Girls in conflict with the law in Uganda:

The experiences and needs of girls before, during and after contact with the criminal and informal justice systems

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Children in conflict with the law
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# Acronyms

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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACERWC</td>
<td>African Committee of Experts on the Rights and Welfare of the Child</td>
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<td>ACPF</td>
<td>African Child Policy Forum</td>
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<td>ANPPCA</td>
<td>African Network for the Prevention and Protection Against Child Abuse and Neglect</td>
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<tr>
<td>CAAFAG</td>
<td>Children associated with armed forces and armed groups</td>
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<td>CFPU</td>
<td>Child and Family Protection Unit</td>
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<tr>
<td>CICL</td>
<td>Children in conflict with the law</td>
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<td>COCTIP</td>
<td>Coordination Office to Combat Trafficking in Persons</td>
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<td>CRC</td>
<td>UN Convention on the Rights of the Child</td>
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<td>CRIN</td>
<td>Child Rights International Network</td>
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<td>DRC</td>
<td>Democratic Republic of the Congo</td>
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<td>FGM/C</td>
<td>Female genital mutilation/cutting</td>
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<td>FHRI</td>
<td>Foundation for Human Rights Initiative</td>
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<td>IDPs</td>
<td>Internally displaced persons</td>
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<td>IPV</td>
<td>Intimate partner violence</td>
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<td>JLOS</td>
<td>Justice Law and Order Sector</td>
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<td>LCCs</td>
<td>Local Council Courts</td>
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<tr>
<td>LGBTI</td>
<td>Lesbian, gay, bisexual, transgender and/or intersex</td>
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<td>LRA</td>
<td>Lord’s Resistance Army</td>
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<tr>
<td>MEL</td>
<td>Monitoring, evaluation and learning</td>
</tr>
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<td>OVCs</td>
<td>Orphans and vulnerable children</td>
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<tr>
<td>P4C</td>
<td>Passion for Community for Development Organisation</td>
</tr>
<tr>
<td>PTSD</td>
<td>Posttraumatic stress disorder</td>
</tr>
<tr>
<td>SGBV</td>
<td>Sexual and gender-based violence</td>
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<tr>
<td>UBOS</td>
<td>Uganda Bureau of Statistics</td>
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<td>UPF</td>
<td>Uganda Police Force</td>
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<tr>
<td>UHRC</td>
<td>Uganda Human Rights Commission</td>
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<td>YOT</td>
<td>Youth Offending Team</td>
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1. Introduction

In Northern Uganda, prolonged poverty and the impact of civil conflict continues to affect young people, forcing them to survive in a subsistence environment with little to no prospect of gaining employment. Latest figures from the Government of Uganda\(^1\) show that the incidence of poverty remains highest in the Northern region, with 43.7% living below the Poverty line compared to 4.7% in the Central region.

Since 2013, Chance for Childhood has been documenting the links between poverty and the likelihood of coming into conflict with the law in the region, and opportunities to promote restorative justice arrangements that address the root causes of committing petty crime. In 2015, Chance for Childhood launched its four-year Right2Change initiative, working in partnership with local grassroots organisation Passion for Community (P4C). The project helps Children in Conflict with the Law (CICL) access alternatives to detention, and pilots a model of community-based structured diversion.

The project targets children who would normally face four fates: indefinite detention by the police in inadequate conditions; referral to adult prisons; being sent to Gulu remand home to face long delays for justice; or an immediate release with no aftercare support due to over-subscription.

Over time, it has become apparent to P4C that girls can face different reasons for coming into conflict with the law, and different vulnerabilities have a greater impact on girls than on their boy peers in this context. Girls also experience the criminal and community justice systems differently.

The following literature review was therefore conducted to support the development of a new monitoring, evaluation and learning (MEL) framework. The new MEL framework will generate learning on the experiences and needs of girls in conflict with the law in Northern Uganda, and alternatives to detention and rehabilitation services available to them. Districts covered by the P4C project are Agago, Pader, Kitgum and Lamwo.

The desk research involved searching for and analysing materials that provided evidence about girls’ vulnerability to and experiences of being in conflict with the law in Uganda. Where there was a scarcity of information, sources from within Eastern and Southern Africa and globally were explored. The literature review was supplemented with qualitative research from P4C in relation to the girls it works with in the communities above.

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\(^1\) (Uganda Bureau of Statistics, 2015)
2. Key findings

The key findings below include issues relevant to boys as well as girls, for example, where data disaggregated by sex was difficult to find, or where an improvement made to the system will aid all children. Other findings focus purely or largely on the experiences of girls such as vulnerabilities associated with defilement or child marriage.

A criminal response to welfare needs

A key finding affecting CICL of both sexes is the misallocation of state resources, which are used to criminalise instead of protect vulnerable children. If funding and services were instead used in a more humane and just way, then the rights violations children suffer, which can lead to their social exclusion and vulnerability to criminality, could be redressed and a child’s pathway into coming into conflict with the law could be arrested. However, the present situation means that the needs of a child in conflict with the law remain unmet, and the child is instead stigmatised as a criminal, and blamed for the wider failure of society and the government, with all its consequences.

Penal Reform International notes that in Uganda “the police have broad discretionary powers to 'detain' children in need of protection” and The UN Committee on the Right of the Child notes in General Comment No. 10 (2007) that “criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization”.

The criminalisation of children and young people with welfare needs and the reliance on imprisonment is unable to address the causes of offending behaviour. The tragedy is one for the individual child as well as society. For example, in England, better cooperation between courts and Youth Offending Teams (YOTs) and increased diversion from courts, was found capable of reducing imprisonment and delivering total savings of over £60 million.

Treatment of girls in the criminal system

Girls make up almost 10% of the population of CICL in Uganda. The criminal justice system in Uganda is also used for the ‘safe custody’ of girls and girls may be detained simply because they are victims of crime, for example of forced marriages, child trafficking and commercial sexual exploitation. Girls are also put in so-called protective custody to escape honour crimes. Children who have been deemed to be beyond parental control or girls who become pregnant before marriage may also be handed over by their parents to the Ugandan juvenile justice system.

Many studies worldwide cite the harsher treatment of women and girls in the criminal justice system due to contravening gender norms. This includes for non-violent crime
such as status offenses and acts such as theft and prostitution. Status offenses (such as truancy, running away from home, violating curfew laws or possessing alcohol or tobacco) are often used against girls to control their behaviour. Meanwhile, girls who have turned to sex work as a survival strategy or are victims of trafficking for sexual exploitation are prosecuted, instead of the adults who are exploiting them. There are calls for status offences to be identified as welfare issues, for these offences to be abolished and the conduct addressed through child protection mechanisms.

**Violent crime**

There are isolated cases of murders committed by children in Uganda, either on their own or together with adults. In the national rehabilitation centre Kampiringisa, two girls in the centre were being held for murder as of August 2010. In 2014, the Uganda Human Rights Commission (UHRC) made monitoring visits to fishing communities in Uganda and found that sexual and gender-based violence (SGBV) is widespread. Approximately 90% of female suspects found in police cells had been arrested for assault and causing grievous bodily harm mostly perpetrated against their partners.

One study of 5,000 juveniles found that “Violent victimization is indeed a warning signal for future violent offending among juveniles. Protecting juveniles against violent victimization may, therefore, reduce overall levels of juvenile violence”. The results were similar for each gender. A considerable number of children in a Uganda study on violence shared transitional thoughts of suicide and revenge, or displaced their anger on younger children.

**Risk factors**

Poverty, peer pressure, a poor home environment, and lack of guidance were cited as situations that cause children to come into conflict with the law in Uganda. More than one study in Uganda highlights the vulnerability of young people as leading to their coming in to conflict with law, as a result of them being targeted by adults. For example, girls facing the juvenile courts in Kampala are said to be there as a result of trumped up charges by their employers, with girls working as maids in homes and restaurants accused of stealing money or babies, as a way of denying them wages. Studies on the background characteristics of women in the justice system in Uganda could not be found. However, a history of trauma is almost universal among incarcerated adults in the USA (over 85%). Posttraumatic stress disorder (PTSD) is four to 10 times more prevalent among incarcerated women than in community samples.

Another study in the USA found that crimes that women are convicted for “are closely related to the structural situation of women in this society. The characteristics are histories of abuse, of being responsible for children, and being limited to low skill/low income jobs. Incarcerated women grew up in abusive families to a much higher extent than men and a majority of them had experienced domestic violence... as single
parents with usually low skills it is for most difficult or impossible to support their children”.

In the UK, risk factors associated with teenage girls and offending included poverty, abuse, truancy, drug and alcohol use, parental conflict, poor parental supervision, victimisation and living in a high crime area. Of children who come into contact with the criminal justice system in the UK, 60% have significant speech, language or communication difficulties; 50% have experienced time in care or substantial social services involvement, compared to 3% of the general population; 31% have a recognised mental health disorder compared to 10% of the general population.

Girls may be susceptible to peer pressure in different ways to boys. Girls experience more emotional stress from problem relationships because they are socialised to focus on relationships. This is particularly true in adolescence when relationship conflict can result in feelings of rejection and depression in girls. The resulting insecurity “can lead girls to associate with antisocial peers and romantic partners, increasing their vulnerability to delinquent behaviours”.

Poverty

For both boys and girls in Uganda, theft and other crimes can be a response to poverty. One study revealed that the majority of offences committed by children and young people in Uganda are related to their very survival and many had been forced to steal in order to eat. According to Uganda’s National Strategic Programme Plan of Interventions for Orphans and Other Vulnerable Children, the Northern region in which Chance for Childhood operates has the highest percentage of critically and moderately vulnerable children in the country at 62.9% (Central region has the lowest at 41.4%).

Young people aged 18-30 account for 64% of the total unemployed population in Uganda. The unemployment rate is higher among the better educated and among young women. However, even where youth are employed, 60% of paid young employees take home less than the average monthly wages/salaries. The disparity in median monthly wages by gender is significant at Shs 66,000 (USD $20) for females and Shs 132,000 (USD $40) for males.

Criminalisation as a result of poverty or other factors further prohibits livelihood options and children are caught in a vicious cycle. Young people in Uganda said they are denied jobs after being released from prison because they lack skills and are burdened by social stigma.

In addition to being a push factor in causing criminality, poverty can also negatively affect children’s experiences from within the criminal justice system. Where police
corruption is prevalent and bribes are needed, for example for early release from detention, juveniles may be unable to pay and secure their freedom.

A lack of livelihood options mean many young women resort to sex work and subsequently become more vulnerable to HIV, other sexually transmitted diseases, to abuse and to coming into contact with the law. Female youth are particularly engaged in brewing local alcohol as a main economic activity, which can be highly dangerous and therefore classified as the worst forms of child labour and hazardous work. Alcohol produced in the informal sector makes up about 80% of alcohol consumed in Uganda. A major issue affecting young women and financial sustainability is access to land. Lack of land ownership and economic insecurity increases the dependence on and subordination to men, and makes women and girls vulnerable to the high rates of SGBV and to other abuses such as child marriage, which in turn impact a girl’s right to education and her future prospects.

**Interrelated vulnerabilities**

Various vulnerabilities cause children to abandon their childhood and seek coping strategies to ensure their survival. Or children are forced into deplorable situations of abuse and neglect, for example by being trafficked for sexual exploitation. The common root of this lack of agency and choice in a child’s life and the subsequent violation of their human rights is vulnerability caused by a range of factors – many of which coexist and are interrelated. For example substance abuse to cope with abuse and hunger; children in street situations linked to poverty, witchcraft accusations or conflict at home; SGBV both resulting from child marriage and causing it, when a girl feels that it is her only option for escape from an untenable home life.

While girls in Uganda are generally vulnerable to human rights abuses due to gender inequality, specific groups of girls are more greatly affected. These include girls with disabilities, girls in conflict affected areas, girls who are out of school, girls subject to child marriage, child mothers, orphans, girls subject to defilement and SGBV, girls affected by HIV/AIDS, girls who have been trafficked for exploitation, lesbian, gay, bisexual, transgender and/or intersex (LGBTI) children, and girls in street situations. Many of these vulnerabilities co-exist for an individual child, and vastly diminish the range of available coping strategies and livelihood options. Such girls are therefore

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2 Defined in Uganda by the Penal Code Amendment Act 2007: “Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.” Aggravated defilement is subject to the death penalty and includes “(a) where the person against whom the offence is committed is below the age of fourteen years; (b) where the offender is infected with the Human Immunodeficiency Virus (HIV); (c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed; (d) where the victim of the offence is a person with a disability”.
pushed further along a path which forces them into conflict with the law (such as through sex work).

The majority of children in case studies in a global Save the Children study on CICL had dropped out of school, either to work to support their families or themselves, or because their parents were unable to pay the costs of their education. A lack of education may be the result of other vulnerabilities/abuses (e.g. child marriage, children in street situations) and may lead to further forms of vulnerability/abuse (illiteracy, lack of access to higher education).

Orphans and vulnerable children (OVCs) in Uganda are more likely to engage in child labour. However, many such children end up resorting to theft and street begging. A child’s coping strategies and livelihood options on the street are likely to result in coming into conflict with the law as a child is forced to “choose” between stealing and going hungry; having sex with a policeman or being arrested.

All the categories of vulnerability therefore have complex interrelationships and the denial or provision of support in one area can affect other areas. For example, education is protective against child marriage, conversely poverty keeps girls in abusive relationships and forces them to marry their defilers in exchange for compensation agreed with their parents.

**Children and girls in detention**

Globally, girls are always in the minority within criminal justice systems and require special protection as a consequence. A 2010 Review of Ugandan Remand Homes and the National Rehabilitation Centre found that the numbers of girls in conflict with the law was small compared to boys, and as there were often just one or two girls in a home containing 20 to 30 boys, they are likely to miss other female company. Such girls are also potentially vulnerable to sexual exploitation given that defilement is such a prevalent offence in Uganda.

Girls in custody are more likely to self-harm than boys. International guidelines note that girls placed in an institution deserve special attention as to their personal needs, and that they are especially vulnerable due to their small numbers as well as their gender, including to abuse from officials such as the police.

According to the Uganda Bureau of Statistics (UBOS), of the 42,000 individuals in prison in 2014, 23,000 are on remand awaiting trial (55%). Women and girls may be disproportionately given pre-trial detention as most female offenders have a low income and may find it hard to provide a financial guarantee, or to evidence secure employment or secure accommodation. Female pre-trial detainees are more likely than
their male counterparts to be held with convicted prisoners because there are fewer facilities for detaining women.

Incarceration of children is proven to be ineffective. In the UK, 72% of children released from custody go on to re-offend within one year. In France, recidivism figures rise to 90% for children incarcerated a second time. The Child Rights International Network (CRIN) believes that: “We need to move beyond the idea of minimum ages, protect children from the negative process of criminalisation, and separate it from the concept of responsibility. Any juvenile justice system should be purely directed at rehabilitation and reintegration - and this should apply to all under-18s, not just to some.”

UN agencies note a “justice vacuum” in Uganda caused by inaccessibility of the formal justice system in much of the country. Informal justice mechanisms have filled a large space in this vacuum and can therefore be capitalised on as existing systems for encouraging diversion and other community responses to juvenile offending.

**Girls’ treatment within the community justice system**

Local Council Courts (LCCs) in Uganda have quotas for female representation and have “introduced important innovations, especially in the representation of women”. However LCCs have sometimes been criticised for overstepping their legal mandate and deciding on matters of criminal law. It is important that rape and sexual violence should not be dealt with by community justice systems, but referred to ordinary courts. Informal justice systems, especially custom and religious-based, are likely to uphold rather than to challenge the harmful norms and values of the society around them, including attitudes and patterns of discrimination. The participation of women as adjudicators or justice officials is vital to ensure women and girls can bring gender-sensitive matters to the attention of justice providers.

Police officers may fail to exercise especially powers of caution and release, due to fear. Such as, as a result of influence of powerful individuals in the community, or fear of retribution and mob justice.

Girls may receive less support in the community or family, and be less willing to ask for help. SOS children’s villages in Uganda stated: “The challenge we face in bringing women and girls on board is girls fear to come up to tell their problems”. In the UK, girls are less likely than boys to have the support of their family, leaving them isolated or dependant on the support of the local authority, their “corporate parent”. In addition, due to a lack of sufficient facilities for girls, their placement a significant distance from a child’s home area decreases the chances of maintaining family and community links.
Responses

Numerous recommendations suggest supporting vulnerable children through a continuum of care and protection interventions that address the multiple challenges and risks faced by the child, protect the child from harm, and provide them with tools and options for their safe development. Access to support mechanisms should be prioritised as early as possible, and not only when a child has come into conflict with the law.

A common theme for girls in conflict with the law, is their limited choices and survival strategies. Expanding the choices available to a child is therefore “the next logical step”. As there may be fewer choices available to girls than boys, particular efforts should be made to promote gender equality in programming. This may include supporting a girl’s choice to remain in education during and after a teenage pregnancy, or for the perpetrator of sexual violence in the home to be forced to leave through the application of the rule of law, instead of the girl child running away or becoming dependent on another abusive relationship as a way out. A key point is that girls and boys need to be empowered to make different and expanded choices made available to them, rather than having these choices made for them.

Meanwhile research on the protective factors associated with females and offending, identifies factors such as high self-esteem, assertiveness, healthy lifestyles, supportive and enduring relationships with families and peers, access to services, positive female role models, and alternative education provision. Particularly important for girls is recognising the significance of relational ties for girls’ development. The fostering of positive relationships, including with family members, peers, romantic partners, therapists, and juvenile justice professionals, can play a significant role in helping girls heal from trauma and resist delinquency.

Research on some of the most vulnerable young people in Uganda in conflict affected areas urges that development efforts should acknowledge their significant potential and seek to create substantive roles for youth to engage in peace-building and civic activities, allowing them to build confidence, leadership skills, and empowerment. The research below highlights examples of best practice in diversion including the Uganda Fit Persons model which provides community support for children who have either been diverted, given a community sentence or reintegrated into their families and communities. Fit Persons are trained and respected individuals who support and follow the child in their reintegration process. In cases where families are unable or unwilling to be a guarantor for the child, the Fit Person is able to step in and even provide temporary foster care while searching for longer-term care options. The model recognises the significance of care and protection issues: that diversion and community-based alternatives need to be provided to children facing care issues; and that addressing care and protection issues is integral to solutions for children who have come into conflict with the law.
Vocational training

Studies have shown that girls may also be denied access to services that boy detainees may receive, such as education and recreation time outside of cells. The European Committee for the Prevention of Torture has often encountered female juveniles being offered activities stereotyped as “appropriate”, such as sewing or handicrafts, whilst male juveniles are offered training of a far more vocational nature.

The 49th Session of the State of the Nation Platform in Uganda noted on youth employment generally that “ineffective vocational training and unattractive employment prospects in the agriculture sector are not the solution. Rather, there is need to focus on and engage youth computing, craftsmanship, and technical and electrical engineering disciplines.” This gives insight into the vocational education options needed for girls in diversion programmes.

Conclusion

Girls in Uganda are disproportionately disadvantaged by risk factors such as poverty and sexual violence, and have fewer coping strategies available to them, increasing their likelihood of coming into conflict with the law. As a victim of crime, a girl may also find herself in so called protective custody.

Once in the system, girls are unlikely to have their needs met, including being placed too far away from family and community, lack of diversion options, and an absence of appropriate vocational training. They may also find themselves at risk of further abuses such as defilement.

An emphasis on diversion is prevalent within the juvenile justice sector worldwide, and awareness is raising on the issue in Uganda, with the drafting of National Diversion Guidelines for Juvenile Justice. However, diversionary measures can only be successful when part of a holistic system that addresses all the needs and vulnerabilities of the girl (and boy) child including a continuum of care and protection interventions that address multiple challenges and risks before a child comes into conflict with the law, and expanding the choices available to the child.

3. Data on girls in conflict with the law

The number of women imprisoned has increased significantly in some countries, and at a greater rate than for men. This increase has largely been ascribed to the adoption of harsher penalties for non-violent and less serious crimes, for which women are usually apprehended (property offenses, drug-related offences, etc.). The majority of such women usually come from socially disadvantaged communities and groups.3 However,

3 (Quaker UN Office, Prison Reform International, 2011)
studies in the UK show that “Common perceptions that girls are committing more crime and are more violent are not borne out by the evidence”\(^4\).

