, the harmonisation of laws has not been comprehensive and has not been followed with implementation of the laws. Ignorance of children rights and related standards is prevalent, so is impunity in the violation of children's rights. Some traditional systems have perpetrated the violation of some children's rights, yet this system has in many countries not adequately been linked to the formal justice systems.

It is against the above background that the African Child Policy Forum (ACPF) and Defence For Children International (DCI), in collaboration of the Government of Uganda through the Ministry of Gender, Labour and Social Development from 7 – 8 November 2011 convened an international conference in Kampala entitled: **Deprivation of Children's Liberty as the Last Resort: Global Conference on Child Justice in Africa.**

1.1 Goals and Objectives of Conference

The organisers were committed to planning a conference which is practical and action-oriented. The aim was to translate the knowledge and conclusions generated from this Conference into concrete actions and documents which can direct future programmatic interventions, and be used for advocacy purposes as well as for the training of the judiciary and law enforcement officials, civil society as well as community based organisations. The overall goal of the Conference was to contribute to the improvement of laws, policies, systems and procedures in the justice system in Africa when it deals with children. Specific objectives included:

- (i) Awareness raising on the gaps in the child justice system in Africa among policy makers, CSOs, academia, and other relevant stakeholders;
- (ii) Identification and sharing of good practice models and concrete actions in the justice system when it deals with children and promotion of learning and linking among African states; and
- (iii) Developing, recommending and advocating for the Guidelines on Child-friendly Justice in Africa to be endorsed and enforced by African States.

1.2 Participants

The Conference attracted over 300 participants representing a diversity of stakeholders and countries. Countries represented included the following: Belgium, Benin, Burkina Faso, Burundi, Cameroon, DRC, Cote d'Ivoire, Croatia, Djibouti, Ethiopia, France, Gambia, Ghana, Guinea, India, Kenya, Liberia, Malawi, Malta, Mauritania, Mexico, Netherlands, Niger, Nigeria, Norway, Pakistan, Palestinian Territory, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, Spain, Sudan, Swaziland, Togo, Uganda, UK, United States, Uruguay, Zambia, and Zimbabwe. Key international and regional personalities (Annexed 1 is the full list of participants)

1.3 Summary of Emerging Issues

- There are a number of international and regional conventions and instruments which protect the rights of children and establish standards in the area of child justice;
- In the area of child criminal justice, the international standards require that detention should be a matter of last resort, child justice systems should instead aim at the rehabilitation, reformation and reintegration of the child;
- Many countries have ratified the international and regional instruments and endorsed the various standards on the rights of children but have not fully domesticated these;
- In many countries in Africa, traditional adjudication mechanisms are being used alongside the formal justice systems to resolve disputes relating to, and affecting children. The traditional systems are more dominant in many countries;
- Many African countries have not embraced the principle that detention of children in conflict with the law shall be done as a matter of last resort;

- Some countries are subjecting children in conflict with the law to long periods of incarceration and in some cases corporal punishment and the death penalty;
- In many countries children spend long times in pre-trial detention and are sometimes detained with adults at whose hands they suffer physical, psychological and sexual abuse;
- Some African countries have not established specialized courts and procedures to handle child related cases;
- Children are affected in various ways by both civil and criminal proceedings and in both formal and informal dispute resolution proceedings;
- Children with disabilities face a number of challenges when they interact with the child justice system either as children in conflict with the law, witnesses or as victims. The special needs of these children need to be attended to;
- Violence against children is prevalent and occurs in a variety of contexts, including in armed conflict, in the penal system and in domestic contexts;
- Reforms in the child justice system towards greater respect for the rights of children do not necessarily require money, what is required is political will;
- Many countries have failed to improve the conditions of child detention centres, many are overcrowded and in a state which perpetrates inhuman and degrading treatments;
- There is need for civil society to adopt innovative approaches in dealing with the challenges posed in the child justice systems and processes. Innovative approaches child help lines, awareness raising campaign that include children as a focus, and setting up child justice support structures such as child justice committees;
- It is necessary to promote child participation in child justice matters. In this process children will provide information and insight into their lives with which to inform legislation, policies, budget allocation and services. The children would also become active and effective advocates for the realisation of their own rights and they will acquire skills, knowledge, and competencies;
- Restorative justice should be promoted as a mechanisms of rehabilitating and reintegrating children into society and building harmony in communities by promoting healing of victims of crime;
- Children in conflict with the law arising from their involvement in armed conflict should be looked at as victims and perpetrators because many times they are coerced into committing offences or even manipulated by commanders for the same purpose;
- Some countries have harmonized their laws with the international standards by establishing child-friendly justice systems. Nonetheless, in some of these countries the laws have not been implemented;

- There is need to link the formal and justice system in order to make them operate in synergy with each other; and
- Some traditional practices followed in adjudication perpetrate violation of children's rights.

1.4 Outcomes of Conference

1.4.1 *Guidelines on Action for Children in the Justice System in Africa*

The Conference adopted *Guidelines on Action for Children in the Justice System in Africa*. These Guidelines are aimed at supporting African States in protecting children's rights at all stages of judicial and extrajudicial procedures and promoting the rights of information, representation and participation of children.

1.4.2 *Report on Good Practices*

Papers presented at the conference on themes highlighting good practices will be compiled into a solid report which will be shared for purposes of learning and linking in the field of child justice.

1.4.3 *Munyonyo Declaration*

Findings, results, recommendations and actions proposed by the Conference were issued in the form of the Munyonyo Declaration on Justice for Children in Africa. The Declaration lays forth a series of commitments and proposed actions to implement the recommendations.



Participants of the Global Conference on Child Justice in Africa at the Speke Resort & Conference Centre, Munyonyo, Kampala, Uganda, 7th – 8th, 2011

2. THE OPENING SESSION

The Conference was opened by H.E. Right Honourable Edward Sekandi, Vice-President, of the Republic of Uganda, who was also the Guest of Honour. The address of the Guest of Honour was preceded by an address from Hon. Madada, the Minister of State Gender, Labour and Social Development in the Government of Uganda in charge of the elderly and the disabled, who indicated that the Government of Uganda had adopted a number of measures to protect children. Children have been protected as part of the vulnerable groups enumerated by the Constitution. This group includes the elderly and disabled, yet there is a link between these groups and children. The elderly form a significant portion of children's caregivers.

2.1 Opening Address by H.E, Right Honourable Edward Sekandi. Vice President, Republic of Uganda



H.E. Right Honourable Edward Sekandi, Vice President, Republic of Uganda

In his address, the Guest of Honour, Hon. Edward Kiwanuka Ssekandi indicated that the Conference was a crucial platform to share approaches and practices in the protection of children and to formulate new ideas. This is in addition to nurturing the old ones. It was noted that Africa is experiencing young offenders including street children, yet some times children are involved in crimes committed by adults. At the same time, in Africa children are perceived as an embodiment of the future, something which has been adulterated by modernity.

The challenge facing Africa in the area of child justice was twofold: First, was the question of how to prevent child crime, and secondly is the question of how to respond to child crime. To respond to this challenge, Uganda had adopted a multi-sectoral approach under the Justice, Law and Order Sector (JLOS), which has streamlined child justice issues. The Ugandan approach has become a model for Africa countries. Uganda was the first country to embark on law reform to align its domestic laws with the Convention on the Rights of the Child. One of the laws adopted in this process was the Children's Act (Chapter 59, Laws of Uganda, 2000 Edition).

The Guest of Honour expressed concern with regard to the fact that many domestic legal systems deprive children of liberty; many children are detained with adults, tortured, something which was unacceptable. In this regard, the Conference should recommend stringent guidelines for handling child offenders. The Guest indicated that as a legal practitioner, he understands that the best approach is giving crime victims an opportunity to regain their personality and offenders to take responsibility and contribute to retribution. In this regard, it is necessary to empower the community to push through cultural values and norms intended to achieve the above. It is important to recognise the fact that most children in conflict with the law are not offenders in strict understanding; they instead need care from the government, their families and the community. The ideal response should address the children's rights to love and care, adequate health, good food, right to play, associate and expression, special care if no family, care if disabled and those in conflict with the law should be given special attention.

The Guest of Honour concluded by pledging the support of the government of Uganda in implementing any resolutions and guidelines adopted at the Conference.

2.2 Welcome Address by David Mugawe, Executive Director, ACPF



At the opening, David Mugawe, the Executive Director of ACPF, indicated that the Conference had been conceived against the background of the various violations and abuses children in Africa suffer on a daily basis. Research by both ACPF and DCI had provided evidence that children suffer various violations when they interact with the justice system. Some of the violations were highlighted to include cases where children are imprisoned with their mothers and the prison becomes the home of the child. In countries like Malawi, child inmates are imprisoned with adults and may not have a meal in the day as food is accessed on the basis of survival for the fittest; in Central African Republic, inmates including children have no access to water to bath or drink; in Ivory Coast, a prison designed for 1000 inmates now accommodates 4000; and in Zanzibar there is evidence that some child inmates have been raped or sodomised in return for food from adults with whom they shared cells. Additionally, in many countries children or their parents/guardians cannot afford legal representation and in the absence of special procedures are treated like adults in the justice system.

The research had also shown that a lot needs to be done by child rights actors to ensure that children are protected and their rights respected. Indeed, the Conference should have come much earlier than it did. It was highlight that the call to governments is not to build luxurious prisons; rather the call is for the adoption of preventive measures to ensure that children do not get into conflict with the law. This is in addition to the adoption of measures to ensure that imprisoned children when released are rehabilitated. A call was also made to such key players on the continent as the African Union (AU), Economic Community for West African States (ECOWAS), Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), and Southern African Development Community (SADC) to uphold the rights of children in line with the pledges they had already made.

2.3 Welcome Address by Rifat Kassis, President of the International Board of DCI



Mr Rifat Kassis, President of the International Board of DCI

The opening session was also addressed by Rifat Kassis, President, International Board of DCI. Mr Kassis introduced the work of DCI, indicating that DCI was formed at time when few structures were committed to challenges of children. It is around this time that DCI started lobbying for the adoption of an international convention on the rights of the child. DCI also played a crucial role in the establishment of the Inter Agency Panel on Juvenile Justice, a structure which was established to facilitate and enhance country and global coordination on juvenile justice. The Panel has since been endorsed by the United Nations Human Rights Council.

DCI's work had shown that many countries have limited specialization in dealing with child justice systems and on the use deprivation in this respect. In many countries the needs of children in the justice system

have not been considered and the root causes that result into children being in conflict with the law have not been addressed. It is against this background that the Conference was conceived.

2.4 Address by Professor Kirsten Sandberg, Member of the UN Committee on the Rights of the Child



Prof Kirsten Sandberg, Member of the UN Committee on the Rights of the Child

Another speaker at the opening session was Professor Prof Kirsten Sandberg, a member of the United Nations Committee of Experts on the Rights of the Child. Professor Sandberg indicated that the issue of justice systems for children was high on the agenda of the Committee. The Committee is in this regard guided by the provisions of Articles 37 and 40 of the Convention. Article 37 guarantees a variety of rights of children relevant in the context of child justice systems. The provision prohibits torture or other cruel, inhuman or degrading treatment or punishment, together with capital punishment or life imprisonment without possibility of

release. Also guaranteed is the right of the child not to be deprived of his or her liberty unlawfully or arbitrarily and requires that detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. Other rights guaranteed include the right to be treated with humanity and dignity taking into account age; separation of children deprived of liberty from adults; right to maintain contact with family; and prompt access to legal and other appropriate assistance. Similarly, Article 40 requires measures in respect of children in conflict with the law to promote integration and the child's assuming a constructive role in society. Other rights guaranteed by the provision include among others presumption of innocence; prohibition of retrospective penal laws; being informed of charges and access to legal and other assistances; speedy determination of matter; and right to appeal and review.

The Committee is also guided by General Comment No. 10 entitled "*Children's rights in Juvenile Justice*" which the Committee adopted in 2007. One of the objectives of this General Comment is to encourage States Parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the Convention on the Rights of the Child. The General Comment emphasizes the four general principles of the Convention: non-discrimination; best interest of the child principle; life, survival and development; and the right to express views. Also emphasized as a core element is the prevention of delinquency, guarantees for fair trial and deprivation of liberty is a last resort.

In addition to the above instruments, the international community has benefitted from several other instruments that define standards for the treatment of children in the justice system. This includes the Riyadh Guidelines, the Havana Guidelines, the Beijing Rules and the United Nations Minimum Standard Rules for the Treatment of Prisoners. More recently adopted is Human Rights Council Resolution 10/2 entitled, "*Human Rights in the Administration of Justice, in particular Juvenile Justice.*" This Resolution among others recognizes that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, including relevant international standards on human rights in the administration of justice. The Resolution stresses the importance of including rehabilitation and reintegration strategies for former child offenders in juvenile justice policies, in particular through education programmes, with a view to their assuming a constructive role in society.

The Committee of Experts on the Rights of the Child has underscored the need to support vulnerable families through states providing necessary assistance to parents and adopting interventions that do not require resort to judicial proceedings such as community service, supervision, and family conferencing, among others. The Committee is concerned that stay in pre-trial detention in many countries is unduly long. Although the Convention does not prescribe a minimum age of criminal responsibility, the Committee has recommended the age of 12 as the absolute minimum and has encouraged countries to adopt an even higher age. Children under 18 must be treated in accordance with rules of juvenile justice. Furthermore, the Committee requires countries to adopt juvenile justice systems with specialized units in the police force and judiciary and requires children to be guaranteed legal representation.

2.5 Keynote Address by Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child



Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child

The opening session was punctuated by a keynote address delivered by Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child. The keynote speaker indicated that the Committee was encouraging all initiatives to put the protection of child at centre of policy. Some of the initiatives include the several reports that have been authored on children's rights and which give data from several countries on the situation of the protection of children's rights. The speaker indicated that issues of child justice on the African continent are complicated, which makes it necessary to look at

child justice beyond juvenile justice in order to include such proceedings as divorce and other civil actions involving children. It is necessary to ensure that in all these proceedings the international norms on child justice are respected. These norms are to be found in the UN and AU specific instruments which have been adopted in the last 20 years and which play an important role in prescribing the behaviour states should observe. One of the important norms is the need to consider the needs of children and to take into account their opinions.

The keynote speaker made reference to the African Charter on the Rights and Welfare of the Child (ACRWC) adopted in June 1990 as one of major instruments protecting the rights of the child on the African continent. Reference was made to Article 17 of the Charter entitled "Administration of Juvenile Justice". This Article provides that every child accused or found guilty of having infringed a penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others. States are required to ensure that no child deprived of liberty is subjected to torture, inhuman or degrading treatment or punishment, children are separated from adults in their place of detention or imprisonment, presumed innocent, informed promptly of the charge, afforded legal and other appropriate assistance, have the matter determined speedily by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal; and prohibit the press and the public from trial. The Article also provides that the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

The keynote speaker referred to statistics from some countries which indicate a worrying trend of subjecting children to detention. In Burkina Faso, some 125 children are in prison; in Kenya 1.7% of all prisoners are children, 3.9% in Ivory Coast, 1.4% in Algeria, 0.5 in Republic of South Africa, 3.5% in Tanzania. Yet, beyond 20% in 28 countries on continent is the percentage of children forming the prison population. The African Committee of Experts has noted torture of children in detention as prevalent and as a matter which requires special attention. The Committee has also noted and encouraged positive developments indicated by reforms some countries had adopted to align their laws with international instruments. Worrying though is the fact that some African countries including the Democratic Republic of the Congo, the Central African Republic, Sao Tome and Principe, Somalia, Swaziland, Tunisia and South Sudan have not ratified the ACRWC and should be encouraged to do so.

Another worrying issue was the fact that many countries had adopted progressive laws regarding children and yet the impact of these laws on children in many countries was still negligible mainly because of the lack of political will to implement these laws, which is worsened by the lack of resources. There were also many cases of children being detained for minor offences and the failure to address these cases without detention. Yet, it has been acknowledged that child delinquency is connected to deficiencies in society such as breakdown of families.

The keynote speaker emphasized the need to construct proper judicial systems based on the recognition that children are doubly vulnerable by age and poverty of parents who cannot pay lawyers. There is also the need to change the mentality of many people which is geared towards condemning children; something which should be addressed in training curricular as has been done by the University of the Western Cape. Children should be looked at as people who aspire to be good citizens. When imprisoned, the rights of children should be respected and they should be put in special detention centres with all social services and separated from adults.

3. SESSION I: CHILD JUSTICE: THE INTERNATIONAL AND AFRICAN HUMAN RIGHTS FRAMEWORK

The speakers at this session included Professor Jaap E. Doek; Dr Benyam Dawit Mezmur; Dr Marta Santo Pais; and Dr Ruth Farrugia. A recorded video message from Ms Radhika Coomaraswamy was also played.

The session was chaired by Mr Mondo Kyetaka, Commissioner in Charge of Children and Youth, Ministry of Gender, Labour and Social Development, Republic of Uganda.

3.1 Child Justice: The International Human Rights Framework, *Professor Jaap, E. Doek, a member of the UN Committee of Experts on the Rights of the Child*



Professor Jaap, E. Doek, a member of the UN Committee of Experts on the Rights of the Child

The participants benefited from the wealth of experience that Professor Doek has in the area children's rights as a long serving member of the UN Committee of Experts on the Rights of the Child and as distinguished academic and judicial officer.

Professor Jaap underscored the attention that has been given to the subject of child justice, a subject which a few years ago was hardly discussed. The question though

remains, what is child justice. It is a concept which is still under construction and developing. One could say though that it is related to child systems which have to do with doing justice to children. It is not just juvenile justice; it has to do with the way children are treated in criminal law and other proceedings. From the perspective of juvenile justice, child justice is procedural and applies right from arrest, detention, trial to sentencing. This is in addition to children being witnesses and how they appear and are treated in court. At the same time, child justice as a concept could be distinguished from the broader concept of justice for children, which encompass a wide range of care and treatment accorded to children in a variety of contexts including health care, education, and social services, among others. Child justice is part of the broader notion of justice for children and includes juvenile justice, which is applicable to children accused of having committed an offence and the proceedings leading to the trial.

Juvenile justice has a long history and has a number of elements, which include: diversion, deprivation of liberty and fair trial. Diversion has different perspectives and is an umbrella term for all measures meant to deal with children without resort to judicial proceedings and includes restorative justice. Diversion requires a strong system of social/community service and for the government to take measures to ensure that there are mechanisms to achieve the diversion. One of the challenges in implementing diversion has been the lack of political will in many countries which have failed to make a place for diversion in their judicial systems. For diversion to properly work, it is necessary to have a clear system and procedures of how it is to be implemented. It is not enough for one to ask a judicial officer to order diversion without giving an indication of how the same is going to work and how it is to be implemented. One has to look at the existence of such structures as social services. How diversion should work also depends on the context of the country.

Regarding deprivation of liberty, one of the major concerns of the Committee has been pre-trial detention. Evidence shows that in many countries children awaiting trial are usually detained with convicts and treated in the same way even when they should be presumed innocent. In some countries rules for pre-trial detention that apply to adults are same for children and do not consider the special needs of children. It is for instance necessary pre-trial detention for children to be shorter; the Committee has indicated that a child should be produced before a court with 24 hrs of arrest by police and formal charges should be preferred within 30 days. Yet, sentencing should be completed within six months from arrest. During all these processes, pre-trial detention has to be minimized and conditional sentencing should be considered by the judge and diversion considered if it is a reality on ground. In all the proceedings, the child should be provided with legal assistance by a lawyer well trained in child rights issues and able to properly advise the judge. During the arrest and trial process, the provisions of Article 40 of the Convention on the Rights of the Child should be observed; intimidation and violence against the child should be avoided.

3.2 Child justice: The African human rights framework, *Dr Benyam Dawit Mezmur, Vice-Chair, African Committee of Experts on the Rights and Welfare of the Child*



This presentation highlighted the African experiences and practices in the area of child justice. Dr Benyam indicated that the challenges and opportunities in Africa are similar across various countries. The African region has also adopted instruments that guarantee the rights of children. The principal instrument in this regard is the African Charter on Human and Peoples Rights (ACPHR). Although the ACPHR mentions the word child only once as seen in Article 18(3), where states are required to ensure the protection of the rights of the woman and the child, all the rights guaranteed by the Charter apply to children as much as they apply to everyone. Indeed, the jurisprudence which the African Commission on Human and Peoples Rights (the Commission) has generated with respect to such rights as liberty and fair trial is relevant to understanding child justice. An example of this is the case of *Curtis Francis Doebbler v. Sudan*, African Commission on Human and Peoples' Rights, Comm. No. 236/2000 (2003) in which the Commission found that sentencing students to lashes as punishment for public disorder amounted to cruel, inhumane and degrading treatment.

In addition to the ACPHR, Africa has the African Charter on the Rights and Welfare of the Child (ACRWC), which is a child specific human rights treaty and which complements the UN Convention. The difference between the CRC and the ACRWC is that the latter has African specificities and gives attention to African priority areas. The ACRWC has provisions that define such international child rights standards as definition of a child (Article 2); principle of non-discrimination (Article 3), best interest of child principle (Article 4); and survival and development (Article 5), which also guarantees the right to life and prohibits the death sentence in respect of children. The prohibition of the death sentence is important because Africa still has countries that execute children. An example is the 2009 execution of a 17 year old child by the government of Sudan.

Within the context of children in conflict with the law, Article 17 of the ACRWC is the most relevant; this provision indicates that the essential aim of juvenile justice is the rehabilitation, reformation, and reintegration of the child with prosecution being considered as a measure of last resort. This provision is complimented by Article 30 which also envisages detention as measures of last resort for expectant mothers. In addition, in order to guarantee these and other rights, the ACRWC uniquely imposes duties on children as is seen in Article 31. This provision could be used to respond to criticism that human right only guarantees children rights without responsibilities.

It is important to note that research, including that conducted by UNICEF, indicates that in Africa many cases involving offences committed by children are handled by informal institutions such as traditional and religious leaders. This informal system cannot be ignored; it is indeed in line with the principles of restorative justice.

The presenter concluded by arguing that it is important to note that many of the challenges that African countries face in the area of child justice can be overcome and this may not necessarily require money and in some cases only minimal amounts of money are required. Indeed, many duty bearers know what to do with regard to children's rights, the problem is that duty bearers

do not do what they are supposed to do. Africa can attain the levels attained in Sweden where on average only 10 children are deprived of their liberty each year.

3.3 Child rights, violence and child justice: Observations, *Dr Marta Santo Pais, UN Special Representative on Violence against Children*



Dr Marta Santo Pais, UN Special Representative on Violence against Children

Dr Marta started her presentation by indicating that there is an inter-linkage between child justice and violence, topics which should not be discussed as if they are separate as they relate to the same child that has to be protected from violence. According to Dr Marta administration of justice and child justice were issues in her work as the UN Special Representative of the Secretary-General on Child Violence. The mandate of the Special Representative on Child Violence as an independent advocate against child violence includes working to ensure that there is a legal framework that protects and promotes the rights of the child, particularly the right to be free from violence. It is in this context that child justice becomes relevant. Indeed, the UN is concerned with the violation of children's rights and has made several recommendations especially relating to participation of children in legal proceedings.

