A CRITICAL ANALYSIS OF THE LAW REGULATING JUVENILE DELIQUENCY IN UGANDA

BY

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LLB/36016/113/DU

A RESEARCH PAPER SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF

THE DEGREE OF BACHELOR OF LAW OF

KAMPALA INTERNATIONAL UNIVERSITY

JUNE 2015
DECLARATION

I, KUGONZA ROSE, hereby declare that the work presented in this research project is my own and has never been submitted anywhere for any degree or any academic award whatsoever on any university or any institution of learning.

SIGNATURE

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KUGONZA ROSE

..........................................................

DATE

10-06-2015
APPROVAL

I certify that I have read and recommend the work submitted by this candidate under my supervision. Her work is thereby ready for submission.

SIGNED

MR. WANDERA ISMAIL

DATE

10/02/2005
APPRECIATION

I thank the Almighty God who has helped me through all my academic life, I thank my supervisor MR. WANDERA ISMAIL for the support and cooperation during the research. I thank my sister who helped me financially during my research and all my friends and family who have been there for me always. May God bless you abundantly.
DEDICATION

I dedicate this work to the family of Mr. and Mrs. Musabe Edward, My Sisters Elizabeth, Doreen, Brenda, Macklyn, Carolyn, Molly and to my Brothers Nelson, Richard, Herbert, Albert and my Uncles Aston and Herbert Ateenyi the most influential people in my life, to all my friends and to all victims of juvenile delinquency all over the world.
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Children Act Cap 59 laws of Uganda

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Regional and International Legislation

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The UN standard minimum rules on Administration of juvenile justice.

The UN convention on the rights of child
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ABSTRACT

The study identifies the legal framework regulating juvenile delinquency in Uganda at national, regional and international levels.

In chapter one the study focuses on the background of study, objectives of the study, the statement of problem that motivated the study and a hypothetical question to test the validity of the study also points out the significance of the study not only to the researcher but also other people who will use the study. The study looks at related literature that has been involved concerning juvenile delinquency.

The second chapter discussed the legal framework regulating juvenile delinquency at national, regional and international levels. The study also critically analyses the law regulating juvenile delinquency in Uganda. Showing what it has failed to achieve in juvenile justice administration the challenges faced by the law enforcement mechanisms and the recommendations if a positive change is to be brought about in the juvenile justice administration system. It is evident that Uganda still has a long way to go as far as juvenile justice is concerned and its is the duty of law enforcers parents and all Ugandan citizen at large to work hand in hand to see that the juvenile justice administration in Uganda is improved.
CHAPTER ONE

1.0 Background of study

Juvenile delinquency is defined under the Black’s law dictionary as antisocial behavior by a minor that would be criminally punishable if the actor was an adult, but instead is punished by special laws regulating juveniles or minors only\(^1\). A juvenile is defined as a person who has not yet reached the age at which he should be treated as an adult by the criminal justice system\(^2\). In Uganda, a juvenile is also known as a minor, and a minor is a person who has not yet attained 18 years of age\(^3\).

Anciently, minors of below 14 years were considered as *Doli Incapax*\(^4\) due to the lack of the necessary *mensrea* required to commit a crime. However, as years went by, the older people started using young children in committing crimes as a way of avoiding responsibility. It was also found out that some of the children had the necessary *mensrea* to commit criminal offences hence need for punishment and rehabilitation for purposes of deterrence and reformation of the juveniles.

After the 1995 constitution of Uganda provides for rights of children which led to the enactment of other laws regulating children affairs establishment of the family and children’s court by the children’s Act to cater for juvenile justice. The children’s Act also sets out the age

\(^1\) Garner R Dryan
\(^2\) supra
\(^3\) Article 30 of the 1995 constitution of Uganda
\(^4\) Incapable of forming an intent to commit a crime
of criminal responsibility as 12 years\(^5\). Under the children Act, the juvenile offenders are supposed to be taken to a children and family court established under the children’s Act.

The juvenile is entitled to constitutional rights granted by the 1995 constitution. In the children family court juvenile delinquency is mainly regulated by legislations, such as the children Act. the children and family court rules and thus it is mainly a legislative products stated by Rollin M. Perkins and Ronalds N. Boyce that,

"Juvenile delinquency when employed as a technical term rather than merely a descriptive phrase is entirely a legislative product\(^6\)."

There are also international legislation regulating juvenile delinquency in Uganda like the United Nations standard minimum rules of administration of juvenile justice Beijing rules 1985.

Though there are international, regional and national legislations governing juvenile delinquency in Uganda, there still remain many challenges in the enforcement of laws governing juvenile delinquency in Uganda yet the welfare of the child is the key principle in all matters concerning children because the young generation is considered as the backbone of society without which it can never stand hence a need for improvement in the legal system and administration in regulating juvenile delinquency in Uganda.

1.1 Statement of the problem

There are many loopholes in the administration of juvenile justice during arrest detention and conviction of juvenile offender’s. the administration in most cases does not follow procedures provided for under the law governing juvenile delinquency. There is needed to come out with

\(^5\) Section 88 cap 59 laws of Uganda

\(^6\) Criminal Law 940 (3rd edition) 1982
possible solutions to challenges faced in the administration of juvenile justice which is main objective of the study.

1.2 Objectives of the study

1.2.1 General objective

The general objective is to ascertain the effectiveness of the legal framework regulating juvenile delinquency in Uganda.