Uganda’s overall prison population rate has been steadily increasing in line with international trends, from 90 in 2008 to 121 in 2014\(^5\). Similarly, both the percentage of females in prison in Uganda and the rate per 100,000 of the national population (both men and women) have increased:

- Females account for 4.5% of the prison population in Uganda (August 2014)\(^6\) - the tenth highest rate in Africa, with South Sudan highest at 10.9%. This has increased from 3.4% in 2005.
- The female prison population has increased from a rate of 3.2 (per 100,000 of national population) in 2005, to a rate of 5 in 2014\(^7\).

Girls make up almost 10% of the population of CICL in Uganda, according to a Save the Children study in 2005\(^8\) which looked at police records in eight districts. Between three and five percent of all cases concerned children (aged 12 to 18), of which 9% were girls.

In terms of juveniles in prison in Uganda, 77 children were found detained in seven adult prisons in the same study. In Kampala’s main adult prison, 60 children were found to be on remand, while the number of convicted children held over the previous six months was only six, making the proportion of remanded children at least 90 per cent.\(^9\)

In Mbale, Uganda, the only two girls in the remand home were charged with defilement and stealing a phone.\(^10\) However there is a dearth of disaggregated data on the number of juvenile females in prison and this is made more opaque where they are treated as adults.\(^11\)

A 2007 study\(^12\) found that many juvenile cases were perpetrated by children living in camps for Internally Displaced Persons (IDPs) found in sub counties affected by armed conflict, and by children in street situations and in commuter centres. The rate of juvenile crimes was said to have been steadily increasing in districts such as Lira, Apac, Kaberamaido, Katakwi, Gulu and Kitgum.

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\(^4\) (Howard League for Penal Reform: Keeping girls out, 2012)
\(^5\) (Uganda Bureau of Statistics, 2015)
\(^6\) (World Prison Brief female prisoners, 2016)
\(^7\) (World Prison Brief Uganda, 2016)
\(^8\) (Save the Children: Hope, 2005)
\(^9\) (Save the Children: Hope, 2005)
\(^10\) (African Prisons Project, 2010)
\(^11\) (Quaker United Nations Office, 2007)
\(^12\) (Civil Society Organisations for Peace in Northern Uganda, 2007)
4. A criminal response to welfare needs

CICL who are not accused of committing an offence must never be processed through the juvenile justice system as offenders, and should instead be addressed through the appropriate legal, administrative or social welfare channels. However, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has noted that:

“In many countries the criminal justice system functions as an ill-suited substitute for a lacking or dysfunctional welfare system, resulting in the detention of children who have not committed a crime but who actually require welfare assistance, such as street children.”

For example, in Kenya, 80-85% of children in police custody or correctional facilities are children in need of care and protection who have committed no criminal offence. An appropriate response to the welfare needs of children which brings them into contact with the criminal justice system means “putting an end to the ‘warehousing’ of girls and boys simply because they are poor.”

Five factors have been identified “which combine to cause immense confusion in many countries” between criminal justice and social welfare systems particularly in relation to children living and working on the street:

1. Criminalisation, stereotyping and discrimination against children in street situations;

2. Outdated legislation which criminalises poverty (such as the criminalisation of survival activities such as ‘vagrancy’, begging and being the victim of commercial sexual exploitation);

3. Lack of social welfare infrastructures and resources;

4. Overlapping juvenile justice systems which lack coordination and resources, and poor coordination between e.g. social service departments and the police which results in children languishing in detention due to lack of monitoring;

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13 (International NGO Council on Violence Against Children: Creating, 2013)
14 (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2009)
15 (Defence for Children International, 2010)
16 (Wernham, 2004)
17 (Wernham, 2004)
5. The causes of street migration, survival strategies whilst on the streets, and children in street situations subsequent involvement with the criminal justice system, mean children in street situations overlap between:

- Children in actual conflict with the law
- Children in perceived conflict with the law
- Children in need of care and protection.

The criminalisation of children with welfare needs and the reliance on imprisonment cannot address the causes of offending, and succeeds only in “temporarily suspending a life of crime and with the continuing crime comes greater fear, more isolation and distrust in communities, and ever more punitive responses”\(^\text{18}\).

The tragedy is one for the individual child as well as society: Were the resources which are used to criminalise children, instead used in a more humane and just way, then the rights violations children suffer (such as denial of education, sexual violence), which first lead to their social exclusion and vulnerability to criminality, would be redressed. Instead, through criminalisation, the child is stigmatised and blamed for the wider failure of society and the government, with all its consequences.

4.1 Uganda

In a baseline survey of children in conflict with the law in Northern Uganda, Chance for Childhood found that “the survey highlighted clear differences between boys’ and girls’ experiences in the reasons for arrest. Worryingly, attempted suicide was the main reason why girls entered in conflict with the law”\(^\text{19}\). Attempting suicide is illegal in Uganda\(^\text{20}\).

In Uganda, the first Child and Family Protection Unit (CFPU) was established at Old Kampala Police Station in 1996 to respond to a number of children that were being brought to the police station even though they had committed no offence. Most of them (the station receives an average of four children per month) were reported as missing or abandoned children. Cases summarised in a 2009 report\(^\text{21}\) include: Children who have run away from their living situation due to “mistreatment” such as: “Orphans who have lost both parents and have been under the care of guardians”; mistreatment by step-parents; children staying with relatives “who subject them to starvation and corporal punishment”. In some cases parents bring children “saying they are fed up” and request the government to look after the children.

The Government of Uganda notes that the situation of these children:

\(^{18}\) (New Economics Foundation, 2010)
\(^{19}\) (Chance For Childhood, 2016)
\(^{20}\) Penal Code 1950 “Any person who attempts to kill himself or herself commits a misdemeanour”
\(^{21}\) (Government of Uganda, 2009)
"Is very pathetic. They live around the police station and at night sleep at the police counter or in the vehicles that are parked at the station without any bedding. The police woman in charge of the unit uses her own money to buy them a little piece of soap so that they can bathe. The worst case scenario is that of the girls. Some of them have reached puberty but there is no facility for sanitary towels and some of them don’t even have knickers. These are at great risk and dangers because at night anything can happen to them."

In 2006 the Government of Uganda and UNICEF produced a *Training Manual on the Role of the Uganda Police in the Protection of Women and Children’s Legal Rights* for CFPU staff, and there are now CPFUs in almost every police station in Uganda which have “been instrumental in protecting women and children from violence and abuse as well as educating the public on laws and legal procedures.” The CPFU was intended to be staffed by all female officers but male police officers are being encouraged to join and the above training manual insists that “A female child must be under the care of a female officer”.

In 2007 the UN Committee on the Rights of the Child commented “it is noteworthy to indicate that some districts/police stations do not have trained CFPU officers. Training more of such personnel and deploying them evenly throughout the country would go a long way to protect children from sexual exploitation as well as other rights violations.”

The department is still hampered by lack of resources. The former head of the Child and Family Protection Department, Uganda Police Force (UPF), Christine Alalo, comments:

“When we receive a new case, we calling around to children’s villages, orphanages, schools & other NGO’s for assistance. Unlike agencies and services provided in other countries to wrap around children, we do not have a social service department to which we can refer victims while we handle the criminal investigation. Our department must deal with both the law enforcement and the social services sides of a case.

“When someone is rescued from abuse, but the police fail to provide for even their basic needs like food, clothing, housing, medical care and school fees, the police become the “bad guys.” Victims soon realize their social needs were better provided for when they were being abused, and so they go back to the abusers, traffickers, pimps.... As the budget in government grows for defense, technology and counter-terrorism, the CFPU budget continues to shrink. There is nothing in the budget for

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22 (Uganda Police Force & UNICEF, 2006)
23 (Committee on The Rights Of The Child, 2007)
24 (Human Rights Network Uganda and the National Coalition on Police Accountability and Security Sector Reform, 2013)
CFPU to attend to basic needs of families and children served. That is why officers pay for food and clothing out of their own pockets.”

In addition are a lack of physical resources. An appeal for $4,000 was issued in 2014\textsuperscript{25} to allow the CFPU in Kampala to conduct “sanitary and functional repairs” for a derelict former police barrack apartment it had been assigned as “Child Protection has not been able to achieve a new office space in the new police office complex, due to the stigma associated with the people they serve.”

4.2 UK

Magistrates in the UK have been accused of confusing welfare needs with a high risk of reoffending and increasing the severity of the sentence or ‘up-tarfiffing’ girls\textsuperscript{26}. A study in the UK\textsuperscript{27} noted that “being drawn into the penal system in this way is often inappropriate and unnecessary for girls whose offending is primarily an outcome of neglect, poor parenting, or other welfare needs and problems”.\textsuperscript{28} The study found that girls can be drawn into the penal system at a much earlier point in their lives than is the case in many other countries. This “increases their chances of coming into contact with the penal system again, thus increasing the penalties they are likely to incur for their behaviour and drawing them further and further into the penal system”.

Hertfordshire youth justice service stated that “more girls have been drawn into the formal youth justice system in the last decade. Once in the system, girls often escalate through it more rapidly than boys, despite their relatively minor offending.” Evidence submitted by Derbyshire County Council stated, “The increasing criminalisation of children for minor offences in the period 2004-2007 had a disproportionate effect on girls i.e. as the overall numbers of young people in the justice system increased, girls made up a larger proportion of the share. As the number of female first time entrants rose the number receiving custodial sentences also rose”.

In England, better cooperation between courts and YOT and increased diversion from courts was found to have the potential to reduce imprisonment and deliver total savings of over £60 million\textsuperscript{29}.

4.3 Safe custody

In the context of confusing criminal justice and welfare responses, the criminal justice system is used for the ‘safe custody’ of girls. This effectively criminalises a child who

\textsuperscript{25} (A Child’s Voice, 31 March 2014)
\textsuperscript{26} (Howard League for Penal Reform: Keeping girls out, 2012)
\textsuperscript{27} (Howard League for Penal Reform: Keeping girls out, 2012)
\textsuperscript{28} (Howard League for Penal Reform: Keeping girls out, 2012)
\textsuperscript{29} (New Economics Foundation, 2010)
has done no wrong and who may be a victim of crime, depriving them of their liberty often with no recourse to due process.\textsuperscript{30}

In Uganda, girls may be detained simply because they are victims of crime, for example of forced marriages, child trafficking and commercial sexual exploitation. In addition, girls may be put in so-called protective custody to escape honour crimes.\textsuperscript{31}

The former head of the Child and Family Protection Department, UPF, Christine Alalo, recently made a plea for safe custody to ensure the prosecution of perpetrators of defilement and abuse:

“The imperative that victims and critical witnesses of abuse are protected in a safe location where their needs can be attended to at least until they can testify in court and a verdict is handed down on the perpetrator. Usually this critical period lasts 1-2 years until sentencing of the perpetrator is handed down.”\textsuperscript{32}

4.4 Beyond parental control

Children who are considered beyond parental control or girls who become pregnant before marriage may also be handed over by their parents to the Ugandan juvenile justice system.\textsuperscript{33} The Foundation for Human Rights Initiative (FHRI) found that some of the children in Kampiringisa Rehabilitation Centre in Uganda had not been processed through the legal system but were brought to the centre directly by their parents and classified as offenders as part of that process\textsuperscript{34}. Some parents deliberately want their children to be detained for becoming “unruly and very disobedient”, however in most cases the children concerned are not offenders.\textsuperscript{35}

Likewise in Nigeria, 80\% of girls detained in the Girls’ Remand Home, Idi-Araba, were non-criminal cases, i.e. ‘beyond parental control’, and ‘care and protection’ and civil dispute cases.\textsuperscript{36}

5. Crimes committed

The most common crimes committed by children in Uganda (both boys and girls) include\textsuperscript{37} drug abuse (mostly marijuana), gambling, theft, violent fights and assault occasioning bodily harm, arson, and defilement (mostly committed by boys). In the

\textsuperscript{30} (Save the Children: Hope, 2005)
\textsuperscript{31} (Nankya, December 2009)
\textsuperscript{32} (A Child’s Voice, 8 April 2014)
\textsuperscript{33} (Nankya, December 2009)
\textsuperscript{34} (FHRI, 2009)
\textsuperscript{35} (JLOS, December 2013 – February 2014)
\textsuperscript{36} (Wernham, 2004)
\textsuperscript{37} (Civil Society Organisations for Peace in Northern Uganda, 2007)
national rehabilitation centre Kampiringisa, the most common offence children were sentenced for was petty theft. Reflecting the list above, children aged 13 to 17 in a 2009 study, indicated that the main ways in which children came into conflict with the law in Uganda were through theft, gambling, “fornication”, rape, defilement, drug abuse, sex work, use of vulgar language, fighting, and homosexuality.

In the UK, over two thirds of offences committed by girls 2009–10 were non-violent. Girls accounted for 38% of theft and handling offences. Evidence from Hampshire and Gloucestershire constabularies in the UK, showed that the crimes for which the majority of girls came into contact with the police were shop theft, low level violent offences, and public order offences, usually involving the use of alcohol.

5.1 Contravening gender stereotypes

Many studies cite the harsher treatment of women and girls in the criminal justice system – particularly for status offenses - due to contravening gender norms. Narrow gender roles and the social control of girls force girls to adopt different coping strategies when under pressure from e.g. family breakdown or poverty. This results in less criminalisation in some cases, and in other cases in more. In the UK, girls are treated more harshly by magistrates if their behaviour contradicts gender stereotypes such as fighting or criminal damage. A study on diversion in Ethiopia found that boys’ criminality is more tolerated, because when girls commit a crime it is considered more embarrassing. As women in a given society become more independent, this can create conflicts in old and new societal expectations, which create tension for women and girls as they are expected to assimilate different gender norms concurrently. The following discusses the situation with regards to criminalising girls in the USA:

“As women began to exercise independence in many untraditional spheres of life they started to engage in more risk taking behaviour... While females were being encouraged to take on these new roles, they were also expected to maintain their previous ones of submissiveness and taking care of the family. Therefore, when a juvenile female displayed non-conforming gender roles to juvenile justice authorities,
they were more likely treated harsher than males who displayed the same demeanour.”

In some countries legislation may even permit a woman’s detention for challenging role models based on religion, custom and a woman’s perceived place in society. Women can lose their parental rights without any examination of what criminal justice options might serve the children’s best interests.

The different treatment of women and girls, manifests in a variety of ways and has long range implications. Speaking about the USA, one study author notes:

“There is strong evidence that suggests females continue to be treated differently and more harshly than males for similar offenses and status offenses. These differences in treatment and processing begin at the first contact with juvenile justice representatives, and continue throughout the system ... Once arrested females encounter more biased treatment during the presentencing reports. Both male and female probation officers were more likely to describe female offenders in a negative light as being rebellious, wilful and destructive. Despite the type of crime that a female offender was arrested for, their sexual behaviour was often described in the presentencing report. In contrast, male sexual behaviour was described only if they have been engaged in sexual criminal activity.”

Some arrests are based on gender in so far as the woman concerned is the wife of a suspect. For example, in Kalangala District, Uganda, three breastfeeding women were arrested and detained at Kalangala Police Station simply because their husbands, who had allegedly been involved in illegal fishing, had evaded arrest. They were later released at the intervention of the UHRC.

Status offences
Status offences, such as truancy, running away from home, violating curfew laws or possessing alcohol or tobacco, are acts which would not be a criminal offense if committed by an adult. They focus disproportionately on regulating the actions of girls and of boys who are poor, disadvantaged or who work or live on the streets.

Status offences are often used against girls to control their behaviour. In the USA, for example, “the pattern of female offending is quite different to males. A very large proportion of their arrests are for so called ‘status offences’.” Penal Reform International notes that in Uganda “the police have broad discretionary powers to

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45 (Donley, 2007)
46 (Quaker UN Office, Prison Reform International, 2011)
47 (Donley, 2007)
48 (Uganda Human Rights Commission, 2014)
49 (Penal Reform International, August 2012)
50 (Save the Children: Hope, 2005)
'detain' children in need of protection, frequently children living or working on the street, who have committed status offences such as loitering or begging".\textsuperscript{51}

There are calls for status offences to be identified as welfare issues, for these offences to be abolished and the conduct addressed through child protection mechanisms\textsuperscript{52}. The UN Committee on the Right of the Child notes in General Comment No. 10 (2007) on Children’s rights in juvenile justice notes that:

"It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

"In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour."

5.2 LGBTI population

Same-sex sexual activities are criminalised in Uganda according to the Penal Code Act 1950, Chapter 120, Sections 145-148 (unnatural offences; attempt to commit unnatural offences; indecent assaults on boys under eighteen; and indecent practices, respectively)\textsuperscript{53}. Although it is not someone’s sexual orientation or the work of advocacy organisations which is criminalised, there is a tendency to widen the scope by for example applying Section 21 of the Penal Code on incitement to commit an offence\textsuperscript{54}.

As a result, the persecution of LGBTI individuals is widespread. The UPF is the top individual perpetrator of violations against LGBTI persons with 64 violations out of the 171 violations reported in 2015 (37%) and children have been evicted from school on the basis of being LGBTI\textsuperscript{55}.

\textsuperscript{51} (Penal Reform International, August 2012)
\textsuperscript{52} (CRIN, 2016)
\textsuperscript{53} (Government of Uganda, 1950)
\textsuperscript{54} (Human Rights Awareness and Promotion Forum (HRAPF), September 2016)
\textsuperscript{55} (Human Rights Awareness and Promotion Forum (HRAPF), September 2016)
Amnesty International notes that the criminalisation of the “promotion of homosexuality” contained in the recent Anti-Homosexuality bill, may lead to limits on adolescents’ access to important health information and that criminalisation is not an appropriate response to consensual sexual conduct by children or is in “the best interests of the child” (UN Convention on the Rights of the Child [CRC] article 3)\textsuperscript{56}.

At least 400 LGBTI Ugandans sought safety and asylum in Kenya between January 2014 and February 2015, following the passage of the Act in December 2013, the overwhelming majority in their late teens or early twenties and identified as gay men. There were also reports of LGBTI Ugandans relocating temporarily to Kenya, both legally and illegally, the latter making them extremely vulnerable\textsuperscript{57}.

While the Anti-Homosexuality Act was annulled on procedural grounds by Uganda’s High Court in August 2014, Ugandan members of parliament petitioned for the bill’s re-introduction and considered a new law targeting the LGBTI community, the Prohibition of Promotion of Unnatural Offences Bill. While specific incidents of arrest or violence drove forced migration, “the general climate of fear created by the bill [meant] others simply did not want to wait for something to happen”\textsuperscript{58}.

A new NGO Act was passed by parliament in November 2015 which includes “special obligations” of independent groups, could make organisations vulnerable to politically motivated charges. There are concerns that the NGO bill could provide a legal basis for restricting advocacy on the rights of LGBTI people\textsuperscript{59}.

While gay men are greatly affected by persecution, transgender and lesbian women and girls are also at great risk of being ostracised from their communities and coming into conflict with the law:

“A suspected lesbian in Nabweru was evicted by the Local Council I Secretary of the area from her rented house and also banished from ever residing in that village again. In the eviction letter served on her, the secretary said that she was being evicted because she was a lesbian, which was against the cultural norms and beliefs of the people in that area. She lost her job since she worked in that area and had to look for shelter among friends.

“Another suspected lesbian in Kyengera was evicted from her rented premises and also banished from the village by the area chairperson. In the eviction letter, the chairperson said that he was banishing her on grounds that she would influence other children to become lesbians. The case was also reported to police.

\textsuperscript{56} (Amnesty International, 2010) \\
\textsuperscript{57} (Zomorodi, May 2016) \\
\textsuperscript{58} (Zomorodi, May 2016) \\
\textsuperscript{59} (Human Rights Watch, 2016)
“A suspected lesbian was gang raped by four men at night as she walked home from a bar. The men kept telling her that they knew that she was lesbian and wanted to show her how natural sex should be... At the time of collecting this data, the victim was living in seclusion in an upcountry district. Such incidents of corrective rape are suffered especially by lesbians and transgender men but are never reported for fear of stigma.”

Intersex children are the subject of multiple human rights violations in Uganda including surgery without consent, family and community discrimination and stigmatisation, discrimination at school leading to school drop-out, abandonment by family, prejudice and stigma when seeking health services, and lack of legal protection as someone who is above twenty-one years of age is not able to reassign their sex with the civil registry.

5.3 Sexual exploitation

In Uganda, girls in conflict with the law “are mostly into prostitution.” Likewise, in a study of children in street situations in Tajikistan, it was found that most street survival strategies were simply not available to girls, who would instead turn mainly to prostitution to survive.