Unfortunately problems still exist, explained in part by the lack of meaningful commitment from governments. At the same time, there is evidence of improvements and eagerness by some governments to protect children which has for example been through law reforms to prohibit abuse of children and violation of their rights. Some countries have adopted inter-ministerial policies aimed at protecting child rights, while others have put in place national plans of actions and set up inter-ministerial commissions on children or ombudspersons for children to inspect places where children are detained.

In spite of the developments described above, studies carried out by the UN have shown that violence against children is still prevalent. The example was given of a study in the United States of America which found out that more than 60 per cent of children suffer from some form of abuse. In many countries, children deprived of liberty are detained with adults. In some cases children are often abused through beatings, flogging and other forms of physical abuse as means of punishment or control. There are also cases of children being subjected to capital punishment. Yet, in many cases children may not be to blame for the offences they committed, and in cases where blame can be established it is always for minor offences. In most cases child abuses is not a priority of most governments which explains why data of abuse patterns against children are not readily available. Where data is available it lacks specificity. It is therefore necessary to do more research and generate data on child abuse.

Although there is evidence of commitments to protect children against violence in many regions of the world, these commitments are most times not translated into action. The UN Special Representative is available to help countries realize their commitments and to work with such regional bodies as the AU, ECOWAS and the EAC to commit to the eradication of child related violence and the protection of the rights of children. Dr Marta indicated that at the moment she was investing time in issues of access to justice, participation by children in proceedings, ensuring that children received child-friendly assistance and are protected from violence. Dr Marta further indicated that when she visits countries she uses a checklist in her monitoring work, which is intended to check whether countries have the following in place: a national plan of action; legislation; and data on child violence and abuse.

Dr Marta observed that while some countries have strategies and action plans in place, in some cases the issue of child justice does not feature in the strategies and action plans. There are also countries which have child specific legislation in place yet the legislation does not prohibit such forms of punishments as capital and corporal punishments and other forms of child abuse. Legislation should be embraced as an important tool to change people's mindsets towards children and to establishing child-friendly justice systems.

It was noted that although there are a number of international standards which protect children against violence and protect their rights, there are not enough structures to monitor the implementation of these standards. There is need to invest in the establishment of these monitoring structures.

In her conclusion, Dr Marta noted that she was not comfortable with the use of the phrase "child in conflict with the law" because in many cases it is the law "which is in conflict with the child".

3.4 Concepts on Child Justice: A global perspective, *Dr Ruth Farrugia, Advocate and Senior Lecturer, Faculty of Law, University of Malta*



Dr Farrugia started her presentation by defining the term "justice" to mean the proper administration of the law and the fair and equitable treatment of all individuals under the law. Children, like adults, are entitled to this justice. Yet, on its part, "child justice" means justice that requires high standard of care for children better than those for adults. Also defined was the term "Child-friendly justice" which refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, giving due consideration to the child's level of maturity and understanding and the

circumstances of the case.

As a matter of fact, there are a number of laws and standards that define and guarantee child justice. The challenge though is that in spite of these laws and standards, children find it difficult to attain justice in an age appropriate and timely manner. In this regard, the following questions need to be asked and answered: Is it really possible for children to access the system? Do we really know how the system works from the child's perspective? Are there in built mechanisms to monitor efficacy and to gauge enforcement?

It is also necessary to understand the following child rights related concepts: International Child Rights; access to Justice; right to participate; facilitating effective access; and listening to children. Access to justice by children was identified as a human rights issue defined by the following principles: Participation; best interests of the child; dignity; protection from discrimination; and rule of law. Participation includes the right of the child to make an informed choice, access to information, the right to participate but also the right not to participate, although there could be circumstances where participation is mandatory.

Dr Farrugia detailed what she considered to be good practices in the area of access to justice for children and child-friendly justice systems. In this regard, reference was made to the Guidelines

of the Committee of Minister of the Council of Europe on Child Friendly Justice, adopted in 2010 (available at: <<http://www.coe.int/childjustice>>). The Guidelines aim at establishing a child-friendly justice system which operates before, during and after judicial proceedings. The elements of a child-friendly justice system indicated include: Information and advice; protection of private and family life; safety (Special preventive measures); training of professionals; multidisciplinary approach; and deprivation of liberty. The Guidelines addresses the elements of the system during judicial proceedings to cover the following issues: access to court and to the judicial process; legal counsel and representation; right to be heard and to express views; avoiding undue delay; organisation of the proceedings; child-friendly environment and child-friendly language; and evidence/statements by children.

The next steps to be undertaken by Europe to implement the Guidelines include incorporating the Guidelines into the EU member states practices as basic minimum human rights standards; sharing of Training Programmes across the 27 member states to promote and apply the guidelines; and introduction of a Review Mechanism to ascertain progress and share good practice

3.5 Address by Ms Radhika Coomaraswamy, UN Special Representative of the Secretary-General for Children and Armed Conflict (*by recorded video message*)

Ms Radhika indicated that she was to speak about the theme of justice for children in the context of armed conflict, a theme which had been adopted by the UN as the theme of the year. Indeed, Ms Radhika's office in her capacity as the UN Special Representative of the Secretary-General for Children and Armed had launched an advocacy paper entitled: *Children and Justice During and in the Aftermath of Armed Conflict*, launched at the Human Rights Council in September 2011. The publication builds on the fact that children are increasingly coming before the justice system as victims, witnesses and perpetrators. The publication makes a number of findings that require discussion, debate and further research. States are increasingly arresting and detaining children associated with armed groups, either because they are considered to be threats to national security or because they have participated in hostilities. In many cases these children are kept in detention places which do not meet the international standards set out by the various international instruments. In some situations states place children in administrative detention rather than charging them with a criminal offence before a court. The children are always detained for long periods of time without granting them legal safeguards and they are vulnerable to abuse. In other situations states prosecute children before national courts or military tribunals which do not generally apply juvenile standards. Sometimes the children are tried without legal assistance, without the presence of their parents, and without understanding the nature of the charge brought against them.

Given the forced nature of their association with armed groups, children should be treated as victims and not perpetrators; instead, those to be prosecuted should be adult recruiters and commanders, based on the principle of command responsibility. The prosecution of children for crimes arising out of their participation in hostilities should be at all times a measure of last resort. Besides being forced to join armed groups, children during their association with criminals are often beaten, abused or manipulated by commanders to commit crimes. Nonetheless, the need for some form of accountability by children for crimes committed is acknowledged, victims of these crimes must feel that justice has been done. This notwithstanding, diversion away from the justice system is suitable for the children and society as a whole. Alternatives that take the best interests of the child into consideration and promote the re-integration of the child into the community, including restorative justice processes, truth telling, traditional healing ceremonies and re-integration programmes should be used.

As a conclusion, there is a way forward to avoid the detention of children associated with armed conflict. It is important to gather data on these issues and include it in the country reports. There is need to advocate and assist governments at the implementation level to design diversion programmes specific to children involved in armed conflict and have committed violations.

3.6 Plenary Discussions

The following issues emerged during the plenary discussion

- As a concept under construction, it is important that child justice is looked at as encompassing process at the community level which should be treated as part of the pre-trial process;
- Right of the child not to participate does not mean that there are no circumstances under which children could be compelled to participate and yet there is need to get more information on what participation entails, to avoid creating problems;
- The system for the protection of children has been failed not only by governments but by a number of actors including parents and other community members;
- There is need for guidance on how one could ascertain whether a particular diversion approach will actually work;
- There is need for attention to be given to children who are born in prisons and sometimes left there when their parents are either released or die in prison;
- It may be necessary to assess what is invested in education in terms of the percentage of the Gross Domestic Product it constitutes. This can help in evaluating the level of political commitment;
- The concept of child justice should develop in ways that encompass the informal processes of justice, including traditional justice;
- One of the problems Africa is facing with regard to resources to protect children is overreliance on donor support;
- Governments should prioritise issues affecting children not on the basis of numbers of children affected but on the basis that rights are being violated;
- Many countries still rely on colonial laws many of which have remained on the statute books;
- In the determination of age of a person for prosecution purposes, whenever there is doubt the person should be treated as child;
- There is need to invest in preventing juvenile delinquency by among others addressing the financial stress of families and avoid social unrest;
- There is no proof that deprivation of liberty actually works, because, in spite of being detained in harsh inhumane conditions many children do not abandon crime and instead they become hardened criminals;
- Although some laws may themselves have gaps, implementation of the laws has in itself remained a big challenge; and
- Many children do not freely interact with social assistance services designed for them because in many cases they do not trust these systems.

4. SESSION II: CHILD JUSTICE: THE AFRICAN EXPERIENCE

The speakers at this Session include Mr Shimelis Tsegaye; Mr Abdul Manaff Kemokai; and Mr Martin Kiiza.

The session chaired by Dr Menberetsehai, Director General, Ethiopian Justice and Legal Systems Research Institute

4.1 Child Justice in Africa: Deprivation of Liberty as a Measure of Last Resort, *Shimeli Tsegaye, a Senior Policy Research Analyst at ACPF*



Shimeli Tsegaye, a Senior Policy Research Analyst, ACPF

Using the UN Rules for the Protection of Children Deprived of their Liberty, Mr Tsegaye started his presentation by defining the term “deprivation of liberty” to mean any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. With regard to children, the Guidelines define deprivation to mean a situation where a child is placed in a closed establishment from which he is not permitted to leave at will. Closed establishments include: police stations, detention centres, prisons, airport transit zones, psychiatric establishments, hospitals, or orphanages. In rationalising the intent of these institutions, terms like security, correction, adjustment, supervised education, education by work, rehabilitation, orientation, classification, placement, therapy, care and treatment centres are used.

The proportion of juveniles forming part of the total prison population varies between 0.5 - 30%, yet, only 5 -10% of children deprived of liberty committed serious offences. In some countries, up to 90% are in pre-trial detention and as many as 90% young people deprived of their liberty are acquitted after judgment, which would mean that the deprivation of liberty was not necessary for most of them. There are a variety of circumstances that may lead to children being deprived of their liberty, which include the following: children made vulnerable due to their life circumstances such as vagrancy; children presenting physical or mental challenges; children deprived of liberty with their parents; children detained for illegal immigration; children detained for political reasons or for reasons for exploitation; and those rounded-up from the streets.

The act of depriving children of their liberty has a number of effects for the child. The act leads to the violation of a range of the basic rights of the child such as health, education, protection from violence, family life and harmonious development. Children deprived of their liberty, especially in prison settings, also face physical and sexual violence (by other convicts or by personnel), suffer physical and emotional neglect, psychological traumas, and considerable malnutrition; they seldom get treatment for physical or mental illnesses, may commit suicide, and may be ushered into the world of criminality. The act also affects parents/family members of the juvenile who will face stigma and in some cases social alienation. Deprivation of liberty is also extremely expensive, & resort to alternatives to deprivation of liberty allows for savings to be made in the juvenile justice system. According to estimates, the average cost of keeping a child in a closed establishment in a developing country is about US\$10/day. In most countries,

the budget allocated to the measures involving deprivation of liberty constitutes up to 3/4th of the budget for the juvenile justice system.

It is important to note that a child is never too young to be deprived of liberty, in closed establishments, we may find new-borns who arrive with their parents, as well as juveniles. Some countries have a minimum legal age of criminal responsibility which is too low as is the case in Kenya at 8, 9 for Ethiopia, and 10 for Cameroon & South Africa. These countries have these ages in spite of the provisions of the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, which provide that the age of criminal responsibility should not be fixed below 15 years of age.

The rights of children in the context of deprivation of liberty could be categorized into two: Rights requiring that deprivation of liberty should be a measure of last resort, and rights that guarantee civil, economic, political, social or cultural rights for children deprived of their liberty. The UN Guidelines provide that institutionalization should be a measure of last resort and for the minimum necessary period. Additionally, the best interests of the young person should be of paramount importance and should be limited to situations prescribed in the Guidelines.

A number international of standards require that detention should be replaced with alternative measures such as close supervision, intensive care or placement with a family or in an educational setting or home, the handing down of community service orders, financial penalties, compensation and restitution, or customary mediation. The standards also require juveniles awaiting trial to be separated from convicts and both are entitled to basics including clothing, beddings, education, medical care and free legal aid.

In Africa, there are a number of countries that have laws that exhibit good practices by conceptualising detention as a matter of last resort. Examples include Zambia, whose Juveniles Act states that detention should be avoided and that if detention cannot be avoided, children must be kept from adults, and girls must be placed under the care of a female officer and children should as far as possible be kept in a place of safety. In Malawi, a child may not be detained prior to the preliminary enquiry and before a finding has been made against a child unless the Director of Public Prosecutions has satisfied the magistrate either that it is a serious crime and there is sufficient evidence to prosecute; it is necessary in the interests of the child to remove the child from undesirable circumstances; or that the prosecutor has reason to believe that release will defeat the ends of justice. Other countries with good practices include Tanzania which has the Law Child Act of Tanzania; Uganda, with the Children's Act; Tunisia, with the Child Protection Code; South African Child Justice Act; and Lesotho with Child Protection and Welfare Act, among others.

While concluding, Mr Tsegaye indicated that wherever deprivation of liberty is resorted to it should be dictated by the best interests of the child, should be the very last resort and for the shortest possible time and a strong legislative framework has to be put in place to ensure the civil, political, economic, social, and cultural rights of children deprived of their liberty.

4.2 Child-friendly justice and Children's Rights: DCI's Experiences in Africa, *Abdul Manaff Kemokai, Director, DCI Sierra Leone*



Abdul Manaff Kemokai, Director, DCI Sierra Leone

Mr Manaff began his presentation by describing features of African countries and issues that impact on child justice on the continent. Most African States have dualistic legal and governance system, they combine both traditional authorities and customary laws with colonial laws, ordinary citizens seek justice from variety of mechanisms, formal justice system tend to be the least trusted by the population due to cost and accessibility, and an estimated over 60% of disputes are resolved outside the formal justice system. This is because of the restorative nature of the informal system and their

conformity with local values in addition to their flexibility, accessibility, fastness and affordability. The informal dispute resolution mechanisms are constituted by family elders, traditional and leaders, educational institutions and include community mediation and paralegal programmes.

Mr Manaff described the elements of a child-friendly system. The system must give special attention to the needs of children in contact with the law; the legal system must be able to positively shape children's lives and prevent additional trauma for the child. The system must also empower children to enforce their rights and should embed strategies to adapt the legal proceedings to the particular circumstances of the child, taking into account socio-cultural traditions and legal system of the state.

As part of its work and a measure to promoting child-friendly system in Africa, DCI operates what are called Socio-Legal Defence Centres. The objectives of this programme include: facilitating and promoting children's access to justice considering their best interest, addressing impunity and enhance therapeutic justice, facilitating children's access to rehabilitation and reintegration services, assisting children reconcile with those that they have offended, and promoting victims and witnesses' protection.

DCI's socio-legal centres are organised in a pyramid like manner, with paralegals at the bottom, where they offer a range of services including investigating cases, visiting police stations and places of detention and facilitating mediation. The paralegals also provide legal advice to children, explain court proceedings to them and connect children to their lawyers. In the pyramid are the lawyers, who provide children with a wide range of professional legal services including legal defence and representation. In some cases the lawyers assist prosecutors with the prosecution of cases where children are victims. DCI also has what is called the Legal Advocacy Committee, constituted by lawyers and senior members of DCI. The major mandate of these committees is to engage government authorities to address policy and administrative issues that impede on justice for children.

The cases DCI handles include cases of child victims of serious crimes, arbitrary detention of children, court decisions not in accordance with the law and best interest of the child, child neglect, care and support (maintenance) cases, stocked cases like those of missing files, and cases involving age controversies which could result into children being tried as adults and kept in adult prisons for pre-trial detention. DCI also has a programme of community interventions intended to establish and strengthen community based child welfare or child protection committees. This is addition to strengthening communities to deal with a wide range of child

welfare, delinquency and abuse cases, with exception of rape, murder and aggravated crimes. The programme has a training and awareness training component which among others targets schools.

At the police station, DCI provides child rights trainings and other capacity supports for the police, provides technical and logistics support for the establishment and management of data system for children, assists with family tracing and mediation and peaceful resolution of children's offences and provides legal advice to child victims and their families to be able to present proper evidence to police investigators. In the courts, DCI provides legal advice and representation for children to advocate for their best interest, guides children and their families through proceedings, addresses and challenges wrong charges and wrong decisions/sentences, and if a victim/witness agrees to testify, ensures that measures are taken to ensure a friendly environment.

DCI promotes reintegration by providing technical support to governments to develop children's reintegration policy and guidelines; piloting cost effective reintegration schemes which in some cases involve the family, DCI and the child sitting together and developing a reintegration plan for the child, focusing on what the child should be engaged in, who to support, who to monitor and how accountability of the process happens. The reintegration programme also has feedback sessions and group discusses for children to report back on progress.

DCI has learnt a number of lessons in its work. One of the lessons is that socio-legal interventions that seek the child's best interest can provide checks and balances within the justice system, promote protection of victims and witnesses, facilitate access to the court and justice for children and their families, inject and project the concept of child rights into the criminal justice system, contribute to significant reduction of incarceration of children, and help reduce burden on the courts by facilitating out of court resolutions and speedy trials.

Mr Manaff concluded by noting that although there is an impressive progress in policy reforms, new legislations do not provide sound legal framework for building child protection systems. According to Mr Manaff, it is important to first develop an overall vision for child welfare and child justice system, pilot various initiatives and approaches and then imbed new processes and procedures within the law. It is also important to develop the informal system and interlink them with the formal ones. Yet, a child-justice system requires specialised structures and a proper birth registration system.

4.3 Child Justice in Africa: Children's Views, *Martin Kiiza, Secretary National Council for Children, Uganda*

This part of the session involved the screening of a documentary entitled "All Deserve a Fair Hearing", done in Uganda by the Ugandan National Council for Children with the support of a number of partners including Save the Children Uganda, Uganda Child Rights Network and the African Network for the Prevention and Protection Against Child Abuse and Neglect. In the video, the children decry the harsh conditions and sometime persecution at home which forces them to run to the streets. While on the streets they are harassed and arrested by police who detain them without food. A 17 year old boy who was arrested on allegation of defilement stated that since his arrest, every time in court his case is adjourned for lack of witnesses and the complainant. He lamented that while in detention he is sodomized and is afraid he may contract HIV/AIDS. The video also shows one of the biggest problems the youth are facing today;

unemployment which forces them to do hard core jobs like working in the quarries. Towards the end, the children in the video recited a poem in which they asked the government to protect the children by arresting those who violate their rights.

4.4 “10”: A documentary film on the situation of children in African prisons, *The African Child Policy Forum*

At the beginning of the documentary it is highlighted that over one million children are detained across the world. Africa has the greater number of these children who are also detained in dehumanizing situations like lack of food, overcrowding, and lack clean water. In some prisons access to food is based on the principle of survival for fittest and in some cases children are physically and sexually assaulted. In Zanzibar, children are punished like adults; an 11 year old who picked a phone was sentenced to 11 months in jail where he was put together with adult inmates who sexually assaulted him. According to the documentary, even when the children report the cases of assault the authorities do nothing about it. In another scenario we see a 10 year old war orphan charged with murder. In some cases children have been detained without any charges being preferred against them after being rounded up on the streets.

In Kenya, the documentary shows that in spite of the existence of good laws, child abuse continues. Extreme poverty has pushed most people to live in the slums of Nairobi where their children live in the streets. In the streets, hundreds are arrested every day by police and taken to court. For example, a 17 year old Martin was remanded by court for 18 months before being tried.

The documentary also shows that because of over exposure to criminals and lack of rehabilitation, former child convicts easily turn into gangsters. In this documentary, the one glaring thing is that, despite the existence of several international and regional instruments as well as local legislations aimed at protecting the rights of children, juvenile justice is still a mystery.

5. SESSION III: PARALLEL SESSIONS: CHILD JUSTICE: POLICY AND PRACTICE

This session was characterized by parallel sessions which discussed the policy and practice of child justice. The parallel sessions focused on interventions featuring good practices, experiences with formal and traditional justice systems and international experiences with child justice.

5.1 Session III A: Child Justice in Africa: Good Practices

The presenters at this session included Dr Benedicta Daudu; Mr Bernard Ojom; Ms Alice Mapenzi Kubo; Ms Jane Kim; Ms Valentine Namakula; and Ms Carin du Toit.

This session was chaired by Prof Julia Sloth-Nielsen, Dean, Law Faculty, University of the Western Cape and Member, African Committee of Experts on the Rights and Welfare of the Child.

5.1.1 Alternative to Judicial Proceedings for Children in Africa: A Desideratum of the 21st Century, *Dr Benedicta Daudu, Faculty of Law, University of Jos, Nigeria*



The objective of this presentation was to examine alternatives to penalties for juvenile offences in order to achieve the aim of reforming children in conflict with the law and reintegrate them into society. Most child offenders are kept in prisons where they are detained with hardened criminals rather than in juvenile detention centres. Dr Daudu made a situation analysis observing that most of the juvenile detention centres, where they exist, lack educational and vocational facilities as well as trained personnel, are seriously overcrowded and in very poor hygienic conditions. There are many cases of police brutality,

abuse and degrading treatment on children and the system does not consider the needs and best interests of the child offender. The presentation was based on examples from West Africa, East and South, Ghana, Nigeria, South Africa and Uganda. It was observed that to ascertain the effectiveness of the alternative penalties, the following questions need to be asked: Will the strategy effectively contribute to a reduction of the prison population? Will it enable the offence-related needs of the offender to be met? Is the alternative cost-effective? Will the alternative contribute to the reduction of crime in the community? And are there legal safeguards in place protecting the human rights of the offender?

It was also observed that to promote the alternative penalties the following need to be done: legislative reforms; development of training curricula for judges, magistrates, probation officers, social workers; enhancement of supervision/monitoring systems of non-custodial sanctions and measures; and raising public awareness about alternatives to imprisonment. Additionally, it is necessary to harmonise the age of criminal responsibility in Africa to be 18 years, laws on birth registration need to be enforced, child offenders must be provided with legal representation so that their rights can be protected and special units dealing with children should be established within the police force, in addition there should be a social welfare centre to provide legal and other assistance to the child offender, and police must always inform parents or guardians whenever their children are arrested.

5.1.2 Access to Justice for Children in War-affected Areas: A Case-Study of DRC and Northern Uganda, Mr Bernard Ojom, Legal and Programme Manager, War Child Canada



This presentation emphasized child participation in the child justice system. The presentation started with detailing the situation in the context of complete collapse of the formal judicial systems and infrastructure: Displacement or disappearance of judicial staff, lawyers, and prosecutors; severe disruption of informal, non-judicial, and traditional systems of justice; and unwillingness or inability of the duty bearers to offer justice. The context on DRC was painted as characterized by non-compliance with the minimum age standard, weak data collection and monitoring systems, long pre-trial detention periods,

inadequate detention conditions and facilities, lack of juvenile justice personnel and structures, and pervasive levels of corruption. On its part, in addition to the problems faced by DRC, Northern Uganda has faced the following challenges: Inadequate capacity of statutory protection services, non-function/underdeveloped diversionary structures, poor understanding and appreciation of the working of the juvenile justice system, lack of trained personnel to deal with child offenders, and inappropriate and inadequate detention and rehabilitation facilities.