1.2.2 Specific objectives

a) To identify the laws regulating juvenile delinquency

b) To analyze the effectiveness of the law regulating to juvenile justice.

c) To identify the challenges faced in the administration of juvenile justice in Uganda.

d) To suggest possible solutions and recommendation for the improvement of juvenile justice systems in Uganda.

1.3 Research questions

a) What are the laws regulating juvenile delinquency in Uganda.

b) What is the effectiveness of the law relating to juvenile justice?

c) What are the challenges faced in the administration of juvenile justice.

d) What are the possible solutions and recommendations?

1.4 Scope of the study

The study covers the legal framework governing juvenile delinquencies in Uganda at national, regional and international level. Kampala chosen as the case study being the
According to a study of geographical distribution of juvenile delinquency in a city of Chicago, the children living around the central business district, a place with distinct features loosened the instinct of traditional rules especially in young people which were classified as a criminal and young people growing up in the communities could model themselves after the highly visible adults who made their living illegally hence juvenile delinquency.

In the survey, it was clearly identified and concluded that group delinquency which characterizes much of our ordinary crimes is deeply rooted in our modern community which seems to agree with delinquency through conduct and speech and adults with whom city juveniles come into contact. That the competing values of modern life confuse the growing young people and encourage him to seek a life of excitement in which they can gain a satisfied status of people of their kind.

According to Roy Smith, magistrates should have a capability to protect the rights of the juveniles and this can be achieved by enrolling magistrates who are qualified enough in the laws governing juveniles. He argues that the magistrates should make sure that the juveniles are kept separate from adult offenders. This is for the welfare of the juveniles.

According to Hirschi and Travis, they are of the view that in punishing juveniles, the rate of punishment of juveniles should be low compared to the rate of punishments on adults because

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1 Brecken Ridge and Abbot
2 Children and the courts 1979
3 Causes of juvenile delinquency California university 1969
juveniles have less culpability and there is need for tolerance in administration of punishment to the juveniles.

He therefore urges for establishment of special courts for juveniles, special detention centres, special rules of procedure and laws if their interests and welfare is to be catered for and for effective rehabilitation of the juveniles into important citizens. In Uganda, juveniles have different laws governing them and the different courts from the adults.

**Hirsch and Travis** poses a challenge on the legal system and society at large to see to it that the high rate of juvenile delinquency is prevented in society because prevention is better than cure. The society should be an example to the juvenile instead of initiating the juveniles into crime. Families should use their children in an exemplary manner so that they can always stay away from crime.

According to **William Bonger**¹⁰ in his book entitled *criminology and economic condition* capitalistic tendencies which promote selfishness among the people is responsible for juvenile delinquency. He said that capitalists have learnt there has to be survival for the fittest, hence leading people to do anything possible for survival, a reason why most children resort to pick pocketing while knowing that its wrong but they do it because of the fact that the principle end of life is to get money at any cost whether in a right or wrong way.

He criticized the juvenile penal system where the delinquents in prison were rejected in society, being thrown into prisons with hard core an adult offender which is unjust because punishment was meant for reformation.

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¹⁰ Criminology and economic conditions
According J. Sloth Neilsen\textsuperscript{11} brings out the challenges faced by children in detention which included the poor state of prison cells and poor conditions including poor nutrition and health care to the children, detention of children with adult offenders, lack of education and access to information programmes, overcrowding of the children, children are not taken to court for trial and where they are tried it takes a lot of time and in most cases, the children are not legally represented. He advocates for transformation by the government to improve the juvenile justice sector in Africa.

According to Edward Ojiambo\textsuperscript{12} he emphasizes that there are no juvenile courts and as a result juvenile offenders are tried in ordinary adult courts which are open to members of the public and magistrates have continued to ignore the laws on juvenile delinquency.

There has been a lot of concern about juvenile system in Uganda and as a consequence of the poor administration of the juvenile justice system for administration of juvenile justice, there has been a rise in the number of children rights activists concerned about addressing the technicalities and riggers in the juvenile justice administration.

The children rights activists include UNICEF, which stands for United Nations Children's Education Fund, the human rights initiative and penal reform international advocate for the upholding of children's rights.

\textsuperscript{11} Children in African prisons pg 177
\textsuperscript{12} Ojiambo E.A Activique on the law relating to treatment and sentencing given to juveniles offenders in Uganda 1998.
Conclusion

It can be pointed out considering the opinion of various writers that the legal framework regulating juvenile delinquency is still wanting not only in Uganda but Africa at large and they point out that there is a need for reformation before the situation goes out of rehabilitation and reformation of juvenile offenders rather than punishment because punishment has far-reaching effects such as it can turn the child into a hard-core criminal which is against the principle of reformation which is the main target of the law.
CHAPTER TWO

The legal framework governing juvenile delinquency in Uganda

2.1 Domestic

2.1.1 The constitution of Uganda

The 1995 constitution of Uganda is the supreme law and shall have binding force on all persons and authorities throughout Uganda and any law or custom that is inconsistent with the provisions of the constitution shall to the extent of inconsistency be void. For any law to be legally recognized, it must conform to the provision of the constitution.

Under the national objectives and directive principles of state policy, the state has responsibility to guarantee and respect institutions which are in charge of promoting human rights which includes the rights of children, and providing adequate resources. The state is mandated to ensure fair representation of marginalized groups of which children are part.

