

**A CASE STUDY OF LEGAL REFORM IN UGANDA**

**AS PART OF A STRATEGY FOR PROMOTING**

**COMMUNITY-BASED CARE**

**BY**

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# **LEGAL REFORM IN UGANDA AS PART OF A STRATEGY FOR PROMOTING COMMUNITY-BASED CARE**

## **INTRODUCTION**

The principal aim of this study is to review the recent legal reform/review process in Uganda from the particular perspective of how it has promoted community-based care. The two reform measures that will be described and analysed from this view point are the Approved Schools (Babies and Children's Homes) Rules, 1991 (Statutory Instruments No. 13 & 14) and the Child Law Review Committee's (CLRC) proposals concerning the reform of various laws concerning children as presented to government in its Report of March 1992. The Babies and Children's Homes Rules which will be referred to as "the Rules" were as Statutory Instruments reviewed and approved by Cabinet and then gazetted in August 1991. As addendums to the Approved Schools Act they did not have to be approved by the elected national assembly, the National Resistance Council (NRC). In contrast the CLRC Report is a major piece of legislation which will require the approval of the NRC. Its proposals if passed will necessitate the repeal of four existing Acts and changes to three others.

### **The Uganda Background to these Reforms**

Uganda, from 1971 to 1986, suffered massive dislocation, first as a result of Amin's brutality and his mismanagement of the economy and government infrastructure (1971-79), and then with the increasing civil strife and break-down of law and order from 1979-86.

A rapid increase in the number of Children's Homes took place between 1961 and 1992, that is since independence in 1962. In 1961 there were probably less than 10 Homes, this includes government Remand Homes and NGO Homes, in 1986 according to the National Council of Voluntary Social Services (NCVSS) there were 56 and by 1992 a MOLSA-SCF study recorded 75 Homes. The tempo for establishing Homes seems to have steadily built up over this period of 31 years particularly due to economic hardships and civil conflict. [*Nalwanga Sebina & Sengendo, 1987; Mugisha, 1992*]. In August, 1992, when SCF and the Ministry of Labour and Social Affairs produced an updated survey, compiled by Geoffrey Mugisha, on all known Homes, they totalled 75 with 2,882 children. Of these 75 Homes 10 were for Babies. There were more male children than female, 1,704 to 1,178. Only 737 of these children were held on court orders. From interviewing the children, the research assistants learnt that 421 children had both parents alive, 1,284 had one parent alive and of those children whose parents were dead 754 had relatives they knew of. This left 432 children who appeared to have neither parents nor relatives alive, or on whom either the children or the Home had no information. This is a group of children for whom special plans are required particularly in fostering and adoption. 152 children had a disability (5% of the total).

Up until the time the Rules were gazetted there were no government regulations concerning Children's and Babies Homes e.g. minimum standards for a Home and grounds for admission, etc. with the exception of the Boys Approved School. Without any clear-cut promulgated policy from government as to the purpose and criteria to be followed in establishing a Children's Home they sprang up very much on the whim of individuals and organisations. As a result, many were

sub-standard and probably almost all took in some children, if not a majority, who could have received care in the community within their extended family.

Culturally it seems Ugandans were not opposed to institutions. For what were Homes if not an extension of the idea of boarding schools which the British had introduced to educate the Ugandan elite? Each region had its famous boarding school and Children's Homes seemed just to be emulating this respected precedent. Also these Homes were often seen as a cheap way for children to be educated and it has not been unusual for parents to present their children as orphans to obtain this advantage.

It was only from the mid 1980s that this assumption was challenged and the importance of community-based care for children stressed, whether in health (in Community-Based Health Care Committees) or disability (in Community-Based Rehabilitation) or in the Department of Probation and Social Welfare's (DPSW) "Policy Guidelines for the Vulnerable and Disadvantaged Children in Uganda" [January 1991]. In these guidelines it is worth noting the following statements:-

No. 3 "All efforts to keep family units intact shall be undertaken as the needs of children are best met in the family environment".

No. 4 "A child shall only be removed from a family environment if it is harmful to the child's welfare and interest .....".

No 6 "Juvenile offenders shall as much as possible be taken care of within the community ....".

In 1991 the Uganda Community Based Association for Child Welfare (UCOBAC), an umbrella organ to coordinate local NGOs working in the area of child welfare, was established by local and international NGOs, including SCF and UNICEF. In August 1991 USAID produced a report entitled "Managing Uganda's Orphans Crisis" which in its turn stressed community care rather than institutionalisation.

With respect to the laws concerning children there has been a recognition for the need for reform for some time. The Minister of Justice/Attorney General, Joseph Mulenga, stated in 1988 that according to the records in the Ministry of Justice the need to reform the laws of Uganda relating to the child "was recognised as far back as 1964 and from then on fruitless efforts were made to bring about change" [*Mulenga, 1988b*].

During the period 1966 - 71 when Katiti was Minister of Culture and Community Development, his Ministry which included the DPSW drafted the Children's and Young Persons Bill which was brought forward as a draft decree in 1973 and 1977 but never enacted despite efforts up to as late as 1981 [*Mulenga 1988a*]. One of the major reasons Katiti gave for the need for new legislation was the "big increase in homelessness and destitution among children" and that the new Act would make it easier "to deal with the detection and prevention of family distress and the treatment and supervision of those already in distress" [*Katiti, 1970*]. It would appear from this that these attempts were not seen in the international proactive context of the Rights of the Child but rather as reactive to an internal problem.

Various government leaders, government departments and agencies as well as conferences spoke out for the need for law reform after the National Resistance Movement (NRM) government came to power in 1986.

In June 1987, at the Probation and Social Welfare Department's senior staff seminar it was proposed that a Committee be formed at the Ministry HQ to amend the Acts that were "out-dated and/or conflicting which hamper the execution of our services" [*Resolution 11*].

The Juvenile Justice Conference in June 1988 advocated for change in the juvenile court structure, the definition of a juvenile, family reconciliation, alternatives to custody, the approved schools, the use of bail and of beyond control, and towards family violence, child abuse and community responsibility for children in its major recommendations. The last sentence in the conclusion to these resolutions states, "It is the hope of this Conference that the government will champion the course of formulating a young persons law in which these recommendations will be taken into consideration" [*Juvenile Justice Conference Resolutions, 1988*].

The Solicitor General also speaking at this Conference also spoke out for reform. He stated, "There is therefore great and urgent need to streamline the law relating to juveniles in general, and to make it contain as many branches on the subject, conveniently in one statute". [*Ayume, 1988*].

President Museveni, in November 1988, in his address to a national seminar on the UN Convention on the Rights of the Child, said that, "as important as the need for human rights is, even more important is the need to recognise and protect the special rights of children who are the most vulnerable members of our society" [*UNICEF National Seminar on the Convention, 1988*].

The Minister of Justice at the same seminar said that he "had no kind or good word to say about the Law of Uganda in relation to the child. This is not surprising considering that nearly all of it was passed during the colonial era and hardly anything was done to reform or improve upon it since enactment". He saw the reform of these laws as "long overdue" [*Mulenga, 1988b*].

The Conference forwarded its recommendations and observations in a report to government in an obvious effort to convince government that it should ratify the Convention, which it later did. The National Seminar on the Rights of the Child passed resolutions calling for:-

- Government to ratify the UN Convention on the Rights of the Child;
- National laws on children to be up-dated;
- Children's rights to be incorporated in the laws and the Constitution;
- The simplification and translation of the Rights into local languages and their wide circulation so as to sensitise adults, children and organisations about children's rights;
- A National Committee to pressurise and follow up the implementation of the Convention [*UNICEF Report on National Seminar on Convention, 1988*].

Advocacy for law reform was high. However, there was need for a steering committee to coordinate the effort and deliver the fruits as proposed at the Senior Probation and Welfare Staff seminar of June 1987.