In DRC, War Child Canada was implementing a project entitled: *Rights and Protection of Children in South Kivu*. The main objective of this Project is to strength response and support mechanisms for children in conflict with the law in Bukavu prison. The Project is aimed at capacity building and coordination of key stakeholders, development of prison database for case management, research by Child Parliament within prison and in the community, and community outreach activities. Similarly, in Uganda, War Child Canada was implementing a project entitled *Keep Children Safe* whose main objective is to strengthen local government capacity to deliver services. The key results of this Project have included the following: Improved capacity of community based structures to prevent and respond to violence, abuse and exploitation of children, support for community based structures to be able to prevent, refer and respond to child protection cases through formal and informal justice systems, accessible legal aid services to children, and strengthened capacity of legal protection actors.

One of the strategies War Child has used has been child participation. This is because through child participation children provide information and insight into their lives with which to inform legislation, policies, budget allocation and services, become active and effective advocates for the realisation of their own rights, acquire skills, knowledge, competencies and confidence, in turn improving their development, are better protected. Silenced and passive children can be abused by adults with relative impunity. It is therefore important to develop civic engagement and active citizenship and to ensure that children become part of a process of building accountability and promoting good governance. In addition, War Child has used integrated programming; worked with families, communities and local and national governments; empowered families, local organisations and children themselves through building their knowledge and confidence in seeking justice; and bridged the gap between the informal and formal justice systems.

5.1.3 The Role of Child Help lines in Justice Systems: Cases from Kenya and South Africa, *Ms Alice Mapenzi Kubo, Child Help Line International*



Ms Alice Mapenzi Kubo, Child Help Line International

In this presentation, Ms Mapenzi demonstrated how Child Help Line International had innovatively used the child help line to protect children. Child Help Line was also assisting in diversion programmes, especially in South Africa and was providing victims with information and helping them to access services and justice.

Ms Mapenzi highlighted some of the challenges which Child Help Line faces. These include the fact that service delivery to children is still a big challenge, although there are many good laws and policies, their implementation was being affected by poor budgeting and lack of personnel. Although a number of non-governmental organizations were offering several services in some cases the services offered were not of good quality. Sometimes cases reported may take up to a year before any service is offered to the child and family. Some cases could take up to 2 years which causes enormous problems. Investigations become long and drawn out processes, yet corruption plays a part. In some cases children are asked to withdraw cases, especially where damages are offered and paid. While in other cases dockets police files disappear.

5.1.4 Justice for Children Innovations, *Ms Jane Kim, Child Protection Specialist, UNICEF, Uganda*



Ms Jane Kim, Child Protection Specialist, UNICEF, Uganda

This presentation concentrated on child-friendly legal aid, detailing the international standards relevant in this respect. Factors to consider when dealing with legal aid for children were detailed to include: access, quality control and service delivery. The component of access include: Legal awareness, geographic access, program access, financial access, legal access, developmental access, and participatory access. Service delivery can be done by lawyers or non-lawyers trained in children's laws, child and adolescent development. Service delivery also requires effective communication with children and liaising with caretakers.

In this presentation, the innovations which have been adopted to promote child-friendly legal aid or children were detailed to include working on amendments to the Children Act, adopting a draft National Legal Aid Policy and a draft National Legal Aid Bill. UNICEF has also adopted innovation tools to promote transparency, participation and accountability. The tools include: DevTrac which is location based reporting tool for Government, UN, NGO and other development partners, Ureport which involves utilizing community based networks for monitoring key service delivery outcomes, including children's access to legal aid. Ureport includes use of free short message service (sms) service for answering questions.

5.1.5 Promoting Child Friendly Justice in Africa: Through Public Interest Litigation, *Ms Carin du Toit, Centre for Child Law, University of Pretoria, South Africa*

The last presentation demonstrated how public interest litigation is being used to protect children in South Africa. The presenter illustrated the role public interest litigation was playing by reference to a number of cases which the Child Law Centre has instituted or intervened in.

The case *S v M* (2008) concerned the question the courts have to consider when sentencing the children? The Court, among others, held that the comprehensive and emphatic language of section 28 (South African Constitution) indicates that just as law enforcement must always be gender-sensitive, so must it always be child-sensitive; that statutes must be interpreted and the common law developed in a manner which favours protecting and advancing the interests of children and that courts must function in a manner which at all times shows due respect for children's rights.

Another case illustrated was *Centre for Child Law v Minister of Justice and Constitutional Development and Others* (2009). In the case the Court held that the principles of "last resort" and "shortest appropriate period" bear not only on whether prison is a proper sentencing option, but also on the nature of the incarceration imposed. If there is an appropriate option other than imprisonment, the Bill of Rights requires that it be chosen. In this sense, incarceration must be the sole appropriate option. But if incarceration is unavoidable, its form and duration must also be tempered, so as to ensure detention for the shortest possible period of time. The Court also held that in a practical and entirely un sentimental sense, children embody society's hope for, and its investment in, its own future. This is why the state must afford children special nurturance and protection.

5.1.6 Showcasing Justice for Children Innovations in Africa, Valentine Namakula, Executive Director Centre for Justice Studies and Innovations

The Justice for Children programme (J4C) targets system-wide reforms and strengthening prevention services. This is in addition to strengthening response services, including rehabilitation and ensuring justice for all children. The long term goal of J4C Supporting System Planning; implementation and accountability by mainstreaming J4C voices and needs. The short term goals include harmonization of J4C standard across the justice system; planning through monitoring and reporting; training by building upon positive system practices; unprecedented flexibility and more freedom for district participation in decision making through District Chain Linked Committees; multiple constituencies-drawing upon strengths of civil society; traditional leaders and child participation.

The innovations of J4Cs include legislative; policy and institutional reforms like amendment to Children's Act and Procedures; innovations to catalyze practice change; capacity development to reinforce standards; system support through on the spot technical assistance; creation of fora for collective discussion of challenges; and justice for Children Structures like the J4C steering Committee and District Chain Linked Committee-J4C Working Committees.

5.2 Session III B: Country experiences on Child Protection and Justice Systems in Africa: Policy and Practice

The presenters for this session included Mr Sylvester T. Uhaa; Ms Joyce Wanican; Alison Hannah; and Ms RL Karabo Ngidi, Attorney.

The session was chaired by Dr Ann Skelton, Director, Centre for Child Law, University of Pretoria



Dr Ann Skelton, Mr Sylvester T. Uhaa, Alison Hannah, and Ms RL Karabo Ngidi (from right to left)

5.2.1 Children with their mothers in Nigerian prisons, *Sylvester T. Uhaa, Country Director, Citizens United for the Rehabilitation of Errants (CURE), Nigeria*

This presentation, using the Nigerian experiences, focused on the practice of sentencing pregnant women to imprisonment and how this violates the rights of children born in prison. The presentation also focused on children who find themselves in prison when their parents are imprisoned. It was observed that children in Nigerian prisons were being denied access to services and rights as required by the MDGs. It was recommended that sentencing should avoid sending pregnant women and feeding mothers to prisons. At the same time, there could be those serious cases where the mother has to go to prison. In latter case the conditions have to be improved to ensure that the child is properly cared for and is able to access a wide range of services and enjoy all children's rights. It is also important for governments to programme and budget for such mothers.

5.2.2 Issues of Child Protection in the Justice System: The Case of Uganda, *Joyce Wanican, Senior Youth and OVC Advisor, USAID, Uganda*



Joyce Wanican, Senior Youth and OVC Advisor, USAID, Uganda

This presentation featured the results of research which was carried out in three districts of Uganda, Gulu, Lira and Dokolo, all in Northern Uganda. The objectives of the research were to examine the role of informal/traditional child protection systems in the protection of children from abuse and exploitation, and to explore how the informal/traditional child protection system can be linked with formal government policies and structures. The questions the research sought to answer were: What are the key child protection issues as perceived by the community? What informal/traditional child protection systems exist to respond to and care for children when they [children] have been harmed by child protection issues? The ethnographic research methodology was used to explore

communities' perceptions on child protection issues. The research shows that defilement, child labour, problem of accessing school fees, verbal abuse and unfriendly home environments were key child protection risks. Other risks identified include poverty/economic difficulties, cultural decay/westernization, conflict/instability, and the misinterpretation of rights by children to mean they should do anything because they have their rights, and harmful traditional practices like early marriages and witchcraft.

On the use of the informal/traditional justice system, it was found that community level actors are responsible for about 85% of total child protection caseload in these districts, while government service providers respond to about 15% of the same caseload. As regards the formal justice system, it was found that the system does not adequately address the re-integration and rehabilitation needs of abused children and those in conflict with the law. Additionally, the financial requirements of taking cases to the police are a significant barrier to accessing justice by poor households. It was further found that the lack of guidance from adult members of communities significantly contributes to juvenile delinquency including alcohol, drug abuse, sexual violence and other anti-social behaviours.

Community voices indicated that child protection issues should be handled by informal structures that seek to compensate, reconcile and re-integrate children into the communities. Government's role should focus on the most egregious offenses (usually requiring formal legal proceedings). Reconciliation/reintegration of victims of sexual abuse in communities is needed to foster support.

It was recommended that dialogue between parents through storytelling and mentorship is a conduit for life skills education. Children strongly felt the need to have story time with their parents to learn morals from their care givers to mitigate risks. Adolescent boys in particular called for more guidance/mentorship from parents, teachers and male adults in communities.

5.2.3 Deprivation of Children's Liberty as the Last Resort: Independent monitoring mechanisms to Safeguard Children in Detention: The Tanzanian experience, *Alison Hannah, Executive Director, Penal Reform International*

The presentation started by giving the rationale for independent monitoring, arguing that children in detention are vulnerable and at risk of abuse and harm. Yet, International standards state that independent bodies should visit places of detention regularly to monitor treatment and conditions and investigate complaints. The standards require that inspectors should have unrestricted access, qualified medical officers should participate in the inspections, the inspectors should submit a report including the degree of compliance with national law, team monitoring girls' places of detention should include women members and any violation should be investigated. The issues to monitor during the investigation include: Material conditions, recreational facilities, disciplinary measures and restraints, medical care and services, and gender issues. When interviewing the children, ethical issues should be resolved, informed consent obtained and the right of child to feel safe and free from reprisals guaranteed. The inspectors should also know how to interview children and should not disclose information that could lead to the identification of the child.

In Tanzania, the Commission for Human Rights and Good Governance has powers to inspect places of detention. UNICEF and Penal Reform have given members of the Commission training and technical assistance in the monitoring. The inspections in Tanzania had shown that the offences for which children are detained include theft, assaults, rape, drugs and most children

are detained in detention pre-trial. Treatment by the police is problematic, access to lawyers and families limited, children are kept with adults and there is a lack of consideration of alternatives to detention. In addition, one third of children complained of violence and abuse from other detainees. Physical punishment and use of solitary confinement as disciplinary measures was common and children lived in poor living condition. Further, staff lacked proper training and no special treatment for girls.

5.2.4 The protection of children through the acquisition of legal guardianship, Ms RL Karabo Ngidi, Centre for Child Law, University of Pretoria, South Africa

This presentation was based on the argument that restriction to the High Court in matters of guardianship in South Africa is a denial of access to justice for orphaned and deserted children who may be in the care of relatives and other care-givers. In rural areas where customary law is practiced most, care givers who are relatives care for children under the assumption that they are also the children's legal guardians. But when issues concerning legal guardianship of children arise, it then becomes clear to the relatives that they are not recognised as legal guardians. Yet, these people may not have the financial means to access the High Court.

The presenter gave an overview of matters where guardianship is required in order for a care giver to take certain steps for the protection of a child and highlighted the lack of accessibility to courts, information and knowledge regarding the acquisition of legal guardianship as problems. The presenter compared the South African position, in relation to the exclusive jurisdiction of the High Courts in matters concerning guardianship, with some African countries. The rules of customary law regarding guardianship were contrasted with the position of written law. One of the observations from contrast was the fact that while rules of custom establish biological links between the child and guardian, written law does not.

The position in South Africa was contrasted with Malawi where the Children's Court has jurisdiction in matters of guardianship, Zimbabwe, the children's court has jurisdiction in matters where the child is orphaned and no guardian is appointed, and in Lesotho, the Children's Court has jurisdiction.

The presenter concluded by indicating that, as part of the submissions, in relation to the amendments to the Children's Act, South Africa must make provision for the Children's Court to have concurrent jurisdiction with the High Court to adjudicate matters concerning the guardianship of children both in matters concerning parental responsibilities and rights and in matters concerning care and protection- this will reflect true reform with enables access to justice.

5.3 Session III-C: Country Experiences on Formal Child Justice from Africa: Policy and Practice

The presenters for this session included Mr Deogratias Yiga; Dr Mutasim Ahmed Abdelmawla Mohamed; Dr Emily I. Alemika; Mr Christian Nsabimana Garuka; and Ms Milen Kidane.

This session was chaired by Prof Tilahun Teshome, Professor of Law, Addis Ababa University.



Mr Deogratias Yiga, Dr Mutasim Ahmed Abdelmawla Mohamed, Prof Tilahun Teshome, Ms Milen Kidane, Dr Emily I. Alemika, and Mr Christian Nsabimana Garuka (from right to left)

5.3.1 Policy Oversight or Double Standards? The Gaps in Legal Protection for Survivors of Child Abuse within the Criminal Justice System in Uganda, Mr Deogratias Yiga, Executive Director, ANPPCAN Uganda Chapter

The presenter observed that Uganda had made commendable achievements in ratifying international instruments that seek to protect children rights. Particular mention was made of the Children Act which provides an elaborate procedure and safeguards on how to try a child. The Act has established a Family and Children's Court.

5.3.2 Challenges of child justice in Sudan: An empirical Analysis (1990-2009), Dr Mutasim Ahmed Abdelmawla, Associate Professor, University of Gezira, Sudan

The presentation began with a note that Sudan was one of the first countries to accede to the Convention on the Rights of the Child in July 1990. The National Council for Childhood was established in 1991. A 25 Years Strategic Plan (2003-2027) as adopted incorporated many directives with regard to childhood care. Some of the achievements of the country were outlined to include increasing enrolment rates at primary education, vaccination, and protection against abuse. In spite of this, many challenges are still remaining (such as high infant and under 5 year's mortality rates, school dropout, child labour, and increasing numbers of street children. High percentages of school drop outs, only 18% of primary school enrolments make it to high school. As a result, many drop outs resort to crime. There is a relationship between crimes committed by mothers and imprisonment of children. It is against the above background that the study presented was carried out. The study aimed at investigating, from an empirical point of view, over the period 1991 – 2009, the trends in the share of children dissents in crime and the impact of war and crimes committed by women on the children dissents.

The study finds that crimes committed by women usually lead to family instability and that crimes committed by women usually increase the number of crimes committed by children. The study shows that the crimes committed by women contribute a 1% level on increasing the dissents of children in Sudan. The elasticity of the dissents of children with respect to changes in

the crimes committed by women is estimated by 0.68. Thus, an increase in the crimes committed by women by 1% increases the dissents of children by 0.68%.

The study makes the following recommendations: The stability of families is highly recommended to protect the children and secure their bright future; more legislative reforms are needed to protect children; policies should also give the street children and children with special needs priority in medical treatment and education; both Sudan and Southern Sudan should keep peace and solve the wedged matters for the sake of children and development.

5.3.3 Legal and institutional framework for juvenile justice in Nigeria: A Critical Analysis, Emily Alemika, Faculty of Law University of Jos, Nigeria

The aim of this presentation was to critically examine the major legal frameworks and the institutional approaches to juvenile justice in Nigeria. Nigeria has an English legal system which operates alongside the traditional system of customary law and in some places the Sharia system of law. Nigeria's court system is made up of federal and states courts. The federal courts comprise of the Supreme Court, which is the apex court; the Court of Appeal and the Federal High Courts. The state courts comprise of the High Court, Customary Court of Appeal, Magistrate court and (customary court purely civil) in the South). In Northern states, there are courts which try both criminal and civil cases using sheria law. Juvenile offenders are tried through some these courts, especially the Magistrate courts.

Nigeria has not harmonized its definition of the child in the various legislations. For instance, Section 277 of Child Rights Act (CRA2003) defines a child as a person who has not attained the age of 18 while the Children & Young Persons Act (CYPA 1958) in section 2 defines a 'child' as person under the age 14, while 'young person means person of age14 but who is under age 17. Similarly, the Immigration Act stipulates that any person below 16 years is a minor. (Immigration Act Cap 11 2004 LFRN) The Matrimonial Causes Act puts the age of maturity at 21. While Section 282 (1) (e) of the Penal Code Act defines a child as 14 years old.

Nigeria has domesticated the Convention on the Rights of the Child through of a number of laws; the most important legislation is the Child Rights Act of 2003. Parts 1-3 of this Act deal with general rights, interest and protection of the child. Parts 8-10 provide for custody, guardianship and court jurisdiction for juveniles. Parts 13 and 20 deal with the family court and child justice administration respectively, while part 23 deals with establishment of implementation committees at the three ties level-National, State and Local Government. Another relevant law is the Children and Young Person Act (CYPA) which is the most comprehensive and relevant law to Juvenile justice in Nigeria. It was established by the colonial administration in 1934 as an Ordinance but has been re-enacted into local laws since the colonial era and after the Nigerian's Independence to take holistic approach to juvenile justice in Nigeria. The CYPA establishes several structures including the probation officers and makes provision to deal with children in need of care.

The Child Rights Act makes provision for custodial and non-custodial measures. Corporal punishments like, whipping, flogging, and denial of food are still features of some legislations in Nigeria. Corporal punishment as alternative to imprisonment is permissible under the Child Rights Act. Islamic law permits whipping, flogging, stoning, amputation of young offenders, and even death penalty in some cases. The classic example is the case of Amina Lawal, a child who was saved by the Supreme Court from a punishment of a Sharia court directing that she be stoned to death.

The age of criminal responsibility is regulated among others by the Penal Code Act, which provides that a child under 7 years cannot be convicted for any offence, while between age 7 and 12 years, a child can be convicted for criminal act if it can be proved that he/she can understand consequences of his act. Under Sharia law, the age of criminal responsibility is either 18 years or puberty. But in case of fornication and adultery attract flogging or the death penalty respectively and age of responsibility is set at 15.

The law makes provision for the establishment of remand homes and provides for vocational training in these places. Nonetheless, these institutions have not functioned as anticipated by the law. They have been compromised by the lack of proper planning and implementation, gross under funding; inadequate staffing both in qualitative and quantitative terms, and lack of necessary training facilities in the workshops and educational. Additionally, there are a number of challenges hampering the effective operation of the juvenile justice system. These include: Numerous uncoordinated and obsolete legal provisions; cultural and religious practices; ethnic pluralisms/linguistic differences; most states in the North are reluctant to domesticate CRA 2003 that meet the CRC standards ; state that domesticate the CRA are not implementing effectively for lack of political will; legislations like CYPA that favours separate juvenile justice system are not effectively implemented.

By way of recommendations, the following need to be done. There is need for general public enlightenment on children's rights; advocacy should be directed at traditional and religious leaders, legislatures and government policy makers to encourage them to adopt rational, humane and effective legal and institutional approaches to the treatment of juveniles; there is need for collaborative efforts among different groups in the society, such as, legal practitioners, social workers, juvenile justice experts, police human rights institutions and activists and related NGOs; and there is need for information sharing among practitioners across the African countries.

5.3.4 Children in conflict with the law in Rwanda: one step ahead, two steps backwards,

Christian Nsabimana Garuka, Project Focal Point, the Centre for the Study of AIDS, University of Pretoria

The presenter started by observing that Rwanda had since 1994 made a lot of progress in the protection of the rights of children, which has been done through the adoption of legislations and policies. A juvenile detention centre has been established at Nyagatare, children in detention have been separated from adults, and the principles of best interests, survival and development recognized. In spite of this, there are some developments which are likely to undermine the rights of children. An example is the move to lower the age of criminal responsibility from 14 to 12. The 1994 genocide has also greatly impacted on children and the enjoyment of their rights. Over 4000 children accused of genocide were imprisonment after 1994, over 1000 are believed to be in detention to date.

The progressive laws include Organic Law N° 51/2008 and No. 09 of 2009 which has determined the organization, functioning and jurisdiction of courts by providing for specialized chambers for minors at the Intermediate Court level. The Law N° 13/2004 of 17/5/2004 relating to the Code of Criminal Procedure provides under article 185 that a minor who is being prosecuted must be defended by a counsel.

However, as mentioned, lowering the age of criminal responsibility has the impact of reversing some of the gains made so far. It is likely to increase the number of children (minors) in conflict

with the law; increase of children in the detention facilities, and burden to the over stretched and problematic legal representation (government has relied on NGOs and donors to provide for legal representation). The increment in the number of children in detention is likely to lead to deterioration in the conditions of detention. Research conducted in the United States of America has also shown that youth who are referred to juvenile court for their first delinquency offense before age 13 are far more likely to become chronic offenders than youth first referred to court at a later age.

The presenter concluded by stating that protecting a child is something completely different from punishing him or her. When a state pretends to do both at the same time, it fails, even more, pretending that such treatment be as similar as possible to that given by parents.

5.3.5 UNICEF Toolkit on Diversion and Alternatives to Detention, Ms Milen Kidane, Child Protection Specialist, UNICEF Eastern and Southern Africa Regional Office (ESARO)

This presentation featured a Toolkit on Diversion and Alternatives to Detention developed by UNICEF. The Toolkit gives practical guidance on how diversion can be implemented, in a manner that realizes the objectives of diversion. It is observed that diversion and other alternatives are an important part of broader work on reforming justice systems for children in conflict with the law. As a result, work on diversion and alternatives should be undertaken within and not in isolation from broader programmes on justice for children and child protection.

It was also observed that the 8 elements of the 'Protective Environment Framework' (PEF) apply to all aspects of work on child protection, including: Justice for Children, children in conflict with the law, and diversion and alternatives. Central to all, is a systemic child rights approach which coordinates with and capitalises on other child protection programme initiatives.

It was indicated that all that one needs to use the Toolkit is a computer, although work still has to be done on ground. The Toolkit is available at http://www.unicef.org/tdad/index_55653.html.

5.4 Session III-D: Traditional/Informal Child Justice Systems in Africa

The presenters at this session included the following: Stella Ayo-Odongo; Paul Fagnon; Iyabo Ogunniran; and Dr Charmain Badenhorst.

The session was chaired by Ms Nompumelelo Lukhele-Shabangu, Head of the National Trafficking in persons Office, Prime Minister's Office, Swaziland.



