

**JUVENILE DELINQUENCY UNDER THE LAWS OF UGANDA;  
CASE STUDY OF KAMPIRINGISA REHABILITATION  
CENTRE AND NAGURU REMAND HOME**

**BY**

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## **DEDICATION**

I dedicate this work to my Dad and Mummy who put much effort using their meager resources towards my career development and finally my Fiancee Sunday Gladys.

I would also like to dedicate to the staff of Kampala international university especially in the Faculty of law.

## ACKNOWLEDGEMENTS

Special thanks go to Almighty GOD who has brought me this far may his name be praised.

Special thanks go to my supervisor Mrs Caroline Muchuma who stood as a leading guide in my endeavors and his devotion for my cause to excel, may GOD bless you abundantly.

I owe special debt of gratitude to my parents, sisters and brothers for the financial, Spiritual and emotional support throughout my course, May GOD richly bless your lives.

Thanks to all staff and community of Naguru and Kampilingisa Juvenile Homes whose cooperation leads to the accomplishment of my.

I would also wish to extend my gratitude to the following as their contributions are worthy appreciation, Parakondo Abraham, Sundy Gladys, Paaka Louis, among others for the continuous encouragement and support during my research.

**DECLARATION**

I **PATRICK CHOL AJAK** declare that this is my own original piece of work and it has never been submitted for any award to this or any other University/ Institution.

**Signed..... Date.....**

**Approved By**

**Supervisor.....Signed.....Date.....**

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## CHAPTER ONE

### 1.0 INTRODUCTION

#### 1.1 Background to the study

The Black Law Dictionary defines juvenile delinquency as antisocial behavior by a minor; especial behavior that would be criminally punishable if the actor was an adult, but instead is punished by special laws pertaining only to minors.<sup>1</sup> Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are multitudes of different theories on the causes of crime, most, if not all of which can be applied to the causes of youth crime. Youth crime is a major issue and is an aspect of crime that receives great attention from the news media and politicians. Crime committed by young people has risen since the mid-twentieth century, as have most types of crimes. The level and types of youth crime can be used by commentators as an indicator of the general state of morality and law and order in a country, and consequently youth crime can be the source of 'moral panics'. Theories on the causes of youth crime can be viewed as particularly important within criminology. This is firstly because crime is committed disproportionately by those aged between fifteen and twenty-five. Secondly, by definition any theories on the causes of crime will focus on youth crime, as adult criminals will have likely started offending when they were young. Usually, a delinquent will do to someone else what has been done to him or her.<sup>2</sup> A Juvenile Delinquent is one who repeatedly commits crime. These juvenile delinquents sometimes have mental disorders/behavioral issues such as posttraumatic stress disorder or bipolar disorder, and are sometimes diagnosed with conduct disorder partially because of their delinquent behaviors.

Curfews have reemerged recently as a popular option for policymakers in their efforts to deter juvenile victimization and delinquency. Imposed on and off since the turn of the century, curfews tend to receive increased attention when there is a perceived need for more stringent efforts at social control. For example, curfew ordinances were originally enacted in the 1890's to decrease crime among immigrant youth. During World War II, curfews were perceived as an effective

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<sup>1</sup> Pg 945 9<sup>th</sup> edition

<sup>2</sup> Aos, S., Miller, M, and Drake, E. (2006) Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates. Olympia: Washington State Institute for Public Policy Can Acad Child Adolesc Psychiatry; 19(1): 32-9.

control for parents who were busy helping with the war effort. More recent interest in juvenile curfew ordinances came as a response to growing juvenile crime during the 1970's.

Uganda adopted The Children Act, Chapter 59 of the Laws of Uganda on August 1, 1997. Under this Act, Local Councils (LCs) are responsible for child protection. If these local government councils cannot resolve a child protection case, it is brought before the Family and Children Court. Section 16 provides that "the child shall have a right to legal representation" in all matters before the family and children court. The Act does not provide any additional information about the responsibilities or duties of the legal representative for the child. The Law Development Center's Legal Aid Clinic represents children in a variety of cases, but its primary focus is on representing children in conflict with the law. Representing children who have been abused or neglected is primarily the responsibility of the state, which would prosecute these cases as criminal proceedings. Thus it seems that most child abuse and neglect cases are handled through the criminal system, whereas most civil family law cases concern maintenance and custody proceedings (Aos, S., 2000).

There are two key issues Uganda faces in implementing the provisions in The Children Act, specifically Section 16. First, Uganda does not have the institutions or financial resources to fully implement the provisions in the Act. In its own initial report to the United Nations (UN) Committee on the Rights of the Child it reports: "In the case of child abuse for instance, the Probation Officer in the present circumstances cannot do much. The officer has no ready place to take the child. Existing children's institutions are inadequate, formal fostering is still not developed owing to cultural and economic limitations. Lipsey, M and Wilson D.,<sup>3</sup> asserts that, the greater problem is that Probation and Welfare Officers have no resources, they are few and therefore cannot adequately solve the problems of the child's family and those of the child." Moreover, three of the five concerns mentioned in the NGO report to the UN Committee on the Rights of the Child also concern a lack of funding and other resources. Second, customary law is a powerful force in Uganda and at times, it conflicts with certain provisions of the Convention on

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<sup>3</sup> Lipsey, M. and Wilson, D. (1998) Effective Interventions for Serious Juvenile Offenders. Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions, Chapter 13. Page 2.

the Rights of the Child<sup>4</sup> (CRC). The extended family acting as a support network and the emphasis on village resolution through the Local Councils (LC's) are two common elements of customary law in Uganda. Both of these factors could prohibit particularly complex or difficult cases being referred to the family and children court, instead of being resolved by the LC's. However, it is important to note that there has been extensive training of the LC's on children's rights to legal protection by both the Ugandan government and various NGOs.