In November, 1989, the Minister of Relief and Social Rehabilitation wrote to nominated persons to request them to serve on the Child Law Review Committee. The Committee was finally inaugurated on June 21st 1990.

On 17th August 1990 Uganda ratified the UN Convention. In July 1990 the OAU General Assembly under the chairmanship of President Museveni adopted "The African Charter on the Rights and Welfare of the Child" and Uganda has since signed it. In September 1990 President Museveni attended the World Summit for Children in New York and on behalf of Uganda adopted and signed the World Declaration on the Survival, Protection and Development of Children and a Plan of Action by which to implement it. On June 16th 1993 the Uganda National Programme of Action for Children (UNPAC) was launched by the President on the Day of the African Child.

### **The Role and Strategy of SCF's Social Work Department in Uganda**

The Social Work Department in Uganda developed out of a need to assist displaced children as a result of the Luwero Triangle conflict. With the agreement of the Ministry of Rehabilitation, Ugandan SCF staff took on a major role of escorting such children out of the war zone, which often involved negotiation with the military, to the temporary safe haven of "Yellow House" at Mulago.

In 1987, with the arrival of two expatriate staff as advisers in Social Work and Probation the size and role of the Department changed dramatically. The expatriate component was further increased to three when a Training Adviser joined the team in 1988. From being primarily operational the Department gradually became less directly involved in hands-on work and more concerned with information collection and fulfilling its advisory role, particularly in the areas of problem analysis and capacity building. For example, during 1987-89 SCF formed part of a joint Ministry and National Council of Voluntary Social Services (NCVSS) inspection team to obtain information on the Children's Homes that had sprung up and to try and improve their standards of care as well as to persuade all involved to resettle children whose parents and relatives could be traced.

Over the last six years the pendulum has continued to swing away from direct operational involvement. The Child Social Care Project Rakai which grew out of the Department's data collection on orphans could be seen as an exception which may be one reason why it has been sensible to make it more of a discrete project. SCF currently provides 2 social work advisers to work in a national context with the Ministry and they advise primarily in the areas of policy and planning, and training.

The central theme of SCF's Social Work Department has concerned the better protection of children in Uganda through its influence and advisory role, especially within the DPSW. In May, 1989, SCF set out the Results that it felt it wished to achieve with the Ministry. These were:-

- Result 1 - A Coherent Probation Policy and Budgetary Framework.
- Result 2 - A Local Community Based Approach to Child Care related Problems.
- Result 3 - An Effective Workforce.
- Result 4 - A Planned Strategy for Children with Special Needs.
- Result 5 - A Higher Profile for Probation in Policy Making at National and Local Level.

Each of these results had various objectives; however, these have periodically changed, e.g. after being achieved, when drawing up forward plans for the next financial year, etc.

A failing concerning these results has been their one-sidedness; they were thought through by SCF and accepted by the Ministry on a sort of "understanding" or "gentleman's agreement" as a way for SCF to proceed, without either the full participation of Ministry HQ staff in their compilation or any formal Agreement. SCF's advisory involvement in the development of the Ministry's policy has therefore been an "ad hoc" development based on history and expertise rather than on a formalised and collective understanding. It was not until 1992, in part because of the change in Commissioner and circumstances in the Ministry and SCF, that this failing was addressed, and it has taken a year for the Ministry to reformulate the joint forward plans, with their results and objectives, in a format that is acceptable to them.

Prior to formulating any strategies for SCF in its work with the Ministry it was recognised as imperative to understand, identify and where possible quantify the difficulties children face in Uganda, especially those which could be regarded as an infringement of their Rights as set out in the UN Convention, and the limitations of government to effect changes in their situation. As a result of the former we became aware of certain major problems children encounter and certain areas of vulnerability e.g. the high under 5 mortality rate (180 per 1,000 live births), that 50% of the school aged are not in school, that 1.1 to 1.5 million children are orphaned, negative attitudes to children especially the girl-child, the problems of the disabled (400-800,000), child abuse, child labour, institutionalisation, treatment of child offenders, street children, etc. As with most developing countries Uganda's children represent over half the population i.e. over 8 million, of these the number who collectively under the terms of the UN Convention do not receive their basic rights are also numbered in millions.

In these circumstances, and with a DPSW, which has an established staff of about 120 to manage 6 government Homes and 40 districts, and is almost paralysed by the massive budgetary cuts due to the government's tight fiscal policy, SCF has had to make difficult decisions as to where to put its main efforts in the field of child protection.

The question for the Social Work Department has been where, within our terms of reference, our social work beliefs and abilities, can we achieve an effective contribution to protecting children in partnership with the DPSW. On reflection it seems that the nature of our contribution has in many ways been determined by the historical development of the Department. There is an obvious linkage between the rescuing and placing of unaccompanied children in temporary

shelter as a result of civil conflict, to the collection of data on children in Homes, to the resettlement programme, its limitations without Homes' regulations, to the Children and Babies' Homes Rules and their monitoring, and the CCOLP's materials and methods for enabling staff in children's residential Homes to improve their child care knowledge and skills.

The historical development of the CLRC and its proposals came from a number of sources. From the Ministry, in that, the reform of the laws was one of their resolutions in their conference in 1987 in which SCF was involved. From SCF as a Child Rights-based organisation whose concern in this area was automatically heightened with the adoption of the UN Convention on the Rights of the Child in November 1989, and from other interested activists in government, UNICEF and NGOs. Law reform was also part of the job description of the Probation member of the team when appointed in 1988 thus showing SCF's active encouragement of this development.

For SCF and the Ministry the Rights of the Child provides the legitimating framework which underpins the necessity for appropriate measures to be taken to better protect children. The Rights of the Child are about everyone considering and reviewing their attitudes to children in all the spheres of survival, protection, development, participation and belonging. To give national status to these Rights and to correct the current inappropriate laws concerning children new laws were seen as necessary.

For the Ministry and for SCF the proposed Children's Act which is Rights-based, will, if implemented appropriately down to grass-roots, act as a major preventative measure for the better protection of children. By challenging some attitudes and encouraging others it provides a framework for good child care practice and it should with the support of government and sensitised child care activists at the grass-roots and upwards provide the necessary enabling environment for the better treatment and understanding of children's needs. It thus could go a long way to having a beneficial effect in the many areas in which children suffer disadvantage.

Both of these pieces of reform fit in with the results which SCF is working with the Ministry to achieve. The Rules and the CLRC proposals are both planned strategies for children with special needs (Result 4) and incorporate and advocate for a local community-based approach (Result 2).

### **THE BABIES AND CHILDREN'S HOMES RULES**

Although the reason for SCF's involvement in the formulation of these Rules may be seen as having developed out of its earlier work of placing unaccompanied children in temporary Homes during 1980-86 the specific events that seem to have focussed and provoked SCF and the Ministry into a sense of urgency on this matter were the deaths of children in two Babies' Homes.

In September 1988 11 babies in Lira Babies Home died of a virus and in December 1988 5 babies died at Nsambya from measles. At this time SCF was providing Dried Skimmed Milk (DSM) and other supplementary food stuffs to about 20 Homes (including most of the Babies Homes in Kampala).

This cause for concern about the care of children in Babies Homes, including medical care, appears, from a recent study of one of the oldest and most respected Babies' Home's in the country, to be very much substantiated. According to the Home's register, between 1976-92,

45% (217) of the babies who came to the Home died there. Despite the fact that most of these children were abandoned the figure is very high. [see *A Babies Home Case Study, Muhumuza, 1993*].