The constitution provides four fundamental human right under chapter four. It provides for special rights of children under article 34 which states that state laws shall be enacted in the best interest of children and shall have a right to be cared for by their parents and those people entitled to take care of them.

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13 1995 constitution of the republic of Uganda as amended
14 Article 2 of the 1995 of the constitution of the republic of Uganda
15 Objective 10 of the national objectives and directive principles of state policies under the 1995 constitution
The constitution provides for the age of majority as 18 years. This implies that all persons below 18 years are considered as minors. The children are entitled to basic education, freedom from discrimination on religious grounds, protection from exploitation and a child offender to be kept separately from adult offenders and special care for orphans and vulnerable children.

2.1.2 Children Act

The children act was an act to reform and consolidate all laws relating to children, to provide for local authority to support children, establish a family and children court to make provisions for children charge with offences and for other connected purposes.

Section 2 of the children act defines a child as a person below the age of 18 years.

Section 3 provides for the welfare principle, which shall be the guiding principles in making decisions regarding to children.

The children act establishes the family and children court, which shall be in every district and any other lower government unit designated by the chief justice not below grade two. This court has power to hear and determine all criminal charges against children.

The children act provides the minimum age of criminal responsibility as 12 years. This means that children below the age of 12 years are not criminally liable for offences committed.

The children act provides for the procedure of arrest, detention and trial of a child.

10 Article 31 of the constitution of Uganda
17 Article 34 of the constitution of Uganda
18 Cap 59 laws of Uganda
19 Section 13 of the children Act
20 Section 88 of the children Act
2.1.2.1 Duty of police officers

The police shall under justifiable circumstances caution and release a child\textsuperscript{21} where the child is arrested. The police is empowered to dispense the cases of their discretion without recourse to formal court hearings in accordance with criterion laid down by the inspector general of police. The Child's parents or guardians and the secretary of children affairs of the local government council for the area in which the child resides shall be informed about the arrest by police.

The police shall ensure that the parent or guardian of the child are present at police at the time the child is interviewed except where it's in the best interest of the child and where the parents cannot be found. Approval and welfare officer shall be informed so that he can attend police interviews\textsuperscript{22}

Where the child cannot be taken to court immediately, the police officer shall inquire into the case and unless the child is charged with a serious offence or it is necessary in the child interest remove the child from association of the other people. Where there is belief that the release would defeat's ends of justice, release the child on bond at his or her own recognizance or by parents or any other responsible person.

2.1.2.2 Bail

Section 90 of the children act provides for release of a child on bail in case there is serious danger to the child on his own recognizance or with societies where bail is not granted court shall record reasons for refusal and inform the applicant of his or her right to apply for bail in the chief magistrate court of high court.

\textsuperscript{21} Section 89 of the children Act\hfill
\textsuperscript{22} supra
Where the child is not released on bail, he is supposed to be committed to the remand home. The children act provides for a remand order committing the child to a remand home mentioned in the act.

The act provides for Kampiringisa rehabilitation centre apace of custody for children offenders

Where there is no remand home within reasonable distance, court shall make a detention order in a place of safe custody as it deems fit.

The act provides that remand in custody shall not exceed six months in case an offence is punishable death or these or these months in case of any other offence. No child shall be subject to corporal punishment.

2.1.2.3 Probation and social welfare officers

The probation and social welfare officer is required to make a written social background report to be taken into account by court after a charge has been admitted or provided before making an order. The report shall include social and family background circumstances in which the child is living and conditions in which crimes were committed.

The court shall ensure that all the contents of the report are made known to the child and a copy of a report provided for the child or his representatives. The probation and social welfare officer shall discuss the period of after care with the child but it will not exceed 12 months after release from detention.

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23 Section 91 of the children Act
24 Section 91(5) of the children Act
25 Section 94(9) of the children Act
26 Section 98 of the children Act
2.1.2.4 National rehabilitation center for children

A national rehabilitation centre for children shall be established by a minister and such other centers that he or she may deem necessary which shall be in each place for detention and rehabilitation for children.\(^{27}\)

The act provides for the establishment of Kampringisa rehabilitation centre's pending establishment of national rehabilitation centre. Some detention centres have been established which includes Naguru remand home, fort port remand home, and Gulu remand home.

The act provides that a child shall not be detained with adults while in custody and female children in custody shall be under the care of a woman officer. The act further provides for expeditious handling of cases without unnecessary delay\(^{28}\) where a case is not completed within three months after the plan has been taken, the case shall be dismissed and the child shall not be liable to any other proceedings for the same offence.

2.1.3 The national council for children act\(^{29}\).

The long title of the act states that the national council for children act is an act to establish a national council for children, provide structure and mechanism which will ensure proper coordination, monitoring, devaluation of programs relating to the survival protection and development of a child and any other connected matters.

The act defines a child as a person below the age of 18 years. It establishes the national council for children with cooperate personality and perpetual succession\(^{30}\) whose objectives are to act as

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\(^{27}\) Section 96 of the children Act  
\(^{28}\) Section 99 of the children Act  
\(^{29}\) Cap 60 laws of Uganda  
\(^{30}\)
a body through which the problems of children can be communicated to the government and other decision making institutions contain a database on the situation of children in Uganda and to support the continuing analysis of the changing needs of children and promote a discussion of emerging priorities.