## **1.2 Statement of the problem**

Dedicated child-rights agencies have raised the standard of juvenile justice in Kampala. Nevertheless, many imprisoned children still face state prosecution without adequate legal assistance. Several distressing facts deserve attention. State-funded lawyers defend children accused of capital crimes. Children imprisoned for lesser charges receive the attention of a social worker probation officer. Social workers, however, are untrained in courtroom litigation. Unfortunately, this denial of experienced counsel eliminates any potential for a fair hearing. Statistics highlight the more pernicious effects of courtroom delays. Most disturbingly, children are held well beyond their period of legal remand. Reports at Central Police Station (CPS) show that all capital suspects in Naguru Remand Home failed to receive court committals before the six-month deadline. Of these children, some of these were retained illegally in the home, while others released in accordance with the law. In addition, it is against such undesirable circumstances that the study assesses juvenile delinquency analysis of the law in order to address the many aspects of youth crime problem.

## **1.3 Objectives of the study**

### **1.3.1 General Objective**

The study investigated factors for the ever-increasing cases for juvenile delinquency in Uganda.

### **1.3.2 Specific Objectives**

- (i) To identify the different ways how juvenile offenders are handled in relation to the law in Uganda.
- (ii) To establish the possible measures that can be put in place to curb juvenile delinquency in Uganda.

### **1.4 Research questions**

- (i) What are the different ways in which juvenile offenders are handled in relation to the law in Uganda?
- (ii) What possible measures can be put in place to curb juvenile delinquency in Uganda?

### **1.5 Scope of the study**

#### **1.5.1 Geographical scope**

The study was conducted at Central division. The study covered the period between 2004-2009 at Kampiringisa and Naguru Remand Home.

### **1.6 Significance of the study**

The study will be significant in the following ways:

- (i) As a student of Law, I am optimistic that the research findings will largely improve on the researcher's knowledge and facilitate me to have a practical approach in solving juvenile delinquency issues in Uganda.
- (ii) The study will be used by Human right organizations to protect the rights of juveniles in Uganda and elsewhere.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 Introduction

In this chapter, a review of the literature about juvenile delinquency under the law in Uganda and elsewhere in the world were made. Specific interest areas on the philosophy and understanding of juvenile delinquency analysis in relation to the law and its processes will be given. The chapter reviews the works of other scholars who have written about the topic of the study or those who have addressed similar issues as those of the variable that were available in the study.

In June 2008, the Office of State Courts Administrator (OSCA), Division of Court Programs and Research, surveyed Missouri's 45<sup>5</sup> regarding their opinions on a statewide definition of juvenile recidivism. Results of the survey supported a statewide definition of recidivism that is: 1) measured as close to the behavioral act of re-offending as possible, without violating the evidentiary rights of youth; 2) based only on new law violations to the juvenile or adult court; and 3) measured annually, using a 12-month tracking timeframe. Based on these recommendations, the following statewide definition of juvenile offender recidivism emerged: "A juvenile offender recidivist is any youth, referred to the juvenile office for a legally sufficient law violation during a calendar year, who receives one or more legally sufficient law violation(s) to the juvenile or adult court within one year of the initial referral disposition date". This statewide definition guided the examination of juvenile offender and case attributes related to recidivism described in the remainder of the report. Identification of these attributes is essential for matching juvenile offenders with evidence-based programming designed to reduce the likelihood of future delinquent behavior.

Pate, S asserts that, curfews have re-emerged recently as a popular option for policymakers in their efforts to deter juvenile victimization and delinquency. Imposed on and off since the turn of the century, curfews tend to receive increased attention when there is a perceived need for more stringent efforts at social control. For example, curfew ordinances were originally enacted in the

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<sup>5</sup> Administrative juvenile officers.

1890's to decrease crime among immigrant youth. During World War II, curfews were perceived as an effective control for parents who were busy helping with the war effort. More recent interest in juvenile curfew ordinances came as a response to growing juvenile crime during the 1970's<sup>6</sup>.

Many countries had developed Juvenile justice systems in order to deal with young offenders. This concept was derived from a belief that the problems of Juvenile delinquency and related problems of youth in irregular situations are not amenable to resolution within the framework of the traditional processes of criminal law. Juvenile Justice Systems, therefore, have been designed to respond to the needs of young offenders. One principal role has been to provide specialized preventive and treatment services for children and young person's as means for "secondary prevention", rehabilitation and improved socialization.

In some countries, the concept of Juvenile Justice, as a social service, is perceived as having fallen short of the goals and objectives originally set. Factors such as rapidly increasing numbers of young persons, insufficient resources and aggravated social and economic dislocations have had a devastating effect on the ability and capacity of the juvenile Justice systems to deal effectively with the broad range of individual and social problems that characterize Juvenile delinquency.

Juvenile justice<sup>7</sup> before the onset of delinquency reflects a desire to provide social Justice for children and young persons with a view to promoting and safeguarding their well-being. To this end, a system of social justice for children and young persons will protect their rights, including those who under five. The European regional preparatory meeting noted, "Experience with the treatment model over the past several decades, when modern evaluative scientific criminology had begun to assess impacts, had not been encouraging, on the whole. Participants expressed somewhat divergent opinions regarding the success or inappropriateness of the treatment model, especially with respect to institutional treatment. However, it was noted that the problems of

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<sup>6</sup> Pate, S and Noreus, B. (2004) Maine Annual Juvenile Recidivism Report. Maine Dept of Corrections, Division of Juvenile Services, Muskie School of Public Service, Maine Statistical Analysis Center. at page 50.