Ms Nompumelelo Lukhele-Shabangu, Dr Charmain Badenhorst, Ms Iyabo Ogunniran, Ms Stella Ayo-Odongo, and Mr Paul Fagnon (from right to left)

5.4.1 Redeeming the future: Children affected by Armed Conflict and the Role of Traditional Justice, *Stella Ayo-Odongo, Executive Director Uganda Child Rights NGO Network*

This presentation featured the findings of research on the use of traditional justice in Northern Uganda. The Study was done against a background of the 20 year armed conflict where children suffered most. It was argued that in this context there is need to look at justice beyond formal justice system. The traditional justice mechanism was adopted as a means of purification for the heinous crimes committed by the Lord's Resistance Army rebels. The problem though is that this system required all "rebels", including children to confess their crimes, yet the children were forced to commit those crimes. The aim of the Study was to look beyond formal institutional mechanisms and provide information for activists working in the area on issues of justice.

Issues and challenges were covered. Many times it was difficult to find uniform processes, this varied from district to district. Process begins with purification, but which is done in an inhumane manner like for instance requiring the perpetrator to drink a bitter root drink. Communities were also torn apart as they could not agree on a universal system to follow and one which applied to all. There were also questions regarding who should be brought to justice after atrocities? Some opined that leaders or government should take responsibility. There were also cases that could not be resolved by informal system, such as killing or maiming. Other issues related to such question as how do we reconcile systems? Should we focus on the offender but also on the victim who suffered?

5.4.2 A Tale of Rites and Rights A Partnership Research on the State of legal Protection for the Girl Child under Formal and Traditional Justice Systems in West Africa, *Paul Zinson Fagnon, Regional Child Rights Specialist, Plan West Africa Regional Office*

This was a presentation of a study conducted by Plan International and ACPF. The goal of the Study was to contribute to the respect, protection and fulfilment of children's rights in West Africa. The objective was to analyse legislative and traditional frameworks and right-holders perceptions pertaining them. The study observes that traditional justice systems refer to non-state justice systems which have existed, with or without some degree of evolution, since pre-colonial times while the formal justice system involves civil and criminal justice and involves formal state-based justice institutions and procedures, such as police, prosecution, courts (religious and secular) and custodial measures. The characteristics of the traditional justice system include the preservation of social/interpersonal harmony; the legal subject is not the individual victim or perpetrator in a particular dispute. The legal issue is rather collective injury and collective responsibility is at work. Conception of justice has a spiritual dimension; the person is seen as dualistic, consisting of body and soul. Sanction is aimed at embracing and reconciling the guilty party with the community.

Under the traditional system the child has a strong bond with ancestors, elders, and the group; solidarity and altruism; rapport with the body; rapport with work and time. The body of the child belongs to the family collectively or the kinship group, which is not considered a 'private property'. Parental rights and authority over the child are exercised by a large number of people. There is no distinction between a father and an uncle, or a brother and a cousin and the child is raised with a sense of duty and respect towards older members of the community starting from early infancy.

The Study identified the merits and demerits of the traditional justice system. The merits were identified to include the fact that the system is accessible, participatory, transparent, flexible, adaptability, uses simple procedures which do not require the services of a lawyer, is quick, uses local languages, the courts are usually in walking distance, and no prison sentences are imposed, instead reconciliation and compensation are promoted. The demerits identified included the following: Partiality, the resolution of conflicts or the sentencing is contingent upon the social status of the parties; exclusion of marginalised groups like women and children, there is a monopoly of power in the judge; the effect of being in oral form is the absence of systematic reporting and recording system; and judges lack of judicial competence of the judges. Additionally, in the traditional systems adjudication is not based on infraction, but based on damage done to society, which might result in unfair punishment of young offenders; also, punishments might involve corporal punishment and there is a tendency of perpetuation of the egregious practices such as early marriages. Yet, the use of with superstitious and at times brutal methods of proof extraction may have a negative impact.

The study makes the following recommendations: Improve the formal justice system by adapting useful aspects from traditional justice system; transform the traditional justice system as it is the only means of justice for many; ensure that law reform processes work with traditional and formal justice systems; research into existing traditional justice in view of dealing with juvenile offenders to inform Juvenile Justice programs; and work towards abolishing the violent aspects of community rituals.

5.4.3 Family Courts and Child Justice Administration: New directions in child legal protection in Nigeria, *Iyabo Ogunniran, Lecturer, Faculty of Law, University of Lagos, Nigeria*

This presentation focused on the status of child justice in Nigeria. A historical background to formal and informal systems was given. It was indicated that the first juvenile courts were created by the 1943 Children and Young Persons Ordinance. One of the challenges previously faced was that although cases were to be heard in camera, in practice this was not happening. But in 2003 Family courts were introduced, where identities of children is protected, confidentiality promoted and names of children could not to be disclosed. The 2003 Act also established family courts with exclusive jurisdictions to hear cases involving children. The family courts have unlimited and exclusive jurisdiction in matters relating to children and operate at two levels, Magistrate and High Court. At both levels, the Magistrate or judge sits with two assessors, one of whom must be a psychologist.

The procedure followed by the family courts is child-friendly and proceeding is conducted in the best interest of the child, the child is allowed to express him/herself and participate in proceedings and the court's reaction must be proportionate, not only to the circumstances and gravity of the offence, but also to the circumstances and needs of society. What came out of this presentation is that Nigeria has gone a long way in domesticating of Convention on the Rights of the Child.

Nonetheless, the presenter indicated that 12 states still have sharia laws to which children are still subject. Yet, in some cases this law violates the rights of children like was the case with a 15 year child who was amputated for theft. The states implementing sharia have been reluctant to enact the Children Rights Act, probably because it would take precedence over sharia. Indeed the Supreme Court has confirmed that the Children's Rights Act will abolish the essence of sharia and Islamic culture and establish a family court that ousts the jurisdiction of sharia courts in all matters relating to children. As a matter of fact, sharia courts have violated the rights of children in a number of cases. In Birni Kebbi State Upper Sharia Court, the Court ordered that the hand of a child be amputated for stealing (conviction quashed), and in Katsina state, a sharia court sentenced a fifteen year old to amputation for theft of a bull. While in Bauchi a sharia court sentenced a child to 100 lashes for pre- marital sex.

The presenter made the following recommendations: There is need for infrastructural development for the purposes of creating a child friendly court; continuous training of judges and assessors; adopting practice directions as has been done by the Ondo State with its Family Court Practice Directions which can serve as a Model for other states; there is need to improve the pay packages for the judicial personnel and the assessors; and stakeholders in child justice administration should explain the benefits of protective the rights of children in Sharia implementing states.

5.4.4 Inadequate Awareness about Child Justice – Lessons from South Africa, *Charmain Badenhorst, Senior Researcher, Meraka Institute, Pretoria, South Africa*

The presenter began by describing the importance of awareness and its different levels, indicating that awareness is crucial for successful implementation of legislation. The three levels of awareness are: First level – knowledge about and training of those tasked with enforcement; second level – general public on societal level; and third level is individual persons. The lack of awareness in South Africa is seen in the ignorance of law enforcement agencies of the provisions of laws relating to children. Within the public, the lack of awareness is manifested in the attitude

towards child offenders, who face discrimination. There have also been wrong media reports regarding the requirements of the law, to which Child Justice Alliance (CJA) has responded with public comments. In dealing with juveniles, without public awareness the requirements of the law regarding rehabilitation and reintegration are likely not to be realized because this requires public involvement.

At the third level, awareness should focus on children because the main purpose of child justice system is to protect children in conflict with the law. It is therefore important to inform children about their rights in terms of the child justice system. Children should also know their right to participate in proceeding and right to be heard. CJA provides for various points in the child justice system where the child must be informed about his/her rights and be explained the processes to be followed in terms of the law. CJA also encourages children to participate in proceedings where decisions affecting them might be taken.

To promote awareness, the presenter made the following recommendations: More training of police officers and other role players on the laws affecting children; there is need to change negative perceptions about children in conflict with the law and ensure community involvement in rehabilitation and reintegration of children, there is need to work effectively with the media by harnessing the power of the media in order to avoid negative reporting and raise positive awareness. Additionally, awareness campaigns should be creative and cater for the different audiences as one size fits all approach will not be effective.

5.5 Session III-E: Selected International Experiences on Child Justice: Policy and Practice

The presenters at this session included Patrick Meehan; Dr Sudip Chakraborty; Dr Jaume Guardans; Claire Paucher; and Ms Anita Goh.

The session was chaired by Dr Ruth Farrugia, Advocate and Senior Lecturer, Faculty of Laws, University of Malta.

5.5.1 A short history of children in the UK justice and welfare system from 1880-2010, *Patrick Meehan, Year Two Coordinator, Early Childhood Studies, Canterbury Christ Church University, UK*



Mr Patrick Meehan, Year Two Coordinator, Early Childhood Studies, Canterbury Christ Church University, UK

This presentation was based on research whose aim was to examine the history of UK child law as an evolutionary process in terms of protection, provision and participation. This was in addition to considering the lessons learnt along the way. The themes considered included victim/villain constructions, role of media, and place of children in economic future, personal development and life chances. The presenter began by indicating that children have been a focus of government thinking and action in the UK since 1800 with focus on protection, provision and participation. In 1870 formal education became compulsory. In 1890 police gained power to enter houses to investigate complaints of child neglect.

The presenter noted the different approaches used including education which is intended to make children sufficiently literate and numerate to enable them to function in their local and wider world. Another approach is care, intended to provide a safe, secure environment for progressive mental and physical challenges, builds self-confidence and empathy. Last approach is control, which is intended to protect children from consequences of adult world and to protect adult world from the ego-centric actions of children.

The history of education legislation in the UK was traced. In 1870 the Elementary Education Act was adopted to make education free and compulsory for all children 5-10 years (raised to 14yrs in 1902). In 1944 the Education Act (Butler's Act) created three kinds of publicly funded high school. In 1988 the Education Reform Act was adopted to make provision for national curriculum, and in 2010 the Education Act to legislate for academies, economic segregation and their effects on public education was adopted.

The legislative history as is applicable to care was also reviewed. In 1889 the Prevention of Cruelty to and Protection of Children Act was adopted to allow police enter homes to investigate child abuse or neglect. In 1906 the Provision of School Meals Act required schools required to provide a hot meal for any children in need. In 1998 the Children's Act was passed to consolidate all child law, it assigns parental responsibility and tries to conform to Convention on the Rights of the Child. In 2004 the Children's Act was adopted and in 2006 the Childcare Act was made for local government to provide childcare for every child aged 3-5.

Further, the legislative history as relates to control was also reviewed. The Crime and Disorder Act was adopted in 1998 to regulate Anti-Social Behaviour defined as "conduct which caused or

was likely to cause alarm, harassment, or distress to one or more persons not of the same household as him or herself and where an ASBO is seen as necessary to protect relevant persons from further anti-social acts by the Defendant". 2008 saw the adoption of the Crime and Disorder Act 2008.

The presenter identified a number of research gaps, which included: How do children understand rights and laws and what are their ideas about belonging within a society; what do children understand about provision, participation and protection. For the future, the following questions were asked: Could laws related to children be more effective if we delivered the provision by focussing on participation before protection? Can the fundamental human rights of children survive the market forces and economic recession? What are the implications of constructing children as consumers and as problems?

5.5.2 Child justice in India: Some Relevance for an Emerging African System, *Dr Sudip Chakraborty, Honorary Nodal Director, Child line India Foundation*



Dr Sudip Chakraborty, Honorary Nodal Director, Child line India Foundation

The objectives of this presentation were to understand child injustice in the Indian context; explain distressed childhoods denial of justice; define juvenile delinquency; review the evolution of the child justice system in India and how it works and its weaknesses. This was in addition to studying the Indian approach to rehabilitation and social integration and deinstitutionalization. The presenter identified what are described as children in especially difficult circumstances to include orphans, abandoned, and working and street children, children victims of natural calamities, those engaged in sex work, and AIDS affected.

The presenter classified juvenile delinquents into two categories: those who commit offences oblivious of the nature of their conduct, and those who are forced to commit offences because of the circumstances they are in. The Indian legislative history in the area of juvenile justice was detailed. The first Act was adopted in 1960 as the Children's Act, followed with the Juvenile Justice Act of 1986. In 2000, the Juvenile Justice (Care and Protection) Act was adopted, and in 2006 the Juvenile Justice Act was amended. The Juvenile Justice (Care and Protection) Act is framed in the light of the CRC, it stresses care, protection, development and rehabilitation, it has adopted child-friendly approach and best interest of the child, and is a clear shift from welfare approach to rights approach.

The biggest problem is that the laws have not effectively been implemented. For instance, despite the fact that the law prohibits detention, cases of detention in police lock ups are many. Indeed, children in conflict with the law would rather prefer adult prison than to perish in ill equipped children's homes. It is also true that Juvenile courts are located in cities, juvenile in rural areas find it difficult to attend court.

The presenter made the following suggestions: Border line sub-delinquency and pre-delinquency can be treated at appropriate levels; police officers should be familiar with the conditions of the Children Caught in Extremely Difficult Circumstances (CEDC); the core staff of Juvenile Homes must be trained and motivated for the cause of CEDC; and there should be separate care and intervention for delinquents and for neglected children.

The presentation concluded by canvassing issues of rehabilitation and social re-integration, noting that children's homes are last option, children should be brought up in family environment and families should be economically empowered to care for children. Additionally, counselling and support services should be provided for families at risk of disintegration.

5.5.3 Juvenile Justice Cycle: the Crime Prevention Experience in Panama, *Jaume Guardans, International Senior Researcher, Program on Human Rights and Governance, College of Law, the American University, Washington*



The presenter indicated that in Panama the Ministry of Internal Security had launched an initiative to reduce the participation in crime of the population between 12 and 29 years of age. This program focuses on three municipalities and differentiates between primary, secondary and tertiary prevention. Primary prevention is addressed to youngsters that are exposed to risks that could contribute to their involvement in violent and criminal acts. Secondary prevention is addressed to those that are at risk because they are already directly or indirectly involved with juvenile organized and violent groups. It also aims at those minors that are themselves victims of interfamily violence. Tertiary prevention is addressed to those minors that have already been judged and condemned for criminal offences and are in juvenile detention centres.

The distinction of the three levels of prevention is important in order to identify the stakeholders involved. There has however, been some major challenges in dealing with stakeholders. A key stakeholder in primary prevention is the school system. But the Ministry of Education officers expressed the difficulties that they encountered engaging teachers and school directors in the crime prevention program. In response, Plans were made to pass a government decree incorporating primary prevention in the primary education curricula. It was however proposed that the best response was for engaging schools in primary prevention to start by preparing a plan including clear description of: (i) the goals to achieve, (ii) the training to be provided to the teachers accordingly and (iii) the evaluation mechanisms to follow up the problems found and solutions implemented in the path to achieving the goals.

Another challenge has been building up ownership as implementing the programme would in practice require that the beneficiaries incorporate the crime prevention activities in which they participate in their annual plan of action. The other challenge has been the establishment of measures to monitor the evolution of juvenile crime. For that purpose it is important to distinguish between information gathering, information management and information analysis. A strategy for information gathering should aim at a system in which the analysis is not guided by the information available but rather that the information is made available to conduct a holistic analysis. Identifying a variety and complementary sources of data gathering that allows crosscutting verification of the accuracy of the information obtained. Once the data that is considered relevant for primary, secondary and tertiary prevention has been identified, steps needs to be taken to find which State and non-State actors can be called upon to regularly provide the required information.

In Panama, the main source of information is the police and the police officers are required to provide reports to many other stakeholders, among them prosecutors, the Ombudsman and the

Ministry of Internal Security. With the purpose of improving the information gathering for secondary prevention, the government contracted the development of software, in which to incorporate the inputs collected in all the police stations and police mobile units of the country. The lesson learnt from that system is that more important as is the technical system put in place to collect the information is the method used and the way in which the information is shared and used.

Finally, for the tertiary prevention the collection and management of the information is done in a much narrower scope than in the other two levels of prevention. As mentioned before it is addressed *to those minors that have already been judged and condemned for criminal offences*. The data to be collected will be on the situation in which the tertiary prevention is carried out in the juvenile detention centres and the family, social and geographical background of the inmates to start preparing for their reintegration.

When a justice sector is well structured it should be possible to have two observatories of crime, one within the state institutions and another within the Organized Civil Society as it is the case in Colombia. It could also have an observatory located in a public university as it is the case in Panama. UNDP has just established a second observatory of violence and crime in the Chamber of Commerce. The main purpose of the analysis is to provide accurate and relevant information regularly to the institutions that have responsibilities in the Justice Cycle.

5.5.4 La place des mineurs dans le système judiciaire français, *Claire PAUCHER, Judge Children's Court*



Ms Claire PAUCHER, Judge Children's Court

This presentation was made in French. The presenter sought to discuss juvenile justice in the French system. In this system, the child was mainly viewed as a person that needs to be protected. There was ongoing debate in on minimum age; after 13 years a child can in some cases be subject to penalties like adults. But in 1993 laws were introduced to deal with children in special manner, prior to judgment child should be given opportunity to make reparation. The child plays role in implementing this system. Child may for instance be brought to justice for

behaviour against authorities by requiring child to spend time with authorities to understand how they work, same for offences against elderly, child may be required to spend time with elderly.

5.5.5 The new Optional Protocol to the CRC: An international communications procedure for child rights violations, *Anita Gob, Advocacy Officer, NGO Group for the CRC, Geneva*

The presenter began by illustrating the international standards that guarantee the rights of children and showed how these could be implemented at the national level. It was highlighted that in spite of the existence of the international standards sometimes national implementation is a problem. The benefits of the communications procedures were described. They provide for the examination of violations by experts, provide an international remedy for victims, they create international jurisprudence, and provide quasi-judicial mechanism for state's violations

The presenter described how the international complaints procedures function, indicating that an individual victim or groups of individual victims, or their representatives can make a complaint after exhausting domestic remedies. The working of the system under the Optional Protocol

was described. It covers the full range of child rights under the CRC and its protocols. The procedure is only applicable in case of failure of the national justice system, is not subject to compulsory legal representation and provision is made for interim measures. Some issues were raised on whether the system establishes a child-friendly mechanism: Distance between the Committee and the victim; written and technical procedure against the State; Need for a representative in most cases; Interest of the child; risk of delays and the possibility of friendly settlements.

The provisions of Articles 2 and 3 were described as positive. It is required that the provisions shall be interpreted in a way to ensure the best interest of the child which include the right to be heard, that the system shall be accessible through child-sensitive procedures, and the examination of any communication that would be contrary to the child's best interests can be declined.

5.6 Video message by Regina Jensdottir, Head of the Children's Rights Policies Division, Council of Europe

This message featured what the Council of Europe was doing in developing children's rights in the region. For over 60 years, the Council of Europe has been promoting human rights and rule of law in Europe. In 2006, the Council adopted a programme called *Building Europe for and with Children: Council of Europe Three Year Action Programme*. The purpose of this programme was to guarantee a holistic and integrated approach to the protection of children's rights to which the last five years have been committed. This has been characterized with the development of new working methods, setting new legal standards and providing advocacy tools and awareness raising materials for the promotion of children's rights and the protection of children from violence. Research had shown that children mistrust the general legal services and systems, mainly due to the lack of individualised treatment. There are also insufficient or inadequate child friendly facilities, lack of a co-operative approach between the families and the professionals.

It is on this basis that the Council decided to develop the Guidelines on Child-Friendly Justice for the purposes of ensuring that children are treated properly in the justice system. The Guidelines serve as a practical tool for states in adopting their judicial systems and non-judicial systems to the specific needs of children. The Guidelines address the child's right to information, to representation, to participation and to protection. Children should also have access to remedies to effectively exercise their rights and to act upon violations of their rights. The Guidelines stipulate that deprivation of liberty should be a measure of last resort and for the shortest period of time.

The Council therefore encourages Africa to adopt similar guidelines, which would help African countries in adapting their judicial and non-judicial systems to promote child-friendly justice. While the Africa system may be different, the continent could still benefit from the work that has been done in Europe. Children's rights have to protection before, during and after the justice process. It is important in the process of developing the Guidelines to take into account the perceptions and experiences of African children relating to access to justice. Building child justice is a process that requires great efforts and immense commitment from various stakeholders, national governments, international organizations, NGOs, policy-makers, academics and children.

6. SESSION V: KEYNOTE ADDRESS BY H.E. DR MENBERETSEHAI TADESSE, DIRECTOR GENERAL, ETHIOPIAN JUSTICE AND LEGAL SYSTEM RESEARCH INSTITUTE



H.E. Dr Menberetsehai Tadesse, Director General, Ethiopian Justice and Legal System Research Institute

This keynote address was based on the information and issues that had emerged from the Conference up to that stage. The keynote speaker decried the situation of children's rights in the justice systems. Although there was evidence of developments in the legal frameworks, this is not reflected in the situation on ground. Many institutions are in direct conflict with what is in the treaties. There is immense challenge on the continent; many states were in a state of war, which made it hard for children to enjoy their rights. As one develops justice standards for children, it was important to understand

African dynamics and to develop the normative framework and other aspects that affect child justice, such as processes and institutions, in a manner that is alive to society context. The interests and demands of children too have to be considered. Even the judicial bodies must operate in a manner that gives attention to the environment in which they work.

It is also important to have regard to the pluralist nature of African justice, which is characterized by the formal and traditional systems. In some countries traditional have been recognized while in others not. In some places as many as 80% of child related cases go through the non-formal traditional systems. The constraints of the formal system have to be appreciated. They include a growing case backlog, expensive nature of the system and the challenges of accessing the system, many children cannot access this system. The pre-trial processes are a problem and the proceedings complex for children to understand, and usually the verdicts of the courts shatter the lives of many children. In contrast, the traditional system is easy to access, is quick and cheap.

Against the above background, the arguments raised by legal positivists that the African traditional systems are illegal and linked to bad practices are unrealistic. The system is accessible and is embedded with positive values that are compatible with international law and ought to be promoted and given the attention they deserve. Nonetheless, the traditional system faces some difficulties, there is need to investigate, support and expound the ambit of this system. Studies have shown that some practices of the traditional system of justice are not consistent with the norms and values that apply in the context of children's rights. These negative aspects of the practice should be shelved and discarded in order to create a child friendly-justice system.

The keynote address was followed with a plenary discussion. During this discussion, the following issues emerged:

- It is necessary to place children in transitional centres immediately after their release from prison as a measure to deal with the psychological impact of detention;
- It is important to appreciate the harm that crime victims suffer and emphasise the need to bring victims and perpetrators together. The support of victims in promoting child justice needs to be obtained;
- It is necessary to examine the circumstances that force children to resort to crime; many children for instance steal to get food.
- Former child offenders should be involved in building child justice in Africa.

7. SESSION VI: CHILD JUSTICE REFORMS: AFRICAN AND INTERNATIONAL EXPERIENCES

The presenters at this session included Julia Sloth-Nielsen; Ms Violet Odala; Mr Cédric Foussard; and Ms Lucyline Nkatha Murungi.

The session was chaired by Mr Rifat Kassis, President, Board of Defence for Children International.