The functions of the council are:

To help in the achievement of intended objectives through adverse and promote policy regarding survival and development and projection of children in Uganda to ensure planning and coordination of child based programs within the broad guidelines of the programs of action, to act for a clearing house for information and data on the situation of children activities designed to benefit children in Uganda, and to work in close in close cooperation with and to coordinate the activities of all persons institutions sector and organizations involved in child based activities.

2.1.4 The family and children court

The children and family court is established under the children act and it is preceded over by a magistrate not lower than grade two. The family and children court has power to her and determine criminal charges against children any exercise jurisdiction conferred by the children act or any other children written law.

The procedure of the children of the children and family court is according the family and children court rules.

30 Section 3 of the national council for children Act
31 Section 4 of the national council for children Act
32 supra
The local council courts are given power as courts of first instance and given a duty to safeguard and promote the welfare of children within its geographical limit and all matters criminal or civil shall be trust dealt by the village executive committee set out under section of the executive committees (judicial powers) act

2.1.5 The family and children court rules

The rules provide for the jurisdiction of the family and children court procedures to be followed in adjudicating cases concerning children.

The rules provides that the court shall it as often as necessary, proceedings shall be held proceedings shall be as informal as possible are parents and guardians of the child should be present if possible, right to legal representation and the right to appeal.

Under rule 29 the court shall promote reconciliation between the complainant and the child.

2.2 Regional instruments

2.2.1 The African charter on the rights of the child

The charter was notified in 1999 by the organization of African unity and Uganda a being a member ratified the charter with the concern that most African children’s situation remains critical due to the unique factors of social economic cultural and traditional development circumstances exploitation hunger and on the account of the Childs mental immaturity, he or she needs special safe guards and care.

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33 Section 10 of the children Act
34 Of the family and children court rule

15
The charter argues member states to recognize rights freedoms and duties enshrined in the charter and shall undertake necessary steps in accordance with their constitutional provisions to adopt measures as may be necessary to give effect to the provision of the charter.

The charter defines a child as a person below 18 years. It provides for the right of children like the right to religion, conscience, assembly, and expression and the welfare principal in all matters concerning children.

**Under Article 17** it provides for the administration of juvenile justice for the purpose of reformation and re-integration of a child into society.

The charter provides that member states should ensure that every child accused is accorded legal assistance and representation.

### 2.3 International instruments

**2.3.1 The UN standard minimum rules of administration of juvenile justice.**

The UN standards minimum rules of administration was adopted on November 1985 by the general assembly resolution no.40/33. Uganda being a member ratified the convention.

**Principle one** of the convention provides that member states shall seek in conformity with their respective general interests to further the well being of juveniles, develop conditions that will ensure a meaningful life and resolving the cases of juveniles with the view of reducing intervention under the law.

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55 Article 2 of the African charter on the rights of children
**Principle two** provides for the application of standard minimum rules on juveniles impartially without discrimination of any kind such as on grounds of race, color, sex or language. It defines juvenile offender as a young person who is alleged to have committed or has been found to have committed a crime.

It provides for the establishment of a set of laws and rules specifically applicable to juvenile offenders and institutions and bodies entrusted with the function of administration of juvenile justice.

Under principle 4, the age limit of criminal responsibility shall depend on the legal system. It shall not be fixed to law or to high bearing in mind the facts of emotional, mental, and intellectual maturity.

Under principle 5 the convention aims at the protection of the wellbeing of juvenile and advocates for the proportionality principle which is to the effect that the gravity of the offence committed by the advocate should be based on personal circumstances like social status, family background, etc. It provides for the rights of children as presumption of innocence, right to remain silent, the right to counsel, right to presence of guardian, right to cross examination of witnesses and the right to appeal to higher authority which shall be granted at all stages.

**2.3.2 The UN Convention on the Rights of A child**

Uganda being signatory to the UN conviction it is bound by the UN convention on the rights of a child it provides for the protection and support for rights of children below 18 years.

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36 Principle 7 of the UN standard minimum rules for administration of justice
Article 40 states that states parties shall seek the establishment of appropriate and desired measures for dealing with children under 18 years without resorting to judicial proceedings provided that human rights are legal safeguards are respected. It provides for the welfare principle as the guiding principle in matters concerning children.

It provides for guarding principles in arrest detention and trial of a child which include:

i. Presumption of Innocence

ii. The child’s right to be informed promptly or directly of the charges against him.

iii. To hear the matter determined without delay by competent independent and impartial body.
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X  most 11 or 12 years, age 11 for federal crimes

XX  Age determined by the states, minimum age is 7 in most states under common law

XXX  Age 9 for girls, 15 for boys

XXXX  Official ages of criminal responsibility from age 12 children action are subject to juvenile legal proceedings

Note: the current age of criminal responsibility in Tanzania is currently 12 years.

Conclusion

Though the age of criminals responsibility in Uganda is considered the most appropriate, considering the conditions of life in Uganda it is too high looking at the high crime rate in Uganda of which and the age at which children in Uganda commit crimes though there are National, Regional and International laws governing juvenile delinquency in Uganda, the law has always been misapplied by law enforcers leading to injustice to the juveniles.
CHAPTER THREE

CRITICAL ANALYSIS OF THE JUVENILE JUSTICE SYSTEM

Though juvenile delinquency is regulated by national domestic and international laws there still remains various loopholes in the enforcement of the law and putting it into practice.