<sup>7</sup>Thomas, D. (May, 2006) How Does the Juvenile Justice System Measure Up? Technical Assistance to the Juvenile Court Bulletin, May. National Center for Juvenile Justice, Vol 25(4), Pg 486-503.

delinquency, had proved more persistent, and the solutions less successful, than had been predicted. Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" The African regional meeting noted the following: "Little, if any, sympathy was expressed for the current controversy in some developed countries centering on the issue of whether the social and rehabilitation approach had or had not endangered the procedural and civil rights of youngsters actually or potentially in conflict with social standards and laws. Africa had a different concern, a concern which sought to achieve social Justice for all and internalized value systems for each young person. Broadly based communal approaches were called for to achieve this far-reaching aim."

Curfew laws vary with respect to the locale affected timeframe, and sanctions. Most restrict minors to their homes or property between the hours of 11 p.m. and 6 a.m., with some jurisdictions allowing exceptions for weekend nights or summer months. Many curfew ordinances provide exemptions for youth who are going to or from a school-, religious-, or civic-sponsored event. Youth traveling from places of employment or responding to emergencies often are excluded from curfew provisions as well. Several ordinances allow unrestricted mobility for youth who are married, accompanied by an adult, or traveling with a parent's permission.

In addition, Noreus, B. (2004) says that, some curfew laws<sup>8</sup> impose more stringent curfew parameters in specific zones of the city, usually in targeted high-crime or commercially important areas. A recent example of this type comes from the city of Austin where, in 1994, the city council took action to limit youth activity in the nightclub district of the city. In that area, the curfew begins at 10 p.m. each night, compared with the 11:30 p.m. curfew for the rest of Austin. Enforcement efforts also differ from city to city. William Ruefle, then of the University of South Alabama, and Kenneth Mike Reynolds, of the University of New Orleans, found in a recent literature review and survey of existing curfew ordinances that curfew enforcement initiatives are implemented through regular law enforcement and special policing units. The 1994 survey, which polled 77 U.S. police departments in cities with populations of 200,000 or more, indicates that 71 percent of the cities with curfew ordinances used regular law enforcement personnel and resources to implement the cities' curfew initiatives. The remaining police departments

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<sup>8</sup> Pate, S and Noreus, B. (2004) Maine Annual Juvenile Recidivism Report. Maine Dept of Corrections, Division of Juvenile Services, Muskie School of Public Service, Maine Statistical Analysis Center. Page 40.

frequently used additional personnel to augment regular enforcement, according to the survey. These added officers contributed to periodic sweeps or "zero tolerance" crackdown efforts in which law enforcement personnel were pulled from other assignments for short periods to strongly enforce a curfew ordinance (May, 2006).

Sanctions for curfew violations, which are status offenses for juveniles, also may vary among jurisdictions. Offenders can be fined from \$50 to several hundred dollars or charged with a misdemeanor. Some ordinances include a parental accountability provision, under which parents can be held partially or fully responsible for children's curfew violations. Sanctions against parents may include participation in diversion programs, fines, and, in some jurisdictions, jail time. For example, the 1994 curfew ordinance in Denver, CO, does not mandate a fine be levied against parents whose children violate the city's curfew ordinance. Rather, the law provides for the assessment of a fine only if the youth and their parents fail to participate in a court-assigned diversion program.<sup>9</sup>

The stated goal of most curfew laws is twofold: to prevent juvenile crime and to protect youth from victimization. According to the Ruefle and Reynolds analysis, those who support juvenile curfews indicate that neighborhoods afflicted with high rates of crime may use curfews as a "means to protect non-delinquent youth from crime and to deny delinquent youth the opportunity to engage in criminal behavior." By keeping youth under the age of 18 off the street, curfews are expected to reduce the incidence of crime among the cohort most likely to offend, according to the Federal Bureau of Investigation's (FBI's) 1994 Uniform Crime Report (UCR). Since juvenile perpetrators of crime often take as their victims other youth, it is hoped that rates of youth victimization will drop as well.

Curfews are credited by some with restoring and maintaining order in lower crime neighborhoods, according to the Ruefle and Reynolds analysis. In addition to equipping law enforcement with tools to keep youth off the streets, curfews provide parents with a legitimate, legal basis for restricting the activities of their children. It is easier for parents to place

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<sup>9</sup> Thomas, D. (May, 2006) How Does the Juvenile Justice System Measure Up? Technical Assistance to the Juvenile Court Bulletin May. National Center for Juvenile Justice, Vol 25(4), Pg 486-600.

boundaries on their children's activities, proponents argue, when other youth in the neighborhood are similarly restricted by a specific time to return home.

Critics of curfew ordinances oppose these initiatives on both practical and legal grounds. According to the National Council on Crime and Delinquency (NCCD), curfew enforcement is often ineffective and unnecessarily funnels large numbers of non-delinquent youth into a criminal justice system that is already inundated with alleged offenders. In addition, some opponents cite a dearth of empirical evidence supporting the efficacy of curfew legislation. According to the literature review conducted by Ruffle and Reynolds, little or no recent empirical evidence indicates that curfew initiatives do not have an effect on juvenile crime, nor has research addressed the impact of curfews and their enforcement on the criminal justice system as a whole.

Gauri Pradhan (2002) opened his address by saying that there are many problems of children and that there is a need to find solutions in socio-economic realities. Tracing history of the Juvenile Justice system he said that in 1899 a group of judges in Illinois had developed the idea that only institutions are not right answer to reform children. He said institutions are not sensitized to meet the needs of children and in reality, they harm them. Methods of diversion are very important in reforming children. In conclusion, he said that the delegates of the conference should share experiences, learn from each other and teach each other.

Lone Lindhol<sup>10</sup> a senior researcher, from Denmark, said that, the area of Juvenile Justice attracts high level of attention around the world. However, the problem identified is only tip of the iceberg and more efforts need to be undertaken to deal with the problems associated with the administration of Juvenile Justice. She thanked the organizer for arranging a platform for people from many countries to share their views, and hoped that it would be proved an occasion to develop a strong tie to address the problem and foster cooperation.