A study of girls engaged in commercial sex exploitation in Kampala and Jinja, revealed girls were exploited as early as seven years of age. Their situation involved multiple vulnerabilities including:

- Sexual abuse either by customers or by family members resulting in pregnancy, trauma and stigmatisation;
- Being forced to move with various men in order to earn a living making them vulnerable and isolated and unable to access the education system;
- Health challenges especially sexually transmitted infections;
- Their parents died and they had to resort to commercial sex work in order to survive;
- Lack of access to support services as “most of these girls are always in conflict with the law and thus they do not want to be identified by any outsider”.

In the UK, Barnado’s found that in 66% of cases where a sexually exploited child had committed a criminal offense, the offence was related to the young person’s sexual exploitation. Similarly, another report in the UK found that:

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60 (Human Rights Awareness and Promotion Forum (HRAPF), September 2016)
61 (SIPD Uganda, 2015)
62 (Youth Map Uganda, 2011)
63 (Save the Children: Hope, 2005)
64 (ANPPCAN Uganda Chapter: Mapping, 2012)
65 (Howard League for Penal Reform: Out of place, 2012)
“Often girls and young women come to the attention of the authorities due to offences they have committed as a result of their sexual exploitation. Many girls use crime as a means to escape their exploiters or as a cry for help (e.g. committing a public order offence to avoid being raped) or to express a sense of justice (e.g. smashing up an exploiters car) as they feel excluded from traditional mechanisms of justice... Too often the youth justice system fails to recognise girls and young women as victims of sexual exploitation because existing legislation allows them to be punished for crimes committed as a result of it.”

As a form of child sexual exploitation, the girls (and sometimes boys) involved in sex work are victims and not perpetrators of a crime. However, girls who have turned to sex work as a survival strategy or are victims of trafficking for sexual exploitation are prosecuted instead of the adults who are exploiting them. Indeed, while the use, procurement, or offering of any child for prostitution is illegal under Article 5 of Uganda’s Employment (Employment of Children) Regulations 2012, the Penal Code does not protect children who are procured or offered for prostitution from being treated as offenders rather than victims.

This situation has historically been exacerbated by a lack of female police officers in Uganda. A study of one CFPU (mandated by police guidelines to handle all cases involving children in conflict with the law) in Pokot in north-eastern Uganda revealed “that the unit did not have a single female police officer to handle sensitive gender-specific cases such as defilement and sexual abuse of girls.”

Transactional sex is of growing concern in Uganda. A study of rural Ugandan adolescents found that 90% of girls’ three most recent relationships included some level of economic support. Sexual relationships without a transaction are viewed negatively by both male and female youth. Young women felt that if they gave sex “for free,” they would be more likely to be viewed as “loose,” and youth of both genders thought that willingness to engage in sex without a transaction could indicate that one was HIV positive. It has been argued that policies that focus on sexual relationships that are exploitative rather than the exchange of sex for money, cause the policing of young women’s (not young men’s) sexual lives and their public social lives.

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66 (Howard League for Penal Reform: Out of place, 2012)
67 (Save the Children: Hope, 2005)
68 (US Department of Labor’s Bureau of International Labor Affairs, 2014)
69 (UNDP, UNICEF and UN Women, 2009)
70 (Youth Map Uganda, 2011)
71 (Howard League for Penal Reform: Out of place, 2012)
5.4 Violent crime

There are isolated cases of murders committed by children, either on their own or together with adults. In the national rehabilitation centre Kampiringisa, two girls in the centre were being held for the capital offence of murder. In 2014, the UHRC made monitoring visits to fishing communities in Uganda and found that SGBV is widespread. Records at most police stations and police posts showed an increase in cases of SGBV against women and girls such as rape, defilement and assault. Local leaders informed UHRC that most relationships amongst fishing communities were temporary lasting only for as long as the man had money and consequently, it was common to find people moving from one relationship to another, which was found to be partly to blame for the high SGBV incidences. Approximately 90% of female suspects found by UHRC in police cells had been arrested for assault and causing grievous bodily harm. UHRC established from the police that most of the fights between women and men were “over lovers or prostitutes”.

Contrary to reports of rising violent crime by girls in the USA, “criminologists have repeatedly found that there is, in fact, not an epidemic of girl-on-girl violence. What exists is an epidemic of adult denial in facing what it takes to raise healthy children. Legislators’ refusal to fund infrastructure such as housing, jobs, and schools; voter apathy, and the ruthlessness of a highly-profitable prison system have combined to usher in the era of the criminalization of social problems”.

Victimisation and violent offending

Exposure to violence in childhood has profound health and social consequences, including increased risk of depression, suicide, conduct disorder, disruptive behaviour, and risky sexual behaviour. Many children reported that their experiences of violence shaped their beliefs about themselves and some children discussed how experiencing violence undermined their trust in adults and confidence in themselves.

One study of 5,000 juveniles found that “violent victimization is indeed a warning signal for future violent offending among juveniles. Protecting juveniles against violent victimization may, therefore, reduce overall levels of juvenile violence”. The results were similar for each gender. A considerable number of children in a Uganda study on violence shared transitional thoughts of suicide and revenge, or displaced their anger on younger children.

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72 (Civil Society Organisations for Peace in Northern Uganda, 2007)
73 (African Prisons Project, 2010)
74 (Uganda Human Rights Commission, 2014)
75 (Schaffner, 2005)
76 (Karen M. Devries, January 2014)
77 (Naker, 2005)
78 (Jennifer N. Shaffer and R. Barry Ruback, December 2002)
79 (Naker, 2005)
Corporal punishment is illegal in Uganda (Penal Code amendment Act 2007) and has been associated with increased aggression across time and cultures. Parental use of corporal punishment is a key childhood predictor of subsequent offending.\(^8^0\) The internalisation by girls of the effects of domestic violence, sexual abuse and family break-up may find expression in violent behaviour, depression, withdrawal and self-mutilation.\(^8^1\)

As well as predisposing children to being violent themselves, exposure to violence means that by adolescence, these children continue to be seriously disadvantaged. This includes underachieving or failing in school, being ostracised or bullied by peers (or victimising other children), and developing addictions, impulsive or reckless behaviour, depression and suicidality, or delinquency:

“Few adults will stop and, instead of asking ‘What’s wrong with you?’ ask the question that is essential to their recovery from violence: ‘What happened to you?’”\(^8^2\)

The young women who perpetrate violent assaults in the USA, have suffered severe and chronic emotional neglect, physical assaults, and sexual abuse: “We who work with them see them, not as armed and dangerous, but as harmed and furious.”\(^8^3\)

5.5 Falsely accusing children of crimes

More than one study in Uganda, highlights the vulnerability of young people as leading to their coming in to conflict with law as a result of being targeted by adults:

“Some youth said they felt targeted by those who want to create problems—especially by rebel groups, opposition politicians, or even government officials—and felt that they were the segment of the population that suffered most from this violence and disturbance.”\(^8^4\)

With regard to children in street situations around the world, incidents have also been reported of members of the public bribing officials to bring heavier penalties against them or to proceed on false charges.\(^8^5\)

Housemaids

The government of Uganda notes that “working practice has been for the mothers to collect young girls from rural areas to care for their children.”\(^8^6\) The Warden of Naguru

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\(^8^0\) (International NGO Council on Violence Against Children: Characteristics, 2013)
\(^8^1\) (Wernham, 2004)
\(^8^2\) (Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 2012)
\(^8^3\) (Schaffner, 2005)
\(^8^4\) (Youth Map Uganda, 2011)
\(^8^5\) (Wernham, 2004)
\(^8^6\) (Ministry of Gender, Labour and Social Development, 2007)
Remand Home in 2010 noted that “mostly girls are working as housemaids and they steal from their employers”\(^{87}\).

However, Carol Bankusha, the Probation and Welfare Officer at Kampala City Council, observed that most of the girls facing the juvenile courts struggle with trumped up charges by their bosses, with some girls working as maids in homes and restaurants accused of stealing money or babies, as a way of denying them what is due to them\(^{88}\).

**Witchcraft Accusations**

Belief in witchcraft is widespread in sub-Saharan Africa and is largely defined as the ability to harm someone through the use of mystical powers. Where previously older women were generally accused of witchcraft, the number of children accused of witchcraft is now increasing\(^{89}\).

Research by UNICEF has shown that an accusation of witchcraft against a child is a complex process of victimisation beginning with the child’s vulnerable situation such as orphanhood or disability. Misfortune in a community, including illness or death with natural causes, triggers suspicions, the search for a scapegoat and accusations “that lead almost systematically to violence that in turn can lead to infanticide or rejection of the child. The child is initially a victim of his situation, thereafter a victim of a witchcraft accusation. Once accused of being a witch, the child is stigmatized forever”\(^{90}\).

UNICEF concludes that one of the most serious consequences of witchcraft accusations against children is violence, be-this psychological (humiliation, contempt, disdain, insolence, etc.) or physical. Other behaviours commonly associated with accusations of witchcraft include infanticide and the abandonment of children.\(^{91}\) In Africa, it is estimated that 80% of children accused of witchcraft run away or are abandoned by their parents\(^{92}\) and children living on the streets is a common consequence of witchcraft accusations as well as an indicator of the scale of the phenomenon.\(^{93}\)

Former British colonies generally adapt the British Witchcraft Suppression Act, and criminalise the practice of witchcraft, accusing someone of witchcraft or representing oneself as a witch\(^{94}\), as is the case in Uganda’s Witchcraft Act 1957\(^{95}\). However the Government of Uganda’s Justice Law and Order Sector (JLOS) has determined that the

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\(^{87}\) (Mugerwa, 2006)  
\(^{88}\) (URN, 2010)  
\(^{89}\) (UNICEF WCARO, 2010)  
\(^{90}\) (UNICEF WCARO, 2010)  
\(^{91}\) (UNICEF WCARO, 2010)  
\(^{92}\) (Safe Child Africa, n.d.)  
\(^{93}\) (UNICEF WCARO, 2010)  
\(^{94}\) (European Parliament, 2013)  
\(^{95}\) (Government of Uganda, 1957)
legislation should be decriminalised given that it is “archaic, and the fact that it is cruel, ambiguous and violates the provisions of the constitution.”

6. Risk factors

“For many adults and children, a 15-year-old who bears a child willingly or unwillingly ceases to be a girl-child but a young mother. An 11 year old who takes on the task of tilling the fields ceases to be a boy but a labouring farmhand. A 16 year old who spends most of his time at a wage-factory ceases to be a young adolescent but a breadwinner. A nine year old girl made to peddle her body on the streets becomes a commodity. An eight year old boy on the street stealing someone’s money for food is a criminal. Boys and girls loitering in the streets sniffing rugby are considered dregs of society.

“Seldom are their situations seen in the context of poverty and lack of parental guidance and societal responsibility”

The text above illustrates how various vulnerabilities force children to abandon their childhood and instead seek coping strategies to ensure their survival. Or children are forced into deplorable situations of abuse and neglect, for example by being trafficked for sexual exploitation. The common root of this lack of agency and choice in a child’s life and the subsequent violation of their human rights is vulnerability caused by a range of factors – many of which coexist and are interrelated. For example substance abuse to cope with abuse and hunger; children living or working on the street linked to poverty and conflict at home; violence against women and girls both resulting from child marriage and causing it, when a girl feels that it is her only option for escape from an untenable home life.

The majority of detainees in a Sierra Leone remand home were either homeless or living in unstable conditions before their arrests:

"You do not find wealthy kids in these facilities, but rather children who are already very vulnerable ... most of these kids were picked up off the streets ... Some of them have been committed for years ... sometimes as high as four or five years, for simple offences like larceny (theft of personal property), all because they have no one to advocate for them on the outside.”

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96 (JLOS, undated)
97 (Save the Children: Understanding, 2004)
98 (Al Jazeera, 29 April 2016)
6.1 Vulnerable children in Uganda

Young women who are generally considered at risk in Uganda include orphaned girls, commercial sex workers, girls with disabilities and domestic workers. They report facing a range of issues, including\(^99\): denial of education and dropping out of school; neglect after losing parents to HIV/AIDS; child marriage; sexual abuse and exploitation; unwanted pregnancy, and/or contraction of HIV.

A report by Uganda Youth Map warns that “unless the root causes of vulnerability are understood and addressed, youth will continue doing what it takes for survival, and Uganda will likely face greater social and political consequences.”\(^100\)

Poverty, peer pressure, poor home atmosphere, and lack of guidance were cited as situations that cause children to come into conflict with the law in Uganda.\(^101\) In research in Gulu and Masaka, alcohol abuse by adults was raised as one of the reasons for either not having enough money to eat, or for being beaten and being thrown out onto the streets.\(^102\)

Many children in Masaka complained of food shortages, a shortage of land and loss of land fertility, a limited number of livestock and a lack of diversity of food to which a child has access. Other negative elements of the community identified by the children included prostitution, disease and ill-health among both adults and children, including HIV/AIDS, violent films shown to children and the many drinking places and bars in the community.

Other recognised factors globally include broken homes, lack of education and employment opportunities, peer pressure and exploitation by criminals\(^103\). A study of CICL (five male, 10 female) in the Agago district of Uganda identified several push factors\(^104\):

- Responsibility given to children due to poverty such as pressure for the eldest children to leave education or leave home.
- SGBV leading to the separation of families and children being abandoned and taking on adult responsibility for their own survival.
- Negative attitudes of parents towards girls’ education because girls are viewed as a source of wealth through child marriage, causing girls to go into prostitution as way of securing material needs.
- Mistreatment from step mothers in terms of starvation, physical punishment, and child labour; causing children to steal and harness their own survival means.
- Children’s involvement in land conflicts due to the premature death of elder family members in the Lord’s Resistance Army (LRA) civil unrest, whose role would have included establishing boundaries over behaviour to young children.

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\(^{99}\) (Youth Map Uganda, 2011)
\(^{100}\) (Youth Map Uganda, 2011)
\(^{101}\) (Government of Uganda, 2009)
\(^{102}\) (Save the Children: Gaining, 2006)
\(^{103}\) (Wernham, 2004)
\(^{104}\) (Chance for Childhood, Unpublished)
• Peer Influence from friends who want expensive material things and steal.

OVCs

The Government of Uganda notes no statistically significant differences between male and female children in the distribution of orphanhood or vulnerability. The leading cause of parental death is AIDS, responsible for 43% of all maternal deaths and 33% of all paternal deaths. Another common cause of death of mother and father was “long illness” (a common euphemism for AIDS related illness).\(^{105}\)

According to Uganda’s National Strategic Programme Plan Of Interventions For Orphans And Other Vulnerable Children 2011/12—2015/16\(^{106}\), the Northern region of Uganda in which Chance for Childhood operates has the highest percentage of critically and moderately vulnerable children in the country at 62.9% (Central region has the lowest at 41.4%). See table below.

<table>
<thead>
<tr>
<th>Region</th>
<th>Critically Vulnerable</th>
<th>Moderately Vulnerable</th>
<th>Generally Vulnerable</th>
<th>Total Vulnerability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>7.8</td>
<td>33.6</td>
<td>52.7</td>
<td>94.1</td>
</tr>
<tr>
<td>Eastern</td>
<td>7.5</td>
<td>45.5</td>
<td>43.8</td>
<td>96.8</td>
</tr>
<tr>
<td>Northern</td>
<td>9.3</td>
<td>53.6</td>
<td>35.9</td>
<td>98.8</td>
</tr>
<tr>
<td>Western</td>
<td>8.1</td>
<td>41.1</td>
<td>45.9</td>
<td>96.1</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>8.1</strong></td>
<td><strong>42.9</strong></td>
<td><strong>45.1</strong></td>
<td><strong>96.1</strong></td>
</tr>
</tbody>
</table>

Critically and moderately vulnerable children are defined as follows:

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\(^{105}\) (Government of Uganda, 2009)

\(^{106}\) (Ministry Of Gender, Labour And Social Development, 2011)
## Box 5: Categories of Critically Vulnerable Children

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orphans whose rights are not fulfilled</td>
<td></td>
</tr>
<tr>
<td>Children infected and affected by HIV and AIDS</td>
<td></td>
</tr>
<tr>
<td>Children with disabilities</td>
<td></td>
</tr>
<tr>
<td>Children in worst forms of child labour (commercial sexual exploitation,</td>
<td></td>
</tr>
<tr>
<td>illicit activities, paid domestic work, work that interferes with school</td>
<td></td>
</tr>
<tr>
<td>attendance)</td>
<td></td>
</tr>
<tr>
<td>Street children/abandoned children and/or neglected children</td>
<td></td>
</tr>
<tr>
<td>Children in contact with the law</td>
<td></td>
</tr>
<tr>
<td>Children in child headed households</td>
<td></td>
</tr>
<tr>
<td>Children experiencing various forms of abuse and biolence e.g.</td>
<td></td>
</tr>
<tr>
<td>survivors of sexual violence; children in abusive homes or institutions</td>
<td></td>
</tr>
<tr>
<td>Children in armed conflict (captives or child soldiers internally</td>
<td></td>
</tr>
<tr>
<td>displaced, ex-combatants, child mothers)</td>
<td></td>
</tr>
<tr>
<td>Any other category of children who are assessed to be in need of</td>
<td></td>
</tr>
<tr>
<td>immediate care and protection</td>
<td></td>
</tr>
</tbody>
</table>
Box 6: Categories of Moderately Vulnerable Children

- Children involved in hazardous work (domestic service, informal sector, commercial agriculture, trafficked)
- Child mothers
- Children out of school
- Children in poverty stricken (impoverish) household
- Children living with the elderly, and/or parents/guardians with severe disabilities
- Children in hard to reach areas (fishing communities, mountain areas, nomadic communities)

However, the moderately vulnerable child can easily become critically vulnerable due to their situation – for example, a child in a poverty stricken household stealing in order to eat and then becoming in conflict with the law.

Gender is only addressed in these categories with the term “child mothers”, however in many categories girls are at greater risk, for example “children out of school” (with girls more susceptible to e.g. child marriage) and “survivors of sexual violence” (girls are more likely to experience SGBV\(^{107}\)).

**Girls in street situations**

Amongst children in street situations, girls are in a minority (estimates range between 3 and 30%).\(^{108}\) However in Uganda, it is believed that girls number as many as boys but they are less visible “as girls are easily picked up by people in the community to do food vending or house-keeping and older ones join prostitution to offer themselves for money”.\(^{109}\)

A Uganda survey found an ever-increasing number of children in street situations, from orphanhood but also because households are too poor to care for children and because children are escaping abuse at home. Children in street situations were frequently involved in risk-taking activities such as taking drugs and alcohol, gambling, sex work

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\(^{107}\) (Karen M. Devries, January 2014)

\(^{108}\) (Wernham, 2004)

\(^{109}\) (Retrak, 2010)
and theft.\textsuperscript{110} Girls in street situations face many challenges including diseases, sexual abuse, unwanted pregnancy, child labour and stigmatisation. Few girls can access services provided to children in street situations “because they are most times away either doing food vending, in video halls targeting men for some favours after providing sex”\textsuperscript{111}.

Children noted that better services like getting them off the streets, education and rehabilitation (rather than providing food and clothing which is mainly the case) are vital\textsuperscript{112}.

Violence towards children in street situations in Uganda is very high: 76% have suffered physical violence; 60% of acts of physical violence were perpetrated by strangers or passers-by; 74% have suffered sexual abuse; 15% of girls had experienced “forced sex”. Children in street situations are also subjected to violence by the authorities. Less than 3% of children in Uganda, reported such incidents to the police\textsuperscript{113}.

SGBV affects girls more as they engage in commercial sex work as their main means of survival. This not only leads to infections and diseases, including HIV/AIDS, but unwanted pregnancies and babies, which make their already vulnerable situation worse\textsuperscript{114}. These exceptionally high levels of sexual violence against girls in street situations are caused by factors such as\textsuperscript{115}; ‘non-normative’ sexual activity on the streets (possibly involving multiple partner and ‘survival’ sex in exchange for food, shelter and protection); gender stereotypes in male-dominated cultures which define these girls as not ‘nice girls’; a general taboo around sexually active children, especially girls, and even a fear of them. Street migration for girls is more traumatic and the social rupture more permanent, and girls display more psychological damage than boys – a combination of sexual abuse and family disconnection\textsuperscript{116}.