There is limited legal machinery required in amendment of law where the old ones have lost effectiveness. Moreso, the law enforcement officers like policemen and magistrates are influenced by emotions and they care less about the well being of the child which is against the welfare principle and the aim of the law which is to reform the offender into a better citizen in the future.

State funded lawyers only defend children accused of capital offences and children imprisoned for lesser charges receive the attention of social workers or probation officers. Social works are untrained in courtroom litigation. The denial of experienced counsel exposes the delinquents to unfair hearing.

Hearings are also comprised of under staffed judiciary the allocation of one social worker per court burdens the courts with overwhelming case load which leads to delay in trial.

According to PT Kakama the probation and welfare staffs are insufficient resourced to effectively carry out their duties and the available magistrates are too few to meet the establishment of Family and Children courts recently designated.

Capital offences in particular take months to be transferred from Family and Children courts to High court. Similarly arrested children take weeks before entering their first plea and since the

\[ ^{37} \text{Juvenile Justice in Uganda past and present perspective} \]
district registrar distributes case assignment after the first hearing, the procedure leaves the
imprisoned children without assistance.

Statistics show that there is so much delay in handling of juvenile cases and most of the children
are held beyond their period of legal remand from march 1999 to 2000, 20% of all capital
suspects in Naguru remand home in Kampala could not receive court committals before six
months deadline provide under the law 71% of the children were detained illegally in remand
homes while 29% were released in accordance with the law.

However, the interview with Naguru staff revealed that the released children were re arrested
and charged with more serious and fabricated offences.

3.1 Age of criminal responsibility

The children act provides the age of the criminal responsibility as 12 years. However, under the
United Nations standard minimum rules for administration of justice. The age of criminal
responsibility shall be determined bearing in mind the emotional, mental and intellectual maturity.
It must not be too low or too high as to defeat the aim of reformation of the child. Considering
the increasing rate of cases on juvenile delinquency and crime rate in general, 12 years of age is
too high to be the age of criminal responsibility.

In Uganda today at 12 years, most children are already in secondary schools which is a
resumption that they are capable of distinguishing between right and wrong and their emotional
mental and intellectual maturity is very high. This means that by the time a child offender
reaches 12 years of age if he had started committing crimes at a younger age, he would have

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38 Section 88 of the children Act
become a habitual offender and reformation and rehabilitation would be difficult if not impossible. Therefore, there is need to amend the criminal responsibility to suit circumstances of the present generation.

More so, the law is not clear as to when the age of the child is to be ascertained during trial. Some courts consider the age of the child at the time of commission of the crime while others consider the age of the child at the time of sentence.

In the case of Uganda v Abdallah Saban\textsuperscript{39} court the view that evidence was required to ascertain the age of the child at the time commission of a crime so as to ascertain whether the child has a capacity to commit a crime.

However, in the case of Katabere v Uganda\textsuperscript{40}, the age of the child was considered at the time of sentencing not the time of committing of the crime.

Some children are even remanded in custody without evidence of their age which leads to a miscarriage of justice.

3.2 Use of Excessive Power by Police

Police is empowered under the children act to dispose cases concerning children at their discretion without recourse to formal education to formal courts\textsuperscript{41}. However, the police is exercising its discretion uses excessive force to bring juvenile offenders to justice. The juveniles are harshly drugged during arrest, they are not told the reasons for arrest in most cases are

\textsuperscript{39} (1974) HCB P280
\textsuperscript{40} CA/23/2001
\textsuperscript{41} 9 Supra
severely whipped or some times wounded which is against the welfare principle of the child provide under the law, nationally, regionally and internationally.

The local council in most cases are also in most case partial and they decide and cases according to what the child has done and in the end they end up going beyond their powers.

In the case of *opera wazi v Uganda* a 16 year old boy was subjected to 16 stokes of canes and payment of bill as fine for defilement in the local council courts.

On appeal, it was held that the local council authorities acted beyond their jurisdiction because cases of defilement are only trouble by high court and the judgment was declared ability on grounds of lack of jurisdiction.

**3.3 Disrespect of Procedure**

The procedure for arrest, trial and detention of juveniles as set out by the law is always misapplied.

**3.4 Arrest**

The children act provides for caution and release of a child in justifiable circumstances. The police is also empowered to dispose of the cases involving children at their discretion but they should ensure that the parents and guardians of the child are present at the police at the time the child is interviewed and where the parent cannot be found a probation and welfare officer shall be informed and the child shall notified about the charge and his right to legal representation however, the police does not follow these procedures which is violence of rights of children.

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12 Criminal appeal No. 19/1982
13 Section 81(1) of the children Act
In the case of *Re Gault*\(^{44}\), a child was arrested in absence of parents, was not represented and notified about the charge. It was held that a juvenile has a right of notice of charge, legal representation and protection against discrimination.

3.5 Trial

The rights of a child during trial are provided for nationally, domestically and internationally. The children act provides for release of a child on bail at his or her own recognisance on the parents and where bail is not granted, courts must give reasons for not doing so\(^{45}\). However most children offenders and their parents do not know what bail is and they do not know that the child has a right to bail. Moreover, some parents cannot afford bail because they are poor.

The rights of fair hearing, presumption of innocence, right to be informed about charges and the matter to be determined without delay as provided for under the children act and the Beijing rules are not respected. Children offenders, especially street children arrested even when they have not committed any crime. They are not taken for trial, they are not even afforded another hearing. The children are not informed about their charges against time, where the children offenders are taken for trial the trial take too long which is against expeditious handling of cases.