Sushil Pyakurel said that the Conference was a culmination of the efforts of both the governments and the civil societies. It is a forum to exchange ideas and solve problems in the field of administration of Juvenile Justice with the help of each other (i.e. the delegates from

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<sup>10</sup> Barnoski, R. (1997) Washington State Juvenile Court Recidivism Estimates: Fiscal Year 1994 Youth. Olympia: Washington State Institute for Public Policy, P. 93 (June 17, 1996).

different countries). He then went on to discuss the establishment of the National Human Rights Commission (NHRC) in Nepal and said that the NHRC will be publishing its report soon and said the report also has findings on the status of juveniles in the country.

Madhav Prasad Acharya gave the vote of thanks. He said that the problem of Juveniles is a complex problem and therefore needs to be addressed in detail. The Government of Nepal has been undertaking different obligations at the international forum but it is slow in implementing them. In Nepal the Juveniles are treated with impunity and they are most often kept in prison with the adult prisoners. Therefore there is a need to address the problem of Juveniles and develop better standards to deal with them. In addition, he said that the Government should handle the problem wholesomely and understand that investment on education is essential to eradicate the problem. In conclusion, he thanked all the dignitaries for giving their valuable time and at the same time thanked all the participants hoping that the Conference would be fruitful.

Three Juveniles that, the trial court had improperly interpreted the Federal Juvenile Delinquency Act<sup>11</sup> to require that, the proceedings charging three juveniles with hate crimes under federal statutes be closed. The Boston Globe argued for access during the arraignment and during the pre-trial and trial stages. The trial court ruled that the statute mandated that the trial be closed. The First Circuit disagreed and found that the statute states that juvenile proceedings under federal law may be closed. A shift away from rehabilitation and toward punishment in juvenile justice has lead to increased access to juvenile court records and hearings in many states. In some states, certain crimes can lead to the press being allowed access. In other states, the press may be able to publish information regarding the juvenile even if the media does not have access to court records. Journalists should focus on gaining access to information for which the judge has discretion to grant access.

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<sup>11</sup> McClintock, F. H., *Crime in England and Wales* London, Heinemann, 1968, page 100.

## 2.1 NATIONAL LEGAL REGIME GOVERNING JUVENILE DELINQUENCY IN UGANDA

Most of Uganda's laws are in written form except for customary, which is the only unwritten component. Courts in Uganda are enjoined to apply the written law, Common law, doctrine of equity, applied law and customary law.<sup>12</sup>

Rules of equity and common law are applied concurrently, but in case where there is a conflict, or variance between the set of rules with reference to the same matter, the rules of equity are expected to prevail. Customary law is applicable in Uganda in a qualified form. In order for it to apply, it must not be repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with law<sup>13</sup>. The body of laws governing juvenile delinquents in Uganda therefore is a complex one being both written and unwritten. The research in this paper discusses those specific laws that govern the day to day lives of juvenile delinquents.

The League of Nations Declaration of the Rights of the child is an old non-binding declaration which asserts that, 'mankind owes to the child the best it has to give,' and declares that it is the duty of all men and women of the world to give to the child the means and necessities for its development. Similarly, the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child is said to have three principle objectives, namely; to secure for the child the basic needs for subsistence, rounded growth and development, to secure for the child a framework for the child's participation in the making and implementation of decisions which affect the child and to protect the child against all forms of harmful treatment. Those rights intended to secure basic needs for growth and development include the right to education, the right to life, survival and development, the right to the highest attainable standards of health, the right to social security, the right to rest, play, recreation and leisure, and the right to a standard of living conducive to the mental, physical and moral development of the child, and the responsibilities and obligations placed on parents and other relatives to secure the best that is possible for the child. Those rights intended to secure the child's participation; autonomy and independence include the right to express his or her views in

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<sup>12</sup> Section 16 of the Judicature Act Cap13.

<sup>13</sup> Ibid S.16(4).

respect for all decisions concerning that child and the rights to freedom of expression, thought, religion, conscience, association, privacy and access to information.

### **2.1.1 The Constitution<sup>14</sup>**

The Constitution, which ranks highest in the hierarchy of laws in Uganda by virtue article 2, is a novel enactment providing for the rights of juveniles. The Constitution imposes a duty on parliament to enact laws in the best interest of children<sup>15</sup>. In this research, a juvenile is understood to mean a child offender, and a child is a person below the age of eighteen years<sup>16</sup>. The Constitution further provides that a child offender who is kept in a lawful custody or detention shall be kept separately from adults. The purpose of this requirement is to protect the child offender from being exposed to adult hard-core criminals. Mwesigwe Alfred a respondent of Namasuuba zone in Makindye parish, who was interviewed by the researcher only twelve days after his release from Luzira prison, attested to this fact. Alfred had been rounded up in an operation mounted by city council law enforcement personnel who detained him for five months at Upper Bay Prison Luzira along with other juveniles on allegations of being tax defaulters though no charges were preferred against them, they were brought to Court of law. His release was only secured by his relatives who confirmed to the prison authorities that Alfred was sixteen years old.

According to his memories of the situation with adults, he said that largely, prison could easily be a source of all evil in society rather than a correctional or even a rehabilitation institution. His view about imprisonment of a juvenile was nothing less than inculcation of crime and suggested that young offenders should never be confined along with adults to avoid young persons being connected with criminal “reverends” in prison. The testimony of this interviewee supports the situational requirement that even when a juvenile has committed a serious offence, his legal interest should be protected adequately these are the rights to a fair trial accorded to every Ugandan charged with an offence under article 28.<sup>17</sup> His legal rights are further protected under the Constitution in Article 23 that provides for circumstances under which a person can be deprived of his/her liberty and Sections 89 to 91 of the Children Act Cap 59. The salient provision of this article is that a person’s liberty can be tampered with only in execution of a

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<sup>14</sup> The of the Republic of Uganda 1995.