A child’s coping strategies and livelihood options on the street are likely to result in coming into conflict with the law\textsuperscript{117}. ‘Do I steal or go hungry?’; ‘Do I agree to have sex with the policeman or let him arrest me?’; ‘Do I help in the older boy’s robbery or get beaten up by him?’\textsuperscript{118} Substance abuse is both a coping strategy and a bonding factor with peers, but will inevitably push children to steal, bringing them further towards conflict with the law.\textsuperscript{119}

\textsuperscript{110} (Government of Uganda, 2009)  
\textsuperscript{111} (Retrak, 2010)  
\textsuperscript{112} (Retrak, 2010)  
\textsuperscript{113} (African Child Policy Forum, 2014)  
\textsuperscript{114} (Retrak, 2010)  
\textsuperscript{115} (Wernham, 2004)  
\textsuperscript{116} (Wernham, 2004)  
\textsuperscript{117} (Save the Children: Hope, 2005)  
\textsuperscript{118} (Wernham, 2004)  
\textsuperscript{119} (Save the Children: Hope, 2005)
The UN Committee on the Rights of the Child General Comment 10 notes that “It is quite common that criminal codes contain provisions criminalising behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization.”

A review of Kampiringisa National Rehabilitation Centre in 2010 held 103 children in street situations (63 boys and 40 girls) alongside young offenders120. “it appeared that in the case of the girls, the street children and offenders were also sleeping in the same quarters. This close proximity potentially puts the street children at risk of harm or exploitation from the offenders.”

6.2 Negative childhood experiences and mental health

The vulnerability of CICL has been extensively researched globally. For example, a study in the UK found that roughly half of children in the juvenile justice system are also known to social services.121 Another UK survey found that 95% of young people in custody aged 16–20 were assessed to have mental health issues (in the general population, only 13% of boys and 9% of girls have some form of mental disorder).122

Children who come into contact with the criminal justice system in the UK generally come from the most disadvantaged families and communities:

- 60% have significant speech, language or communication difficulties123,
- 50% have experienced time in care or substantial social services involvement, compared to 3% of the general population 124,
- One in four boys report suffering violence at home, and one in 20 report having been sexually abused 125,
- 31% have a recognised mental health disorder compared to 10% of the general population126,
- 19% suffer from depression, 11% anxiety, 11% post-traumatic stress disorder and 5% psychotic symptoms 127,
- 15% have a statement of special educational needs128,
- 88% of boys have been excluded from school129.

120 (African Prisons Project, 2010)
121 (International NGO Council on Violence Against Children: Creating, 2013)
122 (New Economics Foundation, 2010)
123 (Barnado’s, n.d.)
124 (Howard League for Penal Reform, 2010)
125 (Howard League for Penal Reform, 2010)
126 (Howard League for Penal Reform, 2010)
127 (Howard League for Penal Reform, 2010)
128 (Howard League for Penal Reform, 2010)
129 (Howard League for Penal Reform, 2010)
Background characteristics of female CICL

Studies on the background characteristics of women in the justice system in Uganda could not be found. However, PTSD is four to 10 times more prevalent among incarcerated women than in community samples\textsuperscript{130}. Other statistics on women include:

- Over 90% of girls in the juvenile legal system in the USA have histories of sexual, physical, or emotional abuse;
- Abused and neglected girls are nearly twice as likely to be arrested as other juveniles;
- 82% of girls suffering depression committed crimes against persons, compared to 42% girls in the general population in a US study\textsuperscript{131};
- Over half the young women in prison in the UK in one study had been in care and a quarter had children of their own\textsuperscript{132}. The effects of early parenthood constitute a recognised risk factor\textsuperscript{133}.

A study in the USA found that crimes that women are convicted for “are closely related to the structural situation of women in this society. The characteristics are histories of abuse, of being responsible for children, and being limited to low skill/low income jobs. Incarcerated women grew up in abusive families to a much higher extent than men and a majority of them had experienced domestic violence... as single parents with usually low skills it is for most difficult or impossible to support their children”\textsuperscript{134}.

Research by the UK Cabinet Office found that risk factors associated with teenage girls and offending included poverty, abuse, truancy, drug and alcohol use, parental conflict, poor parental supervision, victimisation and living in a high crime area\textsuperscript{135}.

A support programme in the UK, Platform 51, stated:

“While girls and boys experience similar factors relating to their offending, girls’ offending is more strongly associated with: low self-esteem; the influence of boys in risky situations; personal relationships, including problems with parents and family, neglect and conflict; and socio-economic indicators such as poverty, large family size, poor housing and educational problems.”

\textsuperscript{130} (Ford, 2013)
\textsuperscript{131} (Schaffner, 2005)
\textsuperscript{132} (Howard League for Penal Reform: Keeping girls out, 2012)
\textsuperscript{133} (UK Government, 2005)
\textsuperscript{134} (Kuhlmann, 2005)
\textsuperscript{135} (Howard League for Penal Reform: Keeping girls out, 2012)
Where girls and boys have similar risk factors in their backgrounds, women are less likely to become recidivist or serious offenders and their criminal careers tend to be shorter\(^\text{136}\).

**Lack of parental care and peer pressure**

A study by Chance for Childhood revealed that the most common motivation for a child committing a crime in Northern Uganda was peer influence. While many of those surveyed did not themselves highlight poverty as a root cause of their crime, the prevalence of “neglect and abuse” and “lack of care and necessities” as the next two most frequent factors points to children often living in desperate conditions, with no financial resources or a stable family to depend on\(^\text{137}\).

In a study in the Philippines of child diversion, one respondent who had reported her granddaughter, age eight, for theft commented: “As her grandmother, I wanted to help her while she is still young. That was precisely the reason I filed the complaint ... The parents must be subpoenaed so they would also be demanded of their responsibility to their children and be made to promise to fulfil their parental obligations.”\(^\text{138}\)

When violence or neglect affect a child’s relationship with his or her parents, gangs and peer groups may become an alternative family, with both positive (such as peer support) and negative (such as gang violence) implications. One of the consequences of the breakdown of family protection may therefore be a child adopting coping strategies that will in turn expose them to further violence and the increasing risk of coming into conflict with the law\(^\text{139}\).

Girls may be susceptible to peer pressure in different ways to boys. Girls are said to experience more emotional strain from problem relationships because across cultures, they are socialised to focus on relationships. This is particularly true in adolescence when relationship conflict can cause feelings of rejection and depression in girls. The resulting insecurity “can lead girls to associate with antisocial peers and romantic partners, increasing their vulnerability to delinquent behaviours”.\(^\text{140}\)

### 6.3 Poverty and livelihoods

The incidence of poverty remains highest in the Northern region, with 43.7% living below the Poverty line compared to 4.7% in the Central Region\(^\text{141}\). Youth at risk in

\(^{136}\) (UK Government, 2005)
\(^{137}\) (Chance For Childhood, 2016)
\(^{138}\) (Save the Children: Back on Track, 2005)
\(^{139}\) (Save the Children: Hope, 2005)
\(^{140}\) (Francine T. Sherman; Annie Balc, 2015)
\(^{141}\) (Uganda Bureau of Statistics, 2015)
Northern Uganda are “deeply affected by poverty and LRA war, particularly female youth, disabled youth, and ex-abductees”\textsuperscript{142}. For both boys and girls in Uganda, theft and other crimes can be a response to poverty. Poverty was mentioned as a cause of delinquency among juveniles in a small 2008 Uganda study “this makes male juveniles resort to stealing and female juveniles to prostitution”\textsuperscript{143}. Another study revealed that the majority of offences committed by children and young people in Uganda are related to their very survival and many had been forced to steal in order to eat\textsuperscript{144}.

When asked why they were involved in crime, 32 girls interviewed at Naguru Remand Home in Uganda said it was mainly due to poor socio-economic conditions at home as a result of extreme poverty, others said it was because they were orphans. The girls also reported that circumstances force them to work as housemaids and they end up stealing because they are not being paid\textsuperscript{145}.

**Youth employment**

Uganda has one of the highest rates of young people in the world, with 78.4\% of the population aged 30 or below\textsuperscript{146}. This means that the high youth unemployment figure of 13.3\% “is a major national concern becoming a social and economic threat”\textsuperscript{147}. Every year, 400,000 young people enter the job market to compete for approximately 9,000 available jobs\textsuperscript{148}. Young people aged 18-30 account for 64\% of the total unemployed population in Uganda\textsuperscript{149}.

However, even where youth are employed, 60\% of paid young employees take home less than the average monthly wage\textsuperscript{150}. Informal employment is almost universal among young workers with 92\% engaged in unstable employment and three in every four young workers aged 15-29 years classified under irregular employment\textsuperscript{151}. In northern Uganda, the majority of work by youth is in the form of leje (small jobs) in the informal sector\textsuperscript{152}. The informal sector provides limited opportunities for skills training.

An outcome of the 49th Session of the State of the Nation Platform, a national policy forum in Uganda, in 2014 was a call to the government of Uganda:

\begin{footnotesize}
\textsuperscript{142} Youth Map Uganda 2011
\textsuperscript{143} (Mugerwa, 2006)
\textsuperscript{144} (Save the Children: Gaining, 2006)
\textsuperscript{145} (DCI-IS, June 2008)
\textsuperscript{146} (Uganda Bureau of Statistics, 2015)
\textsuperscript{147} (Uganda Bureau of Statistics, 2016)
\textsuperscript{148} (Advocates Coalition for Development and Environment, 2014)
\textsuperscript{149} (Brookings, August 2014)
\textsuperscript{150} (Uganda Bureau of Statistics, 2016)
\textsuperscript{151} (Uganda Bureau of Statistics, 2016)
\textsuperscript{152} (Youth Map Uganda, 2011)
\end{footnotesize}
“To focus on addressing real unemployment lest socio-economic ills in society like gambling (sports betting) and drug abuse increase. Evidence shows that such social ills could spark insecurity in form of riots and demonstrations has been witnessed in and around Kisekka, Bwaise and Kalerwe markets.”

The gender dimension of poverty

Female livelihoods

A lack of livelihood options mean many young women resort to sex work and subsequently become more vulnerable to HIV, other sexually transmitted diseases and to abuse.

In a study on Community Service Orders in Africa, over a third of 294 women prisoners at Meru prison in Kenya were found to be serving a sentence for brewing illegal alcohol. In the vast majority of cases, illicit alcohol is brewed by impoverished women who have few other options to raise money. Therefore, even those given a fine, rather than a custodial sentence, can end up in prison due to the inability to pay the fine.

Alcohol produced in the informal sector makes up about 80% of alcohol consumed in Uganda and female youth are particularly engaged in brewing local alcohol as a main economic activity. However, the dangers of alcohol brewing including exposure to harmful chemicals and burns, means it can be classified as one of the worst forms of child labour (ILO convention 182, ratified by Uganda in 2001) and as hazardous work (ILO Recommendations 190). An article on illegal distilleries in Kimasa, Uganda noted:

“The illegal distilling process, which mixes a dangerous cocktail of chemicals, pure alcohol and molasses, saturates the ground around Kimasa ... thick acidic smoke fills the air ... The majority of the 486 people working here are women, many of whom fled from Joseph Kony's Lord Resistance Army in Northern Uganda during the 1990s. It is

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153 (Advocates Coalition for Development and Environment, 2014)
154 (Youth Map Uganda, 2011)
155 (Penal Reform International, 2016)
156 (Youth Map Uganda, 2011)
157 (Youth Map Uganda, 2011)
158 (ILO Convention 182, 1999) “the term "the worst forms of child labour" comprises ... (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”
159 (ILO Recommendation 190, 1999) “In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to: ... (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health”.
a hazardous working environment and the work is labour intensive. Exploding distilling drums are a frequent occurrence and many of the workers suffer from horrific burns.”¹⁶⁰

Girls are seen to have a duty to participate in unre numerated domestic care in Uganda, which is considered ‘natural’ for girls and women but exacerbates their poverty.¹⁶¹ The vast majority (70%) of female youth aged 14-30 are engaged in unpaid family work in Uganda¹⁶². The Government of Uganda notes that “discriminatory practices continue to thrive against the girl child. There is evidence of discrimination against the girl child’s education in homes where girls still do most of the household chores which deprives them of going to school and concentrating. Some drop out of school due to what parents choose to call lack of resources for scholastic materials while others are sent into early marriages.”¹⁶³

The unemployment rate is higher among the better educated and among young women¹⁶⁴. One in five (19%) of young females in Uganda are classified as “Neither in Education nor Employment nor Training” (NEET) compared to 7% of males (almost three times the number)¹⁶⁵. The gender disparity in median monthly wages is significant at Shs 66,000 (USD $20) for females and Shs 132,000 (USD $40) for males.¹⁶⁶ In Uganda, women account for only 37% of public sector employees¹⁶⁷ and female-owned businesses have to pay significantly more bribes and are at greater risk of harassment than male owned businesses in their dealings with government officials. The World Bank’s Doing Business report on Entrepreneurship in 2011¹⁶⁸ noted that a female entrepreneur in Uganda: made 32 payments that cut across 16 tax regimes, accounting for 36% of her profit in taxes; spent about 20 days in one year on compliance.

Girls and land ownership
A major issue affecting young women and their financial sustainability is access to land. Uganda has a pluralistic legal system and under customary law, property and labour belong to the entire family and “women, as property, cannot own property”¹⁶⁹. Women mostly possess user rights to defined land lots designated by the clan, husbands, or brothers. Most parents do not apportion land ownership to their daughters and girls

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¹⁶⁰ (Al Jazeera, 29 April 2016)
¹⁶¹ (ODI, 2013)
¹⁶² (Youth Map Uganda, 2011)
¹⁶³ (Ministry of Gender, Labour and Social Development, 2007)
¹⁶⁴ (Uganda Bureau of Statistics, 2016)
¹⁶⁵ (Uganda Bureau of Statistics, 2016)
¹⁶⁶ (Uganda Bureau of Statistics, 2015)
¹⁶⁷ (Youth Map Uganda, 2011)
¹⁶⁸ (World Bank, 2011)
¹⁶⁹ (Loftspring, 2007)
do not inherit land.\textsuperscript{170} Uganda has a Muslim population of 14\%\textsuperscript{171} and Islamic Law also affords women fewer inheritance rights than men.\textsuperscript{172} Forceful evictions of women (and their children) from their homes after the husband’s death is reportedly common in Uganda and often leaves a widow evicted from her home, with no means to provide for herself or her children. These decisions are typically made under customary law by tribal or religious leaders who may not be aware of the formal legal system and statutory laws such as the succession act are often not implemented in practice.\textsuperscript{173} Families affected by AIDS-related deaths and especially AIDS orphans are vulnerable to property-grabbing\textsuperscript{174}. In a study on OVCs in the Iganga and Kitgum Districts\textsuperscript{175}, OVC land is grabbed by relatives, and children are forced to get married. This practice was noted by all the respondents and key informants as one of the biggest challenges that hinder girls from attaining education in the two districts.

Such practices are “supported by a view of women as ‘property’ through the payment of bride price”\textsuperscript{176}. And vice versa, such that a lack of land ownership and economic insecurity increases the dependence on and subordination to men\textsuperscript{177} and makes women and girls vulnerable to the high rates of SGBV and to other abuses such as child marriage, which in turn impact a girl’s right to education.

**Criminalisation creating poverty**

Criminalisation as a result of poverty or other factors further prohibits livelihood options and children are caught in a vicious cycle. Young people in Uganda said they are denied jobs after being released from prison because they lack skills and are burdened by social stigma. “We end up stealing in search of capital, yet, when we are caught, we are taken back to prison.”\textsuperscript{178}

In one sample of young men, all ten were in school when arrested, highlighting how disruptive criminalisation can be for education with its knock-on effects into employment prospects.\textsuperscript{179} This is reflected in research from the UK\textsuperscript{180} which shows that girls are being criminalised in courts when no intervention is needed or when they could be diverted to other services. They then risk limiting their employment opportunities due to receiving a criminal record.

\textsuperscript{170} (Youth Map Uganda, 2011)
\textsuperscript{171} (Uganda Bureau of Statistics: Census, 2014)
\textsuperscript{172} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{173} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{174} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{175} (ANPPCAN Uganda Chapter, August 2013)
\textsuperscript{176} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{177} (ODI, 2013)
\textsuperscript{178} (Youth Map Uganda, 2011)
\textsuperscript{179} (Youth Map Uganda, 2011)
\textsuperscript{180} (Howard League for Penal Reform: Keeping girls out, 2012)
Poverty preventing exit from the criminal justice system

In addition to being a push factor in causing criminality, poverty can also negatively affect children’s experiences from within the criminal justice system. Poverty is considered to be “one of the key links between street migration, survival strategies and treatment in the system”.181

Where police corruption is prevalent and bribes are needed, for example for early release from detention, juveniles in poverty are unable to pay and secure their freedom.182 Police threaten children in street situations in order to extort money from them. Over a third of children who spoke to Human Rights Watch in Uganda said officials forced them to hand over money or small goods in exchange for not being beaten or being released from detention. Often officers first beat them and then threatened to arrest them if they could not pay.183

Poor families may likewise lack the resources to intervene or may be unable to maintain contact through visits due to travel costs or the cost of taking time off work.

6.4 Child Trafficking

Children as young as seven years old are exploited in Uganda in forced labour in agriculture, fishing, forestry, cattle herding, mining, stone quarrying, brick making, car washing, scrap metal collection, street vending, bars, restaurants, and domestic service. Girls and boys are also exploited in prostitution. Women and children from the Karamoja region are particularly vulnerable to forced labour in grazing and domestic servitude, commercial sexual exploitation, and forced begging and many Karamojong children are taken to Kampala where they are exploited.184

Children from the Democratic Republic of the Congo (DRC), Rwanda, Burundi, Kenya, Tanzania, and South Sudan are also subjected to exploitation in Uganda, and South Sudanese children in refugee settlements in northern Uganda are vulnerable to trafficking.185 As undocumented, such children are not only highly vulnerable to their traffickers but may also come into conflict with the law in Uganda and be treated as criminals due to their non-legal status.

Ugandan children are taken to other East African countries and are exploited including being forced to engage in criminal activities. Ugandan children and adults previously abducted by the LRA remain unaccounted for, and some are still captive with LRA

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181 (Wernham, 2004)
182 (Wernham, 2004)
183 (Human Rights Watch, 2014)
184 (US Department of State, 2016)
185 (US Department of State, 2016)
elements in the DRC, Central African Republic, and the disputed area of Kafia Kingi (claimed by both Sudan and South Sudan)\(^{186}\).

In its 2013 annual report\(^{187}\), Uganda’s Coordination Office to Combat Trafficking in Persons (COCTIP) documents exploitation including sexual exploitation; labour exploitation (including harmful child labour); use of adults and children in illegal activities; human sacrifice; child marriage; and removal of body organs for sale. Children may come directly into conflict with the law as a result of being used for illegal activities by traffickers including “rebel/terrorist activities, drug trafficking, street begging, pornography, prostitution and petty thefts”.

Of the registered victims of internal trafficking, 98% were children (51% of all victims were girls). Meanwhile 80 children were identified as victims of transnational trafficking (36 of them girls), with transnational victims taken from districts such as Kampala, Wakiso, Mukono, Luwero, Adjumani, Mbale, Kapchorwa, Masaka and Kaliro\(^{188}\).

**Intercountry adoption**

Africa has been dubbed the new frontier for intercountry adoption, with a threefold rise in intercountry adoption cases in eight years, despite a global 15 year low, due to a decline in children being offered by traditional sending countries such as Russia and Guatemala. According to Save the Children, over 80% of children in orphanages around the world (from which children are intercountry adopted) have a living parent and most are there because their parents cannot afford to feed, clothe and educate them. Poverty is not a reason to remove a child from his or her parent, yet this is often what is driving families to give up their children in what they perceive are temporary arrangements which will give their children stability and an education before returning home\(^{189}\).

Serious abuses connected with intercountry adoption are well documented and the First Lady of Uganda, Janet Museveni, noted that intercountry adoption in Uganda has facilitated trafficking for prostitution, sex slavery rings, live organ harvesting and hard labour. In such cases she observed that “national policies were always in place and the paper work done.”\(^{190}\) COCTIP notes that “the adoption law of Legal Guardianship Order lacks enough safeguards and it is highly suspected that it is being used to promote trafficking of Ugandan children out of the Country”\(^{191}\).