In the case of *Stephen v parte bottling company limited*\(^{46}\) it was held that a criminal trial which drags on for unreasonably too long is an unfair trial and court may drop proceedings on ground of delay.

\(^{44}\) 387 US 1 1964  
\(^{45}\) Section 90 of the children Act  
\(^{46}\) 1988
The children act provides for social and welfare officer to inquire into background of the child which is to be taken into account before making an order concerning a child.\textsuperscript{47}

However, in some cases the courts do not consult the social and welfare officers do not commit themselves to make reports or even take the reports about the child offenders which affect the decision against the child which may be unjust and is against reformation and rehabilitation of juvenile offenders.

In South African case if SVM\textsuperscript{48} the court did not make an effort to investigate the background and personality of the child nor seek advice of a probation officer .it was held on appeal that before making decision concerning a child his family and social background must be looked at first failure of which may lead to miscarriage of justice.

The child background is of paramount importance if court is to ascertain whether the child understands the difference between what is and wrong and his intellectual or mental maturity.

In the case of F V padwick\textsuperscript{49}, it was held that in order to ascertain the Childs ability to distinguish between rights and wrong, court must look into the background of the child not his demeanor in court.

The trial of children offenders in public courts and sentencing them as if your are sentencing adults is regarded as in human and degrading treatment which is against the 1995 constitution of Uganda on human rights.

\textsuperscript{17} supra
\textsuperscript{18} I Crin
\textsuperscript{19} (1959) Crim.ER 439
In the case *T Vs United Kingdom* 50, T and V were 18 years old when they abducted and killed a two year old boy. Aged 11 they were tried in public in an adult court before a judge and jury (some allowances were made for their age) they were convicted of murder and abduction and sentenced to an indefinite period of detention. The court concluded that the attribution to the applicants of criminal responsibility for their acts did not violate the law.

But it was held on appeal that the trial not only contributed to the inhuman but also degrading treatment and the fact that the applicants were tried in the same criminal procedure as adults and sentenced without sufficient account being taken was qualified as inhuman.

**3.6 Detention**

Detention is the putting of the offender under lawful custody. The children act provides for a remand order where the child is not released on bail 51, the child shall be remanded in place of safe custody which for purposes of Section 91 of the children act means a place considered by court to be fit to provide care for child separately from adult offenders.

However the conditions of remand homes the conditions of remand homes in Uganda are very poor ranging from health care, poor housing and accommodation starvation of children in addition to mistreatment. Children are subjected to corporal punishment and in some scumstances are detained with adults, who hardcover been criminals which puts the children at the risk of copying from these hard core offenders and becoming the same which is against the reformative principle of criminal law 52.

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51 Supra
52 Denis Angeri foundation of Human rights initiative
According to a report on a view of juvenile justice entailed a review on the law and policy to prevent and remedy violence against children\textsuperscript{53} it revealed that children are often detained for petty offences and due to underdeveloped structures diversionary methods, there is difficulty in determining the actual number of children in detention, there is ineffective monitoring and lack of evaluation mechanisms that would eliminate practices that violets the rights of delinquents such as the right against arbitrary arrests lengthy pretrial detention violence substandard conditions and faculties and putting children offenders in the same custody with hard care offenders.

The legal framework on juvenile delinquency leaves a lot to be desired. Through there are various law regulating juvenile delinquency, some provision of the law have lost their significance. There is also inefficient administration of the laws by the law enforces who use excessive power in arrest, trial and detection of juvenile offenders. There also limited remand centre’s in Uganda as compared to the ever increasing number of juvenile delinquents in Uganda.

Though the legal frame work has not achieved much, it has not failed to achieve anything at all but also some areas of success which need to be credited.

In a bid to avoid detaining children with adult person, the police force has established reception centres for children at six police stations, that is Masaka, Katakwi, Kumi, Hoima, Gulu and CPS Kampala.

The police council has established a resolution that all new police stations must have children reception centres provided for in their plans.

\textsuperscript{53} Report by the foundation of human rights initiative and penal reform international of 2013
The police established a child and family protection unit (CFPU) where all cases involving children in conflict with the law are handled by child and family protection units. Officers of this unit are professionally trained to handle such children and provide counseling services to them.

The child and family protection officers of the unit are usually relatively elderly female police officers with stable families.

The children while at police stations are handled with parental touch especially the girl child is strictly under the care of a woman police officer while in the custody. This is designed to avoid abuse of such children.

The police emphasizes as much as possible the gathering of enough information to sustain a charge being preferred on child in conflict with the law before arrest of such a child.

The management of the police has also instruct unit to refer children accused of such offenses such as affray, idle and disorderly criminal trespass, common assault and malicious damage to property to local council courts as courts of first instance, to school administration or clan leaders.

With the creation of the child and family protection units, the bolster in the investigation process investigation of cases where children charged in family and children courts have been enhanced.