<sup>15</sup> Ibid Article 34(1).

<sup>16</sup> Section 2 Children Act cap 59 Op. cit Article 257.(c) of the Constitution, 1995

<sup>17</sup> Article 28 1995 Constitution Of Uganda

lawful order<sup>18</sup> of Court, or pursuant to such order. In case a child in question has not attained the age of eighteen, the Constitution requires that such a person should only be restrained for the purposes of education or welfare of that person. This constitutional requirement would rule out imprisonment or imposing a harsher sentence to a juvenile offender even if he is found guilty, except if such a sentence is aimed at rehabilitating the child offender or it is basically for his/her welfare<sup>19</sup>. Under section 94 (g) of the Children Act where a child is charged by an offence punishable by death the maximum penalty is three years.

It must be noted, however, that the Constitution does not overrule imprisoning or detaining such a child. This would be loophole as it is covered by the provision of Articles 23 (2)<sup>20</sup>, which provides that a person arrested, restricted or detained shall be in a place authorized by the law. S.94 of the children Act and rule 18 of the family and children court rules, 1998 provide for detail of execution of judgments or court orders in respect of children offenders. This provision will be examined in details in this paper.

The Constitution further protects the legal rights of a juvenile delinquent by entitling such a person to the inviolable right that is the right to personal liberty,<sup>21</sup> if unlawfully detained under unclear or unexplained circumstances. In consonance with the international human rights rules, the Constitution outlaws torture, inhuman or degrading treatment or punishment<sup>22</sup>. This provision provides that once a child offender is arrested; he/she should be treated humanely, whether he/she is serving an order of Court or is pending trial.

However, since the promulgation of the Constitution in 1995, a number of laws have been enacted in respect to children's rights generally. These include the Children Act, and the family and children court rules, 1998 that provide for procedures and necessary remedies to be applied and enforced by the Court in respect to juvenile delinquents. In case of laws, which were enacted before the promulgation of the Constitution, there is a constitutional requirement that they be read in consonance with its provision<sup>23</sup>.

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<sup>18</sup> Article 23(i) (a), (b) & (c) Ibid 20.

<sup>19</sup> Article 23(i) of the Constitution, 1995

<sup>20</sup> Ibid 20.

<sup>21</sup> Article 23 of the 1995 Constitution

<sup>22</sup> Article 44 Ibid 20.

<sup>23</sup> Article 273(1) Ibid .

## 2.2 Background to the Enactment of the children Act<sup>24</sup>

The Children Act was enacted approximately one year after the promulgation of the Constitution. It incorporates most of the normative demands of the Constitution in respect to the rights of a juvenile. The salient issues addressed by the Act and the rules made under it, it is that of trial procedure in the family and children courts which was established under the Act, and before the enactment of the Act and the rule hereunder, the trial procedure in the juvenile courts was regulated by the Act<sup>25</sup>. The relevant procedure was laid down under section 117-156 and thereof which required, inter alia, that when a juvenile appeared before court, the Magistrate would explain to him/her the substance of the offence, in a language understood by the juvenile who would then be asked to plead to the charge. The child offender would thereby be asked to confirm these facts; courts would then convict him/her. This would be followed by a social inquiry report upon which the court would base the sentence. If the child denied the charge formal trial would be conducted and the prosecution would be entitled to summon its witnesses to prove its case against the juvenile. This meant that before a juvenile testified or put to his defence, court have to conduct a *voire dire* in accordance with the provisions of the Act as seen in the case of *KIBAGENYI ARAP KOLIL V R*<sup>26</sup> a child who gives an unsworn testimony would not be convicted solely on that testimony.

Another authority on this matter is *WAMBOI KAMAU V R*<sup>27</sup> where it was observed that in a matter that comes before Court, which requires a young person to give evidence, that age of that person must be ascertained.<sup>28</sup> These judicial interpretations lay emphasis on the duty of Courts and other law enforcement mercenaries in the protection of juvenile delinquencies.

Another case to look at is the case of *Libyan Arab Ugandan for foreign Trade and Development vs. Adam Vissitandis*<sup>29</sup> Chief Justice, Benjamin Odoki pointed out "I think it is a well established law that excessive intervention in the proceedings by trial judge may amount to a misconduct justifying the grant of the re-trial.

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<sup>24</sup> Children Act Cap59.

<sup>25</sup> Magistrate court Act (Cap.16).

<sup>26</sup> (1959) EA 92

<sup>27</sup> (1954) 21 EACA 316 at page. 319

<sup>28</sup> (1968 E.A. 637)

<sup>29</sup> Civil Appeal No. 9 of 1985(unreported) .

### **2.2.1 The children Act, Cap 53**

The purpose of the Act, as stated in its long title is reform and consolidates the law relating to children, to provide for the care, protection and maintenance of children, to establish a Family and Children Court and to make provision for children charged with offences. This paper is centered on examining the adequacy of legal mechanisms for the protection of juveniles. The researcher shall therefore examine mainly those provisions of the Act that relate to the Family and Children Court and those that provide for the mechanisms relating to charges against children.

It is recognized under this Act that some social and customary practices may be harmful to the children's welfare.<sup>30</sup> These would include subjecting children, who are alleged to have committed offence to other forms of traditional punishments such community service that would help the child become a responsible community member. According to interviews conducted during the research that was carried out in Naguru Remand Home, most parents and guardians of delinquent children would prefer to satisfy their concerns by personally punishing their children whenever they committed offences at home, or in the neighborhood, while others expressed the view that they prefer to pay compensation to the aggrieved parties rather than their children being taken to court.