Sometime in either December 1988 or January 1989 the Ministry of Relief and Social Rehabilitation set up a Committee to look into the conditions of Babies Homes. This Committee, on which SCF was represented, met with representatives from the Ministry of Health (MOH) and UNEPI to look at the standards that should be set and to put together useful information and advice to those administering these Homes e.g. on immunisation. Draft guidelines were produced in July and comments sought from the Ministers of Health, and Relief and Social Rehabilitation. Between September and November the Minister of Relief and Social Rehabilitation chaired 3 meetings to discuss the Rules, a representative from SCF attended, the last meeting also discussed the composition of the CLRC. By November these guidelines had become draft regulations as it was seen necessary for them to have statutory authority. They were discussed at the Child Care Agencies meeting on 7th November, 1989. A copy of the regulations was sent by the Minister of Relief and Social Rehabilitation to the Minister of Justice in December 1989.

In February, 1990, the legislative drafting expert in the Ministry of Justice replied to the Minister pointing out that various alterations would be needed if these regulations were to become Rules, and that this would require discussions between the two Ministries. In May, 1990, the Permanent Secretary set up a small task force of three, including a representative from SCF, to assist the legal drafters to reformulate the regulations as Statutory Instruments. One of the drafters was later to be the draftsman for the CLRC's proposals. After a number of meetings, which included one with Ministry of Health and Public Health officials, the Rules were finalised and sent to the Minister for signing in December 1990. By March, 1991, the Minister had signed the Rules and the government printer had been asked to print them by the Ministry of Justice and have them gazetted. They were finally gazetted in August 1991.

The whole process from the inception of the Committee to look into the conditions of Babies Homes to the final gazetting of the Rules as Statutory Instruments had taken 2 1/2 years (30 - 31 months).

The task of the implementation of the Rules began in March 1991, at the time the Minister signed them, when they were introduced to District Probation and Welfare Officers (DPWO) at their staff conference. However, prior to that SCF had pointed out to the Ministry the need for a person from the Ministry to take on the prime responsibility for ensuring that these Rules were implemented and monitored. The Ministry appointed an Inspector of NGO Homes in July 1991 to undertake this role and that person is still in post.

Between May and September, in order to explain the Rules, to DPWOs, Homes' Administrators and their staff, the Ministry Training Unit with the Inspector of NGO Homes organised a national workshop for DPWOs, a series of 4 regional workshops and some individual meetings with Homes which were isolated from others. In this way every Home with their respective DPWO were given the chance to participate in discussing the Rules and their implications.

The Report on these workshops stated their specific objectives as being:-

- "(i) Explain the relationship between the Administrators of these Homes and the Probation



and Welfare Officers.

(ii) To explain the current Ministry policy which emphasises community care as opposed to care in institutions.

(iii) To give information about the Child Care Open Learning Programme.

(iv) To share participants views and feelings about the Rules and how they can be smoothly implemented."

The Report made the following interesting comments:-

- "all workshop participants expressed dissatisfaction that they were discussing Rules that were already passed. They felt that they should have participated in their formulation. They were not convinced that some representatives of the Child Care Agencies had been involved in the Rules making process".

- the importance of children staying in residential care for the minimum time possible and being resettled if necessary with foster parents was stressed.

- the employment of both sexes in caring for children was emphasised to lessen the chance of sexual and physical abuse, for modelling and to give a balanced gender environment.

- there was some hostility to these demanding Rules and to what was seen as government's interference and its consequences on donors.

One of the achievements of the workshop was stated as follows "The clear message about the Rules was received. The Rules had no double standards. Homes had to comply with the Rules for the better care of children or else be advised to wind up operations".

With regard to the CCOLP it was greeted as relevant and there was a lot of enthusiasm to start the programme. According to the Report "the Ministry had come out with something seen to be positive in the absence of almost any other government contribution to the running of these Homes".

In the Report's assessment of the workshops they were seen as participatory and positive, more meetings were called for, and DPWOs were urged to fulfill their obligations and especially to visit the Homes regularly. It was noted that: "There was the recognition of the long arm of Government and the administrators urged the Ministry to remain a source of inspiration and guidance, even after they have been granted approval".

By September 1991, 300 copies of the Babies and 400 of the Children's Homes Rules had been printed and were then distributed to the District Administrators and departmental heads in district administrations including Chief Magistrate, District Public Health Inspector (DPHI), Medical Officer (DMO), Education Officer and Police Commander, and to the Wardens of all the Homes. The DPWOs had the role of distributing and explaining these Rules to these and other senior district officers. In addition copies were sent to the Permanent Secretaries and other HQ staff in relevant Ministries e.g. Planning, Health, Education and Local Government (and separately to

Commissioner of Police and Prisons).

The Rules gave the Homes 12 months in which to apply to the Minister for approval with the necessary supporting documents from the DMO, PHI and DPWO (Rule 6(i)). In March 1992 the Commissioner wrote to all DPWOs reminding them to submit reports on the Homes with their applications before the deadline of August 31st 1992.

However, by August 31st less than 10 applications had been received so the deadline was extended to November 31st. By January, 1993, the Ministry had received 53 applications.

In the meantime the Minister nominated members to a Committee whose task was to recommend to him those Homes, which after scrutinising their application, it thought should be approved. According to the Rules this also included the setting of a maximum number of children for each Home.

The Committee consisted of 6 members, 4 of whom were independent members from NGOs and 2 from MOLSA, in addition there were 3 non-voting ex-officio members from MOLSA. The Committee elected from its members its chairman - Father Kasangaki, vice-chairman, who was from SCF, and Secretary -the Inspector of NGO Homes. It was also agreed that the Committee should be called the "The Children's and Babies' Homes Ministerial Advisory Committee". The Committee held its first meeting on October 2nd 1992. Between then and March 1993 the Committee met 7 times. It has had one further meeting in June and another is planned for September; it seems probable that quarterly meetings will be the pattern for sometime to come. At the request of the Committee a team of members have visited 4 Homes so as to make a further assessment to that of the Inspector; members also visited other Homes independently.

The Committee elaborated on one of the sections in the Rules, namely, what was meant by "an adequate number of supporting staff". The Committee decided that it would be looking for a staff-children ratio of 1:3 in Babies' Homes and 1:5 in Children's Homes, staff in this context included cooks not porters.

In a ceremony at the International Conference Centre on 12th May 1993 Approval Certificates were formally given out to 26 Children's Homes with a maximum number of 994 children and 9 Babies Homes with a maximum number of 242 babies making a total maximum of 1,236. However, it is accepted that these Homes for the present are likely to have more children than this and that there is a need for some intensive resettlement of those who have relatives to whom they could return.

A further 3 Children's Homes have been approved pending the fulfilling of certain conditions e.g. trained and sufficient staff, land agreements, the full number of reports, etc. Their combined maximum of children is 105. In addition 13 Homes have been given 60 days to make specific improvements to their facilities which if they fail to make, which in some cases seems likely, they will be compelled to close.

12 Homes have closed (one was a banned religious sect camp), five of those closed voluntarily; in addition two more have been recommended for closure. One of the Homes that closed was a government reception centre for older children all of whom were resettled with relatives except a

few. 3 Homes have become boarding schools returning children to the community in the holidays. 6 Homes now operate as day primary schools. In total therefore 21 Homes have so far either closed or changed their use; this number is expected to exceed at least 25 by the end of 1993. It is realised there is a need to liaise with the Ministry of Education over those Homes that have become educational establishments.

Government Homes, which total six, consist of one Reception Centre (for under 7 years olds), four Remand Homes and one Boys Approved School (there is technically also a girls Approved School attached to the Fort Portal Remand Home which has one child). The Rules may have had some impact on these Homes in that they have brought to government's attention the need to improve the very poor standards which prevail within them largely because of lack of funds. The Ministry has been aware that it would be seen as practising double-standards by the NGO Homes, if sub-standard government Homes were not improved, when at the same time the Ministry was closing NGO Homes that were below the standards set in the Rules. As a consequence project proposals were drawn up and money has been released to carry out extensive re-roofing and rehabilitation on Naguru Remand Home (the largest) and the Boys Approved School. Volunteers have also been involved in refurbishing Naguru Reception Centre and the Approved School. The Ministry, with SCF/USAID financial assistance, is also introducing low-energy wood-burning stoves and special saucepans in all these institutions. Improvements are therefore taking place, if slowly, however, the deep-seated problems are about overcrowding and staffing ratios especially in Naguru Remand Home, the lack of money available to speed up enquiries and court cases of those on remand and to provide for all but the children's basic survival needs, and the enabling of home and supervisory visits by children and staff respectively to take place from the Approved School so as to facilitate early releases.