Conclusion

The critical examination of the legal framework governing juvenile delinquency points and a lot of loopholes in the law and the weaknesses in the enforcement of the law for administration of juvenile delinquency in Uganda.
However its pertinent to identify that enough there are loopholes in the law and ineffective enforcement mechanism has tried its best considering the lack of enough funds necessary to ensure that the laws have been enforced and for the provision of better life for the juvenile delinquents and the ever increasing number of juveniles in Uganda today. The laws should therefore be credited for the role played though there is need for reforms.
CHAPTER FOUR

4.0 Challenges faced in administration of juvenile justice

Though there are various laws and policies regulating juvenile delinquency the legal justice systems is faced with very many challenges some administrative, some monetary and others. Intellectual however institutions charged with the administration of juvenile justice have tried their best in improving the juvenile justice though there is much more to be desired. In several African countries the legal framework governing juvenile delinquency is not effectively and correctly implemented. There is evidence of the suffering of children from brutality of police and arbitrary arrests. The protective measures by national laws are poorly carried out.

The juvenile justice system is practically undermined by difficulties such as lack of judicial independence lack of appropriate facilities in terms of training centres for young offenders shortages technical and material sources and lack of financial resources. The challenges include:

4.1 Lack of cooperation by institutions charged with the administration of Juvenile Justice.

According to the report by the assistant commissioner in charge of the children affairs there is evidence that points outs the existence of substantial barriers that ought to be addressed before comprehensive and sustainable child protection systems can be realized.

Despite of several initiatives, the formal structures of child protection and informal structures do not cooperate with each other but they work independently of each other. the

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54 Arusha times 9 Dec 2009
55 Formal structures are statutory mandate government structures
56 Informal structures are traditional values and shared responsibility welfare of children
child care justice law and order and the basic social service subsystems work independently of each other resulting into partial and fragment services.

The various child protection systems are generally fragmented between many sectors and every coordinate at national and local level. The national council for children which has coordination mandate is constrained by both structural and resource limitations.

4.2 Corruption

The system faces a challenge of corruption and embezzlement of public funds. Some administrators ask for bribes from parents of juvenile so as to release them, others ask for too much bail when the child is to be released on bail. There is also embezzlement of the few funds available by administrators which worsens the conditions of life of the juvenile in that it becomes hard for there case to be handled expeditiously and where they are remanded they live in the worst conditions of life.

4.3 Lack of trained personnel

Cases of juvenile delinquency are always handled by administrators who lack intelligence, integrity and experience matters concerning children behavior and welfare.

The police and judges or magistrates who handle the cases are not specifically trained to deal with children affairs hence they end up treating children as adult offenders. Care taken in remand homes are also not trained on how to handle children and most cases the juvenile offenders are seen are seen as down cuts in society and are always treated into many with corporal punishments, starvation, and poor condition of life which returns the physical and intellectual development of the child and is against the welfare principle which is provided for by the law.
According to a report by the human rights initiative 3rd October 2014 Uganda still needs child protection mechanisms. Street children need to be protected from being rounded up by police and held in cells with adult offenders which leads to increased risk of abuse and violence.

4.4 Inadequate enforcement of laws

Review on the law and policy to prevent and remedy violence against children in police and pretrial detention in Uganda revealed that children are often detained of petty offences due to lack of undeveloped structural divisionary methods. There is difficulty in ascertaining the number of children in detention, lack of evaluation mechanisms that would eliminate practices and violations of rights of delinquents and ineffective monitoring.

4.5 Limited resources

The juvenile justice Administration systems lack enough resources to spend effectively to the grassroots to the needs of the children there are limited resources for training personnel human resource and technical skills required in child protection centre’s. Due to limited resources, there is in admit infrastructural and logistical capacity especially within formal child protection systems for example lack of transport by probation and social well fair offices in the process of making reports on the background of juvenile offenders and meantime of the children in custody is also expensive. There is poor funding of child protection activities at all levels. Most funding is largely dependent on local resources and the government is less concerned about the children yet the resources are limited some children cannot afford paying money for bail or even legal representation and yet the state cannot provide legal representation for them which may lead to injustice.

57 Angeria Denis foundation of human rights initiative
4.6 Lack of committed and motivated administrators

Most administrators handling juvenile offences lack motivation and commitment to their work. Some because they are given little payments and others are just not interested. But they do it because it is their job. This makes them emotional in handling children affairs and may consider the child according to his dominoes in court, not his social background which is not right. They even take too long in deciding the cases of juvenile of fixing them for trial and the lawyers have nothing to do about it. In the case of the *people V Asanga Asongwa*\(^58\) it was pointed out that considering investments and prosecution of criminal matters lawyers have little to do with lengthy delays in prosecution. The administration of juvenile justice should not only be qualified but also committed and motivated by their work.

4.7 Increasing rate of juvenile delinquency

Due to the increasing rate of juvenile delinquency, the case files are so many that it becomes hard for the judges to determine the cases expeditiously due to the requirement of a report on the background of the offenders which leads to a backlog of cases and detention for long or even no trial at all. As a result of the increase in the rate, the juvenile offenders have become so many yet there are limited finances for construction of more remand homes and rehabilitation centres. For example, there is only one remand home in Kampala, that is Naguru remand home and only one rehabilitation centre established under the children Act that is Kampiringisa rehabilitation centre. Yet the delinquents are very many and resources very few. This leads to poor conditions of life like insufficient medical care, clothing, bedding, and food and even over crowding which leads to spread of diseases among the juveniles.+

\(^58\) CFIBA/1228C/01-02
Conclusion

The juvenile justice Administration is faced by many challenges ranging from Administrative challenges, financial challenges it’s the duty of the Government to ensure that the juvenile justice administration is improved so as to ensure effectiveness in the administration of justice to children in conflict with the law. The Government should increase on funding of juvenile justice system and revise the budget to cater for the welfare of the children in conflict with the law.
CHAPTER FIVE

RECOMMENDATIONS

If the juvenile justice system is to be improved, it is not only the duty of the juvenile justice administrators but also the community at large. The struggle should start from the grassroots that is at family level, parents, guardians and all other people responsible for the welfare of children should groom their children with discipline and good manner so that they can grow up as obedient citizens of the country even the bible says, "that if you bring up your children in a right way, even if they grow old, they won't go astray" this can be the first step in minimizing juvenile delinquency and its effect on society.