7.1 The role of restorative justice mechanisms in promoting offender accountability and victim healing and in avoiding deprivation of liberty, *Prof Julia Sloth-Nielsen, Dean, Law Faculty, University of the Western Cape and Member, African Committee of Experts on the Rights and Welfare of the Child*



Prof Julia Sloth-Nielsen, Dean, Law Faculty, University of the Western Cape and Member, African Committee of Experts on the Rights and Welfare of the Child

Prof Sloth-Nielsen described restorative justice by reference to the United Nations Basic Principles on the Use of Restorative Justice, 2000. The Principles define restorative justice as any process in which the victim and the offender and where appropriate, any other individuals or community members affected by a crime, participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator. The Basic Principles indicate that restorative justice often draws on tradition or indigenous forms of justice and in addition to promoting equality and dignity promotes social harmony. In the context of crime, restorative justice

helps communities to understand the underlying causes of crime and promotes community wellbeing, values which find expression in the African Charter on the Rights and Welfare of the Child.

The presenter discussed examples of countries which had promoted restorative justice in child justice matters as part of their laws. Reference was made to Lesotho's Child Protection and Welfare Act, 2011, which harnesses the social benefits of restorative justice and sets up structures in the form of Village Committees through which such justice can be obtained. The Act provides for three direct forms of restorative justice: 1) Family group conference – primarily to deal with concerns relating to the care and protection of the child; 2) 'open village healing circle' — for cases involving two or more acts of anti social behaviour; and 3) 'victim offender mediation' — intended among others to enable the victim and the offender "to talk about the crime, to express their feelings and concerns.

The Lesotho Act also makes provision for diversion, which is however reserved for those suspected of having committed an offence as opposed to those at risk, or involved in anti-social behaviour. Diversion options are set out in 4 levels, comprising as many as 12 different possible outcomes, most of which are restorative.

Although there is no direct link between restorative justice and deprivation of liberty, police officers can informally incorporate restorative justice principles into their decision-making to mitigate conflict. Being a community based dispute resolution mechanism; restorative justice

could speed up criminal justice processes and alleviates delay. Legislating for restorative justice gives the judiciary and other role players, the opportunity to resort to alternative means of resolving disputes. Restorative justice also incorporates participation into the justice system, which could be a response to the challenge of inertia and resilience which formal justice systems face.

The presenter concluded by indicating that time for discussion about desirability of restorative justice is long since passed and measures for effective implementation have already been set out in the United Nations Office of Drugs and Crime Handbook which makes reference to legislation mandating use of restorative justice; provisions on leadership and organization; and securing a buy-in by the criminal justice system. Effective use of restorative justice requires identifying and mobilizing community assets; carefully designing programmes to build on the existing strengths of the community and the justice system; and careful planning and monitoring of the implementation process, all of which require commitment and action, not funds.

7.2 Harmonisation of Child Laws in Africa, Violet Odala, Senior Programme Co-ordinator, ACPF



Ms Violet Odala, Senior Programme Co-ordinator, ACPF

Ms Odala began by defining harmonization, also referred to as “domestication” as a process through which states align their national laws with international treaties human rights provisions and standards to ensure that they reflect their commitments under the ratified treaties. Harmonisation could take the form of broad review of laws leading to a single consolidated piece of legislation or could take the form of thematic or *ad hoc* amendments and formulation of law. The purposes of harmonisation include removing discrepancies between the international treaties and the national laws thereby giving domestic effect to the treaties. In the area of children’s rights, in

addition to the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention of the Rights of the Child (CRC) plus its Optional Protocols, there are over 10 other treaties that are relevant to child rights that could be domesticated once ratified by a state.

It is against the above that ACPF has since 2005 been implementing the Harmonisation Project, which has involved the review and auditing of laws in African countries to determine the extent to which they have harmonised their laws with the international standards on children’s rights. 30 countries have been reviewed since 2005; 19 feature in the 2007 review focusing on Eastern and Southern African countries, while the 2011 review incorporates 11 West and Central African countries. ACPF has also continued to conduct a desk based review of child rights in the other countries in which it has not conducted a comprehensive review.

With respect to state reporting under the ACRWC, the review has shown that 8 countries have not ratified the ACRWC so they are not obliged to report and out of the 46 States Parties, only 14 countries have reported to the African Committee of Experts on the Rights and Welfare of the Child. In the context of the UN Convention on the Rights of the Child, the review shows that all 52 CRC ratifications from Africa were made by 1995 and that all member states have at least sent initial reports to the UN Committee on the Rights of the Child, but there is no consistency

in sending periodic reports every 5 years as required. 33 countries have sent 2nd reports and 14 countries have sent 3rd reports (some of which are combined with the 4th report).

The review has shown some positive strides in that 36 African countries have embarked on review and/or consolidation of laws on children; the best interests standard is generally recognised in almost all African countries and free education policies or laws have been adopted in 36 countries. Corporal punishment is prohibited in 48 countries as a form of sentence, the minimum age of criminal responsibility is 12 or above in 39 countries, and 50 countries are in line with international minimum age of employment. Child trafficking, sale, and exploitation is specifically prohibited in most countries, and there is legal protection from harmful traditional practices such as female genital mutilation, which is prohibited by law in 22 countries. Some countries have incorporated in their laws African values such as those that relate to duties of the child and the African conception of justice.

In spite of the positive strides, there are gaps which have been noticed, such as, failure by some countries to adopt the international definition of a “child” – for example in Malawi, the age of a child is 16; the minimum age of criminal responsibility is lower than the internationally recognised age of 12 in some 15 countries; there are discrepancies in the minimum age of marriage; some countries lack specialised justice systems for children; and there is lack of specialised attention to child victims and witnesses in many countries.

The following recommendations were made: ratification of the remaining treaties by states that have not; domestication of the ratified treaties; continuous review of child related laws to match developments in the international arena; establishment of specialised institutions on child rights and wellbeing; building the capacity of law enforcement bodies; proper and timely reporting to the Committees (for monitoring); all African States not to subordinate the mechanisms of the ACRWC and to go beyond the mere formulation of laws and policies by translating them into practice.

7.3 International Policies and Standards on Juvenile Justice, *Cédric Foussard, Director, The International Juvenile Justice Observatory*



The presentation focused on what the International Juvenile Justice Observatory (IJJO) had done to promote juvenile justice in Europe. The aims of IJJO include bringing an international and interdisciplinary vision of juvenile justice, creating a multidisciplinary network of experts and promoting strategies of intervention. The presenter reviewed the different instruments that have been adopted in Europe for the purposes of ensuring co-operation on juvenile justice matters. These include: European Parliament resolution on the situation concerning basic rights in the European Union (2001) (2001/2004(INI)); Resolution on the situation as regards fundamental rights in the European Union (2002) (2002/2003(INI)), 2006 European Parliament Resolution on “*Towards an EU strategy on the rights of the child*”; 2007 Charter of Fundamental Rights of the European Union and the EC Communication "An EU Agenda for the Rights of the Child (15/02/2011).

One of the initiatives in Europe has been the Juvenile Justice Think Tank Initiative which stems from the work European Juvenile Justice Council. The mandate of the Council includes formulating recommendations on the development and evolution of juvenile justice in Europe; obtaining quantitative and qualitative information on the situation of children, adolescents and young people in conflict with the law within the region of Europe; serving as a transmitter on the action lines that are being developed in various countries of Europe in fields related to intervention with minors in conflict with the law; proposing the promotion of coordinated actions between public administrations, non-governmental organizations and academic and training centres, in various countries in Europe; and drafting reports, opinions and proposals.

In discharging its mandate, the European Juvenile Justice Council has done the following: Exchanged common solutions and good practices to make juvenile justice systems efficient, always respecting the best interest of the child and with the aim to facilitate his social and professional insertion; constituted a task force to address constant research needs and development of good practices on Juvenile Justice-related fields; produced special recommendations on the programmes and actions developed by the European institutions and other intergovernmental organizations that play a role in managing common problems on the global agenda; and made the voice of Juvenile Justice organizations and universities echo in the international agenda on child rights.

IJJO encourages and plans the establishment of regional juvenile justice councils modelled on the European Council. Regional Councils could be established in Asia Pacific, Latin and Africa. The African Council for Juvenile Justice will bring together representatives of public administrations responsible for juvenile justice, universities or academic institutions and NGOs with experience in legislation, implementation, monitoring, research and/or intervention in the field. The mission is to promote sustainable collaboration and coordination among all parties and stakeholders in the development of juvenile justice policies for social integration of young people and children in conflict with the law throughout Africa and the world. The objective could be the developing of the results of the African Council for Juvenile Justice is to ensure respect for the rights of children and adolescents in conflict with the law and promote it in regional institutions, based on existing initiatives and programmes.

In conclusion, the presenter made the following recommendations: There is a need to foster the transnational and multi-institutional cooperation between all juvenile justice agencies and organizations to promote cooperation among the different national legal systems. In order to provide a sustainable response to this need, it is important to start by building a common ground of understanding, sharing the harmonized tools and instruments in the study and the treatment of children in conflict with the law (as proposed by the guidelines) The civil society, through permanent network of experts, researcher, has already developed several interesting cooperation activities. The path already set should be followed by the regional institutions to encourage national decision-makers to integrate the basic rules and instruments which will guarantee the minimum rights of the child in conflict with the law.

7.4 The Right to Access to Justice for Children with Disabilities: Is the International Legal Framework Adequate? *Lucyline Nkatha Murungi, Doctoral Researcher, University of the Western Cape*



Ms Lucyline Nkatha Murungi, Doctoral Researcher, University of the Western Cape

Ms Murungi started by detailing some of the international standards that guarantee the rights of persons with disabilities including the UN Convention on the Rights of Persons with Disabilities. It was also noted that all the international standards that apply to all children apply to children with disabilities as well. Some limitations were however noticed. Although the ACRWC for instance guarantees children with disabilities rights, there is no reference to access to justice when reference is made to access to special assistance. The Convention on the Rights of Persons with Disabilities however has several provisions that may be relevant to children with disabilities in the context of child justice. Article 13 requires states to ensure effective access to justice for

PWDs on an equal basis with others through provision of procedural and age-appropriate accommodations. Article 7 requires states to take measures to ensure enjoyment of all the rights of children with disabilities on an equal basis with other children, and specific recognition is made in this article of the right of the child with disabilities to express their views.

The presenter indicated that it was necessary to pay attention to children with disabilities in the justice system. This is because these children interact with the system at various levels. They interact with the justice system as offenders, victims or witnesses, or otherwise in matters affecting them, but more often as victims. In cases where the children are considered to be offenders, issues regarding criminal responsibility need to be dealt with, especially in relation to children with intellectual disabilities who may not have the capacity to understand their actions. At the point of first contact with the child, communication becomes an issue, for instance, how do law enforcement agents inform child of offence. The Committee on the Rights of the Child in its General Comment on the Rights of Children with Disabilities has indicated that such children should not be placed in regular detention; instead they should be in institutions that have specifically trained staff on disabilities issues. Another issue relates to the ability of the children to report abuse. The current legal framework on access to justice for child victims emphasizes need for the victim or someone acting on their behalf to trigger the justice mechanism. Children with disabilities are not able to do this. The children are also affected as witnesses, sometimes not much weight is given to their testimony. These challenges should be considered in light of the principles deriving from the Convention on the Rights of Persons with Disabilities that are relevant in the context of access to justice by children with disabilities. These include: accessibility (physical, procedural and substantive); respect for difference which may require one to confront the problem of the inflexibility of ordinary court procedures; and reasonable accommodation.

In conclusion, the presenter noted some points of concern: access to justice is an immediate duty, including the accommodations and reforms necessary to make the child justice system relevant to CWDs; the language of the covenants and domestic law needs to be revised in line with current developments in the field of disability; there is still a long way to go in creating awareness on the appropriate legal responses for CWD in the justice system; and there is need to guard against the remnant of the charitable and medical models of thinking about disabilities.

7.5 Plenary Discussions

- Formal systems do not take into consideration victims which includes an often neglected category of victims, the children of prisoners, especially long term prisoners.
- Child delinquency is connected to disintegration of families, which in some cases gives rise to a vicious cycle of crime in certain families. In some cases this happens when a caregiver is convicted leaving children behind without care, which forces the children to turn to crime.
- There is need for greater attention to the problems of the Central African region. This region has problems of armed conflict which has affected neighbouring countries. Justice systems in the region have broken down.
- There is need to involve more men in discussions on child justice, which is currently dominated by women. This is important because justice systems in Africa are dominated by men, who are also the decision makers in this sector. Sensitisation is important in this regard.
- As we promote traditional justice, it is important to look into some of the problems of this system and the challenges it poses, which includes the challenges the system is facing as a result of urbanisation.
- There is an obvious gap with regard to children with disabilities, it is necessary to attend to the needs of this group of children.



8. SESSION VII: TOWARDS A COMPREHENSIVE FRAMEWORK OF CHILD JUSTICE IN AFRICA

This session, which was chaired by Prof Jaap E. Doek, former Chair, UN Committee on the Rights of the Child, culminated into the adoption of Guidelines on Action for Children in the Justice System in Africa. The Executive Director of ACPF presented the Guidelines by in the first place detailing the purpose of the Guidelines. It was indicated that the Guideline aim at achieving the full implementation of AU and related international instruments relevant to children's rights in general and child justice in particular; providing a practical guide to African governments to assist them meet their treaty obligations; and providing an instrument to guide law reform and harmonisation efforts amongst African States. The Guidelines also provide a tool for the co-ordination and direction of actions by various role-players in the formal and informal justice systems in Africa and a framework for the facilitation of international co-operation and technical assistance to State and other actors. This is in addition to enhancing understanding among the media and the general public on child-friendly justice systems.

In terms of scope, the Guidelines apply to all children in Africa and make provisions on procedures of an administrative or judicial nature, whether formal or informal. They are cognisant of family life and kinship forms in Africa and are to be implemented within the context of national legislation and international standards. The Guidelines define a number of overarching principles which include the following principles:

- The right of children to participate;
- The best interest of the child;
- The child's right to non-discrimination;
- The child's right to dignity; and
- The right of the child to survival and development

The Guidelines contain general measures of implementation, which is done by describing in a systematic manner what states ought to do to the implement the Guidelines. In addition, the Guidelines describe what are referred to as the general elements of a child-friendly justice system, which include access to justice; professionalism; prevention of undue delay; non-intimidating and friendly environments; treatment of child victims; and paying due attention to the safety and dignity of the child.

Other subjects covered include: Traditional justice; fair trial rights for children in conflict with the law; fair trial rights in matters involving child victims and witnesses; and justice for children as subjects of non-criminal judicial or administrative proceedings, including alternative care proceedings and family law disputes. Guidelines are given on the creation and implementation of a monitoring and evaluation system.

After the presentation, proposals were made from four working groups on the improvement of the Guidelines. The proposals covered a wide range of issues including the terminology that ought to be used in some contexts, for instance whether "child-appropriate" should be used in the place of "child-friendly". This is in addition to use of "informal justice system" as opposed to "traditional justice system" as the former is wider. Issues were also raised regarding the age of criminal responsibility and whether this should be raised above 12 years. Guidelines should be

extended to all children in contact with justice system, and not necessarily those in conflict with the law. Children in armed conflict context should be viewed as victims and not perpetrators; provisions on fair trial should also address the conduct of correctional officials and the obligation on states to implement correctional measures. Religious courts should as an informal system should be given independent consideration and not lumped with traditional system. A question was raised whether children should be given the right to opt out of the informal justice processes. There is need to ensure that the principle of communal good in the traditional system should not override the best interests of the child. Additionally, the challenges of witness protection should be addressed; institutions of child care should be monitored. (The Draft Guidelines is available at <http://www.kampalaconference.info>)

9. SESSION VIII: THE MUNYONYO DECLARATION



Mr Gezahegn Kebede, Director, East and Southern Africa Regional Office, Plan International

This session was chaired by Mr Gezahegn Kebede, Director, East and Southern Africa Regional Office, Plan International.

As already indicated, one of the outcomes of the Conference was the adoption of the *Munyonyo Declaration on Justice for Children in Africa*. The Declaration, named after the venue of the Conference, is a collective statement of the participants at the Conference through which they underline the nature of child justice in Africa and call upon different actors to take measures to improve

child justice. The Declaration begins by acknowledging the existence of a number of international standards on the rights of children including the UN Convention on the Rights of the Child and the African Charter on the Rights & Welfare of the Child, instruments which many African states have ratified. In spite of this, it is indicated that new child rights policies have not been fully integrated into the general development agenda of governments. Protection structures are largely neglected, and services are mostly *ad hoc* in nature, fragmented and not achieving the desired impact on children. Definitions of child abuse have not been fully adapted to the African context and some forms of child abuse (for example, harmful traditional practices, corporal punishment and child labour) are still not totally recognised as abuse in Africa. The implementation of children's rights in child justice also remains challenging within the informal and formal justice systems. Additionally, despite the fact that deprivation of liberty should be a measure of last resort, many children are still kept behind bars, incarcerated with adults, frequently in horrible conditions and often in pre-trial detention.

It is against the background of the above shortcomings that the Declaration calls for action from several actors, to ensure that all children enjoy their rights in child justice and that deprivation of liberty is used as measure of last resort. Unlike many general declarations, the Munyonyo Declaration is very particular regarding the actors it addresses and is specific on what different actors ought to do to ensure the above. The actors identified include the African Union, which among others is urged to put child justice on its agenda; the African Committee on the Rights and Welfare of the Child, which is also urged to put the issue of child justice on its agenda but also to support the further advancement of the Guidelines on child friendly justice in Africa. The Committee is also urged to establish a working group on child justice mandated to draft a general comment covering all aspects of child justice. The UN Committee of Experts on the Rights of the Child is among others urged to continue the collaboration with the African Committee and to ensure that child justice is reflected in the concluding observations to State Parties. Governments and Parliamentarians are urged to increase budget allocations for children to the maximum extent of available resources and in particular to develop effective child justice



Ms Ileana Bello from DCI presenting the "Munyonyo Declaration" to the conference

systems and harmonise informal and formal justice systems with well defined jurisdictions, working relationships, procedures and linkages. The UN and other international partners are among others urged to provide resources and technical assistance to key government ministries to develop and implement national policies and plans of action setting up effective child justice systems, establishing data collection and management systems and building capacity of professionals. Civil society organisations, including NGOs are among others urged to monitor the implementation of children's rights with regard to child justice and provide governments, regional and international bodies with facts and evidence including by submitting complaints, and persistently engaging government to take action and to assist governments with relevant training on children's rights in child justice. The community and religious leaders are among others urged to promote and advance good practices that respect and protect the rights of children, in accordance with international and regional standards such as good parenting and family based care and prohibit practices that are harmful to the health, welfare and development of children. The Media is urged to play a key role in promoting children's rights in child justice and to make the issues affecting children in contact with the law visible using accurate and balanced information without stigmatising or further victimising the concerned children. (The Munyonyo Declaration is available at <http://www.kampalaconference.info>)

10. SESSION IX: THE WAY FORWARD

This session, which was also the closing session, was addressed Dr Marta Santos Pais, UN Special Representative on Violence against Children; H.E. Mrs Asmaru Berihun, Commissioner for Women and Children, Ethiopian Human Rights Commission; Dr Olawale Maiyegun, Director of Social Affairs, The African Union Commission; and H.E. Right Honourable Jacob L. Oulanyah, Deputy Speaker of Parliament, Republic of Uganda.

The session was chaired by Mr David Mugawe, Executive Director, ACPF.



Dr Olawale Maiyegun, H.E. Right Honourable Jacob L. Oulanyah, Dr Marta Santos Pais and H.E. Mrs Asmaru Berihun (from left to right)

Dr Marta Santos Pais

In her closing message, Dr Marta noted that the problems facing the child justice system were not unique to Africa but were global. She however advised that commitment to child justice should begin with the child; the system should aim at safeguarding the child and ensuring that children trust the system. For this reason, it is important that children are made to feel that they are part of the system. It is also important to invest in raising awareness among children and to sensitise them on how to access the system. Towards this end, it would be important to share the outcomes of the Conference with children across the world.

Dr Marta indicated that it is important to put emphasis on prevention as 90 – 95% of children should not be in system. Additionally, it is important that justice be looked at broadly beyond juvenile justice to focus on responses to all the needs of children. It is also important to narrow the gap between the law and reality. The law should be specific and clear and should provide for

penalties for those who subject children to violence while in detention and a clear message should be sent out regarding violence against children. The law should also establish child-friendly detention centres taking into account the best interest of the child and promoting reintegration. Regarding the traditional system, it is important to learn more about these in order to overcome the challenges that compromise the best interests of the child under these systems.

H.E Mrs Asmaru Berihum

Mrs Asmaru indicated that the Conference was evidence of a commitment on the African continent to the promotion of child justice and that the African continent was doing everything within its power to invest in child justice. The speaker related the Ethiopian experiences and approach, which included providing vulnerable people including children with free legal services. The Conference was an opportunity for cooperation in achieving access to justice for children formal and informal. The Conference was also an opportunity for others to learn from those who are passionate about the protection of children. Governments in Africa should reconsider how well they have performed in ensuring access to justice for children.

Dr Olawale Maiyegum

Dr Olawale indicated that the African Union takes the issues of children very seriously and had put children as a top priority on its agenda. He noted that the presence at the Conference of 4 members out of the 11 members of the African Committee on the Rights of the Child was testimony to the AU position on children. He observed that the ACRWC has almost become universally acceptable practice and pointed out that AU has taken serious steps to address dangerous traditional practices.

On the way forward, Dr Olawale noted that we do not need another declaration because they are enough declarations in place. He stated that what is needed is action. The question to ask was one of what we are doing to promote the welfare of the child. Dr Olawale observed that AU through the Cairo Declaration of 2007 had developed a monitoring and evaluation tool to follow the actions of member states in relation to children. The speaker noted that as we move to hold governments accountable it was also important to hold civil society accountable on the role it had played to promote children's rights on the continent. Dr Olawale expressed his commitment to ensuring that issues raised at the Conference are put on the agenda of the African Union.

H.E Hon. Jacob Oulanya

H.E Hon. Oulanya remarked that he is by no means an expert like those who had gathered in the conference. H.E indicated that the choice of Uganda was proof the commitment Uganda has made on issues of deprivation of child liberty. The country had adopted and domesticated a number of instruments on children's rights and had created legislation in the area.

His excellence assessed the conference in terms of its objective, which included bringing together over 300 participants from all over the world, something which had been achieved. The second

objective was adopting Guidelines on Child Justice in Africa, these too had been adopted. The Conferences was also intended to have a deep conversation on a number of child rights issues such as deprivation of liberty, harmonization of law and reintegration and rehabilitation. There was evidence that conversation had been held on these issues.

Reciting the law of negligence, the Honourable Deputy Speaker referred to the duty of care and strictly liability as well as the duty to rescue, known as the drowning child principle. In relation to this, Honourable Olunyah asked whether civil society in Africa was doing its work properly. He asked whether resources obtained by child rights NGOs on the continent were being used for the purposes for which they are obtained. There is need for NGOs too to be accountable.