With regard to the Approved School a directive by the previous Commissioner that the children should be returned after one year rather than complete the full 3 years of their sentence has greatly helped to reduce numbers. So also has the Ministry's discouragement of children being sent to the Approved School for being Beyond Control or for Care and Protection as these are not viewed by the Ministry as criminal offences.

#### **Observations on whether the Aims of these Rules are being Achieved**

Behind the constructing of these Rules is the belief that children are best brought up by their parents or relatives, or within a caring substitute family, and that full-time residential care is a last resort after all the preferred solutions have either proved grossly unsatisfactory (the concept of "significant harm" in child care is relevant here as adopted by the CLRC from the England and Wales Children's Act 1989) or temporarily unachievable. Specifically, however, the Rules are about the regulating of these Homes of last resort so that a set of minimum standards can be expected by society and by any child who is placed in one.

By the end of 1993 Uganda should have a total of less than 50 approved Babies' and Children's Homes, this is a reduction of more than 25 on the figure of 1992, and at least a thousand less children than in 1992. The Rules require a 6 monthly report from each Home and it will be interesting to see the analysis of the collated information. The first 6 monthly reports should have been returned by the end of May 1993 but so far the Inspector has only received 10.

A fundamental factor with regard to the implementation, monitoring and evaluation of these type

of Rules is that they will only be effective if someone is specifically given the responsibility to undertake these tasks e.g. the Inspector of NGO Homes. Further, this person needs to have the full backing of government, and it certainly has, I believe, been of great assistance for that person to have an advisory committee made up of respected members from other organisations, other than government, to listen, question, discuss, give Homes specific conditions to meet and make the final recommendations concerning approval or not, as well as setting the maximum numbers of children allowed. The Committee has had an important role in the recommendation process and as the final arbiter before the Minister's decision it has tended to diffuse any antagonism that might have otherwise been directed against the Inspector over these decisions. The role of the Inspector and the advisory committee will be needed for the foreseeable future. It is clear that for the Rules to achieve their purpose care must be taken to establish and maintain an appropriate administrative structure for their enforcement.

A few specific examples from Uganda's experience show the on-going importance of the Inspector's role in vigilantly upholding the Rules standards and seeking their amendment and wider implementation where necessary. One of the frustrating facts that has emerged since Homes were approved under the Rules is that a standard achieved is no guarantee of its maintenance. The Inspector has recorded examples of exemplary Homes deteriorating dramatically as a result of changes in staff, particularly the Warden/Administrator. At present it is only through

regular visits by the Inspector that quite sudden changes in a management's values and practices, which run counter to the Rules objectives and provisions, and government policy, can be detected and corrected. To counter this see-saw in management beliefs and practice towards children in residential care requires, in addition, that the Inspector persuade those organisations that manage Homes and appoint Wardens and staff to accept: the Rules and their underpinning principles, the need for Wardens to have 2 - 3 year contracts and to be appropriately trained and committed to community-care.

One of the ways that organisations, Wardens and staff involved in residential care can share problems and improve their understanding of the Rules and government policy is by attending training workshops. These are currently being organised but they will be an on-going necessity and an essential responsibility of the Inspector in conjunction with the Department's training officer.

With greater understanding of the issues concerning children in full time residential care there will often be a need to modify or introduce new provisions to the Rules. For example, the most notable defect in the Children and Babies Homes Rules that has come to light has been its failure to address the need for routine health tests, especially chest X-rays, for all staff in the Homes. This is particularly because it is the staff of a Home who are the most likely carriers of the tuberculosis bacteria which can infect children and if not treated can cause their death. The need to amend the Rules so as to make up for this defect will require that someone, like the Inspector, follows this issue up through the right bureaucratic channels.

A further issue that has required the mediation of the Inspector concerns the implications of the Rules for other Ministries who have a responsibility for children in full residential care. In Uganda, Homes for the disabled come under a different Ministry. The question of how the Rules apply to this group of children is currently being negotiated between Ministries. In the opinion

of the Advisory Committee and the Inspector the Rules should apply to these Homes but it does raise problems of accountability. Similarly, there is need for the Inspector to promote discussion with the Ministry of Education over Children's Homes that have changed their status from Homes to boarding schools, over the regimes that exist in orphans boarding primary schools and boarding schools in general.

Another important role of the Inspector concerns the resettlement of children who do not need to be in these Homes because they have parents and relatives who could adequately look after them. The Inspector by his regular visits to the approved Homes can check that the DPWO is trying to resettle those children using his/her motorcycle or local transport where that is possible, where that is not happening or other breaches of the law are evident e.g. children resident without a court order, he can inform the HQ staff so that action is taken. The ability of the DPWO to use his motorcycle for resettling is dependent on the officer receiving some basic funding. If the number for resettlement from a Home is considerable then central logistics may be required. Recently the Inspector was moved from the Non-operations to the Operations Section in the DPSW which should make the liaison needed concerning resettlement easier.

It is important to be aware that Homes are often reluctant for the children in their care to be resettled. The reasons for this may be possessiveness, sometimes, for example, exhibited by Homes headed by females of various religious persuasions, but more often, I think, because outside funding often depends on donors being impressed by the numbers resident, rather than the necessity for children to be there or concern over the quality of care provided. It is also probably the case that donors find the monitoring of a Home much easier from a distance than the monitoring of community care.

Between January 1990 and May 1993, the numbers of children resettled from Homes, including 2 fanatical religious sect camps, was 1,379. The Rules are very necessary to stop what has happened in some cases in the past, where, soon after children have been resettled, the Home either attracts them back or seeks quickly to fill up the vacated places in some other way.

It should be evident from the time-scales indicated that even a fairly simple piece of legislation will take a considerable period of time, even if all goes well, to be effective. In the case of the Rules from the planning stage to the first phased completion of implementation will have taken 5 years (January 1989 - December 1993). For the Homes to reduce their numbers to the maximum allowed and to resettle those who can adequately be cared for in the community will take at least another year depending on funds. For the effectiveness and usefulness of the Rules to be finally evaluated will take longer and monitoring should be continuous.

It would, I believe, have been wrong to be hooked into speedy implementation at all costs as the process by which it is done is in the long term of more critical importance. The fundamental issue is about the acceptance of the primacy of the culture of community-based care for children using the extended family, fostering and adoption, as opposed to full time residential care, by those organisations that run Homes and those who administer and staff them, and also by opinion leaders. There is within this a necessary process of education and communication both with these people and the public in general, because for many people in Uganda full time residential care for children is seen as an advantage to parents/relatives, as it saves money and is a way for children to receive free education. Often guardians have been very ignorant of the standards pertaining in these Homes.

The need for sensitisation, the belief of Homes that the government was not really serious, the government's limited funds to resource its staff to effect the Rules, the problems of DPWOs enforcing the Rules in their locality when up against powerful vested interests, etc, all have contributed to the Rules being effected well behind schedule.

Homes and their funding organisations are now more ready to adopt a policy of keeping only the most vulnerable children in their Home, while assisting the great majority through school fees and visits to settle back into their extended or substitute family. One or two Homes were following this policy before the Rules were gazetted, in part under the influence of the community emphasis in the Ministry from the late 1980s and enlightened management. This policy and practice is one the Ministry through the Rules, the Advisory Committee and the Inspector is working hard to promote, but it is not easy. It requires that wardens/administrators change their role and the purpose of the Home, and even when they are persuaded they still have to convince their organisations/donors of the intrinsic value of this more appropriate yet less glamorisable and visible approach.