### **2.2.2 Convention on the Rights of the Child<sup>31</sup>**

The very first commitment to children's rights was the Declaration on the Rights of the Child, known as the "Declaration of Geneva", which was adopted by the League of Nations in 1924. The Declaration of Geneva was further revised and extended in 1948 and in 1959 led to the UN Declaration on the Rights of Child, which was adopted unanimously by the General Assembly of the United Nations (20 November 1959). This declaration was expanded and developed, ultimately resulting in the UN Convention on the Rights of the Child, which was unanimously adopted by the United Nations General Assembly on 20 November 1989.

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<sup>30</sup> Section 7 the children Act cap59

<sup>31</sup> Juvenile delinquency (1989) Washington, DC Adolescence 1986, 20/24(501\*509).

The CRC contains 54 articles and is a comprehensive instrument setting out rights that define universal principles and norms for the status of children under juvenile delinquency. It is the only international human rights treaty which covers the whole spectrum of civil, political, economic, social and cultural rights of children.<sup>32</sup> It includes economic and social rights with the recognition that these are progressively realizable and depend on the resources available to the state party.<sup>33</sup> The CRC offers the highest standards of protection and assistance for minors compared to any other international instrument; For example, protection standards go beyond the usual guarantees of health, education and welfare, to guarantees which relate to the child's individual personality, rights to freedom of expression, religion, association, assembly, and the right to privacy.<sup>34</sup> The Convention on the Rights of Child It is the most widely ratified of all human rights treaties. As of March 2003, it had been ratified by all countries in the world except the two: the United States which has signed but not ratified; and Somalia which does not have a recognised government able to ratify.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights' civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.<sup>35</sup> Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services. The principles outlined in the international human rights framework apply both to children and adults. Children are mentioned explicitly in many of the human rights instruments- this sentence is hanging; either complete it or remove it.; standards are specifically modified or adapted where the needs and concerns surrounding a right are distinct for children. The Convention also specifically provides that where a country already has a higher standard than that set forth in the CRC, the former will prevail: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation

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<sup>32</sup> Lansdown, G. "Children's welfare and children's rights," in Hendrick, H. (2005) *Child Welfare And Social Policy: An Essential Reader*. The Policy Press. p. 117

<sup>33</sup> Convention on the Rights of the Child, UNICEF.

<sup>34</sup> Rodham, H. (1973). "Children Under the Law". *Harvard Educational Review* 43: 487-514.

<sup>35</sup> UNICEF 2008

of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources, and, where needed, within the framework of international co-operation". (Article 4 CRC) Governments have taken the following types of measures to implement the convention at national level:

- Developed comprehensive national agenda
- Developed permanent bodies or mechanisms for promote coordination of all sectors of government, monitoring and evaluation
- Taken steps to ensure that all legislation is fully compatible with the CRC by incorporating it into domestic law or ensuring that its principles take precedence in cases of conflict with national legislation.
- Carried out child impact assessments to ensure children are taking into account in planning and policy decisions
- Analysed government spending to determine the portion of public funds spent on children and to ensure that these resources are being used effectively.
- Carried out data collection
- Raised awareness and disseminated information about the CRC
- Involved civil society including children in the process of implementing and raising awareness of child rights.<sup>36</sup>

#### **2.2.4 The family and children court<sup>37</sup>**

This Court is established as a novel aspect aimed at the observance and enforcement of juvenile's legal rights. The court is expected to be established in every District and many other lower governments units designated by the Chief Justice<sup>38</sup>. The Court has to be presided over by a magistrate not below Grade II.<sup>39</sup> This court has powers to determine criminal charges against children<sup>40</sup>. It also has jurisdiction to hear and determine all criminal charges against children

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<sup>36</sup> Supra 34

<sup>37</sup>Section 13(1) the children Act cap59.

<sup>38</sup> the children Act Cap59.Please find an alternative citation for this, it is not in the Act. Go back to your source document.

<sup>39</sup> Section 13(1) the children Act cap59

<sup>40</sup> Section 14(1)(a) Ibid.

except offences that attract a death penalty and any offence for which a child is jointly charged with a person over eighteen years of age<sup>41</sup>.

Where the charges against the child have been admitted or proved against him/her, the court has a discretion to either discharge for not more than twelve months; binding the child over to be of good behavior for a maximum period of twelve months, compensation, restitution or fine taking into consideration the means of the child so far as they are known to the court. The court, however, cannot make an order of detention in default of a fine<sup>42</sup>.

The court can also make a probation order in accordance with the Act<sup>43</sup> (Cap 109) for not more than twelve month. This order is supposed to be made with such conditions as may be recommended and Social Welfare Officer. The probation order however cannot require a child to reside in a remand home.

In case the court decides to impose a punishment of detention on a child, it must abide by the requirement of the Children Act. A child under sixteen years can only be put under detention for a maximum period of three months<sup>44</sup>. A child above the age of sixteen years can only be put under detention for a maximum period of twelve months<sup>45</sup> if the offence with which the child is charged attracts a death penalty, a child can only be detained for a maximum period of three years<sup>46</sup>.

The Act defines detention as placement in a centre designated for that purpose by the Minister in circumstances and with such conditions as may be recommended to the court by the Probation and Welfare Officer<sup>47</sup>.

In case the child has been remanded in custody prior to an order of detention being made in respect of him/her, the period spent on remand is expected to be taken into account when making the order of detention<sup>48</sup>. Detention is only to be recommended as a last resort and when court is

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<sup>41</sup> S.93(a)(b) of the Children Act cap 59

<sup>42</sup> S.94(a)-(g) Ibid 27.

<sup>43</sup> Probation Act (Cap 109).

<sup>44</sup> S.94(1) (g) Ibid 27.

<sup>45</sup> Ibid 27.

<sup>46</sup> Ibid S. 94(1)(g) of the Children Act.

<sup>47</sup> Ibid S.94(2).