\(^{186}\) (US Department of State, 2016)  
\(^{187}\) (COCTIP, February 2014)  
\(^{188}\) (COCTIP, February 2014)  
\(^{189}\) (Harrop, Adoption trade sets up shop in Africa, July 2012)  
\(^{190}\) (Harrop, Adoption trade sets up shop in Africa, July 2012)  
\(^{191}\) (COCTIP, February 2014)
Tracing, witchcraft and ritual killings

In some African countries, witchcraft has become inextricably linked to the trafficking in persons for exploitation. Through ritual “oaths of protection” in countries such as Nigeria, witchcraft provides a cost effective and convenient way for trafficking victims to become mentally chained to their traffickers, and the ensuing life of sexual slavery or forced labour, among other abuses. Meanwhile, the expulsion of alleged witches from communities, including in Uganda as described above, creates a desperate and vulnerable population who become easy prey for ruthless exploitation.192

Uganda is among African countries in which there are beliefs that human body parts, particularly those of children and of Albinos, contain magical powers which can be used to enhance witchcraft rituals. However such rituals are not always steeped in ancient traditions and belief systems. In its report on child sacrifice in Uganda, the Jubilee Campaign notes that while animal sacrifice is well established, the practice of child sacrifice is a relatively recent phenomenon and is a purely criminal activity “undertaken by those posing as traditional healers with the intent of exploiting people’s religious beliefs in order to profit financially”. The Jubilee Campaign defines child sacrifice as “the act of murdering a child by a witch-doctor or their accomplices in order to use the child’s blood, organs and/or limbs mixed with herbs and other elements in a ritual witchcraft ceremony”. In 2013, COCTIP recorded a total of 12 suspected human sacrifices, ten of which involved children as victims.194

In 2008, the UN Committee on the Rights of the Child made public its concern over the sale of children for sacrifices and the ritual killings in Uganda. And the Jubilee Campaign reports that child sacrifice is “growing exponentially” in the country, with unofficial figures of 3,000 disappearances a year vastly outstripping official government figures of 72 ritual murders in the 5 years to 2010.195

Just like the belief in child witches, child sacrifice operates at all levels of society. The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) has even linked increases in ritual killings to Ugandan elections and “the temptation to some politicians is to seek services of traditional healers”. Meanwhile in July 2012, Kampala-based businessman Godfrey Kato Kajubi was sentenced to life imprisonment for ordering the ritual murder of a 12 year old boy, who was killed by a witchdoctor for a payment of Shs 15 million (USD $4,000).196

192 (Harrop, Ties that bind: African witchcraft and contemporary slavery, September 2012)
193 (Harrop, Ties that bind: African witchcraft and contemporary slavery, September 2012)
194 (COCTIP, February 2014)
195 (Harrop, Ties that bind: African witchcraft and contemporary slavery, September 2012)
196 (Harrop, Ties that bind: African witchcraft and contemporary slavery, September 2012)
6.5 Girls with disabilities

In a study of five countries by the African Child Policy Forum (ACPF)\(^\text{197}\), children with disabilities in Uganda and Zambia are the most vulnerable to physical violence (87% of the Ugandan sample had suffered at least one kind of physical violence), and children in Ethiopia and Uganda the most vulnerable to emotional violence (children with auditory disabilities were the most vulnerable to emotional violence in Uganda at 41%). One in four children (24%) in the Ugandan sample were forced to have intercourse. Over half (51%) of Ugandan children with a physical disability are forced to work for the benefit of others. In Uganda, there have been reports of increasing numbers of ritual sacrifices of children with disabilities and of albino children.\(^\text{198}\)

In Uganda, children with disabilities face two vulnerable periods: At age six the child is subject to physical and emotional violence when it becomes apparent to parents that the child’s disability is permanent; and at age 12-15 when the child experiences sexual violence upon beginning puberty.\(^\text{199}\)

Girls and young women with disabilities are more vulnerable to SGBV. According to the ACPF study, girls and boys with disabilities were equally likely to suffer a given type of sexual violence one or two times (28% of all cases) but girls are far more likely to suffer a given sexual violence more than 10 times (28%) than boys (16%).

There is a clear nexus between poverty and abuse suffered by girls and children with disabilities. Girls with disabilities are least likely of all groups to receive education because of a combination of stigma and lack of support structures. They are often therefore caught in a cycle of poverty\(^\text{200}\) and like other impoverished girls may resort to sex work: “If a disabled girl does not work and she is ashamed of asking for help, she can solve the problem via prostitution.”\(^\text{201}\) In addition, “shame, poverty and negative cultural beliefs increase the vulnerability of children with disabilities to violence, especially from care-givers” in Uganda.\(^\text{202}\)

Poverty may also be a cause of disability because “adverse social and environmental conditions, such as poverty, poor nutrition, and social deprivation, during the critical years of early brain growth and development usually present later in childhood as cognitive impairments and poor performance at school.”\(^\text{203}\)

\(^\text{197}\) (African Child Policy Forum, 2011)  
\(^\text{198}\) (African Child Policy Forum, 2011)  
\(^\text{199}\) (African Child Policy Forum, 2011)  
\(^\text{200}\) (Youth Map Uganda, 2011)  
\(^\text{201}\) (African Child Policy Forum, 2011)  
\(^\text{202}\) (African Child Policy Forum, 2011)  
\(^\text{203}\) (Geoff Solarsh and Karen J. Hofman, 2006)
As with the issue of women and lack of land ownership, girls and women with disabilities find themselves trapped in abusive relationships because they are financially and socially dependent on their partners and families for survival.\textsuperscript{204} The lack of application of existing child protection laws, and adequate referral, judicial and police services further harm children with disabilities in Uganda\textsuperscript{205}.

### 6.6 Conflict affected areas

From 1996, up to 1.7 million people from northern Uganda entered government-run camps for IDPs, supposedly created for the safety of the people from the LRA, but which were in fact rife with disease and violence. A generation of Acholi people, an ethnolinguistic group of northern Uganda, “were born and raised in criminal conditions”\textsuperscript{206}. By the end of 2013, the LRA had moved from Uganda to the border region of Congo, South Sudan and the Central African Republic (CAR)\textsuperscript{207}.

Children who were traumatised by their direct experience with the LRA in northern Uganda, or who grew up in IDP camps, may have difficulty adjusting to post-conflict life. Child offenders and incarcerated children from such communities are common\textsuperscript{208}. Children in Karamoja and northern Uganda continue to be challenged by armed conflicts, insecurity, weak governance structures, and other factors such as\textsuperscript{209}:
- The demand for services for young people exceeds supply, exacerbating vulnerability;
- There are mismatches between youth needs and available interventions;
- Youth link their risky behaviour and engagement in illicit activities “to unemployment, idleness, poverty, and lack of support structures”, reporting an overwhelming sense of alienation, hopelessness, and insecurity;
- Many children in street situations in Kampala are from Karamoja.

Young women are especially vulnerable to the psychological and physical hardships resulting from conflict and traditional systems that disempower women. Children, particularly girls, were exposed to sexual violence, and led to the phenomenon of “night commuting”, as children fled to temporary shelters. By October 2004, tens of thousands of children in Gulu, Kitgum and Pader were fleeing their homes each night to urban centres and the larger IDP camps fearing attacks and abductions by the LRA. These children faced the threat of physical abuse, sexual exploitation and gender-based violence including rape\textsuperscript{210}.

\textsuperscript{204} (Youth Map Uganda, 2011)
\textsuperscript{205} (African Child Policy Forum, 2011)
\textsuperscript{206} (Invisible Children, n.d.)
\textsuperscript{207} (GlobalSecurity.org, n.d.)
\textsuperscript{208} (Youth Map Uganda, 2011)
\textsuperscript{209} (Youth Map Uganda, 2011)
\textsuperscript{210} (Ministry of Gender, Labour and Social Development, 2007)
Children Associated with Armed Forces and Armed Groups (CAAFAG)

Between 25,000 and 30,000 children were forced into armed conflict by the LRA, 15-30% of them girls\(^{211}\). Once a girl reached puberty, she typically assumed the role of “wife” to a commander, acting as sex slaves, and repeatedly raped, often bearing children\(^{212}\). Upon return to the communities, girls reported shame and stigma associated with experiences of sexual violation while in captivity\(^{213}\).

Effects of time in captivity (of both boys and girls) are evident in their poor health and lack of education, creating significant obstacles for reintegration into their communities\(^{214}\). Many former female CAAFAG have been unable to reintegrate fully. Often returning home HIV positive and traumatised, they face stigma and poverty, as do their children. Girls have more limited economic activities available and when they have children, can find it hard to access work. In northern Uganda, the most common economic activity reported by former female CAAFAG is alcohol brewing and distilling because it is relatively profitable and can be performed alongside domestic duties.

One returnee, Jennifer, “returned to Gulu with her daughter, but was spurned by her family. ‘My parents feared I would try to kill them in the night,’ she says. ‘And my older brother said he didn’t want his children hanging around me in case they too became a prostitute.’ Having only had a brief, interrupted education, Jennifer says there are limited opportunities for former combatants like herself.”\(^{215}\)

Lillian was abducted by the LRA in 1998 when she was 13 years old, but faced severe stigma upon her return: “Many in Kitgum were not happy to welcome her. Some had lost their daughters to the LRA. They looked on her as a rebel and as a killer. Lillian feels that her home town folk even tried to kill her. She says they tried to poison her, welcoming her with poison on their hands and giving her charms that had been cursed.”\(^{216}\)

In 2012 Uganda rescinded its amnesty programme for LRA fighters and “the shift has raised tensions brewing just beneath the surface. The fighters and ex-bush wives who settled near the people they may have once harmed are... increasingly tormented by their former communities.”\(^{217}\)

The children born as a result of rape in armed conflict are often victims of abandonment and even infanticide\(^{218}\) and are stigmatised twice – for being illegitimate and a child of

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\(^{211}\) (Corbin, 2008)  
\(^{212}\) (Beard, 2011)  
\(^{213}\) (Corbin, 2008)  
\(^{214}\) (Beard, 2011)  
\(^{215}\) (Al Jazeera Magazine, May 2015)  
\(^{216}\) (Lillian’s Story: Abducted at 13 by LRA, Uganda, October 2014)  
\(^{217}\) (FT Magazine, July 2013)  
\(^{218}\) (Susan McKay, July 2010)
the “enemy”. They may have an ambiguous legal status and may face legal and cultural impediments to disclosure about the identity of both parents, potentially making them stateless.\textsuperscript{219}

Such mothers and children need special care to prevent further human rights violations and to ensure their successful and long term reintegration. Strategies for the reintegration of girls need to facilitate a girl’s acceptance in multifaceted ways, through for example conducting traditional rituals, making reparations, providing health care and livelihoods support, and developing links with women’s groups.

6.7 Lack of access to education

Opportunities for girls to develop their capabilities through education in Uganda are undermined by factors such as\textsuperscript{220}: gender inequality and the role and status of women and girls in the family, clan and community; negative attitudes towards girls’ educational abilities including by parents; teenage pregnancy and child marriage; gender-insensitive school environments; the impact of HIV and AIDS on households; distance to schools; inaccessibility of vocational training due to cost.

The majority of children in case studies in a global Save the Children study on CICL\textsuperscript{221} had dropped out of school, either to work to support their families or themselves or because their parents were unable to pay the costs of their education:

“The impact of both fees and hidden costs found behind so many of the ‘free’ education systems cannot be underestimated, not only in terms of these children’s lives but also in terms of the resulting cost to society, financial and social, including the increased likelihood that these children will come into conflict with the law”.\textsuperscript{222}

While access to primary education by gender is relatively equal in Uganda, with primary enrolment for 2013 comprising 49% girls and 51% boys, there are educational disparities as children grow up. For example\textsuperscript{223}:

- Higher Institutions Enrolment, 2012 shows 44% girls vs 56% boys;
- 2012/2013 literacy rates for those age over 10 are just 65% of females compared to 75% of males;
- The disparity is most marked in the Northern region, where only 48% of females are literate compared to 73% of males.

\textsuperscript{219} (Susan McKay, July 2010)
\textsuperscript{220} (ODI, 2013) and (Youth Map Uganda, 2011)
\textsuperscript{221} (Save the Children: Hope, 2005)
\textsuperscript{222} (Save the Children: Hope, 2005)
\textsuperscript{223} (Uganda Bureau of Statistics, 2015)
The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) highlights Uganda’s “discriminations based on gender with practices which lead girls to stay at home to look after their little sisters and brothers or the denial of pregnant girls or girl mothers to continue their schooling compromising their right to education”.  

The Government of Uganda also notes that “lack of sanitary towels for older girls in school cause absenteeism and eventual drop out... Additional challenges to girls’ education are inability of schools to protect girls from abuse, discriminative attitudes and practices by teachers, stereotyped curriculum and teaching methods and absence of relevant life skills and guidance on reproductive health.”225 The issues of lack of education for girls are compounded for those girls who also suffer “inadequate access to education by destitute (children) and children with disability”226.

There are also regional variations. The proportion of children who had never attended school in the Northern region (12%) was nearly six times that of Central region (2%). The Karamoja sub region had the highest proportion of children aged 6-17 years who had never been to school (41%) and the lowest of those attending school (58%), attributed to cultural beliefs which attach low importance to education and the high poverty levels in the area227.

**OVCs and education**

A 2009 Uganda study found that:

- Orphaned children aged 6 to 12 years old were significantly more likely (93%) to be currently going to school compared to their non-orphaned counterparts (90%);
- In the age group 13 to 17 years old, orphaned children were less likely to be attending school (78%) compared to non-orphaned children (87%).

Reasons for this include that support for younger children to remain in school in the immediate aftermath of parental death may be followed by financial difficulties as the child grows up, or the fostering family shows preference for biological children going to school while fostered children perform chores or earn an income228. A more recent study found that overall orphans were less likely to attend school compared to non-orphans229.

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225 (Ministry of Gender, Labour and Social Development, 2007)  
226 (Ministry of Gender, Labour and Social Development, 2007)  
227 (ILO and UBOS, 2013)  
228 (Government of Uganda, 2009)  
229 (ILO and UBOS, 2013)
A survey of OVCs in Kitgum and Iganga revealed that school dropout rates of OVC in all the surveyed schools is high with a 65% drop out rate\textsuperscript{230}. This is reflected by other research in Kitgum\textsuperscript{231}.

“Most of these children do a lot of work and take care of the goats and other animals... most of these parents do not value education, they like children to drop out and cultivate or to go for hunting. This is even worse for those who do not have parents and they are heading their own households.

“...Girls are first told to fetch water in the morning, grind sorghum and wash all the cooking utensils before going to school and if you fail to do all these you won’t be given lunch”

“... For the child headed households they are supposed to improvise whatever they need for themselves and it is even made worse for those who come to school because they won’t have any one to cook for them at home when they are at school... most of them end up dropping out of school”.

\textbf{Child marriage as a barrier to education}

Child marriage and early pregnancy have been identified as a main reason for girls dropping out of school in Uganda.\textsuperscript{232} A teacher from Kitgum comments:\textsuperscript{233}

“In our school here we have a challenge of early marriages most of the orphan girls are married off by their relatives because they do not want to have the burden of looking after them”.

The ACERWC has noted that in Uganda, child marriage “not only affects the health of the girl but also drives her to abandoning her education. There is a need to observe that the law heightens this phenomenon by authorizing marriage under 16 years of age”.\textsuperscript{234}

In Acholiland and Karamoja, two regions with protracted conflicts, girls are treated with a privileged status growing up, due to girls being a future source of wealth, which is inextricably linked to the denial of education.\textsuperscript{235} An educated girl in Karamojong society “cannot fetch a lot of cow” and may be considered a prostitute and given a lower

\textsuperscript{230} (ANPPCAN Uganda Chapter, August 2013)
\textsuperscript{231} (ANPPCAN Uganda Chapter: Survey, August 2012)
\textsuperscript{232} (Office of the Special Representative of the Secretary-General on Violence against Children, 2014)
\textsuperscript{233} (ANPPCAN Uganda Chapter, August 2013)
\textsuperscript{234} (African Committee of Experts on the Rights and Welfare of the Child, November 2010)
\textsuperscript{235} (UNDP, UNICEF and UN Women, 2009)
dowry price than an uneducated girl. Education is considered to undermine a girl’s role as a homemaker, mother, and wife. This stigmatising of educated girls is a great deterrent for education, and illiteracy rates are high in Karamoja\textsuperscript{236} (only 23% of women are literate\textsuperscript{237}).

Similarly, in one study of the Pokot tribe in North East Uganda\textsuperscript{238}, complex interplays based on gender inequality undermine girls’ access to education including:

- If a girl goes to school and delays the tradition of child marriage, she delays the returns to the family in form of a dowry;
- The school environment exposes girls to a new value system that may undermine parental authority;
- If girls move away from their local communities for education, it may expose them to boys from different ethnic groups and cultural traditions that may not offer a high enough dowry;
- Education undermines girls’ pre-disposition towards manual labour and makes girls “lazy”;
- Uneducated girls attract a far higher dowry – the less the education, the higher the girl’s value and vice versa;
- Sexual abuse by male teachers;
- Practical challenges related to sanitation and hygiene conditions in schools;
- Stigma attached to school-going girls who are characterised as ill-behaved and/or as prostitutes.

**Child labour**

Research by the Government of Uganda\textsuperscript{239} indicates that 2 million children aged 5-17 years are involved in child labour (approximately 16% of total children). Children’s work was overwhelmingly in the primary sector (agriculture, forestry and fishing) and working children put in an average of 19 hours of work per week in economic activities.

OVCs in Uganda are more likely to engage in child labour with half of double orphans involved in employment, much higher than the proportions for the non-orphans and single parent orphans. Boy orphans are involved in construction, brick-making, stone quarries, hawking, boda boda (motor cycle taxi), and girls as housemaids, barmaids, selling firewood.

\textsuperscript{236} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{237} (Uganda Bureau of Statistics: DHS, 2011)
\textsuperscript{238} (ANPPCAN Uganda Chapter, 2008)
\textsuperscript{239} (ILO and UBOS, 2013)
However, many children who “cannot cope with the work pressure” end up in theft and street begging. Child beggars are a growing challenge in Lira district, Northern Uganda:

“The begging children are between 5 and 8 years of age. Children are affected psychologically. They feel powerless and hopeless undermining their self-esteem and confidence. Some of these children have a violent disposition because their work makes them more susceptible to beating and other forms of physical abuses. These children feel betrayed by their communities in that they think their relatives and community leaders are indifferent to their plight. So they become violent to vent their anger”.

6.8 Child marriage

Child marriage is a violation of human rights, compromising the development of the girl child in multiple ways. These include high levels of maternal mortality and high rates of child malnutrition, and problems with sexual and reproductive health such as HIV/AIDS. Girls who marry are often taken out of school and are marginalised from social activities, reinforcing the gendered nature of poverty. Child marriage is used as a way for the family to both increase its income and/or reduce the financial burden from an additional household member.

However girls and boys may also choose to marry at a very young age, albeit that the choice is against a backdrop of deprivations and limited options. For example, the Government of Uganda and UNICEF note studies which show that adolescents attribute teenage pregnancy and child marriage to for example, inadequate provision of basic necessities by parents, lack of control over girls mobility, inadequate parental guidance, mistreatment of girls at home, peer pressure and experimentation at adult relationships, and few options in life other than marriage.

In Uganda, over 15% of ever-married women aged 20-49 were married by the age of 15, and 49% were married by age 18. Child marriage is highest in northern Uganda, estimated at 59%.

A girl who has been raped can be expected to marry her rapist— if the bride price offered is enough. The ACERWC notes the continued practice in Uganda of “parents forcing their pregnant daughters to marry the perpetrator of the sexual abuse”. This is a continuation of the traditional practice of “marriage by abduction” which occurs in

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240 (Civil Society Organisations for Peace in Northern Uganda, 2007)
241 (Girls Not Brides, 2016)
242 (UN Committee on the Rights of the Child, July 2003)
243 (Government of Uganda and UNICEF, June 2015)
244 (Government of Uganda and UNICEF, June 2015)
Uganda246. In Karamoja, if a boy rapes a girl, it is termed colloquially as ‘putting her down’. The practice of ‘courtship rape’ is common in the region247. While in Karamoja myself in 2014, one such incident had occurred the day before, described to me thus:

“It was terrible, I heard the girl screaming and running for her life as a boy chased her. Crowds gathered to cheer him on. Eventually he caught her and raped her and her fate was sealed - she would become his wife. It is a traditional practice here and was heart breaking to see.”248

Studies have shown that women who married at younger ages are more likely to believe that it is sometimes acceptable for a husband to beat his wife and were more likely to experience domestic violence themselves. The age gap between partners is thought to contribute to these abusive power dynamics249.

Defilement
Defilement is the most common serious crime Uganda accounting for more than half of all the serious crimes in 2014250 and can lead to child marriage. According to a 2012 study in selected districts of Uganda: 78% of primary school going children and 82% of secondary school students had experienced sexual abuse; 6% were subjected to defilement. Male teachers were found to be the main perpetrators, responsible for 24% of teenage pregnancies, child marriages and defilement.251

In the case of the Pokot in North East Uganda, defilement is not recognised as a crime in the local community because the ages of children is unknown, and it is believed girls are ready for marriage as soon as they undergo female genital mutilation/cutting (FGM/C)252.