There are some, however, whose reason for establishing Homes was personal financial gain, such Home owners have been antagonistic to the Rules, but they and those connected with such a Home have been given time to reconsider their attitude and the Home's role. This has paid dividends in some cases.

An interesting development that seems recently to have taken place is that those Homes which received the Minister's approval appear now to see themselves as an elite. They have, unlike others, successfully completed the lengthy process of obtaining approval. The evidence for this is based on the large turn-out for the certificate giving ceremony on May 12th 1993, and the competition to be elected on to the Child Care Agencies (CCA) Executive Committee. This organisation to which SCF used to give considerable support went into a period of dormancy when that support was removed. The new Chairman of the CCA spoke out before his election in a most positive way for Homes to provide very focused care for children with special needs, for the community-based approach and for resettlement, the latter statement seemed to carry additional weight by his admission that he used to be opposed to the resettlement of children. It now remains to be seen whether this Committee can assist government and the Inspector by bringing some self-regulatory practice to Homes which can also work towards the active fulfilling of the spirit as well as the letter of the Rules.

### **THE CHILD LAW REVIEW COMMITTEE'S PROPOSALS**

The background to these proposals has been described. The process was particularly speeded up because of the fear that the legislative proposals of 1973/77 The Children's and Young Persons' Decree might be re-introduced with minor modifications; this was proposed at and after the national seminar organised by UNICEF. The Social Work team studied the Decree and felt it was seriously deficient in many areas including its philosophical base. As a result SCF wrote an 8 page commentary to the Minister pointing out the deficiencies and where more appropriate revisions should be considered. However, the Social Work team was not united in seeing the reform of the laws concerning children as a priority or the most productive way of using SCF's time and money. The arguments elaborated for not becoming involved have been set out

elsewhere [*Parry-Williams, 1991 pp.34-37*].

The decision to go ahead was based on a number of reasons. On the negative side was the fear that if we did nothing others would become involved who might not hold the same beliefs concerning the Rights of the Child. Alternatively that Uganda's children could become saddled with a law (the Decree) which was in no way a radical re-think of the needs of children based on their rights but a tinkering with previous legislation. In addition was the fact that if the Decree was passed it would probably be a long time before government would wish to consider any further reforms.

On the positive side:

"There was also a major justification for SCF to be involved no matter what was the outcome as we were very concerned about the lack of protection given to children. The Committee was one way of focusing the attention of the public and influential people on the rights and needs of children. Further it was our belief that the process of researching, informing, debating, explaining and publicising the issues, concerns and ideas with which the CLRC was to grapple would be as important in themselves as the passing of the law itself. Too many laws have been introduced in Uganda without national debate. We were of the opinion that by raising public awareness of the issues and concepts we would be going some way to change and mould new positive attitudes" [*Parry-Williams, 1991, pp. 37*].

On April 26th 1989, a formal proposal was sent to the Minister by SCF expressing our interest in assisting with the reform of the laws concerning children. It was not until October that the Minister decided a review of these laws was necessary. To obtain a funder (Comic Relief) took from October 1989 to May 1990; it was therefore fourteen months from the time the letter was sent by SCF to the inauguration of the CLRC on 21st June 1990. That SCF was able to obtain the funds for the CLRC enhanced its influence in the formulation of the proposals.

From the CLRC's inauguration to the presenting of its Report to the Minister in March 1992 was 21 months. Copies of the Report were sent to all Cabinet Ministers. It then took till November 1992 for the Ministry to produce its own response; that Cabinet Memorandum was presented to the Cabinet by the Minister in April 1993. The President chaired that particular meeting and the proposals were agreed to except for one sentence concerning maintenance to unmarried child-mothers in pregnancy by their parents. This was, I think, because it was seen as pointing a finger of blame at the girl's parents who would already by custom have been shamed enough by this event.

The proposals are now in the hands of the same legal draftsman who worked with the Committee for about a year prior to the Report being presented. The legal proposals in the Report were drawn up by this draftsman so do not require a great deal of alteration. It is hoped that they will be ready by the end of August after which they will have to return to Cabinet for their final endorsement before being introduced to the NRC. It is unlikely that they will become law before the end of 1993. If all goes well it will have taken just less than 5 years from the original proposal to the Minister, to the proposals becoming law. The period for implementation, if done as is proposed by the Ministry and SCF, but for which no funding has yet been found, will take a further 3 years including evaluation. It would seem therefore that a major reform of this sort, from initiation to full implementation, may take 8-10 years.

SCF's role in this process has been important both in its work within the Committee, but also, since the Committee's function was terminated with the presentation of its Report, in keeping the Ministry's attention focussed on the need for it to pursue the progress of the proposals through its various stages, all of which, otherwise, could hold up proceedings almost indefinitely.

The fact that other outside parties are also interested in these proposals becoming law has assisted the process. UNICEF which contributed ?5,000 to the ?56,734 from Comic Relief to the CLRC has exerted its influence in pressing for action. UNPAC has the proposals as one of its major planks in its child protection plans. The African Network for the Prevention and Protection Against Child Abuse and Neglect [ANPPCAN] [Uganda Chapter] was recently formed in Uganda, and as an independent multi-disciplinary organisation, one of whose objectives is the promoting of the Rights of the Child, it is in a good position to act as an independent pressure group for the CLRC's proposals. It has already held two workshops on these proposals to inform participants of their content at which a number of the NRC members attended. With the automatic disbanding of the CLRC after it had fulfilled its terms of reference it has been essential that some organisation representing the interests of Ugandans takes on the informing, lobbying and publicist role. Unfortunately ANPPCAN [Uganda Chapter] has yet no Secretariat or long term funding so apart from workshops and the occasional articles in the press its influence is as yet very marginalised. However, it does have the makings of a dynamic organisation. In the dissemination of the concepts within these legal proposals and in working for the enactment of this new law the importance of a wide variety of determined pressure groups is, I believe, of the utmost importance.

### **The CLRC's Acceptance of Broad Underpinning Principles**

The Committee decided to concentrate its attention on the laws concerning child care, children and domestic relations and juvenile justice. However, before getting involved in specifics it soon became clear that the Committee needed to decide on the underpinning principles which should guide its deliberations. In the determination of these principles a number of important issues had to be resolved. Most were discussed early in the proceedings although they often returned for further elaboration, others arose out of later discussions, some were decided upon while others were shelved as too contentious. Many of the debates came about because of different perceptions of what is meant by the welfare of children and whose responsibility that welfare is. How the reforming body is composed will have a bearing on the nature and breadth of these debates. In the Committee different attitudes to issues which had to be resolved were often polarised either on a professional basis between social workers and lawyers or by way of gender; considerable time was needed to hear out and come to an understanding of the different standpoints.

#### **(a) The Perception of a Child, his/her Best Interests and Rights**

How a child is perceived in Uganda was a major consideration of the Committee. The concept of the child as paternal property is still common, and constitutes the greatest obstacle to the acceptance of a child having rights. In Europe the change in the legal status of children from this same attitude is seen as coming from social legislation following industrialisation and the emergence of women's rights [Weisberg, 1978]. Developing countries have little of the former, although they have urbanisation, and women in customary practice are in as bad, if not a worse, position than children. It therefore seems that the achieving of Children's Rights will come about in a different way from that in Europe.



A clear example of paternal power in Uganda is the accepted right of the father to remove his child from the mother at the age of seven. Mothers agree to this arrangement for it is through the father's clan that the child has his rights and property. Such a concept poses a serious block to both the rights of the mother and of the child in any decision over custody.

The definition of a child as a person under 18 years was adopted by the Committee. There is a great deal of confusion in the old colonial laws as a result of giving various statuses in prescribed age brackets for people between 0 - 21 years e.g. the Adoption Act describes everyone under 21 years as an 'infant'!