<sup>48</sup> Ibid S.94(3).

satisfied that a suitable place is readily available where the child is to be detained<sup>49</sup>. The rationale for this requirement is to avoid a child being detained in an adult prison.<sup>50</sup>

The Act requires, further that a child or a person under whose custody he/she is to be together with the order under which he/she is committed. The order is sufficient authority for the detention centre to receive the child and detain him/her. Corporal punishment is outlawed in respect of a child who has either admitted the charges or against whom they have been,<sup>51</sup> there is an absolute prohibition.

The foundation for the condition of punishment regarding such a child is to ensure that even if he/she has admitted, the charges or they have been proved against him/her; there were still chances of such a child to be rehabilitated or reformed. The Act considers that a child should not be detained for more not than three years in capital offences<sup>52</sup> but this provision appears to put the society at risk, especially the child commits a serious offence like murder. Some feel that such a person should be detained for a longer period commensurate with offence committed<sup>53</sup>.

However, considering the fact that a child below 18 can easily reform and become a good citizen in future and considering the requisite elements of crime, namely, *Men rea and actus reus*, which must be proved through a rigorous trial, there is justification for such a child to be detained for a short period. The trial procedure in ordinary court is normally so rigorous involving cross-examination of witnesses. Prosecution must prove beyond reasonable doubt that the accused person actually committed the offence, and that the requisite elements of a criminal offence were actually present at the time the person committed the offence<sup>54</sup>.

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<sup>49</sup> Ibid S.94(4) Ibid 27.

<sup>50</sup> Bishop, D., & Frazier, C. (2000). Consequences of transfer. In J. Fagan & F. E. Zimring (Eds.), *The changing borders of juvenile justice: Transfer of adolescence to the criminal court* (pp. 227-276). Chicago: University of Chicago Press. noted that the incarceration of juveniles in adult facilities may increase the potential for creating career criminals among these youth. Criminal trajectories may be encouraged by factors that are common to adult correctional facilities, such as association with hardened adult criminals and lack of rehabilitative programming.

<sup>51</sup> S.94(9) Ibid 27.

<sup>52</sup> Ibid 27.-Section 94(1)(g) of the Act

<sup>53</sup> Deuteronomy 21:18-21.

<sup>54</sup> The of WOOLMINGTON VS. R (1935) A.C where the court, inter alia held that prosecution must prove that the accused must have intended to committed the offence at the time in question when it is alleged that he committed the offence. .

### **2.2.5 Procedure and sitting of the family and children court**

The Act requires that where possible the Family and Children Court sit in a different building from one normally used by other courts<sup>55</sup>. The rationale for this is not given in the statute. However, considering the procedure lay down in the Act, it might, indeed, necessitate such arrangements so put in place. It is anticipated that the court should sit as often possible<sup>56</sup> and that the proceeding should be held in camera<sup>57</sup>. If the family and children court is to sit in the same building and perhaps the same chambers or courtroom as the ordinary courts, it is likely that those statutory requirements cannot be met. The ordinary courts sitting arrangements would have to be interrupted from time to time and probably, these may not be an ideal environment for holding the trials in camera.

The requirement that the court be held in a different environment from that ordinary in trying other cases, Uganda does not have especially skilled magistrates to handle juvenile cases solely to the exclusion of other cases. This being the case, it appears that the provision of the statute in that regard may not be expected to be achieved even in the near future. This by itself makes the whole legal regime governing the protection of juvenile a sham.

Further considering that a child may not be able to withstand the rigors of examination and cross-examination during trials, the Act requires that those proceedings in the court to be as informal as possible and be by inquiry rather than by exposing the child to adversarial procedures<sup>58</sup>. In this regard, the Act recognizes the need for the protection of the legal rights of juvenile delinquent and considering their age, they deserve a fair trial by undergoing simpler procedures throughout the trial. Such procedures are intended for confidence building in the child who would tell the court the true version of his /her case or defend himself effectively.<sup>59</sup>

In all trials conducted in Family and Children Courts, the Act requires that parents or guardians of the child be present<sup>60</sup>. At least if one of the two is not present, probation and social welfare

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<sup>55</sup> S.15 Ibid 27.

<sup>56</sup> S.16(a) Ibid 27.

<sup>57</sup> S16 (b) Ibid 27.

<sup>58</sup> S.16 (c) Ibid 26.

<sup>59</sup> Myers, Child Witness Law and Practice, 1990 Cumulative Supplement, 67; Amber B., 191 Cal.App.3d 682, 236 Cal.Rptr. 623 (1987).

<sup>60</sup> S. 16 (d) Ibid26.

officer should be present. The purpose of this, according to Myers (1990) is to give child psychological satisfaction and security against the adverse court atmosphere during the trial, and that those responsible for his/her upbringing are still caring.<sup>61</sup>

The child's legal rights under the statute are guaranteed by requiring that in all proceedings before the court, the child shall have a right to representation<sup>62</sup>. The Act is silent as to whether the legal representation shall be provided by the State. However, considering the fact that most children who commit criminal offences come from very poor backgrounds, it is not expected that such children would afford expensive legal services. However, a number of legal Aid Clinics have been established to assist in such cases but unfortunately most of these clinics are confined to urban areas such as Kampala and Jinja whereas the majority of deserving cases are in rural areas which are unattended to.<sup>63</sup> Secondly, the increasing numbers of juvenile delinquents particularly the street children overwhelms these clinics.

Once the court find a child guilty it may make an order and in that regard, it must explain to the child affected as to his/her right of appeal<sup>64</sup> the procedures through which trials in Family and Children Court go through are spelt out in the Family and Children Court rules, 1998 discussed later in this research. In addition to the person who is authorized to be present during the trial of a child, the court may exercise its discretion and permit any of the following persons to attend the proceedings, namely; parties to the case before the court, their advocates, witnesses and other persons directly concerned in the case; parents or guardians of the child before the court, a probation and social welfare officer, any other person whom the court authorizes to attend court<sup>65</sup>.

