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The need for legal representation for children in conflict with the law: An African perspective

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Children in Conflict with the Law

- Anyone under 18 years who comes into contact with the justice system as a result of being suspected or accused of committing an offence
- Many of these children find themselves in court with no legal representation and hence end up representing themselves even in complex cases.
- Due to lack of representation, they may not be in a position to recognise that their rights to a fair trial are abused, for example, the right to privacy, the right to legal representation, the right to have the matter heard and determined expeditiously.

The right to legal representation for children in conflict with the law

- Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) provides that a child in conflict with the law has the right to legal or other appropriate assistance in the preparation of his defence. The same has been ratified by 115 countries and domesticated in the legal framework of many countries.
- Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) provides that an accused person has a right to legal representation and if he cannot afford, the same to be availed to him without payment if the interests of justice so require.
- Article 17(2)(c)(iii) of the African Charter on the Rights and Welfare of the Child provides that a child in conflict with the law has a right to be afforded legal and other appropriate assistance in the preparation and presentation of his defence
- Article 7(1) of the African (Banjul) Charter on Human and Peoples' Rights provides that every accused person has the right to defense, including the right to be defended by counsel of his choice

Domesticated Statutes

- The Children Act (2001), Kenya at section 186 (b) provides that a child in conflict with the law, who is unable to get legal assistance, has a right to be provided for one by the government to aid in the preparation and presentation of his defence.
- The Nigeria Child Rights Act (2003) at section 155 provides that a child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in court.
- The South Africa Child Justice Act, at sections 80 to 83 emphasises on the right of a child offender to legal representation of his/her choice either at his/her expense or as directed by the presiding officer. The presiding officer may direct that the child be represented by legal aid.

The problem of legal representation in Africa

- The main problem of legal representation in Africa is the issue of access.
- Many children are not defended in court or have a state lawyer appointed for them by the courts.
- This despite the fact that a few countries have enacted legislation that would see to it that children access legal aid paid for by the state.

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- However, many African countries are yet to enact legislation that touches on legal aid for children in conflict with the law.
- Few counsels are willing to take up children matters either due to poor remuneration or no remuneration at all.
- Therefore, a large percentage of children who come into contact with the criminal justice system are unable to access legal representation.

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- This goes to show that many children go through the criminal justice system not understanding why they are there in the first place.
- Some children are ill advised to plead guilty to charges they may not even understand and hence deny themselves the right to a fair trial.
- Lack of a lawyer also means that children rights won't be respected at the trial. Yet some of the effects of the trial process like pre-trial detention and lack of privacy can be mitigated by access to counsel.
- Court appointed lawyers rarely put up a fight for their clients.

The need for courts to realise that children in conflict with the law have a right to legal representation

- The fact that children are not in a position to prepare a defense as they may not understand the rules of evidence, the art of cross-examination and the elements of the offence that they have been charged with.
- The potential conviction of children in conflict with the law must lead to the realisation of their right to legal representation even at the state's expense.
- Some magistrates, out of ignorance may mete out illegal sentences for example, sentencing a child offender to death.

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- There is also the risk of having children being sentenced to institutions that would separate them from their normal developmental environment hence subjecting them to an increased likelihood of abuse.
- Appointing counsel at the state expense ensures that the child's rights are not abused, once exposed to the criminal justice system.
- The counsel may also advise on non-custodial sentences especially where the child has been charged for minor offences, and lodge an appeal against any improper sentence.

Ways forward

- Governments should introduce cost effective legal aid systems that meets the needs of children.
- Use paralegals to provide basic legal advice and training, especially to the poor children whose parents and/or guardians may not be able to afford a lawyer and are unaware of their rights under the law.
- Encourage lawyers to provide *pro bono* legal aid services for children in conflict with the law as an ethical duty.

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- Governments should enact legislation to ensure the provision of legal aid at all stages of the criminal justice process, that is, from the moment a child is arrested by the police until the child's matter is heard and determined.
- Identify incentives for lawyers to work in rural areas for example, through tax exemptions
- The courts should take up a pro-active role in ensuring a child in conflict with the law is provided with legal aid and is able to put up a defense.

Conclusion

*“You must work-we must all work to
make the world worthy of its
children.” Pablo Casals*

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