The question of how children are perceived was linked to what are in their best interests and their rights. No where in current legislation is a "welfare principle" stated concerning children. Because of their vulnerability and their age, which amongst other things denies them the vote and the right to sue, it was accepted that they should be specifically protected. The over-riding principle of the Committee was that "in all dealings with children their best interests should be paramount". The question of how "best interests" are defined raised many questions but it critically placed expectations on the guardians of children to provide a minimum standard of child care or eventually be in breach of the law.

The most comprehensive statements of what constitutes the best interests of a child comes in the UN Convention and African Charter and these documents were the bedrock on which most of the principles were built. The importance placed on these rights documents led to the Committee's publication of a simplified version to be made available to as many people as possible in the major languages.

The fact that the best interests and rights of children are most comprehensively set out in a UN document raised the question of imposition, Child Rights in a codified sense is not indigenous to Africa but an import. It is therefore open to that criticism from African traditionalists, and supporters of an Afro-centric determination of social issues.

The Committee as a body took a stand in support of the internationally adopted standards concerning children, Uganda is in any case a signatory to them, rather than adopt a more parochial traditionalist line, but it would be an exaggeration to say that all members were necessarily whole-hearted in their commitment. The OAU African Charter gave the internationalist line an African face, particularly with its inclusion of the child's responsibilities, and thus made the concepts more acceptable.

The female members were particularly sympathetic to the international legislation as it is and will continue to be from this source that their own rights will be supported. The more cautious and defensive attitude of the male members may be related to the fact that they would be those most likely to lose influence in any realignments of status. However, being also a highly educated group there was a realisation that Uganda cannot escape the fact that it is part of the "global village" characterised by an increasing interdependence and an emphasis on human rights.

**(b) Customary Law and Practices.**

Customary law and practice are particularly powerful forces in Uganda in the deciding of social issues. There was nothing the Committee seemed to enjoy more than debating about domestic relationships with regard to marriage, inheritance and custody of children. This almost always ended in a gender confrontation.

Customary law is allowed in Uganda as long as it does not contravene the written national statutes. However, there is such a variety of such laws that there is no way they can be incorporated into the national laws without making them totally confused. Some scholars would in any case cast doubt on whether customary law is in fact custom as it claims to be, namely the handed down traditions of pre-colonial society. Chanock and others would instead see current customary laws as more a result of politics than custom. Traditional custom because it was not set down prior to colonial times was open to negotiation and compromise and changed according to the pressures to which society was exposed. The writing down of customary law broke this pattern of transmutation. Colonial administrators and missionaries in alliance with elders or chiefs for their own mutual advantages sought to impose order and control in a changing society in which probably women were the major losers. From this angle the state and customary law have been allies and "once we understand the modern customary law as the product of this interaction during the colonial period it again becomes harder to invoke custom in opposition to reform", [*Chanock, 1989*].

The Committee felt, because of the varieties of practices, it should go ahead and recommend legislation for a more egalitarian society between men and women and for a greater protection of children knowing full well that differences between state's law and people's law will continue to exist as they do even in industrialised countries.

Customary practices in Uganda vary with locality however there are certain practices which are broadly common to all Ugandan ethnic groups. There is the role of the extended family both as an insurance against difficulty and disaster and as a support network. The resilience of the extended family, which is often said to be collapsing and is certainly more limited in scope in urban areas, is still very much in evidence as a social safety net especially in rural communities. Village resolution of most familial and inter-familial problems and disputes is another feature of rural Ugandan society. It was seen as important that such common features of self-reliance and justice be incorporated within the new legislation.

**(c) Responsibility for Child Care - parents, community and State.**

The responsibility for child care took the Committee into the role of parents, the community and the state. In doing so it came up against the very patriarchal basis of Uganda society at all levels and therefore the issue of gender, the way the clan reinforces patrilineal power, the use of terminology and the implication of a minimum age for criminal responsibility of 14 years.

The Committee agreed that the mother and father of a child, no matter the relationship between them, had a continual responsibility for that child unless adopted. The maintenance of the child was therefore a joint responsibility. The old Affiliation Act (1946) only dealt with the maintenance of children born outside marriage. It uses terms like illegitimate which the Committee saw as stigmatising on the child and foreign to Ugandan culture; the Committee decided that such terms should be excluded from the legislative text. The question of

maintenance was liberalised, extended to subsisting marriages and divorces, and to either parent. Custody of a child on the separation or divorce of its parents in customary practice usually goes to the father, and often on his death to his brothers. The Committee decided that either parent be entitled to custody and it stated that the prime consideration should be the welfare of the child. As far as the mother is concerned this is likely to be in direct conflict with customary practice and the problem is further compounded by the fact that the officials who would decide such issues are usually male and biased on this matter.

The magnitude of the task in improving child protection and the means to do it led the Committee to seek to institutionalise that responsibility within the community, particularly at the village level. This raises the question of top-down state enforcement as against grassroots participatory demand. The Committee felt the urgency of these issues could not be left to the community alone. The task was seen as a national one and so the initiative to develop policies and programmes should lie with government. Once this is done it is then a matter of encouraging, training and integrating the need for action for children as a concern within the community by some form of participatory structure. This would seem to be the long term goal rather than one that could answer the immediate need.

The legislative proposals place considerable responsibility on the elected village Resistance Committee (RC) court of nine persons for protecting the welfare of children. It first, however, places emphasis on the informal settlement of child-related issues through a proposed secretary responsible for children, the present Vice-chairman who has no specific duties, and/or the chairman. Only if this fails should it go the RC court as court of first instance. It is proposed that every resistance council from village to district level should promote the welfare of children within their area and work with others to improve services to children, in particular, "to mediate in any situation where the rights of the child are being infringed and especially with regard to:

- (a) education
- (b) immunisation
- (c) medical treatment
- (d) child abuse
- (e) denial of necessities of life i.e. shelter, clothing, adequate diet, etc.
- (f) protection of the right of a child to succeed to the property of his parents on their

death".

Also to "give every possible assistance to a disabled child among other children and to develop his patrilineal and self-reliance", and to assist, accommodate and trace parents of lost or abandoned children.

The state only takes up the role of full responsibility for a child as parent, "parens patrias", as opposed to guiding others behaviour through the law, when a child is removed from where she or he is living and placed elsewhere by an order of court. The executive power to move children once placed on these Care Orders was vested in the Probation and Social Welfare Officers rather than in the court, although the court should be informed of any change of address. One of the main reasons for this was to try and speed up actions which would work for the benefit of children e.g. their return home, instead of having to go through the lengthy process and delays involved in finding the court files, a magistrate with time and then explaining to that magistrate the reasons why he should agree to the proposed course of action, which of course he may reject.

The decision that the minimum age of criminal responsibility should be 14 years, had an implication for child care. All offences under the age of 14 had to be dealt with as care and protection matters and not offences. However, the criteria for all Supervision or Care Order was as in the Children's Act 1989 England and Wales that of "significant harm". If there was no sign of harmful parenting yet a child offended a category had to be found under care and protection to include this, otherwise there would be nothing the state could legally do about it. For this reason the category of "beyond parental control" was seen to be necessary.

**(d) The Emphases in Non-interventionist and Interventionist Principles.**

Non-intervention and diversion from the court process, wherever possible, was regarded as an important principle in better protecting children and is very evident in the proposals. The primary informal role of the RC officials responsible for children in solving problems, the use of cautioning, the injunction in child care matters not to make a court order unless it will be of benefit to the child, the decriminalisation of certain offences e.g. idle and disorderly, are all specific examples of this principle.