“By tradition, if it is known that your daughter was raped, she loses dignity. She even fears to report that case, stigma is also an issue. And on top of that they think she will not get another man to marry her after she was raped. They will say “Patricia was raped, ahh! I can’t go there to take her” Mayuge Sub-county253

“Girl children suffer abuse more than boys only that the kind of abuse girls most suffer is considered more ashamed and thus under reported. There are many girls who get defiled every day but very few report because of the traumatizing nature of the abuse” A probation officer in Kampala district254

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246 (ODI, 2013)
247 (UNDP, UNICEF and UN Women, 2009)
248 As told to the report author on a visit to Karamoja in 2014.
249 (UNICEF, 2005)
250 (Uganda Bureau of Statistics, 2015)
251 (Uganda Human Rights Commission, 2014)
252 (ANPPCAN Uganda Chapter, 2008)
253 (ODI, 2013)
254 (ANPPCAN Uganda Chapter, 2014)
Financial payments by perpetrators

JLOS notes the “alarming trend of negotiation in cases of defilement in the community”\textsuperscript{255} which is hampered by financial interests because parents of defilement victims especially in rural areas, can solicit heavy fines from people who impregnate their daughters rather than access justice\textsuperscript{256}. Christine Alalo, former head of the Child and Family Protection Department, UPF, comments:

“When a child is abused or someone is a key witness of abuse, their testimony is vital to the effective prosecution of a perpetrator. If these vulnerable minors are released back into custody of their community and families while awaiting the trial of the perpetrator, the case against the perpetrator might as well be closed. The witness will be coerced into denying abuse, their parent(s) will be paid off by alliances of the perpetrator as “hush money,” and the child is at very great risk of disappearing.”\textsuperscript{257}

In addition are problems of bribery of officials:

“I would say that one of the factors hindering the services rendered to these OVCs is the corruption and bribery where you would like to assist, for example a defiled child—you get the suspect and take that person to [the] police, but because of bribery that person is imprisoned and all of a sudden you find that [he] is released without even knowing how he was released, and the case ends.” Interviewee, Central region.\textsuperscript{258}

Connivance between law enforcement officers and perpetrators of abuse contributes to the widespread child abuse in Uganda. Corruption of the police in handling child abuse cases is strongly decried with stories that when the case is reported and even arrests made, the accused are quickly given bonds and within minutes are seen loitering in the community. While the community members blame the police, the police officers blame it on the unfair constitutional provisions that state that no suspect should be kept in police cells beyond 48 hours. One police officer explained that when a child abuser is arrested, there time needed to thoroughly investigate the matter before taking the case to court.\textsuperscript{259}

Peer to peer sex

The majority of remand homes note that defilement is the most common offence among the children detained there\textsuperscript{260}: “The current debate on the reduction of the age
of consent is based on the fact that defilement is the biggest contributor to the numbers in remand homes.”

The court system may be overburdened with defilement cases, frequently involving two teenagers of proximate age who have had consensual sexual relations. This is also illustrative of a double standard:

- Young teenagers or children may be married against their will;
- Consensual sexual relations with peers outside of marriage can render teenage males liable to severe punishment.

The law on defilement in Uganda, when it penalises consensual relationships between peers, has been criticised for criminalising teenagers and protecting the economic interests of parents more than the well-being of girls.

**Bride price as unconstitutional**

In a significant development, an appeal to the Supreme Court of Uganda was upheld in August 2015, to the effect that the marriage custom and practice of demanding bride price, and its refund in case the marriage breaks down, was deemed unconstitutional.

The petitioners had argued that the payment of bride price introduces inequality in marriage and “makes men treat their wives as mere possessions; and that that was why women’s rights in marriage were constantly violated by men, including infliction of violence and abuse on women.”

The judgement notes the link between child marriage, bride price and SGBV:

"It cannot be denied that there are men who view bride price as consideration for their entitlement to the woman’s labour, obedience, her sexual availability and fertility ... I agree that this attitude might contribute to domestic violence...

"The consequence of (collecting bride price in advance from the man’s family) will be that the girl’s family will exert pressure or influence on her to enter into that marriage just because bride price was already been paid, sometimes, in extreme cases even before she became of age! It is therefore not surprising that forced marriages, especially of girls who have not yet come of age in this country are not uncommon in rural areas where poverty levels are high and literacy levels are relatively much lower than in urban areas.”

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261 (New Vision, Uganda, 2007)  
262 (UNDP, UNICEF and UN Women, 2009)  
263 (UNDP, UNICEF and UN Women, 2009)  
264 (Supreme Court of Uganda, 6 August 2015)  
265 (Supreme Court of Uganda, 6 August 2015)
Polygyny

Polygyny is a common and legally recognised practice in Uganda and permitted for customary and Muslim marriages\textsuperscript{266} with 25% of married women in Uganda in a polygynous union\textsuperscript{267}. However the practice is strongly linked in some countries to child marriage (child brides are more likely to be a second, third or fourth wife in Mali\textsuperscript{268}) and to the violation of women’s rights.

In Uganda, polygyny is criticised for\textsuperscript{269}:

- Dispossessing women and children of land and property;
- Increased cases of abandonment and neglect of women and children as a result of a man’s inability to provide for his multiple families;
- Exposure to HIV/AIDS when the man gets a new wife who may be infected or inherits a widow who may be infected;
- Discrimination because polygyny applies only to a man marrying multiple times (the term polygamy applies to both sexes).

Polygynous unions are more common in rural areas than in urban areas and are more common among women from the poorest 20% of society than among women from the richest 20% of society, in all but four countries. Lack of education is another common factor observed across countries and women who had received no education were more likely to be in polygynous unions\textsuperscript{270}.

The practice of polygamy or polygyny is widespread in most regions where informal (community) justice systems also play a role in regulating family and marriage relations, and as a result there is a lack of recognition of the practice’s harmful consequences\textsuperscript{271}. Community justice systems may therefore fail to take the best interests of the women or girl into account, including in decisions made around diversion of girls and women from the criminal justice system where females from polygynous unions come into contact with the law.

Child mothers

Teenage pregnancy has been persistently high in Uganda\textsuperscript{272} reducing only a small amount from 31% in 2001, to 24% in 2011. The median age at first birth for women age 20–49 years has been stable over the years standing at 18.9 years in 2011.

\textsuperscript{266} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{267} (Uganda Bureau of Statistics: DHS, 2011)
\textsuperscript{268} (Girls Not Brides, n.d.)
\textsuperscript{269} (MIFUMI, February 2010)
\textsuperscript{270} (UNICEF, 2005)
\textsuperscript{271} (UNDP, UNICEF and UN Women, 2009)
\textsuperscript{272} (Government of Uganda and UNICEF, June 2015)
More girls than boys have sex at a young age - 44.4% of girls and 34.9% of boys aged 15-19 years in Uganda have already had sexual relations.\textsuperscript{273} The median age at first sexual intercourse for women aged 25-49 is 16.8 years compared with the median age at first marriage of 17.9 years\textsuperscript{274}. Meanwhile among adolescents aged 15-19 years who have ever had sex, half of boys (50.4%) reported using a condom at last sex episode compared with just 27.5% of girls.

There is a positive relationship between poverty, a lack of education and teenage pregnancy with girls from the poorest households and no education having higher rates of pregnancy (34% and 45% respectively). Adolescents with no education (56%) are more likely to have had sex and to engage in high-risk sex (16.6%) than those with education\textsuperscript{275}. High-risk sexual behaviours include non-marital sex, extra-marital sex, non-consensual sex, commercial sex, transactional sex, intergenerational sex, and sex for survival\textsuperscript{276}.

Child mothers are forced to withdraw from their education:

“Girls get pregnant from schools and they are not sent back to school after delivery—the community here does not support sending child mothers back to school, reason being they are already spoilt and can never contribute positively to the community” —Young woman in Gulu.\textsuperscript{277}

**Abortion**

Abortion is legally restricted in most cases in Uganda. This combined with social stigma surrounding the issue contributes to underreporting and to women and girls seeking unsafe abortions outside of medical facilities. A survey of adolescents ages 12-19 revealed that over 26% of females and 22% of males had a close friend who tried to end a pregnancy. Another survey found that 56% of in- and out-of-school adolescents in Kabarole reported having a friend who had an abortion.\textsuperscript{278}

Use of contraception varies according to women’s social and economic status. In 2011, only 13–15% of Uganda’s poorest and least educated married women used modern contraceptives, compared with 37–39% of the wealthiest and most educated women\textsuperscript{279}. The result is that more than half of pregnancies in Uganda are unintended, and nearly a third of these end in abortion. Ugandan women give birth to nearly two children more

\textsuperscript{273} (Government of Uganda and UNICEF, June 2015)
\textsuperscript{274} (Uganda Bureau of Statistics; DHS, 2011)
\textsuperscript{275} (Government of Uganda and UNICEF, June 2015)
\textsuperscript{276} (Youth Map Uganda, 2011)
\textsuperscript{277} (Youth Map Uganda, 2011)
\textsuperscript{278} (Youth Map Uganda, 2011)
\textsuperscript{279} (Guttmacher Institute, February 2013)
than they want on average (6.2 vs. 4.5)\textsuperscript{280}. These figures are illustrative of a women’s lack of agency over her own fertility in terms of access to contraception and abortion. Indeed child marriage is linked to lack of agency over sexual and reproductive health.

The severe implications of the illegal status of most abortions in Uganda include that unsafe abortion accounts for 26\% of the country’s maternal deaths\textsuperscript{281}. In addition are the legal implications of seeking an abortion. The Ministry of Health through the 2006 and 2012 National Policy Guidelines and Service Standards recommend that a woman or girl should be assisted to terminate the pregnancy in some instances such as severe maternal illnesses threatening the health of a pregnant woman, severe foetal abnormalities which are not compatible with extra-uterine life, cervical cancer, HIV-positive women requesting a termination, rape, incest and defilement. However, when local leaders do not have access to information regarding reproductive health services and rights guarantees, and the law on abortion, girls and women who become pregnant may be denied justice and healthcare\textsuperscript{282}.

The enforcement of Uganda’s law on abortion “has been limited to the criminal perspective ignoring the obligation the state has in enforcing the reproductive health rights of women”\textsuperscript{283}. The result is that many women, girls and health care providers are arrested, with some serving prison sentences.

\textbf{Child mothers in Kitgum and Iganga}

A report conducted by the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) shows that 25\% of the child mothers in Kitgum headed their own households and lived in very poor conditions\textsuperscript{284}. For every 10 households there were two child mothers with over a third having given birth at age 15 or younger:

\textsuperscript{280} (Guttmacher Institute, January 2013)
\textsuperscript{281} 2008 figures from the Ugandan Ministry of Health quoted in (Guttmacher Institute, February 2013)
\textsuperscript{282} (Center for Health, Human Rights and Development (CEHURD), July 2016)
\textsuperscript{283} (Center for Health, Human Rights and Development (CEHURD), July 2016)
\textsuperscript{284} (ANPPCAN Uganda Chapter, August 2013)
While most of the girls in Kitgum were married off at an early age by their parents, most girls in Iganga district were impregnated by their boyfriends and opted to stay with their parents. In such circumstances, the child mothers compete for survival in their families and “they always conflict with their parents which makes them move out of their homes to work as housemaids in the urban centers”.  

Of the child mothers interviewed who were unmarried, their source of income is between Shs 2,500 (USD $0.75) and Shs 10,000 (USD $3) a month. In most cases, most of the child mothers have no source of income, eat only once a day and their children are malnourished.

It is hard to obtain information on married child mothers as they are not perceived to be children, and are not considered vulnerable as they are married:

“Here it is normal to marry off girls at an early age as early as 13 years and when a girl is married, she is no longer seen to be a child any more. It is also difficult to think that someone is vulnerable when they are married with their husbands. That is the biggest challenge here.”

Children of imprisoned mothers
The impact of a mother’s imprisonment on her children is similar to bereavement, but with added stigma and often less community support. It can lead children into aggressive and anti-social behaviour.

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285 (ANPPCAN Uganda Chapter, August 2013)
286 (ANPPCAN Uganda Chapter: Survey, August 2012)
287 (Quaker United Nations Office , 2007)
Although all released prisoners face issues in reintegrating into society, for mothers, these may be compounded by:

- The need to reconcile with children who may have changed and grown up during their absence;
- The difficulty in obtaining housing for a single mother from an impoverished background, newly released from prison. Even a short prison term may lead to the mother losing her rented accommodation;
- It is common for a mother to be unable to regain custody of her children if she does not have anywhere to live.

In Uganda, interviews with prison officials caring for children living in prisons revealed the most urgent needs of children to be clothing, medical care and nutrition. One prison officer described how the children cannot cope with prison life due to the different characters exhibited by inmates including the mentally ill. Children’s relationships with non-imprisoned family members, friends and the outside world can be greatly diminished. Several prison officers referred to the importance for children of maintaining links with relatives outside of prison, since so many had been abandoned by their wider family.  

P4C Uganda have identified two mothers who are imprisoned with their babies and where the health of both the mother and child is at risk:

Gift, age 2: Gift has a smiling face and likes playing with Derrick (below). The mother said that Gift wakes up early in the morning and always demands to suck her breast. After playing, Gift always takes an afternoon sleep and after waking up she quietly gets up and needs the mother to attend to her. Gift is still young and needs her mother’s love and cannot at this point be separated from the mother. She eats well though the prison does not provide a balanced diet.

Derrick, age 3: Derrick is the first born of Akidi Alice 23 years old. The mother was arrested and remanded in Patongo Prison farm for murder. Derrick usually wakes up early in the morning and demands breast feeding and porridge. The mother said sometime the breast milk is not enough due to inadequate feeding of the mother in the prison. Derrick is very happy little boy and loves playing with a toy car in the compound inside the prison. He is very attached to his mother and so plays for a few minutes and then comes back and sits on his mother’s lap. Derrick is still young and does not know where he is, but he misses the company of many children as in a family home. In addition, the prison environment is unfavourable for the child’s growth and development. Derrick is active and inquisitive to learn and know things and makes the mother laugh each day. The mother is worried about the boy growing up in the prison compared to a homestead which is conducive and very interactive for growth and development.

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288 (Penal Reform International, November 2015)
development. She is worried about any abrupt sickness that will bring her crises psychologically and economically.

All these issues highlight the need for non-custodial sentences for mothers wherever possible.

6.9 Violence against women and girls

Studies show that Uganda has very high rates of violence against children. More than 98% of children report experiencing physical or emotional violence, 75.8% report experiencing sexual violence. In a more recent study in one district, over 90% of children were found to have experienced physical violence in their lifetime, over half report emotional abuse and 4% of boys and 13% of girls report sexual abuse. Ninety-three per cent of boys and 94% of girls had ever experienced physical abuse by school staff. In another study, Uganda was found to have a higher than average rate of physical violence within the community (based on interviews with children in five countries).

Uganda also has the highest rate (of the five countries surveyed) of girls who experienced coerced sexual intercourse and rape:

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289 (Naker, 2005)
290 Quoted in (Karen M. Devries, January 2014)
Widespread violence against women in Uganda takes various forms, including intimate partner violence (IPV), SGBV and FGM/C. In Uganda, 58% of women believe that wife beating is justified under certain circumstances, indicating that women generally accept the right of a man to control his wife’s behaviour through violence. Such a perception could act as a barrier to prevent women from accessing health care for themselves and their children.\(^{292}\)

As discussed above, violent victimisation has significant impacts for coming into contact with the law, as significantly reducing the agency ad choices available to women and children.

**HIV/AIDS**

The HIV epidemic in Uganda disproportionately affects young women (2013 HIV prevalence among young people aged 15-24 was 4.2% for women and 2.4% for men). The majority of new HIV infections occur among young women and adolescent girls. The issues faced by this demographic include SGBV and a lack of access to education, health services, and social protection.\(^{293}\)

The subordination of women and girls in Africa and related human rights abuses are a major driving force of the AIDS epidemic on the continent and risky behaviour practices and increased domestic violence exacerbate the spread of HIV/AIDS. In this

\(^{292}\) (Uganda Bureau of Statistics: DHS, 2011)  
\(^{293}\) (Avert, n.d.)  
\(^{294}\) (Human Rights Watch, 2003)
regard, the UHRC observed in 2014 that there were inadequate gender programmes which limited empowerment, awareness raising and participation of women and girls to combat the spread of HIV/AIDS.295

Widows from AIDS and their children (who may end up AIDS orphans) are likely to face not only social stigma against people affected by HIV/AIDS but also deprivations caused by property rights violations296 (see above).

Girls and women in households affected by AIDS and by poverty have diminished choices and possibilities and turn for survival to the sex trade or to situations that expose them to SGBV, increasing the risk that they themselves will die of AIDS. HIV infection – or suspicion of infection – may render children in street situations vulnerable to even greater discriminatory treatment once within the system.297

Children in Uganda were asked how supportive their community was towards children affected by HIV/AIDS. Some children stated they were still largely stigmatised while others stated that they are loved, cared for and given counselling by the community. However, the government notes that stigma and discrimination remain persistent issues that may not easily be eliminated from a society.298

7. Girls’ treatment within the criminal justice system

In the UK, despite improvements in recent years, 72% of children released from custody go on to re-offend within one year.299 Other studies have shown that time spent in detention increases the likelihood that a child will come back into conflict with the law (for example in France, recidivism figures rise to 90% for children incarcerated a second time).300

7.1 Girls in prison

International guidelines note that girls placed in an institution deserve special attention as to their personal needs, they are especially vulnerable due to their small numbers as well as their gender. Additional issues they may face include the fact that they:

• May be primary carers for children, whether their own or siblings;
• Have different health, hygiene and sanitary needs;

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295 (Uganda Human Rights Commission, 2014)
296 (Human Rights Watch, 2003)
297 (Wernham, 2004)
298 (Government of Uganda, 2009)
299 (Barnado’s, n.d.)
300 (International NGO Council on Violence Against Children: Creating, 2013)
• Are at a high risk of substance abuse, self-harm, mental health issues, HIV and other sexually transmitted diseases;
• May have experienced past physical, emotional or sexual abuse;
• Are at risk of violence whilst in detention. 301.

Studies from the UK have shown that the needs of girls are overlooked due to the small number of girls in the penal system. 302. As a result of their low numbers, many countries do not have special facilities for girls and they are often held with adults, which may increase the risk of physical and sexual abuse. According to one report referring to the French system “girls’ vulnerability to violence in such a situation is manifest”. 303

Furthermore, girls can be at risk of being held in isolation or far from their homes in order to keep them in institutions separate from boys. There may be a lack of female staff in facilities where girls are detained. 304
In addition there is a lack of access to reproductive health care and sanitary supplies, and healthcare for girls who are pregnant or have babies with them in detention. 305

Where both girls and boys are detained at a facility, assumptions about girls’ social roles may mean that they are more likely to be required to work as cleaners, cooks, or perform other ‘domestic’ work in the facility. 306

Girls in custody are more likely to self-harm than boys. One study of 17-year-old girls in UK Youth Offender Institutions shows that 36% had engaged in self-harm during the previous month. 307

Girls in custody in the UK are more likely to be restrained, however “some searching and control and restraint practices … have been seen to be highly counterproductive for females with high histories of abuse and trauma leading to flashbacks and exacerbating distress”. 308

**Girls in prison in Uganda**

In 2014, UHRC inspected 1,122 places of detention including 73% of 246 prisons in the country, 78% of 299 police stations, 38% of 1,811 police posts and all six remand homes. 309

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301 (Penal Reform International, 2013)
302 (Howard League for Penal Reform: Keeping girls out, 2012)
303 (Defence for Children International, 2010)
304 (Penal Reform International, August 2012)
305 (Wernham, 2004)
306 (Wernham, 2004)
307 (New Economics Foundation, 2010)
308 (Howard League for Penal Reform: Keeping girls out, 2012)
309 (Uganda Human Rights Commission, 2014)
The UHRC noted continuous improvements in the conditions of places of detention after inspections in 2014. However, there were “recurring challenges that are structural and administrative in nature” including:

- inadequate accommodation and sanitation facilities
- security of persons due to long and arbitrary detention
- security of vulnerable persons, including children incarcerated with adults and
- indefinite detention of inmates pending ministerial orders (39 male and five female)
- inadequate access to food and clean water

The UHRC found the ongoing construction of cells/wards for juveniles and females:

- Seven prisons and one military detention facility had constructed wards for female suspects/inmates. They were also found at Arua and Kiryandongo Government prisons, as well as Lukaya and Sembabule prisons.
- 94 (10.3%) of police detention facilities had constructed cells for juveniles.