The speaker concluded by indicating that child rights activists who were doing it as a job would only draw a cheque and not care much, what was required was passion for child rights protection.

On this note the Conference was closed.

ANNEX 1: LIST OF PARTICIPANTS

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
1	MR.	ABANGALA	WILLONDJA AWI	SOS JEUNESSE ET ENFANCE EN DETRESSE - SOS JED	SECRETARY GENERAL	CONGO, DR	SOS_JEDFIZI@YAHOO.FR
2	MR.	ABDELAZIIZ	HAAMUD	SOMALI CHILD CONCERN	CHILD PROTECTION MENTOR	SOMALIA	SOCCOSOMALIA@GMAIL.COM
3	MR.	ABDUL-MANAFF	KEMOKAI	DEFENCE FOR CHILDREN SIERRA LEONE	EXECUTIVE DIRECTOR	SIERRA LEONE	MANAFFKEMOKAI@YAHOO.CO.UK
4	MR	ADAM	MUGURUMA	LEEWAY UGANDA	ADVOCATE	UGANDA	MUGURUMA2@YAHOO.COM
5	MME	AGNES	KABORE OUATTARA	MINISTRE DE L'ACTION SOCIALE ET DE LA SOLIDARITE N	DIRECTOR GENERAL	BURKINA FASO	AGNESKABORE@HOTMAIL.COM
6	MS	AGNES	ALOBO	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	TECHNICAL ADVISOR-OVC	UGANDA	ATOAGNESALOBO@YAHOO.COM
7	MR	AHMED	ISMAIL ALI	MINISTRY OF JUSTICE - SOMALILAND	DIRECTOR OF CHILD RIGHTS DEPARTMENT	SOMALIA	E.KITSA@SCSOM.ORG
8	MS	AISHA	RAHAMATALI	DEFENCE FOR CHILDREN INTERNATIONAL	ADVOCACY OFFICER	SWITZERLAND	ADVOCACY@DCI-IS.ORG
9	MR	AKWASI	AMANKWAAH	GHANA NGOS COALITION ON THE RIGHTS OF THE CHILD	PROGRAMMES OFFICER	GHANA	BARIMAAKWASI@HOTMAIL.COM
10		ALALO	CHRISTINE	UGANDA POLICE	AG.COMM OF POLICE CHILD AND FAMILY PROTECTION DEPT	UGANDA	ALALOCHRISTINE@YAHOO.COM
11	MS	ALICE MAPENZI	KUBO	CHILD HELPLINE INTERNATIONAL	PROGRAMME MANAGER FOR AFRICA	NETHERLANDS	ALICE@CHILDHELPLINEINTERNATIONAL.ORG
12		ALIOU	MAIGA	UNICEF DRC	CHILD PROTECTION SPECIALIST	CONGO, DR	ALMAIGA@UNICEF.ORG
13	MS	ALISON	HANNAH	PENAL REFORM INTERNATIONAL	EXECUTIVE DIRECTOR	UNITED KINGDOM	HEADOFSECRETARIAT@PENALREFORM.ORG
14	H.E. MR.	ALMAW	MENGIST	MINISTRY OF WOMEN, CHILDREN AND YOUTH AFFAIRS	STATE MINISTER	ETHIOPIA	ALMZEH@YAHOO.COM
15	MISS	AMONG	HOPE	UNIVERSITY OF PRETORIA	DOCTORAL CANDIDATE [LLD]	SOUTH AFRICA	HOPE.CHODRY@GMAIL.COM
16	MS	ANTA	GOH MARTIN	NGO GROUP FOR THE CRC	ADVOCACY OFFICER	SWITZERLAND	GOH@CHILDRIGHTSNET.ORG
17	DR	ANN	SKELTON	CENTRE FOR CHILD LAW	DIRECTOR	SOUTH AFRICA	ANN.SKELTON@UP.AC.ZA
18	MRS	ANNE	BRUNEAU	COMMUNICATION NON VIOLENTE BELGIQUE	TRAINER	BELGIUM	ANNEBRUNEAUCNV@YAHOO.FR

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
19	MRS	ANNE AKINYI	EJAKAIT WEKESA	IDAY-INTERNATIONAL	EAST AFRICA REGIONAL COORDINATOR	KENYA	ANNE.EJAKAIT@GMAIL.COM
20	MRS	ANNETTE	NTIGNOI	ASSOCIATION GRAIN DE SABLE (AGS)	PRESIDNET	BELGIUM	ANNETTE.NTIGNOI@GRAINDESABLES.ORG
21	MS.	ANN-KRISTIN	VERVIK	PLAN NORWAY	SENIOR CHILD RIGHTS ADVISER	NORWAY	ANN-KRISTIN.VERVIK@PLAN-NORGE.NO
22	REV	ANTHONY	TSIBU-DARKO	POTTER'S HOUSE FOUNDATION	PRESIDENT	GHANA	G HARFO2003@YAHOO.COM
23	MR	ANTHONY	OYUKO	UGANDA REGISTRATION SERVICE BUREAU	HEAD CIVIL REGISTRATION	UGANDA	OYUKOANTHONY@HOTMAIL.COM
24	MR.	ANTHONY STEPHEN	KIGAI	REFLECT CONSULT	MONITORING AND EVALUATION SPECIALIST.	UGANDA	ASKIGAI@GMAIL.COM
25		ARCADE	MUNAGARUTO KE	NEW FAMILY FOR DEVELOPMENT - IDAY - BURUNDI			
26	MR	ARISTIDE JEAN FRANCIS	ZONGO	ASSOCIATION BURKINABE POUR LA SURVIE DE L'ENFANCE	EXECUTIVE DIRECTOR	BURKINA FASO	FZONGO@ABSEBURKINA.ORG
27	MR.	ARTHUR	LAROK	AFRICAWIDE MOVEMENT FOR CHILDREN	INTERIM COORDINATOR	UGANDA	LAROK@HOTMAIL.CO.UK
28	MR	ASHER	NYAKUTAR	MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT	HEAD/ NAGURU REMAND HOME	UGANDA	ASIKUAS@YAHOO.COM
29	H.E. MS.	ASMARU	BERIHUN	ETHIOPIAN HUMAN RIGHTS COMMISSION	COMMISSIONER FOR WOMEN AND CHILDREN	ETHIOPIA	ELALUBERIHUN@YAHOO.COM
30	MS	AYESIZA	HAWAH	HOIMA LOCAL GOVERNEMET	COMMUNITY DEVELOPMENT OFFICER	UGANDA	HOIMAIUIU@YAHOO.COM
31	MS.	AYSEL	SABAHOGLU	DEFENCE FOR CHILDREN NETHERLANDS	TEAM LEADER	NETHERLANDS	A.SABAHOGLU@DEFENCEFORCHILDREN.NL
32	DR	BABUGURA	FIDELIS	NATIONAL ASSOCIATION OF WOMEN ORGANISATIONS IN UGANDA	BOARD MEMBER	UGANDA	NAWOU@NAWOUUGANDA.ORG
33	MRS	BAMBA	KOUMBA	BICE-IVORY COAST	ASSISTANTE JURIDIQUE	COTE D'IVOIRE	KOUMBABAMBA@ROCKETMAIL.COM
34		BARYAYEBWA			DIRECTOR SOCIAL PROTECTION	UGANDA	

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
35	MR.	BAUDOUIN	KIPAKA	ARCHE D'ALLIANCE	COORDINATOR	CONGO, DR	ARCHEDALLIANCE@YAHOO.FR
36	MS	BEATRICE	AYIKORU	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	SENIOR YOUTH OFFICER	UGANDA	BAYIKORU@YAHOO.CO.UK
37	MS.	BEATRICE	OGUTU	DCI	PROGRAMME MANAGER	KENYA	BEATRICE.OGUTU@ICSAFRICA.ORG
38	MR	BENDA	BAGUMA	PRESIDENTS OFFICE	DIRECTOR	UGANDA	BENDA@GMAIL.COM
39	DR	BENEDICTA	DAUDU	FACULTY OF LAW, UNIVERSITY OF JOS	LECTURER	NIGERIA	BENNYDAUDU@YAHOO.CO.UK
40	MR	BENJAMIN	ALIPANGA	GULU UNIVERSITY	LECTURER	UGANDA	BENPANGA@GMAIL.COM
41	MR	BENJAMIN K.	CHIRCHIR	KAMITI MEDIUM PRISON	SECURITY OFFICER	KENYA	CHIRCHIRBENJAMIN@YAHOO.COM
42	PROF	BENOIT	VAN KEIRSBILCK	DEFENCE DES ENFANTS - INTERNATIONAL BELGIQUE	PRESIDENT	BELGIUM	INFO@DEI-BELGIQUE.BE
43	DR	BENYAM DAWIT	MEZMUR	UWC/ACERWC	MELLON RESEARCH FELLOW/ VICE-CHAIR (2ND)	SOUTH AFRICA	BENYAM.MZMUR@GMAIL.COM
44	H.E. MR	BERHANU	TSEGAYE	MINISTRY OF JUSTICE - ETHIOPIA	STATE MINISTER	ETHIOPIA	
45	MR.	BERNARD	OJOM	WAR CHILD CANADA	LEGAL PROGRAM MANAGER	UGANDA	OJOMBERNARD@YAHOO.COM
46	MR.	BERTH	NTUMBA KANIKI	ACTIONS DE DEVELOPEMENT INTEGRAL DURABLE(ADID)	COORDONATRICE	COTE D'IVOIRE	BERTHKANIKI@YAHOO.FR
47	MR.	BEYAN	PEWEE	LIBERIAN CHILDREN'S PARLIAMENT	CHAIRMAN FOR THE RIGHTS OF CHILDREN COMMITTEE	LIBERIA	FBEYANHO@HOTMAIL.COM
48	MS.	BIRGITTA	WEIBAHR	EMBASSY OF SWEDEN IN KAMPALA	FIRST SECRETARY	UGANDA	BIRGITTA.WEIBAHR@FOREIGN.MINISTRY.SE
49	MS	BRENDA	KHAWANGA	MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT	ADMINISTRATOR	UGANDA	BRENDAHKHAN@GMAIL.COM
50	MS	BRENDAH	ACHIENG OTEDO	TORORO DISTRICT LOCAL GOVERNMENT	COMMUNITY DEVELOPMENT OFFICER	UGANDA	BRENDAHBREF@YAHOO.COM

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
51	MS	BRIDGET	ASALE	TORORO DISTRICT LOCAL GOVERNMENT	COMMUNITY DEVELOPMENT OFFICER	UGANDA	ASALEBRIDGET@GMAIL.COM
52	MR	BRIGHT	ANTHONY MALERE	ANPPCAN-UGANDA CHAPTER	PROGRAMME OFFICER	UGANDA	ANPPCAN@ANPPCANUG.ORG
53	MRS	BRIGITTE	KAMANDA KAMWANYA	SOLIDARITE POUR UN MONDE MEILLEUR	ASSISTANT	CONGO, DR	SOLIDARITENGO@GMAIL.COM
54	MS	CARINA	DU TOIT	CENTRE FOR CHILD LAW	ATTORNEY	SOUTH AFRICA	CARINA.DUTOIT@UP.AC.ZA
55	MR	CEDRIC	FOUSSARD	INTERNATIONAL JUVENILE JUSTICE OBSERVATORY	DIRECTOR	BELGIUM	CFOUSSARD@OIJJ.ORG
56	DR.	CHARMAIN	BADENHORST	COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH (CSIR)	SENIOR RESEARCHER	SOUTH AFRICA	CBADENHORST@MTNLOADED.CO.ZA
57	MS.	CHIARA	GUIDETTI	IDEABORN	EXECUTIVE DIRECTOR	SPAIN	CGUIDETTI@IDEABORN.COM
58	MS	CHIDINMA	ONYEBUCHI	DEFENCE FOR CHILDREN INTERNATIONAL NIGERIA	PROGRAMME ASSISTANT INTERN	NIGERIA	DCINIGERIALAGOS@YAHOO.COM
59	MR	CHRISTIAN	GARUKA	CSA	HUMAN RIGHTS RESEARCHER	RWANDA	CHRISGARUKA@YAHOO.FR
60	MR.	CHRISTIAN	VAN DEN KERCKHOFF	UNICEF	CHILD PROTECTION OFFICER	UGANDA	VDK.CHRISTIAN@GOOGLEMAIL.COM
61	MS.	CHRISTINE	MUSAIDIZI MUTENGWAYIRE	CHILDREN'S VOICE	PROGRAM MANAGER	CONGO, DR	CHRISTINEMUSAID@HOTMAIL.COM
62	MS	CHRISTINE	GUWATUDDE KINTU	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	PERMANENT SECRETARY	UGANDA	PS@MGLSD.CO.UG
63	MS	CHRISTINE	NAMWANJE	ACTION TO POSITIVE CHANGE ON PEOPLE W/ DISABILITY	HEADMISTRESS	UGANDA	CHRISTINENAMWANJE@GMAIL.COM
64	MS.	CHRISTINE	KATABARWA SUUBI	HOPE 21 PROJECT	EXECUTIVE DIRECTOR	UGANDA	CHRISTINEKATABARWA@YAHOO.CO.UK
65	MS.	CHRISTINE MARGARET	KAJUMBA	MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT	PROBATION AND WELFARE OFFICER	UGANDA	KAJUMBACHRISTINE1@YAHOO.CO.UK
66	DR	CHRISTOPHER	MBAZIRA	SCHOOL OF LAW, MAKERERE UNIVERSITY	ASSOCIATE PROFESSOR	UGANDA	BAZZIRA@YAHOO.CO.UK

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
67	MRS	CLAIRE	PAUCHER	TRIBUNAL POUR ENFANTS DE PONTOISE	CHILDREN'S JUDGE	FRANCE	CLAIRE.PAUCHER @JUSTICE.FR
68	MRS	CLARE	BANGIRANA	CENTRE FOR JUSTICE STUDIES AND INNOVATIONS	NATIONAL ASSOCIATE - CSO PARTICIPATION	UGANDA	AHABWEC@YAHOO.COM
69	MR	CRIS	MAGOBA	OFFICE OF THE PRIME MINISTER, REPUBLIC OF UGANDA	SENIOR INFORMATION OFFICER	UGANDA	CMAGOBA@MYSELF.COM
70	MRS.	DAISEY	MUCULEZI	SAVE THE CHILDREN	PROGRAMME MANAGER CHILD RIGHTS GOVERNANCE	UGANDA	SCIUG@SCIUG.ORG ; D.MUCULEZI@SCIUG.ORG
71	MR	DAVID	KAFAMBE	DSW	YOUTH TRUCK COORDINATOR	UGANDA	DKAFAMBE@GMAIL.COM
72	MR.	DAVID	MUGAWE	THE AFRICAN CHILD POLICY FORUM (ACPF)	EXECUTIVE DIRECTOR	ETHIOPIA	MDAVID@AFRICANCHILDFORUM.ORG
73	MR.	DEOGRATIAS	YIGA	ANPPCAN UGANDA	EXECUTIVE DIRECTOR	UGANDA	DYIGA@ANPPCANUG.ORG
74	MS.	DINAH	MWESIGYE	RETRAK UGANDA	DEPUTY COUNTRY DIRECTOR (CURRENTLY ACTING)	UGANDA	DINAH.MWESIGYE@RETRAK.ORG
75	MS	DORAH	MUSIIMIRE	MINISTRY OF GENDER	PROBATION AND WELFARE OFFICER	UGANDA	DMUSIIMIRE@YAHOO.CO.UK
76	MS	DORAH	ANDEZU	ACTION FOR CHILDREN	CHILD PROTECTION OFFICER	UGANDA	OGUDADCE@YAHOO.CO.UK
77	MS	DOREEN	KYALIGONZA	DEFENCE FOR CHILDREN INTERNATIONAL UGANDA	PROGRAMME COORDINATOR	UGANDA	DCIUG@YAHOO.COM
78	MS	DORIS	SONSIAMA	REFUGEE LAW PROJECT	INTERN	UGANDA	DORDORSIE@YAHOO.COM
79	MR	DUNCAN	CHANDO	GLOBAL PEACE YOUTH CORPS - KENYA	DIRECTOR OF EDUCATION	KENYA	DCHANND@YAHOO.COM
80	MR.	EBRIMA	SAIDY	WAR CHILD UK	COUNTRY DIRECTOR	UGANDA	EBRIMA@WARCHILD.ORG.UK
81	MR.	EDWARD	OUMA	CHILDREN'S LEGAL ACTION NETWORK	EXECUTIVE DIRECTOR	KENYA	EDWARD@CLAN.OR.KE
82	MR	EDWARD	OCHOM	UGANDA POLICE FORCE	DIRECTOR CRIMINAL INVESTIGATIONS DEPARTMENT	UGANDA	OCHOMEDWARD@YAHOO.COM

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
83	H.E. MR.	EDWARD	KIWANUKA SSEKANDI	REPUBLIC OF UGANDA	VICE-PRESIDENT	UGANDA	
84	MISS	ELEONORA	MANSI	UNICEF	CHILD PROTECTION OFFICER (UNV)	UGANDA	ELEMANSI@HOTMAIL.COM
85	PASTOR	ELFAS	ZADZAGOMO SHANGWA	DEFENCE FOR CHILDREN INTERNATIONAL ZIMBABWE	NATIONAL DIRECTOR	ZIMBABWE	DCI-ZIMBABWE@LIVE.COM
86	MS.	ELLA	STEFANA	IDAY-INTERNATIONAL	COMMUNICATION OFFICER	BELGIUM	ESTEFANA@IDAY.ORG
87	MS	EMILY	AJIAMBO	MINISTRY OF GENDER, LABOR & SOCIAL DEVELOPMENT	SENIOR SOCIAL GERONTOLOGIST	UGANDA	AJIAMBO_EMILY@YAHOO.COM
88	DR.	EMILY IFE	ALEMIKA	UNIVERSITY OF JOS	LECTURING/ SENIOR LECTURER	NIGERIA	EALEMIKA@YAHOO.COM
89	MR	EMMANUEL	KUSEMERERWA	MALARIA AIDS & RIGHTS ORGANIZATION	EXECUTIVE DIRECTOR	UGANDA	EAKUSEMERERWA@GMAIL.COM
90	MR	EMMANUEL	KIBUUKA	YOUTH REVIVAL ASSOCIATION	EXECUTIVE DIRECTOR	UGANDA	KIBUUKAROTARY@GMAIL.COM
91	MR	ERIC BUNNET	KITSA	SAVE THE CHILDREN	PROGRAMME MANAGER CHILD PROTECTION	SOMALIA	EMAIL E.KITSA@SCSOM.ORG
92	MS.	ESKEDAR	BEYENE	THE AFRICAN CHILD POLICY FORUM - ACPF	OPERATIONS OFFICER	ETHIOPIA	BEYENE@AFRICANCHILDFORUM.ORG
93		ESSEWEGNON LAURENT	AKOHIN	DCI			
94	MS	EUNICE	APIO	FACILITATION FOR PEACE AND DEVELOPMENT (FAPAD)	EXECUTIVE DIRECTOR	UGANDA	FAPAD2001@YAHOO.COM
95	MS.	EUNICE	KIRUNDA NSAIRE	UGANDA YOUTH DEVELOPMENT LINK- UYDEL	MONITORING AND EVALUATION OFFICER	UGANDA	NSAIREE@YAHOO.COM
96	MR.	FASSIL	W/MARIAM	OAK FOUNDATION	COORDINATOR, EAST AFRICA AND CHILD ABUSE PROGRAMME	ETHIOPIA	
97	MR	FINLAY	WOOD	INDEPENDANT	CONSULTANT	UGANDA	FINLAYWOOD@ME.COM
98	MS	FLORENCE	OCHAGO	UGANDA LAW REFORM COMMISSION	ASSISTANT COMMISSIONER LAW REFORM	UGANDA	FOCHAGO@YAHOO.CO.UK

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99	MR.	FODAY M.	KAWAH	DEFENCE FOR CHILDREN INTERNATIONAL-LIBERIA	EXECUTIVE DIRECTOR	LIBERIA	DCILIBERIA@GMAIL.COM
100	MR	FOROMO FREDERIC	LOUA	MEMES DROITS POUR TOUS (MDT)	PRESIDENT DE MDT	GUINEA	MDTGUINEE@YAHOO.FR
101	MR	FRANCIS	SSUUBI	WELLS OF HOPE MINISTRIES	EXECUTIVE DIRECTOR	UGANDA	SSUUBI@WELLSOFHOPE.ORG
102	MR	FRANCISCO	CASTELLANOS GARCIA	REINTEGRA DNI MEXICO	COMUNIDAD TERAPEUTICA REEDUCATIVA	MEXICO	FCASTELLANOS_REINTEGRA@HOTMAIL.COM
103	MR	FRED	KAKEMBO	UGANDA CHILDREN CENTRE	DIRECTOR	UGANDA	KAKEMBOFRED@YAHOO.COM
104	MR	FREDERICK	LUTOMA FUANYI	SOLIDARITE POUR UN MONDE MEILLEUR	CHARGE DE REINSERTION	CONGO, DR	SOLIDARITENGO@GMAIL.COM
105	H.E. MR.	FREDERICK	RUHINDI	JUSTICE AND CONSTITUTIONAL AFFAIRS	DEPUTY ATTORNEY GENERAL AND DEPUTY MINISTER	UGANDA	
106	MR.	FREDRICK	RUHINDI	MINISTRY OF JUSTICE	DEPUTY ATTORNEY GENERAL	UGANDA	OLGASEMAK@YAHOO.CO.UK
107	MR.	FRIDO	HERINCKX	WC HOLLAND			
108	MR	GABRIEL	TIBAYUNGWA	DEFENCE FOR CHILDREN INTERNATIONAL	BOARD CHAIRMAN	UGANDA	GABRIET2000@YAHOO.COM
109	MR.	GAHIGA	AUDACE	OBSERVATOIRE BURUNDAIS DES PRISONS	PRESIDENT	BURUNDI	OBPBU@YAHOO.FR
110	BISHOP	GAPIRA	JEAN FAUSTIN	RWANDA GATEWAY INTERNATIONAL MISSIONS	CHAIRMAN	RWANDA	GATEWAYINTERRDA@YAHOO.FR
111	MR.	GARAKUMBE	INNOCENT	DEFENCE FOR CHILDREN INTERNATIONAL - UGANDA	EXECUTIVE DIRECTOR	UGANDA	GARAKUMBE@YAHOO.COM
112	DR	GEORGE	AMONG	DEFENCE FOR CHILDREN INTERNATIONAL, GHANA SECTION	EXECUTIVE SECRETARY	GHANA	DCIGHANA@YAHOO.COM
113	MR	GEORGE	KALAMU	BETHEL PRIMARY SCHOOL	TEACHER	UGANDA	GEORGEKALAMU@GMAIL.COM
114	MRS	GEORGINE	MUKAYIRANGA	ARDHO	EXECUTIVE SECRETARY	RWANDA	ARDHO@RWANDA1.COM