The main debate about intervention centred round the justice versus "child saver" models. Uganda inherited its colonialists belief in the reformation and rehabilitation of juvenile offenders through long term training, primarily in skills but also in behaviour; children sent to the 2 Approved Schools stay for 3 years unless executive action is taken to reduce it, while for the Reformatory School it is 5 years. To complicate matters these Schools were also seen as centres available for those in need of Care and Protection.

The belief in "doing good" to children through a rehabilitation process which deprives them of their liberty for years totally ignores the concepts of child Rights and that justice requires a reasonable proportionality between an offence and its punishment based on the gravity of the offence.

Court research in Uganda shows there are very few convicted serious juvenile offenders. Furthermore the concept of incarceration is alien to Uganda's culture which traditionally stresses compensation, restitution or fines as the way to redress grievances and restore harmony amongst conflicting parties.

The Committee's proposals for coping with juvenile offenders by way of community solutions and through proportionality in sentencing is more in line with Uganda's tradition. It was proposed in its guiding principles that custodial sentences shall not be made except for a serious offence and as a last resort, and for the shortest time possible, and that such sentences should be determinate. Ironically, though with hindsight not surprisingly, the stiffest resistance to determinate custodial sentencing came from the staff of the Probation and Social Welfare Department, the future implementors of any new children's laws.

A major diversion from the criminal process was proposed by raising the minimum age of criminal responsibility to 14 years. At present in Uganda the minimum age is 7, although in law the years 7 - 12 constitute a grey area in that it has first to be proved that the child knew the act

was wrong before a prosecution may take place. The reasoning which led to 14 years being selected as the minimum age concerned a number of important areas, such as the legislation offences of children appearing in Uganda's courts, the question of at what age is it reasonable to expect children to fully understand the consequences of their actions and to have the maturity to resist the pressure of peers and adults.

A controversial form of intervention was the use of corporal punishment, i.e. caning of children, this was an issue frequently revisited. It became clear in the discussion that the beating of children even at a very young age at home is a common practice. Although as a punishment its use was specifically prohibited in the district Family and Children Court the Committee's approach to the RC court was different.

The problem was that the disposal of cases at the lowest RC court level was favoured as a way of giving quick local justice, yet research showed these courts often used caning. Alternatively, children going to the district court often would be detained in police cells while waiting for that court and then often be remanded for long periods in appalling conditions. All this would be happening well away from their homes and as a result they were likely to be deprived of contact and support from their families. Even if the district family and Children's Court changed all this there is the question of the cost, remoteness, distance and probable delays to this system of administering justice.

The Committee felt caning in the RC court was in the circumstances the lesser of the two evils. Often at village level there were no local alternatives, usually there was no Probation and Social Welfare Officer present to assist, the children and their families had no money to pay fines, or the parents were unwilling to assist their child; caning thus became the quickest and easiest solution for the court. The Committee's decision was therefore very pragmatic it did not include caning as a disposal of the RC courts as it is strongly opposed to its use, but it did not specifically ban its use as it had done in the Family and Children's Court. If it had, it knew that such a prohibition would be seen as unacceptable and would be openly disregarded, thus undermining the standing of the legislation.

The use of one-day's community work was seen by some members as an alternative to caning which would allow it to be banned, but the majority of members felt the injustices this could lead to would be greater than that imposed by caning and that a child's work would not be used as an alternative disposal as it was not held to have sufficient value by villagers.

**(e) The Use of Administrative structures appropriate to socio-economic realities.**

Uganda is a poor country and will be in all probability for the next decade; it cannot therefore afford an expensive and sophisticated court infrastructure which requires more magistrates, court buildings, remand homes, transport facilities and all the back up services. It was therefore necessary to devise a system of judicial structures that are affordable, achievable, acceptable and beneficial to children.

The alternative of local solutions to local problems through empowering village committees to that of a more sophisticated, remote and unresponsive district and High Court structure was an issue from many angles. The CLRC decided in favour of the former both on an informal basis

and as the court of first instance in all offender and child care matters, unless very serious, but gave the court very limited sentencing powers. For very serious matters concerning children it was proposed that the district level should be empowered to deal with most cases which would have gone to the High Court. The prime emphasis was to make justice fairer and more easily accessible.

There are however problems, particularly to western eyes, of giving an elected village administrative and executive body judicial powers. Will it set up a local tyranny, by for example passing bye-laws the transgressors of which it then judges? Will it be a "kangaroo court" deciding issues with no reference to the law but only its own particular prejudices. There are also major implementation problems in using the village RC courts, especially concerning the logistics of getting them copies of the laws, their wish to uphold them and to stick to the dispositions the law will give them. There are well known instances of the RC courts failing to uphold the law and compounding abuse. Further, there is the fact that RC courts have already been given jurisdiction in the RC Judicial Powers Statute 1988 to hear cases that fall under customary law. Will it not confuse the situation to give them powers also which are part of national statutory law?

Against these failings and possible confusions, some of which are also not uncommon in the Magistrates courts, should be put the following factors. The RC courts have already been given judicial powers and have some understanding of the laws of evidence. There is a long tradition of village and clan courts in Uganda society. Many village committees already illegally deal with child-related problems. A decree is hardly likely to stop this practice. If sensitisation concerning children's rights can be given then child care and juvenile justice interventions at the village level should improve. In fact by taking the needs and Rights of children through the law to grass roots provides a major opportunity to change basic attitudes to children so that they are better protected and their abuse reduced.

In the survey that was carried out on Resistance Committees by the social work researcher the majority of those interviewed at RC I level favoured RC courts as opposed to Magistrates courts. "The arguments in favour of the RC Courts were mainly based on their nearness to people and the opportunity it gives people to seek justice in a more relaxed atmosphere, this gives them a chance to express themselves freely, and to put questions to those party to a case. In children's cases, those interviewed could not see why a child should be taken out of the community where he/she has grown up, and where her/his behaviour is well known. To them, a child is best corrected in his/her own society". In conclusion the researcher states that "All those interviewed had no doubt that, the best guardian of the child is the family first, and then the community in which the child lives. The role of the RC I was therefore emphasized in both child care and young offender cases" [*Dufite-Bizimana, 1991*].

In relation to the criteria proposed the village RC courts are unlikely to incur the same costs to government as district courts and they also will be more affordable to the recipients, as a village court system is already in existence it would seem to be achievable and the research appears to show it is acceptable. As to whether it will be beneficial to children in a positive sense rather than just "not as bad" depends on the success of the implementation phase.

The issues raised above were some of the most important in underpinning the principles of the

Committee; and as can be seen they raised many contentious matters which took time to resolve.

### **Some Observations on the influence of the Proposals**

Although the proposals are only at a half-way stage to becoming law i.e. they have been agreed to by the Ministry concerned and by Cabinet but not by the NRC, they have exerted some influence already.

The National Executive Committee (NEC) of the National Resistance Movement (NRM), the Movement's executive body, agreed in 1992, that one of the 9 members of the Resistance Committee at each level should be responsible for the interests of children. This was after a paper was presented to it from the CLRC. It was hoped that this would be included in a consolidated RC bill about to be presented to the NRC but it appears to have been forgotten so an amendment will be required.

On January 14th, 1993, a Youth Bill was introduced to the NRC, because of the CLRC's clarity over the age definition of a child it was able to persuade members to urge the Council that the age definition of youth be altered so that it did not conflict with that of children. It had been proposed that youth should include all those from 13 to 30 years but that was changed to only include those from 18 to 30.

In November, 1991, the Armed Services Bill was tabled in the NRC. Section 106 refers to juvenile militants and Section 108 defines juvenile militants as persons "over the age of 10 years enrolled in the army and below the prescribed minimum age". The CLRC protested to certain council members concerning this. Although it was stated in the NRC that the minimum age was 18 it seems that it could be as low as 10 with parental consent. The position is still confusing. It is in breach of the OAU African Charter and the UN Convention which state 18 and 15 respectively as the minimum age of recruitment. An issue of a similar nature also arose at an ANPPCAN workshop on the CLRC proposals where strong objections were raised to children as young as 6 being involved in "*mchaka mchaka*" (a group course consisting of political education, military science and military training). Government not long after stated in a circular to District Administrators dated February 19th, 1993, that because of objections from international organisations which deal with children's affairs, psychologists and some members of the public "training in military science and weaponry in particular should be availed to adults only" or those in post secondary institutions. However, children are allowed to take part in political education [*New Vision, May 22, 1993, Appendix I*].