According to Carolyn Hamilton, If reforms are to be achieved, there should be consideration of policy, budgetary, human resource, institutional capacity, professional practice implementation planning, and transitional arrangement.

To be effective, a reform must be an ideally participatory process which takes into account not only the political ideologies but also the view of professional working within the system as well as those who find themselves at the receiving end of the juvenile system.

Any new law related to juvenile justice system before being enacted should be preceded by comprehensive policy paper setting out the reasons for reform and the possible outcomes that the law intends to achieve.

Judicial authorities should make commitment to establish, strengthen, and expand the coverage of the institution and programmes necessary for implementation.

59 Bible Proverbs
60 Guidance for legislative reform on juvenile justice system guidance paper may 2011 by Carolyn Hamilton, professor at University of Law in University of Essex.
The Government should decide whether to amend the existing laws or draft a new law or code and clear. Any new law or code should contain specific provisions about jurisdiction to the extent which either criminal laws apply to children procedure followed from the time of the first contact with police by the juvenile to the end of the trial process, due process guarantees and diversionary measures for children convicted of criminal offences.

A child friendly version of the law should be published and made widely available for the children to help them understand the law and assist them in preserving it.

1. Upholding the enforcement of the laws on juvenile delinquency

The juvenile justice systems should ensure that the laws regulating juvenile justice are uphold for the wellbeing of the offenders. There should be proportionate reaction of the administrators such as magistrates, police and the remand wardens in the administration of justice to children so as to achieve the reformatory principle of criminal law.

According to Ssewanyana L61, a comprehensive juvenile justice system should faster the wellbeing of the child to ensure that there is proportionate reaction by authorities to the character of the offender and the nature of the offence committed. This can only be granted by ensuring that juvenile justice standard are established and uphold.

2. Increased funding of the juvenile justice system by the government

The government should revise budgets to include the funding of the juvenile justice system. Under the national objective and directive principles of state policy, the state has

61Juvenile justice in Uganda by Ssewanyana L.
responsibility to grant and respect institutions in charge of protecting human rights. Therefore, the government should improve on budgeting, resourcing and costing of child protection bodies and juvenile justice system through giving a better salary scale to administrators to motivate them in doing their work. Provide more funds for building of more remand homes and rehabilitation center's to reduce overcrowding and its resulting effects and to finance the activities of the administrators such as the magistrates, police and the probation and social welfare officers.

3. **Provision of training to juvenile justice to administrators**

The administrators should have prior training in the handling of children matters because they are fragile and for purposes of reformation and reconciliation. Some magistrates have tremendous qualifications but on the average, their skills are poor. They have little ability in identifying salient facts. Therefore, there should be prior training or in-service training to get them acquainted to the law regarding juveniles. There should be coordinated accredited training programs, the administrators should be people of intelligence, integrity and experience in child behavior and character.

4. **Harmonizing linkages between formal and informal structures of child protection**

The formal and informal structures of child protection should work hand in hand so as to achieve the desired standards. Governmental and non-governmental organizations should cooperate to achieve the common goal of child protection. There should be linking and strengthening of national and local systems by establishing linkages between districts and international level. There should be linking between informal and formal protection structures through better

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62 Objective 10 of the national objectives and directive principles
documentation of work of informal structures and improving the capacity of formal structures to support the work of informal structures.

5. Emphasis on rehabilitation, reformation and reconciliation rather than punishment.

The juvenile justice system should deal with the juvenile offenders with emphasis on rehabilitation of the offender. It should first consider disposition of cases concerning children without recourse to courts of law. The courts are even empowered to release a child on probation with caution in justifiable circumstances the juvenile offenders should be rehabilitated and reinstated back into society so as to become amore important citizen. Release on probation saves the cost of maintenance and minimizes the stigma attached to being remanded .it also gives an opportunity for a child to repent and change into a better person.

According to Lillian Ekirikubinza the decisions of courts of law show that there is little evidence that suggests that courts have been guided by the need to get a child out of detention and promote rehabilitation. Therefore, law enforcers should focus much on the welfare of the delinquent rather than punishment because rehabilitation is the main aim of the law.

6. Improvement in process and procedure of the justice systems

The juvenile justice systems should be improved by development of standardized protocols and quality standard methods as well as establishing accountability standards. There should be improvement in data and information management systems through an integral data and resources partnership. There should also be checks and balances on the administrators who are

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"Juvenile justice in Uganda by Lillian Ekirikubinza"
not committed to their work and to corrupt administrators and penalties should be imposed on them.

Conclusion

Juvenile justice systems are faced with so many challenges despite the fact that there are various laws regulating it. It is the duty of every Ugandan in conjunction with the juvenile justice systems to see to it that there is improvement in the administration of the law concerning juvenile because the young generation is the backbone of our nation without which it cannot stand.
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