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115	MR	GERMAIN	LUFUNGULA	ENFANT POUR L'AVENIR ET LE DEVELOPPEMENT(EAD)	PROGRAM CORDINATOR	CONGO, DR	EADEV2005@YAHOO.FR
116	MR	GEZAHEGN	KEBEDE	PLAN INTERNATIONAL	REGIONAL DIRECTOR, EAST & SOUTHERN AFRICA	KENYA	GEZAHEGN.KEBEDE@PLAN-INTERNATIONAL.ORG
117	MR	GILBERT	NGAIRA	KENYA ALLIANCE FOR ADVANCEMENT OF CHILDREN	PROGRAMME OFFICER	KENYA	GNGAIRA@GMAIL.COM
118	MS.	GILLIAN	KIPLAGAT	WC HOLLAND			
119	MRS.	GRACE	MALERA	THE MALAWI HUMAN RIGHTS COMMISSION	EXECUTIVE DIRECTOR	MALAWI	GMALERA@YAHOO.CO.UK
120	MRS	GRACE	BABIHUGA NUWAGABA	UGANDA LAW SOCIETY	EXECUTIVE DIRECTOR	UGANDA	ED@ULS.OR.UG
121	MR	GREGOIRE	NDOMBASI NSINGI	SOLIDARITE POUR UN MONDE MEILLEUR	CHARGE DE LA PRISE EN CHARGE	CONGO, DR	SOLIDARITENGO@GMAIL.COM
122	MRS.	HARRIET	KYAKUHA NAKIMULI	NATIONAL COUNCIL FOR CHILDREN	PROGRAM OFFICER	UGANDA	HNAKIMULI@YAHOO.COM
123	MS.	HARRIET	LUYIMA		DIRECTOR OF LABOUR	UGANDA	
124	MRS	HAWA	SIDIBE	ADPDH	PRESIDENT	MAURITANIA	ONGADPDH@GMAIL.COM
125	MS	HELLEN	TOMBO	PLAN INTERNATIONAL	REGIONAL CHILD RIGHTS SPECIALIST	KENYA	HELLEN.TOMBO@PLAN-INTERNATIONAL.ORG
126	MS	HILDAH	LAMWAKA	MAKERERE UNIVERSITY BUSINESS SCHOOL	TEAM LEADER	UGANDA	BLAMHILDAH@YAHOO.COM
127	MS	HOPE	BAGOTA	UGANDA HUMAN RIGHTS COMMISSION	VOLUNTEER	UGANDA	HOPE.BAGOTA@UHRC.UG
128	MR.	IDRISSA	DJIBRILLA	DEI NIGER	PRESIDENT	NIGER	IDRISSA_DJIBRILLA@YAHOO.FR
129	MR.	IKECHUKWU	O. ANYIM	CHILD AND ENVIRONMENTAL DEVELOPMENT ASSOCIATION-	NATIONAL COORDINATOR	GAMBIA	MORRISANYIM@YAHOO.COM
130	MS	ILEANA	BELLO	DEFENCE FOR CHILDREN INTERNATIONAL	EXECUTIVE DIRECTOR	SWITZERLAND	DIRECTOR@DCI-IS.ORG

S/N	TITLE	FIRST NAME	LAST NAME	NAME OF ORGANISATION	JOB TITLE / POSITION	COUNTRY / LOCATION OF OFFICE	E-Mail
131	MRS	IRADUKUNDA	ADELINÉ	ASSOCIATION BURUNDAISE POUR LE SECOURS ET LE DEVEL	VICE PRESIDENTE	BURUNDI	ONGABSD@YAHOO.FR
132	MR.	ISAAC	SINGURA	MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS	STATE ATTORNEY	UGANDA	KSINGURA@GMAIL.COM
133	MR	ISKIL	YUSSUF	CHILD DEVELOPMENT AND CONCERN FOUNDATION	EXECUTIVE DIRECTOR	NIGERIA	CHILDANDDEVELOPMENT@YAHOO.COM
134	MR.	ISSA	OMAR DJAMA	RESEAU DE JEUNE DEVELOPPEMENT DURABLE ET OMD	PRESIDENT	DJIBOUTI	ISSA_012@HOTMAIL.COM
135	MR	ISSA	AHMED NUR	UNICEF	CHILD PROTECTION OFFICER	SOMALIA	IANUR@UNICEF.ORG
136		IVICA	KUJUNDZIC	HIGH ADMINISTRATIVE COURT OF CROATIA	JUDGE	CROATIA	PERKUJU@YAHOO.COM
137	MRS	IYABO	OGUNNIRAN	FACULTY OF LAW, UNIVERSITY OF LAGOS	LECTURER	NIGERIA	FACULTYOFLAW-UNILAG.COM
138	H.E. RIGHT HON.	JACOB	L. OULANYAH	REPUBLIC OF UGANDA	DEPUTY SPEAKER OF PARLIAMENT	UGANDA	
139	MR.	JAMES	KABOGGOZA	MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT.	ASSISTANT COMMISSIONER/CHILDREN AFFAIRS	UGANDA	KABOGGOZASS@YAHOO.COM
140	MS	JAMIRAH	KISAKYE	KYAMBOGO UNIVERSITY KAMPALA	TEAM LEADER	UGANDA	KJAMIRAH@YAHOO.COM
141	MS	JANE	KIM	UNICEF	CHILD PROTECTION SPECIALIST	UGANDA	JKIM@UNICEF.ORG
142	MS.	JANE	MPAGI		DIRECTOR GENDER AND COMMUNITY DEVELOPMENT	UGANDA	
143	MS	JANE STELLA	OGWANG	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	PRINCIPAL PROBATION & WELFARE OFFICER	UGANDA	JSOGWANG@YAHOO.CO.UK
144	PROF.	JAPP	DOEK	IBOT	MEMBER	NETHERLANDS	JAAP@JAPPEDOEK.NL
145	MR	JARED AKAMA	ONYARI	NEW AFRICA PROGRESSIVE FORUM	EXECUTIVE DIRECTOR	KENYA	NEWAFRICAPROGRESSIVEFORUM@GMAIL.COM
146	MR.	JAUME	GUARDANS	IDEABORN	DIRECTOR	SPAIN	JGUARDANS@IDEABORN.COM

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147	MR	JEAN-JACQUES	SCHUL	IDAY-INTERNATIONAL	PRESIDENT	BELGIUM	JJSCHUL@IDAY.ORG
148		JEAN-LUC	RONGE				
149	MR	JEAN-MAURICE	MURET	ESPERANCE EN CASAMANCE	MEMBER	SWITZERLAND	VIVEJM@HOTMAIL.COM
150	MS.	JEANNE FLORA	KAYTESI	AFRICA UNION COMMISSION	WOMEN, GENDER AND DEVELOPMENT DIRECTORATE	ETHIOPIA	KAYTESIJF@AFRICA-UNION.ORG
151		JEANNOT	KASSA KANDOLO	CHILDREN'S VOICE	EXPERT EN PROTECTION LEGALE ET SOCIALE DE L'ENFANT	CONGO, DR	JKASSAKANDOLO@YAHOO.FR
152		JEANNOT	KASSA KANDOLO	CHILDREN'S VOICE	EXPERT EN PROTECTION LEGALE ET SOCIALE DE L'ENFANT	CONGO, DR	JKASSAKANDOLO@YAHOO.FR
153	MR	JEPHTHAH	IGHODARO	DEFENCE FOR CHILDREN INTERNATIONAL NIGERIA	PROGRAMME COORDINATOR	NIGERIA	DCINIGERIALAGOS@YAHOO.COM
154	MR.	JESSE	RUDY	INTERNATIONAL JUSTICE MISSION	FIELD OFFICE DIRECTOR	UGANDA	JRUDY@IJM.ORG
155	MS.	JESSICA	SENYONJO	PLAN UGANDA	CHILD RIGHTS ADVOCACY SPECIALIST	UGANDA	JESSICA.SENYONJO@PLAN-INTERNATIONAL.ORG
156	MR	JIMMY	OBURU	MINISTRY OF JUSTICE AND CONSTITUTIONAL	PRINCIPAL STATE ATTORNEY	UGANDA	JOBURU@YAHOO.COM
157	MS	JOANITA	BUSHARA	LAW DEVELOPMENT CENTRE	LECTURER	UGANDA	JBUSHARA@YAHOO.CO.UK
158	MR	JOHN	MUZEE RODINA	AVEVENA	PRESIDENT	CONGO, DR	IDAYKIVU.RDC@GMAIL.COM
159	MR.	JOHN	SSENYONGA	DEFENCE FOR CHILDREN INTERNATIONAL UGANDA	DEPUTY EXECUTIVE DIRECTOR	UGANDA	NYONGAJOHN@YAHOO.CO.UK
160	MR	JOHN	MANGENI	DEFENCE FOR CHILDREN INTERNATIONAL	FINACE & ADMINISTRATION ASSISTANT	UGANDA	MANGENIJOHN@YAHOO.COM
161	MR	JOHNSTONE SIKULU	WANJALA	SIMA COMMUNITY BASED ORGANIZATION	PROGRAMME COORDINATOR	KENYA	SIKULUJ@YAHOO.COM
162	MR	JONATHAN	LEA-HOWARTH	WAR CHILD CANADA	PROGRAMME DIRECTOR	UGANDA	JONATHAN@WARCHILD.CA

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163	MR	JOSEPH	MEVOGNON	FONDATION JOSEPH THE WORKER/ STRUCTURE LAZARIENNE	COORDONNATEUR PROJET JUSTICE JUVENILE	BENIN	FONDATIONJOSEPHTHEWORKER@GMAIL.COM
164	MASTER	JOSEPH	OPOKU	CHILDREN AND YOUTH IN BROADCASTING	CHILDS RIGHT ADVOCATE	GHANA	JOPOKU2010@GMAIL.COM
165	MR.	JOSEPH	KILAMA	REMAND HOME (GULU LOCAL GOVERNMENT)	SENIOR ASSISTANT COMMUNITY DEVELOPMENT OFFICER	UGANDA	JOSKILS@YAHOO.CO.UK
166	MR	JOSEPH	KYEYUNE	EAST AFRICA COMMUNITY DEVELOPMENT ASSOCIATION	COORDINATOR	UGANDA	KYEYUNEJOSEPH@ROCKETMAIL.COM
167	MR	JOSEPH	WALUGEMBE	ACTION ON DISABILITY AND DEVELOPMENT	COUNTRY DIRECTOR	UGANDA	JWALUGEMBE@ADDUGANDA.ORG
168	MR.	JOSEPH	ANGOLE	SCHOOL OF LAW, MAKERERE UNIVERSITY	GRADUATE STUDENT	UGANDA	ANJOSEH@YAHOO.COM
169	MRS	JOSEPHINE	GITONGA	PARENTING IN AFRICA NETWORK	PROGRAM MANAGER	KENYA	JOSEPHINE.GITONGA@PARENTINGINAFRICA.ORG
170	MS.	JOSEPHINE	KAMARA	DEFENCE FOR CHILDREN INTERNATIONAL	CONSULTANT TO SUPPORT THE PREPARATORY ACTIVITIES	UGANDA	JOSEPHINEKMR@YAHOO.COM
171	MS	JOSEPHINE	KANKUNDA	FOUNDATION FOR HUMAN RIGHTS INITIATIVE (FHRI)	SENIOR RESEARCHER	UGANDA	JOKANKUNDA@YAHOO.COM
172	MS.	JOYCE	WANICAN	USAID	SENIOR YOUTH AND OVC ADVISOR	UGANDA	JWANICAN@USAID.GOV
173	MR.	JUAN PEDRO	FUMEIRO ARRIOLA	DNI INTERNACIONAL	ABOGADO PTE. DNI URUGUAY MEMBRO CEI	URUGUAY	JPFUMEIRO@GMAIL.COM
174	PROF.	JULIA	SLOTH-NIELSEN	FACULTY OF LAW, UNIVERSITY OF THE WESTERN CAPE	DEAN	SOUTH AFRICA	JSLOTH-NIELSEN@UWC.AC.ZA
175	MISS	JULIET	NAKAYENGA	DCI UGANDA	VOLUNTEER	UGANDA	NAKAYEJ@YAHOO.COM
176	MR	KARIMANZIRA	PASCAL	OBSERVATOIRE BURUNDAIS DES DROITS DE LA PERSONNE H	PRESIDENT	BURUNDI	OBDPHBURUNDI@YAHOO.FR
177	MR	KENNETH	MULIFE	JUDICIARY - ZAMBIA	SENIOR RESIDENT MAGISTRATE- LUSAKA	ZAMBIA	KENNETHMULIFE@YAHOO.COM
178	MR	KENNETH	OKWIR KAKIIZA	NORWEGIAN REFUGEE COUNCIL	PROJECT COORDINATOR (EDUCATION)	UGANDA	KENNETH.KAKIIZA@NRC.OR.UG OR KOKWIR@YAHOO.COM

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179		KERWEGI	ANTHONY	CONCERNED PARENTS ASSOCIATION	EXECUTIVE DIRECTOR	UGANDA	CPAHEADOFFICE@YAHOO.COM
180	HON.	KIBUULE			MINISTER OF STATE FOR CHILDREN AND YOUTH AFFAIRS	UGANDA	
181	PROF.	KIRSTEN	SANDBERG	UN COMMITTEE ON THE RIGHTS OF THE CHILD	PROFESSOR OF LAW, UNIVERSITY OF OSLO	NORWAY	KIRSTEN.SANDBERG@JUS.UIO.NO
182	MR	KOSSI	BARIMEDIE	RESOPE/KARA	PRESIDENT	TOGO	RESOPEKARA@YAHOO.FR
183	MR	KYEWALYANGA	FREDRICK	ELGON YOUTH BRASS BAND ASSOCIATION	DIRECTOR	UGANDA	ELGONYOUTHBAND@GMAIL.COM
184	MS.	LANA	PETO KUJUNDZIC	ASSOCIATION OF JUVENILE AND FAMILY JUDGES	JUDGE FOR MINORS	CROATIA	PERKUJU@YAHOO.COM
185	MR.	LAWRENCE	OGWARIA KARWOTH	KOTIDO DISTRICT LOCAL GOVERNMENT/MGLSD	SENIOR PROBATION & SOCIAL WELFARE OFFICER	UGANDA	OGWARIA@YAHOO.COM
186		LENNART	REINIUS	SAVE THE CHILDREN SWEDEN - EASTERN AND CENTRAL AFRICA	REGIONAL DIRECTOR	KENYA	LENNARTR@ECAF.SAVETHECHILDREN.S E
187	MR	LEON BERTRAND	ENAMA	CAMEROON COALITION FOR CHILDREN'S RIGHTS (COCADE)	SECRETARY GENERAL	CAMEROON	ENAMALEON@YAHOO.FR
188	MR	LEONARD	AGUM OGWANG	APAC DISTRICT LOCAL GOVERNMENT	SENIOR PROBATION & WELFARE OFFICER	UGANDA	AGUMOGWANG@YAHOO.COM
189	MR.	LEULESELASSIE	LIBEN AMEDIE	FDRE FIRST INSTANCE COURT	JUDGE	ETHIOPIA	LEULESELASSIE@GMAIL.COM
190	MRS	LILIAN	MWEBAZA	TEENAGE MOTHERS' CENTRE	EXECUTIVE DIRECTOR	UGANDA	TNMOTHERS@GMAIL.COM
191	MS	LUCYLINE NKATHA	MURUNGI	UNIVERSITY OF THE WESTERN CAPE	DOCTORAL RESEARCHER	SOUTH AFRICA	NKATHA.MURUNGI@GMAIL.COM
192	MR	LYANDRO	KOMAKECH	REFUGEE LAW PROJECT, SCHOOL OF LAW, MAKERERE UNIVERSITY	SENIOR RESEARCH AND ADVOCACY OFFICER	UGANDA	L.KOMAKECH@REFUGEE LAW PROJECT.ORG/ LYANDRO@GMAIL.CO
193	MRS	LYDIA	NAMULI	CENTRE FOR JUSTICE STUDIES AND INNOVATIONS	NATIONAL COORDINATOR, JLOS JUSTICE FOR CHILDREN P	UGANDA	NAMULIL@YAHOO.COM
194		LYDIA	WALUSIA	UGANDA CHILD RIGHTS NGO NETWORK (UCRNN)	EXECUTIVE OFFICER	UGANDA	WALUSIA2002@YAHOO.COM

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195	MS	LYDIA JEAN	AKITE	UGANDA CHILD RIGHTS NGO NETWORK	PROGRAM MANAGER ADVOCACY & PARTNERSHIP	UGANDA	LAKITE@UCRNN.NET
196	MS.	LYDIYA	NDIKO SSESANGA	UGANDAN PRISONS HEAD QUARTERS	WELFARE AND REHABILITATION OFFICER	UGANDA	LNDIKO@YAHOO.COM
197	MR.	MACBAIN	MKANDAWIRE	YOUTH NET AND COUNSELLING (YONECO)	EXECUTIVE DIRECTOR	MALAWI	MACBAINMKANDAWIRE@YONECO.ORG
198	MS	MADINAH	FRIDAY	MINISTRY OF GENDER LABOUR AND SOCIAL	YOUTH OFFICER	UGANDA	FMADINAH@YAHOO.COM
199	MRS	MAGUY	LIKOKO MBALAKA	SOLIDARITE POUR UN MONDE MEILLEUR	CHARGE DE LA PROTECTION DE L'ENFANT	CONGO, DR	SOLIDARITENGO@GMAIL.COM
200	MR	MAHENDRANATH	BUSGOPAUL	DCI-MAURITIUS	DIRECTOR	MAURITIUS	HALLEY@INTNET.MU
201	MR.	MAMADOU BAILO	BAH	SABOU GUINEA	PROJECT OFFICER	GUINEA	BAHBAILLO@GMAIL.COM
202	MAG.	MAME NGOR	DIOUF	EDEN / CONAFE SENEGAL	PRESIDENT / MEMBRE BUREAU EXECUTIF	SENEGAL	MAMENGORDIOUF@HOTMAIL.COM
203	DR.	MANAL	ABDELRAHEEM MOHAMMED	UNICEF, FAMILY AND CHILD PORTECTION UNIT	HEAD, DEPARTMENT FOR RESEARCH AND TRAINING	SUDAN	MANALOMER99@YAHOO.COM
204	MR	MARC	DE MAEYER	IDAY	CONSULTANT	BELGIUM	MARCDEMAERYERMARC@GMAIL.COM
205		MARCOS	GUILLEN	DNI AMERICAS	VICE PRESIDENTE		
206	HON.	MARGARET	BABA DIRI	PARLIAMENT OF UGANDA	MEMBER OF PARLIAMENT	UGANDA	MDBABA@PARLIAMENT.GO.UG
207	MRS	MARGARET	MUTONYI MAFABI	JUDICIARY	DEPUTY REGISTRAR, FAMILY DIVISION, HIGH COURT	UGANDA	MARGARET.MUTONYI@GMAIL.COM
208	MS.	MARGARET	KASEKENDE	CHILDREN OF UGANDA	PROGRAMME DIRECTOR	UGANDA	
209	MS.	MARGRET	ATALA	KOLE DISTRICT LOCAL GOVERNMENT	DISTRICT COMMUNITY DEVELOPMENT OFFICER	UGANDA	MAGILAT@YAHOO.COM
210	MS	MARIE CHANTAL	KOFFI	IVORIAN WOMEN LAWYER ASSOCIATION / MINISTRY OF JUS	JUVENILE JUDGE	COTE D'IVOIRE	KOFFMC@YAHOO.FR

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211	MS	MARJORIE	LUNKUSE	WELLS OF HOPE MINISTRIES	COORDINATOR	UGANDA	LMARJORIE@WELLSOFHOPE.ORG
212	MS.	MARTA	SANTOS PAIS	UNITED NATIONS	SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL	UNITED STATES	MSANTOSPAS@UNICEF.ORG
213	MS	MARTHA	KAMPIRE	MINISTRY OF GENDER LABOUR AND SOCIAL DEVELOPEMENT	PROBATION AND WELFARE OFFICER	UGANDA	KMAT31@YAHOO.COM
214	MRS	MARYAM	UWAIS	ACRWC	MEMBER, COMMITTEE OF EXPERTS	ETHIOPIA	MARYAMU@WALI-UWAIS.COM
215	MS	MARYJANE	BIIRA	REFUGEE LAW PROJECT	CHILD RIGHTSOFFICER	UGANDA	BIIRAMJ@GMAIL.COM
216	MS	MAUREEN	NAHWERA	EMBASSY OF SWEDEN / SIDA - KAMPALA	PROGRAMME MANAGER	UGANDA	MAUREEN.NAHWERA@FOREIGN.MINISTRY.SE
217		MBONIMPA	PIERRE CLAVER	APRODH	NATIONAL COORDINATOR	BURUNDI	MBONIMPA50@YAHOO.FR
218	MS.	MELBA BABY	DAVIS	DEFENCE FOR CHILDREN INTERNATIONAL-LIBERIA	SOCIAL WORKER	LIBERIA	DCILIBERIA@GMAIL.COM
219	MR.	MELHIKU	TIRUNEH	THE AFRICAN CHIDL POLICY FORUM	INFOHUB OFFICER	ETHIOPIA	TIRUNEH@AFRICANCHILDFORUM.ORG
220	H.E. DR	MENBERETSEHAI	TADESSE	ETHIOPIAN JUSTICE & LEGAL SYSTEM RESEARCH INSTITUT	DIRECTOR GENERAL	ETHIOPIA	MENBERETADESSE@YAHOO.COM
221	MS.	MILEN	KIDANE	UNICEF	CHILD PROTECTION SEPCIALIST	KENYA	MKIDANE@UNICEF.ORG
222	MR	MODOU	NYANG	YOUNG PEOPLE IN THE MEDIA/ THE GAMBIA	COMMUNICATION FOCAL POINT	GAMBIA	MODOUC2006@HOTMAIL.COM
223	MR	MOHAMADOU CHEIKH	FALL	ASEDUC	TRAINING OFFICER	SENEGAL	CHEIKHFALL2@HOTMAIL.COM
224	MR.	MORITZ	MAGALL	MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT	HEAD OF ORPHANS AND OTHER VULNERABLE CHILDREN NIU	UGANDA	MAMORITZ2004@YAHOO.COM
225	MR.	MOSES	BINOGA	UGANDA POLICE	HEAD OF ANTI HUMAN SACRIFICE & TRAFFICKING DESK	UGANDA	BINOGAMOSSES@YAHOO.COM
226	MR	MOSES Z.B.	ALUTIA	SIXTY FEET UGANDA	DIRECTOR	UGANDA	MOSESALUTIA@SIXTYFEET.ORG