The single page leaflet on the Rights and Responsibilities of the Child in Uganda produced by the CLRC with illustrations as a simplified version of the Rights of the Child has been circulated in English to NRC members and District Administrations. It is being used by the Department of Probation and Social Welfare and various NGOs e.g. UCOBAC in their training programmes and there has been a considerable demand for copies. It has now been translated into 8 vernacular languages. It is planned to use these as one of the handouts in the implementation process.

The idea within the CLRC proposals are gradually becoming incorporated into the thinking of numerous NGOs, as well as some donor agencies. UNPAC sees them as a central plank in their programme to bring about the better welfare of children. They have received considerable

mention by the UNPAC teams in their tours of district administrations when informing them concerning the programme of action.

Since the proposals were presented to government leading newspapers have called on government to speed up the process of having these proposals enacted as law [*New Vision editorial March 5th, 1993, Appendix II*]. The discussion of the proposals in various seminars and workshops have raised a high degree of awareness and concern for child protection. Two such workshops organised by the Foundation of Human Rights Initiatives and jointly by ANPPCAN, MOLSA, SCF and UNICEF strongly recommended that the CLRC proposals be enacted by government.

Apart from requests for the Report from within Uganda requests for copies have been received from other African countries who are considering or already involved in updating their laws concerning children. As a result of such requests copies of the CLRC Report have been sent to Botswana, Eritrea, Kenya, Malawi, South Africa, Tanzania, Zambia and Zimbabwe.

Study surveys were an integral part of the CLRC's work. Consideration of the implementation of the proposals has also lead to a further piece of grass-roots research which has been observing how children are perceived by different gender age groups in 42 villages in seven widely separated districts. This is producing very useful information about attitudes to children and the problems they face. This qualitative research will help to make the trainers of the implementors more sensitive to local issues. Most importantly it shows that people at grass roots feel children should be treated differently from adults and that they wished to know how they could better bring up and assist in the development of their children.

### **Some General Comments on the Survival of the Reform Process**

The survival of the reform process relies on two major components, the existence of a very supportive environment and the credibility of the reforming body with opinion leaders.

#### **(a) A supportive Environment.**

As earlier stated once the Report is presented the Committee has fulfilled its function as set out in its terms of reference and therefore no longer has an official role.

The Report now moves into another arena, that of the Minister and his Ministry, Cabinet, the Ministry of Justice for final drafting and the time-table for legislative business in the National Assembly. In these areas it is competing for attention against other matters of national interest. The Committee has no control over its movement through these processes. For example in Uganda for 8 months from the time the Report was presented until the Ministry's response had been accepted by the Minister an embargo was placed on the circulation of the Report. This might have gone on for longer if there had not been expressions of interest shown to the Minister by various bodies such as UNICEF and SCF as to the situation regarding the proposals.

A critical issue, therefore, for the advocates for the reform process and funders is to check out whether a supportive environment exists which should give a reform body a fair chance of completing its work, and whether there are sufficient advocates and pressure groups in high places to keep up the momentum into the final legislative stage. A consultant to the CLRC said in his opinion it was probable that 75% of all such reform proposals fail to make the statute



book.

Numerous elements make up the supportive environment that is required. First, because of the time scales involved in legislative reforms it is essential that there is a realistic prospect of political stability and particularly, that the government in power will stay long enough to see the process completed. Ownership of the reform concept by government is vital; changes in government are likely to put such a commitment in jeopardy. It was our experience that there was enough change and unpredictability within day to day events to destabilise the process that, if that were coupled with a general political instability law reform would be a foolhardy venture.

A second element that needs to be considered is the attitude and commitment of the political leaders in government to the reforms, particularly that of the Head of State, especially where much of the authority of the state is vested in that person.

A third basic prerequisite for legal reform is institutional support, in this case the Department of Social Welfare had a policy that emphasised the needs of children and of preventive and developmental strategies to enhance their rights.

Fourthly, apart from governmental institutional support there is also the essential support that needs to be accessed for the policies and to the appropriate implementors in government through donors, UN and bilateral agencies and international and indigenous NGOs. Persistent advocacy especially from indigenous NGOs acting as pressure groups and from opinion leaders will be an important force in bringing reforms onto the statute book. It seems vital that this concern and pressure to obtain a result is institutionalised in the objectives of various bodies because of the long time scales involved.

The reform process should be able to benefit from the fact that the UN and the major international donors are placing an increasing emphasis on the upholding of human rights as a fundamental indicator of good governance and as a pre-condition to aid.

**(b) The Credibility of the Reforming Body.**

The importance of the Committee gaining credibility amongst opinion leaders is essential for the survival of the reform process. This will not just be the result of a well-written and argued Report, based on enunciated and sound principles, with clear proposals. It is also important for it to be known and shown in the Report that the Committee was composed of respected representatives from appropriate interest groups and from all the major regions of the country. That it represents a fair spectrum of age, has gender balance and was chaired by someone of national distinction, preferably associated with the law.

To gain support for concepts which are new requires extensive consultation with leaders both up-country as well as in the capital. There is need for evidence of this in the Report. Publicity is also vital to keep the reason for the Committee's existence and the issues in the public eye and a Public Relations Officer was appointed to do this.

In relation to the work itself I think the Committee gained by involving outside consultants from within Africa and Europe. It was clear from their involvement that the Committee was a pioneer in this area; it also helped set the Committee's work in a broad rather than parochial context.

Two of these consultants returned twice and their broader and independent perspective was helpful.

There was consensus in the Committee that for credibility there was a need for more exact data concerning children, particularly concerning the administration of justice in the courts and the outcomes for children. The findings of the appointed social work researcher, one of which showed an excessive (75%) use of remands in custody often for long periods rather than the use of bail, were of considerable importance to the Committee's proposals. The other major research project looked at how best the local government structure could be used to protect children.

The need for investigations in the fields of criminology, sociology and the law led to the early appointment of a social work and legal researcher, and for a short time of a social anthropologist, these with the administrative staff and the Public Relations Officer constituted the Committee's Secretariat. It was a system that in retrospect could have worked better, but important work was produced which helped to substantiate the proposals.

The transferring of social work principles into legal coherence across a broad piece of legislation is a major task. That the Committee was able to present its legislative proposals in a way which now needs only the drawing together of the parts and sections into an overall framework is to the credit of the legal draftsman who was a part of the Committee for the last year. The effectiveness of involving the draftsman in the issues is, I believe, to be seen by the coherence and clarity of the proposals themselves. If they had not been drawn up in this way but left in a much more general form it would leave them much more open to misinterpretation and all manner of proposals, which would constitute another major barrier to be negotiated and further put back any completion date.

The per diems provided by the funding were important in keeping the Committee together and in helping to achieve a high turnout at meetings over a long period. There was also a high level of commitment and after full debate of the issues proposals were usually adopted by consensus.

However, it seems fair to say that even with a supportive environment and a Committee that establishes a high degree of credibility there is the factor of 'good fortune' required in bringing proposals to the statute book.

A major question in Uganda is whether with all the more urgent economic priorities and pressures as well as political ones e.g. decentralisation, a new Constitution to be agreed on, retrenchment within the civil service, the planned rationalisation of Ministries, consideration of multi-partyism, etc. it will be willing to give serious attention to these reforms. This takes us back to the survival of the reform process and the need to activate a highly supportive reform environment which understands the importance and implications of community care.

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