

ROLE OF THE POLICE UNDER DIVERSION: AN ASSESSMENT, SUCCESSES AND FAILURES

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INTRODUCTION

Diversion is a contemporary phenomenon in Criminal Justice in general and juvenile justice in particular. It is considered to be a subject of fundamental human rights and a powerful tool in crime prevention. The police like other agencies in the Criminal Justice System have got a fundamental role to play in diverting children from the formal Criminal Justice System. Diversion can be defined as strategies developed in the juvenile justice system to prevent young people from committing crime or to ensure that they avoid formal court action and custody if they are arrested or prosecuted.

The convention on the rights of the child recognizes a right to a properly functioning diversion system. Article 40 of the CRC states that State parties shall seek the establishment of “ whatever appropriate and desirable measures for dealing with such children under the age of 18 years without resorting to judicial proceedings” providing that human rights and legal safeguards are fully respected.

Article 34 of the constitution of Uganda provides for the rights of children. It is specifically stipulated that laws must be enacted in children’s best interest and must be protected from social or economic exploitation or any condition harmful to their health or physical, mental, spiritual moral or social development.

The children Act was therefore, enacted to reform and consolidate the law relating to children. It specifically provides for the care, protection and maintenance of children. The Uganda Police Force among other stakeholders is mandated under the Children Act to defend, protect and enforce the rights of the child and is also given powers to provide for effective diversion measures of juveniles. This article outlines the role of the police under diversion and assesses the successes and failures.

What is the purpose of diversion?

1. To prevent harm to the juvenile offender. This can be done through preventing sexual and physical abuse of children while in police custody, providing education to children while in detention in relation to spread of diseases, stigmatisation, alienation, anger, and despondency. Children need to be prevented from developing low self-esteem which may lead them to be psychologically traumatised, alienated and commit more serious offences.
2. To promote positive rehabilitation of juveniles. Human rights are about respecting the human dignity of each and every citizen in society including children. This requires advocacy and the need to promote the fulfillment of their human potential. Diversion provides alternatives that are effective in reducing re-offending. These may include education, counseling, sports etc.
3. To protect society. Harming individuals in detention also harms society. Alienated, angry and abused people while in detention may lead them to be more dangerous to society when they come out
4. To make effective use of State resources. Detention is a scarce resource. Jails, prisons and remand homes are very expensive to operate. The earlier a case is diverted from the Juvenile or Criminal Justice System, the more resources are saved to handle the remaining cases.

POLICE POWERS UNDER DIVERSION

1. Section 90 (2) of the children Act empowers the police to dispose of cases at their discretion without recourse to formal court hearings in accordance with criteria laid down by the Inspector General of Police.
2. The Police under Section 90 (1) of the children Act also have powers to caution and release a child who has been arrested.
3. The Police also have powers to release a child who is in conflict with the law and refer without a formal charge, to the Secretary for Children Affairs or to the probation and Social Welfare Officer.
4. Sec 90 (6) empowers the police to release on police bond any child arrested with or without a warrant and cannot be immediately taken before a court.

5. The police have powers and are required under S.90 (7) to detain a child under custody where release on bond is not granted for a maximum of twenty four hours or until the child is taken before a court, whichever is sooner.
6. The police are also barred from detaining a child with an adult person. This is another form of diversion by preventing a child from abuse by adults or learning more hardened criminal acts from such detention.

SUCSESSES

1. The police are exercising their powers to caution and release children unconditionary or by referring their cases to the LCs or the probation officers, or release them on police bond and where possible to observe the 24 hour detention rule.
2. In a bid to avoid detaining children with adult persons, the police force has established reception centers for children at six police stations. These are Masaka, Hoima, Gulu, CPS Kampala, Katawi and Kumi. The police council passed a resolution that all new police stations must have children reception centers provided for in their plans.
3. The police established since 1998, a Child and Family Protection Unit (CFPU). Where possible all cases involving children in conflict with the law are handed by the child and Family Protection Unit. Officers of this unit are professionally trained to handle such children and provide counseling services to them.
4. Most of these CFPOs are relatively elderly female police officers with stable families. So children while at police stations are handled with a parental touch especially the girl child who is strictly under the care of a woman police officer while in custody. This is designed to avoid abuse of such a child.
5. The police are emphasising as much as possible gathering of enough information to sustain the charge being preferred on the child in conflict with the law before arrest of such a child.
6. The police are also emphasising the requirement that during interview of a child in conflict with the law police officers shall ensure that the parent or guardian or secretary for children affairs is present at time of interviewing the child.

7. Management of the police has also instructed units to refer children accused of offences such as affray, idle and disorderly, criminal trespass, common assault and malicious damage to property, to the LC court of first instance, school administrators or Clan leaders.
8. With the creation of the CFPU to bolster the investigative process, investigation of cases where children have been charged in a Family and Children Court, has been enhanced.
9. The police are aware that the minimum age of criminal responsibility is 12 years. Children below the age of 12 years are not arrested or charged. However, where a child below the age of 12 years is suspected to be in conflict with the law and the life of such a child is at stake, the police may put such a child under its custody. Without any amount of delay such a child must be referred to the secretary children Affairs or the probation and social welfare officer or the parents.

Failures

1. 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.
2. The police guidelines require that police officers must complete investigations in less than one month, if the case concerning a child is before a Family and Children Court and a plea of guilty has been entered and where owing to the seriousness of the case, the matter is before the High Court, then the maximum period of investigation to be undertaken by the police officer shall not exceed three months. However, quite often than not, this is practically not possible. Police investigations are hampered by several factors such as lack of resources and logistics, corruption, lack of professionalism, and delays by the State Attorneys.
3. In most instances, cases against children are referred to the police by the LCs. So it would not be prudent again to refer such cases back to the same people. In any case such cases are referred to police by complainants who think that the LCs are either

compromised, or have personal interests in the case. Apart from lack of training for LCs on how to handle such cases they are now in limbo.

4. The power to release suspects on police bond has been compromised by the cancer of corruption. This has got negative repercussions. Either those without money are never released. If released the public is not happy about it and can lead to mob justice or the political leaders ensure that suspects are not released on police bond. This of course negates the diversion process.
5. The police have few detention facilities and in some cases, children are detained with adults or at police posts where such detention is not allowed. It is not uncommon to find children remanded at police stations by courts. This may be due to lack of remand homes in some magisterial areas.
6. The biggest threat to the diversion process by the police is lack of adequate sensitisation and training to police officers on the Children Act and how to handle children issues. Save the Children Uganda, is assisting us to train police officers but this is a drop in the ocean.
7. Lack of Probation Officers in some districts has also affected the diversion process. Where they exist certain programmes have taken over their services e.g the Community Service programme.
8. The police guidelines require officers to use custodial options for children as an option of last resort. Arrests shall not be carried out before gathering enough information to sustain the charge being preferred on the child in conflict with the law. However, the plague of arrest before conducting investigations has afflicted the police especially in the outposts. This is compounded by the fact that communities especially complainants are increasingly urging the police to lock up suspects as a punitive measure. This of course has negative implications to the diversion process.