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227		MUGULUSI	DANIEL		UNDER SECRETARY MINISTRY OF GENDER	UGANDA	
228	MR	MUKENDI KAFUNDA	EDHO	CATSR	COORDINATEUR	CONGO, DR	EDHOMUK@YAHOO.FR
229	DR.	MUTASIM	ABDELMAWLA	UNIVERSITY OF GEZIRA	ASSOCIATE PROFESSOR OF ECONOMICS	SUDAN	ABDELMAWLA2004@HOTMAIL.COM
230	MRS	NALINYA	RASHIDAH	NALINYA BRIGHT FUTURE PRIMARY SCHOOL	HEADMISTRESS	UGANDA	NALINYABRIGHT@YMAIL.COM
231	MS.	NALUMANSI	CLEMMY	ENVIRONMENT AND GLOBAL INFORMATION ASSOCIATION	EXECUIVE OFFICER	UGANDA	ENVIRONMENTASSOCIATION@YAHOO.C O.UK
232		NANGERA	TAUSI GRANIE	DEFENCE FOR CHILDREN INTERNATIONAL-UGANDA	PROGRAMME CORDINATOR	UGANDA	DCIUG@YAHOO.COM
233	MS.	NANSASI	RITA FAITH	MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS	STATE ATTORNEY	UGANDA	NANSASIRITA@YAHOO.COM
234		NAOMI	WALKER	PLAN INTERNATIONAL	MEDIA COORDINATOR	LIBERIA	NAOMI.WALKER@PLAN- INTERNATIONAL.ORG
235	MRS	NATHALIE	SELIFFET	FOODSTEP	DIRECTOR	UGANDA	FOODSTEP@HOTMAIL.COM
236	MR	NATHAN	WABWIRE	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	PRINCIPAL YOUTH OFFICER	UGANDA	NATHANBWIRE@YAHOO.COM
237	MR	NEWTON	BALENZI	GLOBAL PAN AFRICAN MOVEMENT	YOUTH COORDINATOR	UGANDA	NBALENZI@YAHOO.CO.UK
238	MS.	NIGHT	TEDDY	DCI-UG	SOCIAL WORKER	UGANDA	N'TEDDY78@YAHOO.COM
239	MS.	NIHORIMBERE	ADELINE	COMMUNAUTE DES VOLONTAIRES DU DEVELOPPEMENT	SECRETAIRE GENERALE	BURUNDI	CVDPT@YAHOO.FR
240	MR	NIKHIL	ROY	PENAL REFORM INTERNATIONAL	PROGRAMME DEVELOPMENT DIRECTOR	UNITED KINGDOM	NROY@PENALREFORM.ORG
241	MR	NIRMAL	BUSGOPAUL	DCI-MAURITIUS	PROGRAM COORDINATOR	MAURITIUS	HALLEY@INTNET.MU
242		NIYONZIMA	GENEVIEVE	APROFAPER	COORDINATOR	RWANDA	APROFAPER@YAHOO.FR

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243	MS	NKEIRUKA	ADUBA	REFUGEE LAW PROJECT	INTERN	UGANDA	NKEIRUKAADUBA@YAHOO.COM
244	MR.	NKESHIMANA	LÃ©ONIDAS	OPPDFE	PROJECT MANAGER	BURUNDI	MANINKEL@YAHOO.FR
245		NNENNA ACHAMA NGOZI	ELUWA	FIRST LADY'S SAVE OUR YOUTHS CAMPAIGN	EXECUTIVE DIRECTOR	NIGERIA	STARTRIGHTEDUCENTRE@YAHOO.COM
246	MRS	NOELLE	GARCIN	IDAY-INTERNATIONAL	SECRETARY GENERAL	BELGIUM	NGARCIN@IDAY.ORG
247	MS.	NOMPUMELELO	LUKHELE- SHABANGU	NATIONAL TRAFFICKING IN PERSONS OFFICE, PRIME MINISTER'S OFFICE	HEAD OF NATIONAL TRAFFICKING IN PERSON'S OFFICE	SWAZILAND	MPUMIELUKHELE@GMAIL.COM
248	MR.	NWAEFULU	MARVIN	MDMARV GLOBAL SERVICES LIMITED	DIRECTOR	NIGERIA	MARVINALONE@YAHOO.COM
249	MR	OGWANG	ROBERT	MARANATHA CHILD CARE MINISTRY	EXECUTIVE DIRECTOR	UGANDA	MCCMUGANDA@GMAIL.COM
250	DR.	OLAWALE	MAIYEGUN	AFRICAN UNION COMMISSION	DIRECTOR, SOCIAL AFFAIRS	ETHIOPIA	MAIYEGUNO@AFRICA-UNION.ORG
251	MS.	OLGA	SEMAKULA	MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS	STATE ATTORNEY	UGANDA	OLGASEMAKULA@HOTMAIL.COM
252	MR	OSIKOL	STEPHEN	PRESIDENTS OFICCE	ADMINISTRATIVE OFFICER	UGANDA	SOSIKOL@YAHOO.CO.UK
253		OTTO	LUCY	KITGUM DISTRICT LOCAL GOVERNMENT/MGLSD	SENIOR PROBATION AND SOCIAL WELFARE OFFICER	UGANDA	O'TTOLUCY45@YAHOO.COM
254	MR.	PATRICK	SSENYONGA	LWABENGE CHILD CARING COMMUNITY	EXECUTIVE DIRECTOR	UGANDA	LWABENGE_CHILDCOMMUNITY@YAHOO.CO.UK
255	MR	PATRICK	SSENYONGA	LWABENGE CHILD CARING COMMUNITY	EXECUTIVE DIRECTOR	UGANDA	PATRICKTOTEX@YAHOO.CO.UK
256	MR	PATRICK	MEEHAN	CANTERBURY CHRIST CHURCH UNIVERSITY	SENIOR LECTURER, EARLY CHILDHOOD STUDIES DEPT.	UNITED KINGDOM	PATRICK.MEEHAN@CANTERBURY.AC.UK
257	MR.	PATRICK	GEARY	CHILD RIGHTS INTERNATIONAL NETWORK	LEGAL COORDINATOR	UNITED KINGDOM	PATRICK@CRIN.ORG
258	MR	PAUL	FAGNON	PLAN INTERNATIONAL	CHILD RIGHTS SPECIALIST PLAN, WARO	BENIN	PAUL.FAGNON@PLAN-INTERNATIONAL.ORG

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259	MR	PAUL	SSEKAMWA	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	ADMINSTRATOR	UGANDA	SSEKAPPAUL@GMAIL.COM
260	MR	PAUL	GADENYA	JUSTICE LAW & ORDER SECTOR SECRETARIAT	SENIOR TECHNICAL ADVISOR	UGANDA	PGADENYA@GMAIL.COM
261		PERIS	JONES	SAVE THE CHILDREN NORWAY	SENIOR ADVISOR CHILD RIGHTS GOVERNANCE	NORWAY	PERIS.JONES@REDDBARNA.NO
262	MR	PETER	NKHONJERA	SAVE THE CHILDREN IN UGANDA	COUNTRY DIRECTOR	UGANDA	P.NKHONJERA@SCIUG.ORG
263	MS	PHILOMEN	NAKYAZZE	UGANDA CHILD RIGHTS NGO NETWORK	PROGRAM DIRECTOR	UGANDA	P.NAKYAZZE@UCRNN.NET
264	MS.	PHUMILE GUGU	MASHWAMA	CENTRE FOR INTERNATIONAL MANAGEMENT DEVELOPMENT AN	ADMINISTRATOR	SWAZILAND	MEDICAREMZ@YAHOO.COM
265	MS.	PRISCILLA	NYARUGOYE	UGANDA HUMAN RIGHTS COMMISSION	SENIOR HUMAN RIGHTS OFFICER, HEAD VPU	UGANDA	PRISCILLA.NYARUGOYE@UHRC.UG
266	MR.	RASHAD	AZIZ			PAKISTAN	
267	MS	RASHIDAH	KACOLLEGE	MINISTRY OF GENDER LABOUR AND SOCIAL DEVELOPMENT	ADMINISTRATOR	UGANDA	RASHIDAHK23@YAHOO.COM
268	MR.	RAYMOND	SENESIE	DEFENCE FOR CHILDREN SIERRA LEONE	PROGRAMME MANAGER NORTH	SIERRA LEONE	BOBRAYSSENS@YAHOO.COM
269	MS.	REGINA	KACWAMU	UGANDA YOUTH DEVELOPMENT LINK	PROGRAMME OFFICER (CHILD PROTECTION)	UGANDA	RKACWAMU@YAHOO.COM
270	MS	REGINAH	NAMAKULA	IDAY-UGANDA	COORDINATOR	UGANDA	RNAMAKULA@IDAY.ORG
271	MR.	RICHARD	NSUMBA MUGANZI	LEGAL AID SERVICE PROVIDERS NETWORK	NATIONAL COORDINATOR	UGANDA	RICHARD.MUGANZI@GMAIL.COM
272	MR.	RIFAT	KASSIS	DCI	PRESIDENT	PALESTINIAN TERRITORY	PRESIDENT@DCI-IS.ORG
273		RITA FELICITE	SODJIEDO				
274	MR.	ROBERT	ODIDA	KOBULIN YOUTH SKILLS DEVELOPMENT CENTRE-NAPAK	PRINCIPAL	UGANDA	ODIDA_ROBERT@YAHOO.COM
275	MR.	ROBERT	OCHAI	TASO; THE AIDS SUPPORT ORGANISATION	EXECUTIVE DIRECTOR	UGANDA	OCHAIR@TASOUGANDA.ORG

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276	MR	ROBERT	TUMWESIGYE	BINDI FOREST COMMUNITY DEVELOPMENT ORGANISATION BW	DIRECTOR	UGANDA	BWIFODO@YAHOO.COM
277	MR.	ROBERT	OMITA	UGANDA PRISONS SERVICE	ASSISTANT COMMISSIONER IN CHARGE OF WELFARE	UGANDA	ROMITAOKOTK@YAHOO.CO.UK
278	MR	ROBERT	OMITA OKOTH	UGANDA PRISONS SERVICE	ASSISTANT COMMISSIONER FOR WELFARE AND REHAB.	UGANDA	ROMITAOKOTH@YAHOO.CO.UK
279	MS.	ROBIN	MAYERS	DCI		UK	
280	MR	ROGERS	MUTAWE	UGANDA YOUTH DEVELOPMENT LINK	PROGRAMME OFFICER	UGANDA	MUTAWE2@YAHOO.COM
281		ROMUALD	DZOMO NKONGO	IDAY - FRANCE	PRESIDENT		
282	MS	RONALDAH LERATO KARABO	NGIDI	CENTRE FOR CHILD LAW	ATTORNEY	SOUTH AFRICA	KARABO.NGIDI@UP.AC.ZA
283	MS.	ROSALINE	MARVA	DEFENCE FOR CHILDREN SIERRA LEONE	PROGRAMME MANAGER SOUTH	SIERRA LEONE	KMARV2003@YAHOO.COM
284	DR	RUTH	FARRUGIA	UNIVERSITY OF MALTA	SENIOR LECTURER + ADVOCATE	MALTA	RUTH.FARRUGIA@UM.EDU.MT
285	MS.	SABRINA	CAJOLY	ACPF	CONSULTANT	KENYA	SABRINA_CAJOLY@HOTMAIL.COM
286	DR	SAKA	MANFUL	DEPARTMENT OF SOCIAL WORK	LECTURER	GHANA	MANFULK@HOTMAIL.COM
287		SALOME	NGABA ZOGO	IDAY - CAMEROON	PRESIDENT		
288	BISHOP	SAMUEL	YANKYERAH	CENTRE OH HOPE	AFRICA DIRECTOR	GHANA	CHARISMACENTRE@HOTMAIL.COM
289	MS	SANDRA	ADONG ODER	INSTITUTE FOR SECURITY STUDIES	SENIOR RESEARCHER	SOUTH AFRICA	SODER@ISSAFRICA.ORG
290	MS.	SARAH	GUEBREYES	THE AFRICAN CHILD POLICY FORUM (ACPF)	HEAD, PROGRAMME MONITORING AND OPERATIONS	ETHIOPIA	SGUEBREYES@AFRICANCHILDFORUM.ORG
291	MISS	SARAH	NABUKONDE KISOLO	PAVE FOUNDATION	EXECUTIVE DIRECTOR	UGANDA	SNABUKONDE@YAHOO.COM

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292	MS	SARAH	NAYIGA	SOS CHILDREN'S VILLAGES UGANDA	FAMILY BASED CARE COORDINATOR	UGANDA	NATIONALOFFICE@SOSUGANDA.ORG, NAYSAE@YAHOO.COM
293	MR	SARE	DAFASSAWA	EDD	DIRECTEUR EXECUTIF	BENIN	DED_TRAFFIC2000@YAHOO.FR
294		SEGUYA	SEAN MOSES	XCYTE MEDIA	MANAGING DIRECTOR	UGANDA	XCYTEMEDIAA@GMAIL.COM
295		SERGIO	GUZMAN FRIAS				
296	MS.	SEVERINE	JOLIAT	INTERAGENCY PANEL ON JUVENILE JUSTICE	COORDINATOR	SWITZERLAND	SJOLIAT@JUVENILEJUSTICEPANEL.ORG
297	MR	SHARAD	SAPRA	UNICEF	CONTRY REPRESENTATIVE	UGANDA	SSAPRA@UNICEF.ORG
298	DR	SHARON	DETRICK	DEFENCE FOR CHILDREN NETHERLANDS	PROGRAMME MANAGER	NETHERLANDS	S.DETRICK@DEFENCEFORCHILDREN.NL
299	MR	SHEDRACH	FRIMPONG	PLAN GHANA	PROJECT MANAGER (JUVENILE JUSTICE)	GHANA	SHEDRACH.FRIMPONG@PLAN-INTERNATIONAL.ORG
300	MR.	SHIMELIS	TSEGAYE	ACPF	SENIOR POLICY RESEARCH SPECIALIST	ETHIOPIA	STSEGAYE@AFRICANCHILDFORUM.ORG
301	MRS	SILVIA	PASTI	UNICEF	CHIEF, KEE CHILDRENSAFE PROGRAMME	UGANDA	SPASTI@UNICEF.ORG
302	MR.	SIMON	NZIGU	HOPE FOR ORPHANS AND RURAL DEVELOPMENT	FOUNDER/ CEO	UGANDA	HORDUG@GMAIL.COM
303	MR	SIMON PETER	OGWANG	LIRA DISTRICT LOCAL GOVERNMENT	COMMUNITY DEVELOPMENT OFFICER	UGANDA	OGWANG.SIMONPETER@YAHOO.COM
304	MS	SMITA	SHAH	GARDEN COURT INTERNATIONAL/LCIL, CAMBRIDGE U.	CHILD PROTECTION LAWYER	UNITED KINGDOM	SMITA.SHAH.K@GOOGLEMAIL.COM/SMITAS@GCLAW.CO.UK
305	MRS	SOLANGE	MER	ASSOCIATION POUR ENFANTS OUBLIES (APEO)	PRESIDNET	FRANCE	ASSO_APEO@YAHOO.FR
306		STELLA	AYO-ODONGO	UGANDA CHILD RIGHTS NGO NETWORK (UCRNN)	EXECUTIVE DIRECTOR	UGANDA	
307	DR	STEPHEN	NSABIYUMVA	KAMPALA CAPITAL CITY AUTHORITY	SENIOR MEDICAL OFFICER	UGANDA	SNSABA200@YAHOO.COM

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308	MR	STEPHEN	OSIKOL	OFFICE OF THE PRESIDENT	ADMINISTRATIVE OFFICER	UGANDA	SOSIKOL@YAHOO.CO.UK
309	MR	STEVEN	AROJJO	MAKERERE UNIVERSITY	LECTURER	UGANDA	SAROJJO@SS.MAK.AC.UG
310	MS.	SUBHADRA	BELBASE	PLAN UGANDA	COUNTRY DIRECTOR	UGANDA	SUBHADRA.BELBASE@PLAN-INTERNATIONAL.ORG
311	DR.	SUDIP	CHAKRABORTY	CHILD LINE INDIA FOUNDATION	HONORARY NODAL DIRECTOR	INDIA	SUDIP294@YAHOO.COM
312	MS.	SUNDAY	YOWERI	KYAMBOGO UNIVERSITY	TEAM COORDINATOR	UGANDA	SUNDAYYOWERI@YAHOO.COM
313	MISS	SUSAN	MBUGUA	SAVE THE CHILDREN SWEDEN	PAN-AFRICAN CHILD RIGHTS ADVOCACY ADVISOR	KENYA	SUSANM@ECAF.SAVETHECHILDREN.SE
314	MS	SUSAN	OKALANY	DIRECTORATE OF PUBLIC PROSECUTION	PRINCIPAL STATE ATTORNEY	UGANDA	SUSANOKALANY@YAHOO.COM
315	HON.	SYDA	BBUMBA	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	MINISTER	UGANDA	
316	MR	SYLVESTER	TERHEMEN UHAA	CURE-NIGERIA	COUNTRY DIRECTOR	NIGERIA	CURENIGERIA@GMAIL.COM
317	MRS	SYLVIA	NAMUBIRU MUKASA	CENTRE FOR JUSTICE STUDIES AND INNOVATIONS	OPERATIONS MANAGER	UGANDA	SYLIVINN@YAHOO.COM
318	MS.	TANJA	VAN DE LINDE	PLAN NETHERLANDS	SENIOR ADVISOR CHILD RIGHTS	NETHERLANDS	TANJA.VANDE.LINDE@PLANNEDERLAND.NL
319	MR.	TEDLA	MEKONNEN	YE ETHIOPIA GBS MAHIBER	FOUNDER/GENERAL MANAGER	ETHIOPIA	MEKONNENTEDLA@EGBSA.ORG
320	MS.	THOKOZILE	MHLANGA	DEFENCE FOR CHILDREN INTERNATIONAL ZIMBABWE	CHILD PROTECTION OFFICER	ZIMBABWE	DCI-ZIMBABWE@LIVE.COM
321	PROF.	TILAHUN	TESHOME	ADDIS ABABA UNIVERSITY	LECTURER	ETHIOPIA	TILAHUNTESH46@YAHOO.COM
322	MR	TIMOTHY	OPOBO	ANPPCAN-UGANDA CHAPTER	PROGRAM COORDINATOR	UGANDA	TOPOBO@ANPPCANUG.ORG
323	MR	TOLO ANTOINE	SANOU	ASSOCIATION TIE	SPECIALIZED EDUCATOR	BURKINA FASO	ANTOINETOLOS@YAHOO.FR

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324	MR	TOM	BEAH	DEFENCE FOR CHILDREN SIERRA LEONE	PROGRAMMES COORDINATOR	SIERRA LEONE	TOM.DCISL@YAHOO.COM
325	MR.	TOM	LENT	WELLSPRING ADVISORS			TOM.LENT@GMAIL.COM
326	MR	TOMMY	OCEN	LIRA DISTRICT LOCAL GOVERNMENT	COMMUNITY DEVELOPMENT OFFICER	UGANDA	OCENTOMMY@YAHOO.COM
327		TONNY	NGWENOMOL	LIRA DISTRICT LOCAL GOVERNMENT	PROBATION AND SOCIAL WELFARE OFFICER	UGANDA	TONNYNGWENOMOL@YAHOO.COM
328	MR	TONY	TATE	FUND FOR GLOBAL HUMAN RIGHTS	PROGRAM OFFICER	UNITED STATES	TTATE@GLOBALHUMANRIGHTS.ORG
329	REV	TSEGAYE	YOSEPH MEKONNEN	ONE VOICE ASSOCIATION	CHAIRMAN	ETHIOPIA	YOSEFMKONEN@YAHOO.CO.UK
330	MS.	TSEHAY	MENKIR	FIRST INSTANCE COURT OF FDRE	JUDGE	ETHIOPIA	TSEHAYTEKLEMICHAEL@YAHOO.COM
331	MRS.	TUHUMWIRE	MARGARET	EWA	DIRECTOR	UGANDA	EWAMMISSION@YAHOO.CA
332	MR.	TUMUTOIJERE	GABRIEL EDIE	MINISTRY OF GENDER LABOUR AND SOCIAL DEVELOPMENT	SENIOR ASSISTANT SECRETARY	UGANDA	TUMUTOIJERE8@YAHOO.COM
333	MR.	TWAHA	MATATA	MINISTRY OF FOREIGN AFFAIRS	FSO V	UGANDA	MAGARA@MAIL.COM
334	MS.	UBAH	MOHAMMED	ETHIOPIAN HUMAN RIGHTS COMMISSION	COMMISSIONERS LEGAL ADVISOR	ETHIOPIA	MOHABUB@YAHOO.COM
335	MS.	VALENTINE	NAMAKULA	CENTRE FOR JUSTICE STUDIES & INNOVATIONS	EXECUTIVE DIRECTOR	UGANDA	VNAMAKULA@GMAIL.COM
336	MRS	VALENTINE	NAMAKULA	CENTRE FOR JUSTICE STUDIES AND INNOVATIONS	EXECUTIVE DIRECTOR	UGANDA	VNAMAKULA@GMAIL.COM
337	MS	VIOLET	ODALA	AFRICAN CHILD POLICY FORUM	SENIOR PROGRAMME COORDINATOR, LAW PROGRAMME	ETHIOPIA	ODALA@AFRICANCHILDFORUM.ORG
338	MR.	WANDEGA	ANSLEM	ANPPCAN UGANDA CHAPTER	PROGRAM MANAGER	UGANDA	AWANDEGA@ANPPCANUG.ORG/AWANDEGA@GMAIL.COM
339	MR	WILLIAM	NADIOPE	DEFENCE FOR CHILDREN INTERNATIONAL - UGANDA	ACCOUNTANT	UGANDA	WWNADIOPE@YAHOO.COM

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340	MR	WOUT	VISSER	WAR CHILD HOLLAND	ADVOCACY ADVISOR	UGANDA	WOUT.VISSER@WARCHILD.NL
341	MRS	YANNICK	ARLABOSSE-TITZ	ESPÉRANCE EN CASAMANCE	PRÉSIDENTE	SWITZERLAND	YANNICKARLA@GMAIL.COM
342	MISS	YVONNE	NATUKUNDA	DEFENCE FOR CHILDREN INTERNATIONAL UGANDA	BOARD MEMBER	UGANDA	YVONNEDEVO@YAHOO.COM
343	MS	ZAINABU	KYAKUSIMIRE	LEEWAY UGANDA	PROGRAM ADMINISTRATOR	UGANDA	KYAZAINA@GMAIL.COM
344	MS	ZAINAH	NAKUBULWA	MINISTRY OF GENDER, LABOUR & SOCIAL DEVELOPMENT	DISTRICT COMMUNITY DEVELOPMENT OFFICER	UGANDA	ZAINAHNAK@YAHOO.COM
345	MS.	ZERITHUN	KASSAHUN	FEDERAL FIRST INSTANCE COURT	SOCIAL WORKER	ETHIOPIA	ZERITHUNK@YAHOO.COM
346	MR.	ZUHAIR	IMAM	PLAN INTERNATIONAL	CHILD PROTECTION & PARTICIPATION ADVISOR	SUDAN	ZUHAIR.ABDULLA@PLAN-INTERNATIONAL.ORG