Despite the fact that “incarceration of children with adults increases their vulnerability to violence and abuse that could have long lasting physical and psychological harm” in 2014 UHRC found 91 juveniles incarcerated with adults compared to 26 in 2013:

- Most of the juveniles detained were between the ages of 16 and 17 years;
- They were charged with offences of defilement, theft, murder and being idle and disorderly;
- The UHRC found two juveniles, both 17 years old who were detained at Kyazanga Prison because they had failed to prove their age in court (Uganda’s DHS 2011 reveals that only 29.9% of children under five years of age have had their births registered, and only 17.7% have a birth certificate – a crucial document for proof of age. However the situation is dramatically improving due to birth registration interventions in Uganda, including from UNICEF).

A Review of Ugandan Remand Homes and the National Rehabilitation Centre found that the numbers of girls in conflict with the law was small compared to boys, and as there were often just one or two girls in a home containing 20 to 30 boys, they are likely to miss other female company. They are also potentially vulnerable to sexual exploitation given that defilement is such a prevalent offence.

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310 (Uganda Human Rights Commission, 2014)
311 (Uganda Human Rights Commission, 2014)
312 (Uganda Human Rights Commission, 2014)
314 (African Prisons Project , 2010)
Corporal punishment is prohibited by law in penal institutions in Uganda. However, the effectiveness of the laws is questionable since there are few mechanisms to monitor or protect children’s rights.  

7.2 Pre-trial detention and detention pending trial

According to the Uganda Bureau of Statistics (UBOS), of the 42,054 individuals in prison in 2014, 22,937 are on remand awaiting trial (55%)  

- During pre-trial detention, it is required that a person arrested or detained should be brought before court within 48 hours. However, suspects can be detained for periods ranging from 10 to 30 days in police custody. During inspections the UHRC intervened by either ordering the release of juveniles or ensuring that they were transferred to the Reception Centre.  
- In the case of detention of persons pending trial, court shall grant bail if the person has been remanded for 60 days for offences triable by the High Court and subordinate courts; and in the case of offences triable by only the High Court a person who has been remanded for 180 days is entitled to bail. However the UHRC referred many cases of inmates who had been awaiting trial of between 2-4 years for reasons such as “Lack of enough Judicial officers in the area”, “Inadequate High Court sessions” and “Lack or absence of enough doctors and resources”. 

Women and girls may be disproportionately given pre-trial detention as most female offenders are in low-income groups and cannot provide a financial guarantee, or show they have secure employment or secure accommodation – all factors in considering whether the individual is likely to abscond before trial. 

Female pre-trial detainees are more likely to be held with convicted prisoners because there are fewer facilities for detaining women. Their conditions of detention are often more restrictive than those of convicted prisoners. Certain aspects of this, such as limitations on visiting and family contact, may have a disproportionate impact on female detainees who have caring responsibilities. 

This is particularly significant when a 2005 survey of pre-trial detainees in Uganda revealed that more than 460 detainees had been held for longer than their

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315 (UNICEF ESARO, n.d.)
316 (Uganda Bureau of Statistics, 2015)
317 (Uganda Human Rights Commission, 2014)
318 (Uganda Human Rights Commission, 2014)
319 (Quaker United Nations Office, 2007)
320 (Quaker United Nations Office, 2007)
constitutional maximum remand period and should have been released unconditionally to await their trial.\textsuperscript{321}

8. Case studies

Uganda: Girl, Mbale Remand Home
One child housed at Mbale Remand Home was abandoned by her parents. She lived with her aunt who “was brutal to her so she ran away to live with someone in Soroti where she fell in with a man”. It is possible that this man was sexually exploiting her and he reported her for stealing a mobile phone. She has nowhere safe to go if she is released from custody. There is no welfare alternative to family for such children and they would have to come back to the remand home.\textsuperscript{322}

Uganda: Nantongo, 16, assault
Nantongo, 16, sang loudly along to Mabete, a song by a local artiste and went about finishing her house chores. Suddenly, her next-door neighbour came yelling insults, threatening to cut her into pieces and throw them into the latrine. The song, apparently, was one they used to taunt the neighbour about her big breasts and today, she was putting an end to it. Being one not to take threats lightly, Nantongo attacked the woman, knowing well that she would be beaten to a pulp. She went for her opponent’s breast and sunk her teeth into it before four others came to help her teach the neighbour a lesson. That was one year ago.

A week ago, Nantongo, walked out of Naguru Remand Home after serving four times the sentence recommended for a non-capital offence like assault at three months. She has lost two years of school because she was arrested in the middle of the school year and released in the same period. Justice has been elusive for Nantongo, yet the two adults with whom she was charged were granted bail. By law, a case that goes beyond one year from the time the child is charged, should be dismissed and the suspect cannot be recalled to answer the charges.\textsuperscript{323}

Uganda: Emily, 14, house girl
Emily had spent one month at Naguru remand home. She was allegedly kidnapped from her home by someone she did not know and was brought to Kampala to be a house girl. Her boss accused her of having stolen money from him. She was arrested by police from her boss’ home and detained at Kawempe police station for one month. She supposedly spent one month in detention with adult women since there were no special cells for children.\textsuperscript{324}

\textsuperscript{321} (Quaker United Nations Office, 2007)
\textsuperscript{322} (African Prisons Project, 2010)
\textsuperscript{323} (New Vision, Uganda, 2007)
\textsuperscript{324} (FHRI, 2009)
Uganda: Christine, 16, runaway
Christine allegedly escaped from school and her mother had her arrested and taken to Katwe police where she spent a night with other women inmates. She was later taken to Naguru remand home where she spent a week and then was transferred to Kampiringisa rehabilitation centre. She has so far spent a month and sixteen days there. In regard to the form of punishment at the Centre, she said they at times cane the children who are unruly or those that try to escape.325

Uganda: Kristy, 16, runaway
Kristy was allegedly brought to Kampiringisa by her sponsor after escaping from her boarding school in Masaka. Her sponsor is not willing to pay for her education while she is in detention so she must spend the day reading rather than attending classes.326

Uganda: Mary, 13, girl in street situation
Mary is an orphan and was brought to Kampiringisa with a group of children in street situations found on Kampala road. She has no parent or guardian to cover her school fees; however, she is currently attending primary four and the costs of her education are being covered by one of the centre’s employees.327

Uganda: Anna, 15, accused of attempted murder
Anna hails from Mutundwe Kirinyabigo. She is accused of attempted murder. She was arrested and brought to the police by her grandmother with whom she lives.

A neighbour called Nalubowa Daisy asked her to borrow a book and she handed it over. Later she realised the book had money. When she was asked about the book she denied having it but later after getting it back from Nalubowa she returned it but the money was gone. Nalubowa gave her some powder wrapped in a paper and told her to put it in the drinking water that it will do away with the allegations of theft. Her grandmother then realized that the water was smelling poison. On asking her she confessed to the grandmother and then she was brought to police.

She informed the police that she is below 18 but nothing has been done and she is being held in the same cell with adults and worse with Nalubowa who gave her the poison. She claims she is being tortured by Nalubowa and another inmate. She fears to tell the police.328

Uganda: Hilda, 12, kidnapped
Hilda was allegedly kidnapped by her former boss to help her do chores at her home. The lady who kidnapped her was treating her poorly so she ran away. She doesn’t know where her mother lives or how to contact her. A boda boda driver picked her up and

325 (FHRI, 2009)
326 (FHRI, 2009)
327 (FHRI, 2009)
328 (FHRI, 2009)
brought her to Naguru. She used to attend school prior to her being kidnapped. She talked about how the only reason she wanted to go back “out there”, into the community was that the education at the remand home is not up to the standards offered to the general population.\(^\text{329}\)

Uganda: Okello, boy in street situation
Both Okello’s parents died in Gulu district leaving behind his two sisters and himself. Unfortunately there was only one surviving relative who was their uncle. He mistreated them and denied them a share in the deceased parents’ property which they had a right to. As a result, the girls were forced into child marriage for survival while Okello became a street child and committed a number of offences of theft. For one such offence he was arrested and detained by the police.\(^\text{330}\)

Uganda: girl, 14, begging
“My brother and I went to town and pretended to be mentally retarded, deaf and dumb and begged money from shops and passers-by. That day, we were at least able to raise something to eat”.\(^\text{331}\)

Kenya: Police abuse
“The girls go into the police cell and have to do sexual intercourse with the police to get released, but she is not released. The policeman is even 42 and the girl is 16. It’s really bad.”
Kenya Participants in the National Street Children Workshop, Nairobi, Kenya, 22 February 2003.\(^\text{332}\)

Kenya: Girl in street situation
“You have no one to take care of you. Nobody in the society respects you or wants to see you... People don’t care whether you die, whether you live.”
Girl participant, National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, 6-7 March 2003.\(^\text{333}\)

Philippines: Joy, 16, substance abuse
Sixteen-year-old Joy is in jail for substance abuse: “I have always been and still am a hard-headed child. Do you know why children are hard-headed? Because some parents lack love and caring. How come children do not obey their parents? Because they see what their parents do. Why do children come to this?\(^\text{334}\)

Philippines: Girl in street situation, 14

\(^{329}\) (FHRI, 2009)  
\(^{330}\) (Save the Children: Hope, 2005)  
\(^{331}\) (Save the Children: Hope, 2005)  
\(^{332}\) (Wernham, 2004)  
\(^{333}\) (Wernham, 2004)  
\(^{334}\) (Save the Children: Understanding, 2004)
“Because of family problems, we left home and stayed out in the streets with friends. Here, we learned how to break the law in order to survive and this is why the police caught us. We experienced different kinds of abuse under the hands of older people.”

Philippines: Roxanne, 16, broke curfew
“All of us were girls. We got jailed in February 20, 2001 because of failing to observe the curfew. We came from a birthday party. The policemen were very rude towards us and they accused us of using glue. They took photographs of us with some glue in our possession even if we never had any. We cleaned the toilet and they cut our hair.”

9. Girls’ treatment within the community justice system

9.1 Informal Justice Systems and women’s rights

LCCs in Uganda have quotas for female representation and have “introduced important innovations, especially in the representation of women”. LCCs require that a minimum of 30% of representatives be women and that the roles of chair and vice-chair be equally distributed between men and women (there is a mandatory representation of at least three women out of a nine-member executive council).

However LCCs have sometimes been criticised for overstepping their legal mandate and deciding matters of criminal law: “the restricted jurisdiction of courts at this level motivated litigants to take their cases ‘downward’ to informal village-level ... courts rather than, as intended, upward to the District courts ... the LCCs in Uganda reach formal decisions after public hearings that resemble court hearings, though without technical rules of evidence or legal representation; decisions are binding”.

The UN Committee on the Elimination of Discrimination against Women has noted that LCCs in Uganda are other dispute resolution fora that can be frequently utilised by poor women and men to resolve disputes relating to child maintenance, domestic violence, marital disputes and land disputes. However “LCCs have sometimes fallen short of effecting justice on account of gender biases and a limited appreciation of the principles of natural justice”.

UN agencies in a report on Informal Justice Systems found that:

335 (Wernham, 2004)
336 (Wernham, 2004)
337 (UNDP, UNICEF and UN Women, 2009)
338 (UNDP, UNICEF and UN Women, 2009)
339 (Committee on the Elimination of Discrimination against Women, 2009)
340 (UNDP, UNICEF and UN Women, 2009)
Informal justice systems, especially custom and religion-based, are likely to uphold rather than to challenge the values of the society around them, including attitudes and patterns of discrimination;

On the other hand, the flexible and adaptable approach of customary law can allow it to change in ways that reflect changing values in society;

The lack of procedural rules in informal justice systems may facilitate women’s access and participation, but may also disadvantage women by permitting prejudice and creating conditions for the abuse of power;

Informal justice systems can lack privacy and confidentiality, making women less willing to litigate personal and intimate rights violations such as those related to domestic violence. However rape and sexual violence should not be dealt with in informal justice systems, but referred to ordinary courts.

The participation of women as adjudicators or justice officials is vital to ensuring that women can bring sensitive matters to the attention of justice providers. In the same way that women’s participation as police officers and in victims service units is a key part of dealing effectively with domestic violence and rape, it is equally important to foster their participation in informal justice systems.

9.2 Children and diversion

Research has shown that non-custodial measures can reduce offending by up to 70%. Possible diversionary measures include:

- Cautions or warnings;
- Apologies to persons negatively affected by the actions in question;
- Compensation, including non-monetary payment, for any damage caused;
- Behavioural contracts;
- Curfews;
- Peer education or youth mentoring;
- Mediation;
- Referral to structured educational, vocational, community service or life skills programmes;
- Counselling, therapy, or substance abuse treatment.

Participation in any programmes that incorporate a residential element must be and remain strictly voluntary. In addition, diversion is never appropriate for children who do not admit to committing an offence, and children who proclaim their innocence must be presumed as such until a court has determined otherwise.

However, it is worth noting that “diversionary measures are not always in children’s best interests. Diversion can sometimes fail to contribute positively to a child’s growth.
or development, and a constructive, rights-based formal judicial intervention may provide better access to the support and guidance needed to address the issues that underlie offending behaviour...children must be assisted in making an informed choice about whether to accept an alternative to prosecution.” ³⁴³

CRIN believes that: “We need to move beyond the idea of minimum ages, protect children from the negative process of criminalisation, and separate it from the concept of responsibility. Any juvenile justice system should be purely directed at rehabilitation and reintegration - and this should apply to all under-18s, not just to some.” ³⁴⁴

UN agencies note a “justice vacuum” in Uganda caused by inaccessibility of the formal justice system in much of the country. Informal justice mechanisms can therefore be capitalised on as existing systems for encouraging diversion and other community responses to juvenile offending. These include the cultural institutions of elders and traditional leaders, which often mediate conflicts between families and communities, and the Local Council system “which have played predominant roles in providing alternatives to formal justice”. ³⁴⁵

The UN study found that informal justice systems that are linked to the formal system, including those to which cases of juvenile offenders are diverted to avoid formal prosecution “tend to have a better understanding of the rights of children and are more likely to respect them. However, links with the formal legal system and an obligation to respect the legislation does not of itself guarantee full respect for the rights of children”. ³⁴⁶

This is particularly important when some informal or community systems uphold negative cultural or gender norms – for example in allowing a payment to the family of a girl in settlement of defilement.

Police discretion

Broad discretionary powers are given to the police in the use of diversion from the courts, however “such powers are often not exercised due to political interference, or fear of retribution from individuals or communities”. ³⁴⁷

Other sources from within Uganda reinforce this point: “There is a problem of police officers failing to exercise their powers especially powers of caution and release due to fear. Such fear may be as a result of influence peddling by those people who wield power in the locality, or fear for retribution and mob justice in the communities”. ³⁴⁸

³⁴³ (International NGO Council on Violence Against Children: Creating, 2013)
³⁴⁴ (CRIN)
³⁴⁵ (UNDP, UNICEF and UN Women, 2009)
³⁴⁶ (UNDP, UNICEF and UN Women, 2009)
³⁴⁷ (UNDP, UNICEF and UN Women, 2009)
³⁴⁸ (Kasingye, Undated, first cited 2010)
Sensitisation and training of police officers is needed on the Uganda Children Act. “Save the Children Uganda, is assisting us to train police officers but this is a drop in the ocean”. 349

Different treatment of boys and girls

A study on diversion in Ethiopia350 found that girls are considered to be more easily rehabilitated than boys. Therefore, girls who commit offence tend to be ‘handled’ in the family rather than being referred to the police.

This is confirmed by a 2006 Uganda study which says that:

“While in the rehabilitation centres, it was revealed that female juveniles are easy to be rehabilitated, accepted and resettled back to their families or communities compared to the male juvenile delinquents. This is because female juvenile delinquents easily confess and accept their mistakes compared to male juvenile delinquents. Such confessions among the female juveniles give a clear approach to their care-takers.” 351

However a study by Chance for Childhood found that despite the petty nature of crimes committed by survey respondents, only 15% of children were registered for diversion programmes, and none were girls352.

Girls more socially isolated

In the UK, girls in conflict with the law are less likely than boys to have the support of their family, leaving them isolated or dependant on the support of the local authority, their “corporate parent”353. This has implications for the success of rehabilitation services and diversion practices. This is reflected by research which found that due to a lack of sufficient facilities for girls, their placement in facilities located at a distance from a child’s home area decreases the chances that family and community links may be regularly maintained354.

In some countries legislation may permit women’s detention for challenging role models based on religion, custom and woman’s perceived place in society. This can

349 (Kasingye, Undated, first cited 2010)
350 (Save the Children: Diversion, 2005)
351 (Mugerwa, 2006)
352 (Chance For Childhood, 2016)
353 (Howard League for Penal Reform: Keeping girls out, 2012)
354 (Wernham, 2004)
lead to more extreme forms of ostracisation by family and the community during
detention and upon leaving prison than is experienced by men.355

This is compounded by the fact that girls may be less willing than boys to reach out for help. SOS children’s villages in Uganda stated: “The challenge we face in bringing women and girls on board is girls fear to come up to tell their problems.”356

Meanwhile the UHRC in its inspections of remand homes in 2014, found that “families of the juveniles do not visit them in detention and that children’s families rejected them when they were taken back to resettle in the community”.357

10. Lessons in keeping girls out of the criminal justice system

10.1 Multifaceted response to a complex problem

"If those who drop out from school and become street children are protected, rehabilitated, reintegrated and to go back to school, then there will be less vulnerability to criminality in the future. That is a very effective proactive strategy to prevent crime, which is being done by the project."
Addis Ababa Police Officer358

As discussed above, the complex needs of girls in conflict with the law include: lacking a family that can support adolescent development or provide basic safety; dangerous neighbourhoods; individual trauma from sexual and other abuse; involvement in prostitution; relationships with older men with high potential for exploitation; academic failure; substance abuse; lack of preparation to earn a living and live on one’s own359.

Numerous recommendations point toward supporting vulnerable children through a continuum of care and protection interventions that address the multiple challenges and risks faced by the child, protect the child from harm, and provide them with tools and options for their safe development.360 Access to support mechanisms should be prioritised as early as possible, before a child has come into conflict with the law.

Particularly important for girls is recognising the significance of relational ties for girls’ development. The fostering of positive relationships - with family members, peers,
romantic partners, therapists, and juvenile justice professionals – have the capacity to play a significant role in helping girls to heal from trauma and resist delinquency.\(^{361}\)

As can be seen from the above analysis, children often face multiple problems and disadvantages at the same time, and so it is ineffective to treat a series of isolated problems (child with family problem, child abused, child in care, child with anti-social behaviour issues, child in conflict with the law\(^{362}\)).

A common theme for girls in conflict with the law, is their limited choices and survival strategies. Expanding the choices available is therefore “the next logical step”\(^{363}\) for example:

- Offering the option of residential shelters as an alternative to sleeping in a dangerous alleyway;
- The option of family reunification or group living;
- The option of less hazardous employment;
- The option of self-protection against pregnancy and sexually transmitted infections and HIV/AIDS;
- The option of someone to call in times of trouble who can intervene at the police station.

As there may be fewer choices available to girls than boys particular efforts should be made to promote gender equality in programming. This may include supporting a girl’s choice to remain in education during and after a teenage pregnancy; for perpetrator of sexual violence to be forced through rule of law to leave the home instead of the girl child running away or before she becomes dependent on another abusive relationship as a way out.

The complex potential pathways into vulnerability and criminality therefore need to be tackled with a range of “gender-sensitive social and economic interventions”\(^{364}\), including education programmes, poverty reduction strategies, skills development, psychosocial interventions, parental counselling, vocational training, job creation, responsive programmes for ‘risk’ situations to prevent events taking place or re-occuring.

Research on the protective factors associated with females and offending by the UK Cabinet Office in 2009, identified\(^{365}\) high self-esteem, assertiveness, healthy lifestyles, supportive and enduring relationships with families and peers, access to services, positive female role models, alternative education provision.

\(^{361}\) (National Child Traumatic Stress Network, 2014)
\(^{362}\) See for example (Save the Children: Hope, 2005)
\(^{363}\) (Wernham, 2004)
\(^{364}\) (Wernham, 2004)
\(^{365}\) (Howard League for Penal Reform: Keeping girls out, 2012)
A key point is that girls and boys need to be empowered to make different and expanded choices made available to them, rather than having new and better choices made for them.\textsuperscript{366} Gender-responsive programming also emphasises the importance of agency and control for girls and similar empowerment techniques are part of trauma-informed treatment and family engagement strategies: “Sharing power helps adolescent girls feel that they are being treated fairly, a particularly salient issue for girls caught up in the juvenile justice process.”\textsuperscript{367}

In research on some of the most vulnerable young people in Uganda in conflict affected areas “youth spoke of their high energy, resilience, and a strong desire to receive education, find work, and contribute to peace and development in their communities. Development efforts should acknowledge their significant potential and seek to create substantive roles for youth to engage in peace-building and civic activities, allowing them to build confidence, leadership skills, and empowerment.”\textsuperscript{368}

\section*{10.2 Girls and diversion}

A Review of Ugandan Remand Homes and the National Rehabilitation Centre\textsuperscript{369} made several recommendations including:

“The Ministry of Gender should re-examine the accommodation of female children in mixed remand homes. Potentially two alternative measures could be introduced: create a national remand home specifically for females so that they can be housed together; or create small-scale female remand homes in the current districts staffed by a matron.”

Diversion of girls was simply not considered here, despite it being generally in the interests of all concerned.

Girls who are considered high risk may be diverted from anti-social behaviour by factors which are associated with key relationships, such as differing styles of parental supervision. Ironically, seeing as early parenthood is a risk factor in girls becoming in conflict with the law, it can have a role in diversion from negative peer pressure by early parenthood, with the close relationships implied by this.\textsuperscript{370}

Options for community penalties should be available to girls as well as boys in the local area. This might involve:

\footnotesize{\textsuperscript{366} (Wernham, 2004)
\textsuperscript{367} (Francine T. Sherman; Annie Balck, 2015)
\textsuperscript{368} (Youth Map Uganda, 2011)
\textsuperscript{369} (African Prisons Project, 2010)
\textsuperscript{370} (UK Government, 2005)}
- Ensuring that provision is in place to avoid the necessity of placing single girls alone with a group of boys;
- Developing attendance centres for girls where these do not exist;
- Providing child-care facilities where these are needed.\textsuperscript{371}

**Educational and vocational opportunities**

The UHRC 2015 report notes that “Rehabilitation and reintegration of inmates back into society should be the aim of correctional facilities that seek to make inmates responsible members of the society”. However rehabilitation interventions are offered in only 40% of prisons and are “very limited”. While the report lists various forms of training, there is no mention of the gender dimension of training needs\textsuperscript{372}.

Other studies have shown that girls may also be deprived access to services that boy detainees may receive, such as education and time outside of cells for recreation\textsuperscript{373}. The European Committee for the Prevention of Torture has often encountered female juveniles being offered activities which have been stereotyped as “appropriate” for them (such as sewing or handicrafts), whilst male juveniles are offered training of a far more vocational nature.\textsuperscript{374}

The 49th Session of the State of the Nation Platform in Uganda noted on youth employment generally that “Ineffective vocational training and unattractive employment prospects in the agriculture sector are not the solution. Rather, there is need to focus on and engage youth computing, craftsmanship, and technical and electrical engineering disciplines.”\textsuperscript{375}

This gives insight into the vocational education options for boys and girls in diversion programmes.

**Best practice in Eastern and Southern Africa**

Save the Children and UNICEF have highlighted examples of best practice in diversion for both boys and girls within Eastern and Southern Africa\textsuperscript{376}:

Ethiopia community-based correction programme supports diversion by the police of cases where a child aged 9–15 years has committed a first offence or petty offence.

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\textsuperscript{371} (Wernham, 2004)
\textsuperscript{372} (Uganda Human Rights Commission, 2014)
\textsuperscript{373} (Wernham, 2004)
\textsuperscript{374} (Quaker United Nations Office , 2007)
\textsuperscript{375} (Advocates Coalition for Development and Environment, 2014)
\textsuperscript{376} (Save the Children: Hope, 2005) and (UNICEF, 2009)
The programme brings together police and community workers with families, the child and other key individuals (including teachers) to provide intensive and individualised support for the child in community centres. Support includes help with studies, vocational opportunities, and support to parents in good parenting skills as well as recreational opportunities.

Kenya Diversion Project addresses the crucial role and impact that the police have on children as the point of contact once a child is deemed to be in conflict with the law. Crucially, it recognises not only that the police need specialised training to deal with those cases but also provides a support framework for the police to call on other services to deal with each individual case.

Kenya Legal Aid Scheme benefits approximately 2,500 children per year (of whom approx. 20% are in conflict with the law. Courts are assisted to make the most appropriate ruling for children in conflict with the law. Children in conflict with the law spend less time in the justice system (including in police custody awaiting charge) compared to those without legal assistance as the legal assistance helps the cases move faster in court. Increase in diversion & alternatives to detention as a result of the legal aid scheme: paralegals at community level sensitize community members & leaders on child rights and child protection resulting in many cases being handled and concluded at that level through alternative dispute resolution or restorative justice.

Uganda Fit Persons model provides community support for children who have either been diverted, given a community sentence or reintegrated into their families and communities. Fit Persons are trained and respected individuals who will support and follow the child in their reintegration process, including within their families and schools. In cases where families are unable or unwilling to be a guarantor for the child, the Fit Person is able to step in and even provide temporary foster care while searching for longer-term care options with the family. The model is important in that it recognises both that diversion and community-based alternatives are rarely provided to children who are facing care issues, and that addressing care and protection issues is integral to finding solutions for children who have come into conflict with the law.377

South Africa diversion for young offenders and youth development whereby the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) provides diversion programmes for young people in conflict with the law, with most participants being referred by a prosecutor. The case is withdrawn on condition that the young person completes the diversion programme which includes:

- Substance abuse
- Anger management
- Community service learning

377 See also (Save the Children: Gaining, 2006)
• Life skills
• Substance addiction
• Addressing criminal behaviour
• Domestic violence
• Positive parenting skills
• Restorative Group Conferences
• Safety ambassadors as a community-based crime prevention initiative, and
• Youth empowerment
• Individual & family counselling
• Victim-offender mediation.

Most participants are between 14 and 18, although some are older or younger. Over a period of 12 months following completion, 83% of CICL have not re-offended and a significant change in attitude was observed.

Best practice from the UK

In the UK, there is evidence that girls prefer interventions that are stylistically different to those offered to boys. Girls preferred a female only environment that built on one-to-one relationships.

However, there are concerns that simply establishing a girls’ group will not solve all the problems. Pam Vedhara MBE, specialist youth support manager at South Tyneside council stated:

“…people often resort to citing ‘girls’ groups’ as the answer. The provision of single gender group work has great merit as it affords opportunities for in depth discussion about a range of issues including image, behaviours, domestic violence and empowerment. However, offered in isolation, this can simply be a 2 hour slot within a week of overwhelming vulnerability and isolation”

For girls who lack parental support, the local authority in the UK has a key role to play in ensuring that support is available and to intervene to enable girls to lead crime free lives.

Examples of UK projects include:

Multisystemic Therapy (MST) is an intensive family and community based intervention that targets the multiple causes of serious anti-social behaviour in young people. MST works with the individual, family and others such as peers, school and community and

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378 (Howard League for Penal Reform: Inquiry on girls, 2012)
379 (Howard League for Penal Reform: Inquiry on girls, 2012)
380 (Howard League for Penal Reform: Keeping girls out, 2012)
is aimed at preventing out of home placements including custody. Therapists are available to families 24 hours a day, seven days a week and are able to work intensively with families due to low caseloads. The length of treatment is typically three to five months.

Intensive fostering is a multi-dimensional therapy which is offered as an alternative to children facing the prospect of a custodial sentence. Intensive supervision and support can be given for up to 12 months, during which time children are placed with foster carers and their behaviour is monitored constantly. Intensive fostering aims to encourage pro-social relationships and minimise association with offending peer groups.

Liz Oldfield, manager of the Action for Children Wessex intensive fostering programme, expressed concern that even when girls were eligible, magistrates still considered custody for girls in the mistaken belief they would be safer.³⁸¹

Piloting court diversion schemes for girls and young women whose offending is linked with sexual exploitation joins sexual exploitation services with youth justice. Rather than relying on chance disclosures or individual youth offending team workers’ ability to recognise sexual exploitation, youth justice professionals would need to proactively engage with specialist services and provide a form of assessment which does not currently happen and which places girls and young women’s law breaking into a wider context. Above all, it would require that youth justice professionals better understand the links between law breaking and sexual exploitation in order to deliver such court diversion schemes.³⁸²

Examples of Police discretion:

- Alex Marshall, Chief Constable of Hampshire Constabulary: “Our Community Resolution (CR) and Youth Restorative Disposals (YRD) pre-court options encourage resolution including restorative work as an option for low level offences where a sanction disposal is considered disproportionate. Increased discretion and a more proportionate approach to dealing with offences has been welcomed by officers and in general, victims of low level minor crime are favourably disposed to apology where this is genuine.”
- Gloucestershire Constabulary has introduced Community Oriented Policing or COP resolutions and encourages the use of restorative justice. The use of COP has led to a significant fall in the number of girls arrested by Gloucestershire Constabulary from 773 arrests in 2008/09 to 257 arrests in 2010/11.³⁸³

³⁸¹ (Howard League for Penal Reform: Inquiry on girls, 2012)
³⁸² (Howard League for Penal Reform: Out of place, 2012)
³⁸³ (Howard League for Penal Reform: Keeping girls out, 2012)
Support for girls facing disadvantage or in need but not specifically at girls who had come into contact with the penal system. These programmes address many of the protective and risk factors associated with girls and offending behaviour such as poverty, low self-esteem and disengagement from education\(^{384}\).

**Best practice from the Philippines**

Example of Informal Diversion Strategies with Children in Street Situations - Childhope Asia Philippines – Street Education Programme

Late one afternoon, five children in street situations (three girls aged 11, 12 and 13 and two boys aged 10 and 11) were caught by community officials sniffing glue beside one of the houses in their neighbourhood. The head community official immediately called the office of Childhope Asia Philippines’ Street Education Programme to inform the street educators of the apprehension.

Primarily, the collaboration focuses on how both parties may maximize their roles and utilize their resources to better help children in street situations. Another aspect of the partnership is to immediately inform the street educators of incidents involving children in street situations (especially those involved in abuse and apprehension cases, whether the child is a victim or an offender), as in the current case.

The street educators and their supervisor gathered all the necessary information from the community official over the phone. All the children in street situations who were apprehended were out-of-school.

The following courses of action were taken:

- Group counselling/conferencing among the parents and the children in street situations, together with the community official;
- Releasing three children to their parents’ custody with the parents having signed a memorandum of agreement with the community official/office, taking on the full responsibility in ensuring that the child will not be involved in glue-sniffing again;
- Individual counselling among the 2 girls without parental care and their referral to temporary shelters, with one of them referred to where her sister was also staying;
- Coordination with the Department of Social Welfare and Development about the case;
- Close monitoring of the 3 children who were released to their parents but who were still in the area (conduct of family counselling, involvement of the children and parents in the project’s activities whenever possible etc.).\(^{385}\)

\(^{384}\) (Howard League for Penal Reform: Keeping girls out, 2012)

\(^{385}\) (Wernham, 2004)
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Understanding Children In Conflict With The Law: Contradictions On Victimisation, Survivor Behaviour And The Philippine Justice System. (n.d.).


Appendix A: Standards and guidance documents

Essential principles for dealing with children in conflict with the law

• States shall promote and establish laws and procedures for measures for dealing with children who have infringed the penal law, without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. (Convention on the Rights of the Child, Article 40)

• Consideration shall be given to dealing with juvenile offenders without resorting to the formal trial system, whenever it may serve the child’s best interests. (Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, Rule 11)

• Any diversion involving referral to community or other services must require the consent of the juvenile, or her or his parents or guardian. Children should be informed of their rights in regard to the judicial or non-judicial proceedings in which they are or might be involved. Children have the right to legal aid at every stage of the process where diversion is applied. (Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, Rule 11; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 10)

• A variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training, mediation, restorative justice measures and other alternatives to deprivation of liberty shall be available to ensure that children dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence. (Council of Europe Guidelines on Child-friendly Justice; Convention on the Rights of the Child, Article 40; Guidance Note of the Secretary-General: UN Approach to Justice for Children)

• Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him or her in any subsequent legal proceeding. (Committee on the Rights of the Child, General Comment No.10)

• The police, prosecution and other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings. (Beijing Rules, Rule 11; Riyadh Guidelines, No.58)

386 (Penal Reform International, 2013)
National

UNICEF and the Children’s Legal Centre have published Guidance for Legislative Reform on Juvenile Justice\(^{387}\) (Section 5 on Diversion) as a guide for parliamentarians and governmental authorities involved in drafting or reviewing juvenile justice laws. It sets principles, standards and norms that States need to consider when amending or drafting legislation and illustrates those issues with some examples of good practice and research.

In May 2016, Cambodia passed a new juvenile justice law designed to steer youth offenders toward restorative justice instead of incarceration\(^{388}\).

The Government of Ghana has recently produced a new *Justice for Children Policy*\(^{389}\) which includes a strategy to “Promote the use of community justice mechanisms and diversion at the community level”.

In terms of Uganda’s national legislation, the Constitution of Uganda prohibits torture and provides for rights of persons detained including entitlement to legal representation, access to medical treatment and a next of kin among other rights. Other legislation provide for rights such as: not to be punished twice for the same offence, special protection of children including not being detained with adults or remanded in adult prisons, removal of persons with mental disabilities from places of detention, prohibition of corporal punishment and abolition of hard labour.

These pieces of legislation include: Penal Code Act Cap 120, the Children Act Cap 59, the Uganda Peoples ’Defence Forces Act Cap 205, The Uganda Police Act Cap 303, the Uganda Prisons Act (2006), The Trial on Indictment Act Cap 23 and the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013\(^{390}\).

In addition, JLOS is currently drafting *National Diversion Guidelines for Juvenile Justice* which aim to provide more specific guidance on diversion for minor offences.

International

There is a comprehensive and far-reaching body of international law which regulates juvenile justice. The most recent agreement is the Directive of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings 2016\(^{391}\). Others include:\(^{392}\)

\(^{387}\) (UNICEF and the Children’s Legal Centre, 2011)  
\(^{388}\) (Cambodia Daily, May 2016)  
\(^{389}\) (Government of Ghana, November 2015)  
\(^{390}\) (Uganda Human Rights Commission, 2014)  
\(^{391}\) (European Union, 2016)  
\(^{392}\) (Penal Reform International, 2013)
General child rights

- Universal Declaration on Human Rights 1948 For full text of international treaties and standards see the website of the UN OHCHR*. Sets out the fundamental rights that all human beings are entitled to without discrimination. It has influenced and been the basis for the adoption of numerous other human rights instruments, standards and guidelines.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (and its Optional Protocol 2002) [b] The Convention against Torture (CAT) bans torture and other cruel, inhuman or degrading treatment or punishment under all circumstances and obliges States to take measures to ensure its prevention. It requires States to investigate and prosecute any allegations of torture and provide training to all law enforcement and military personnel in torture prevention. It also established the Committee against Torture that monitors implementation of the CAT. The Optional Protocol (OPCAT) requires the establishment of national preventive mechanisms to visit places of detention and receive allegations of abuse and investigate these. It also sets up the Subcommittee on the Prevention of Torture which has the remit to visit all places of detention in signatory States.

- Convention on the Rights of the Child 1989 [b] The CRC is the most widely ratified Convention, being ratified by all but three States worldwide. A wide range of children’s rights are set out in the CRC and it obliges ratifying States to protect these. States must report on their implementation of the rights at regular intervals to the Committee on the Rights of the Child who subsequently deliver ‘Concluding Observations’ on the situation in said country. Thirteen ‘General Comments’ have been published by the Committee on the Rights of the Child giving a more detailed interpretation of some of the rights in the Convention. Of these, General Comment No.10 (2007) deals with the treatment of children in conflict with the law.

Children in conflict with the law

- Standard Minimum Rules for the Treatment of Prisoners 1955 Set of non-binding rules that set out the principles to ensure that all those deprived of their liberty are treated with humanity and dignity.

- Code of Conduct for Law Enforcement Officials 1979 Rules that ensure the performance of duties by law enforcement officials are carried out in a humane manner and respect the human rights of those who come into contact with them.

- UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (‘Beijing Rules’) The Beijing Rules are a set of principles and guidelines for the proper administration of juvenile justice and includes guidelines and commentary on justice for children issues such as juvenile courts, the age of criminal responsibility, prosecution of juveniles, sentencing and standards for juveniles if incarcerated.
• **UN Guidelines for the Prevention of Juvenile Delinquency 1990 (‘Riyadh Guidelines’)** Sets out standards for the prevention of juvenile delinquency including the protection of children who are deemed at risk of juvenile delinquency and implementing measures that can negate these risks. Promotes the role that various sectors of society such as the family, community, media, and education system have on the prevention of young people at risk of juvenile delinquency.

• **UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (‘Havana Rules’)** Set of principles that apply to every juvenile deprived of their liberty in any facility or institution and promotes their development and well-being. Sets out standards for material conditions of detention, protection of juveniles whilst in detention, and educational, vocational and work programmes, among other things.

• **UN Standard Minimum Rules for Non-custodial Measures 1990 (‘Tokyo Rules’)** Set of rules on how to administer non-custodial sanctions and the safeguards that need to be in place for those sentenced to these measures.

• **Guidelines for Action on Children in the Criminal Justice System 1997** Guidelines on how to implement the principles of the Convention on the Rights of the Child and other international standards relating to the administration of juvenile justice.

• **UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002** Discusses the use and principle of restorative justice programmes, how and when they should be used in the criminal justice system, how they operate and who should be involved.

• **UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 (‘Bangkok Rules’)** Complements and goes beyond the Standard Minimum Rules for the Treatment of Prisoners to ensure women’s rights and needs are adequately met, including the specific needs of girls in detention.

• **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2012** This set of guidelines recognises the importance of provision of, and access to, legal aid in order for children and adults to participate in the justice system, obtain a fair trial and have their rights protected. Most relevant are Principles 1, 4 and 5 and Guidelines 7, 8, 9 and 10, which refer specifically to legal aid for victims, witnesses and children in conflict with the law.

**Children as victims and witnesses**

• **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1988** Suggests and promotes measures to be taken to uphold the rights of victims and improve their access to justice, social assistance, redress and compensation.

and measures that should be taken to ensure their rights are fulfilled and they are fully protected from hardship throughout the judicial process.

Regional: Africa & Europe

- **African Charter on Human and Peoples’ Rights 1986 [b]** This charter upholds the Universal Declaration of Human Rights but also takes into consideration the historical, traditional and cultural values of African civilisation which should characterise their reflection on the concept of human and peoples’ rights.

- **African Charter on the Rights and Welfare of the Child 1990 [b]** The ACRWC was adopted by the African Union in 1990 (came into force 1999) and is a complementary instrument to the CRC but has a specific and nuanced focus on issues affecting African children. Its provisions concerning the rights of children in conflict with the law are largely in conformity with the CRC however, it also has a specific section focused explicitly on the rights of children imprisoned with their mothers. It sets up the African Committee of Experts on the Rights and Welfare of the Child.

- **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [b]** Identifies the inalienable rights and freedoms of every human being and compels signatories to guarantee and protect these rights without discrimination. It has 14 Protocols amending some of the original articles or adding additional rights and safeguards. Violations of the rights set out in the Convention are handled by the European Court of Human Rights, and any individual (including a child) or group of individuals can bring a case against their signatory State to the court, stating the violation of their rights under the Convention.

- **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987 [b]** Based on Article 3 of the ECHR, it further strengthens the protection for people against torture, inhuman or degrading treatment or punishment and establishes the European Committee against Torture (CPT) which has the remit to visit all places of detention and report to States on their findings.

- **Council of Europe Framework Decision on the standing of victims in criminal proceedings 2001** Outlines victim’s rights in criminal proceedings such as assistance, protection, mediation (where appropriate), and redress and outlines how each State should ensure that these rights are met and how this is best done.

- **European Rules for juvenile offenders subject to sanctions or measures 2008** These rules are intended to uphold the safety and rights of all juvenile offenders subjected to community sanctions or measures, or any form of deprivation of liberty. They include discussions on the legal framework and implementation of non-custodial sanctions or measures, all aspects of the treatment of children who are deprived of their liberty, complaints mechanisms and inspection of facilities, staffing, and working with the public and the media.
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 2010 Guidelines for treatment and measures that should be put in place to protect the rights of all children who come into contact with justice systems either as offenders, victims, witnesses or a third party to proceedings (i.e. custody cases). It outlines general principles and specific guidelines for each stage of the judicial process.