The purpose of permitting the presence of only a few persons in court is mainly to ensure that the child does not feel intimidated at all stages during the trial.

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<sup>61</sup> Ibid 57

<sup>62</sup> S. 16 (e) Ibid26.

<sup>63</sup> "In a country where legal services are clustered around the urban areas and are expensive to engage FIDA (U) has made advances in this field by providing legal advice and representation to its clients who come from districts like Kampala, Mpigi, Mukono, Jinja and Masaka. (And the organization operates branches in Arua, Mbarara and Mbale as well as a Mobile Legal Clinic in Kapchorwa)" FIDA Annual Report 1999 p.4; LAP Annual Report 2000 p.13 FIDA notes : at p.15 "in practical terms FIDA (U) cannot reasonably reach all the women, children and men in need of its services without spreading itself too thin on the ground"

<sup>64</sup> S.12 Ibid 26.

<sup>65</sup>S.16(2) Ibid 27.

In all cases, the family and children court must make an order in respect of child is beneficial to him/her<sup>66</sup>.

### 2.2.6 Theories of juvenile delinquency control

The control theories in explaining delinquency address both self-control and social control. These theories have origins in classical criminology. They are to the effect that individuals with low self-control tend to get involved in delinquency especially in situations of low social control.<sup>67</sup>

From the social perspective, the structure of society promotes the exclusion of youth from many types of relationships which exclusion ultimately leads to delinquency (e.g.) employment, marriage etc. exclusion from mainstream legitimate opportunities for economic and social advancement leads to delinquent conduct e.g. of gangs and youth cliques.<sup>68</sup>

There is a direct relationship between theories of delinquency causation and the choice of methods and programs to control it. Understanding this relationship reveals the root cause of police tendencies to base their actions in the classical school and court, the correctional personnel to use the positive school, i.e. individual treatment, changes in society, punishment or a combination of these strategies.<sup>69</sup>

### 2.2.7 The justice system in Uganda

Literature shows that before the 18<sup>th</sup> Century, children did not hold a protected status. It is only in the 18<sup>th</sup> and 19<sup>th</sup> centuries that the idea developed, that children should be treated in a special way. During the 19<sup>th</sup> century in western countries “child saving” institutions were established and eventually the state became heavily involved in reforming delinquents through the juvenile court system<sup>70</sup>

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<sup>66</sup> S.17 Ibid 27.

<sup>67</sup> Albert J. Reiss, Jr., “Delinquency as the Failure of Personal and Social Controls,” **American Sociological Review**, XVI (1951). 196-207. For example, “Our observations show that delinquent recidivists are less often persons with mature ego ideals or nondelinquent social roles” (p. 204).

<sup>68</sup> Supra note 65

<sup>69</sup> Supra note 65

<sup>70</sup> Corrado, Raymond ; Markwart, Alan. – The evolution and implementation of a new era of juvenile justice. a theoretical and analytical assessment. – Toronto, Butterworths, 1992. Pgs 137–227.

The provisions of the Children's Act and the African Charter on the Rights and Welfare of the Child are said to have three principle objectives, namely, to secure for the child the basic needs for subsistence and rounded growth and development, to secure for the child a framework for the child's participation in the making and implementation of decisions which affect the child and to protect the child against all forms of delinquents<sup>71</sup>. Those rights intended to secure basic needs for growth and development include the right to education, the right to life, survival and development, the right to the highest attainable standards of health, the right to social security, the right to rest, play, recreation and leisure, and right to a standard of living conducive to the mental, physical and moral development of the child and the responsibilities and obligations placed on parents and other relatives to secure the best that is possible for the child. Those rights intended to secure the child's participation; autonomy and independence include the right to express his or her views in respect for all decisions concerning that child and the rights to freedom of expression, thought, religion, conscience, association, privacy and access to information. Those intended to secure their physical, mental, moral and spiritual development and protection from harmful practices include: protection against discrimination; the rights to family re-unification and to be brought up by one's parents or family; the right to be protected against physical and mental violation, injury and abuse, negligent treatment and maltreatment; the right to be protected against all forms of exploitation including sexual abuse and sexual exploitation, economic exploitation and hazardous labour; the right to be protected against illicit narcotic drugs; freedom from torture and cruel and inhuman punishment and treatment; the right to be protected against abduction and illicit transfer and the right to be protected when in difficult circumstances.<sup>72</sup>

In recent years, Uganda's children have been let down by the systems that should be protecting them How? Although their rights are recognized by law, many of the organizations that ought to be enforcing these rights are not running. In addition, when childcare issues are raised at the village level, local councils are consistently weak at handling them. As a result, many of Uganda's children suffer abuse/neglect without anything being done about it, although there have

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<sup>71</sup> OAU Doc. CAB/LEG/24.9/49 (1990) part one, entered into force Nov. 29, 1999.

<sup>72</sup> Preamble of Children Act Cap 6

been various cases where people have been tried and convicted for example the famous Child sacrifice case of Kato Kajubi. A Department For International Development (DFID)-supported agency is working in Uganda to alert more people to child abuse, and to ensure that action is taken against it. The African Network for Prevention and Protection against Child Abuse and Neglect provides support to abused children, engages with communities to increase awareness, and lobbies for changes in policy.

Juvenile delinquency is a growing problem in Uganda. In the past, communities shared the responsibility for bringing up and protecting children. However, this traditional structure has gradually given way to the modern family unit, in which parents or guardians take care of the child's welfare and development. With the watchful eye of the community disappearing, many children have become vulnerable to mistreatment.<sup>73</sup>

### **2.2.8 Working with delinquent adolescents in Uganda**

If the person working with delinquent adolescents is too quick in shutting off normal adolescent expression of verbalization and behavior, this can compound the problems for the delinquent's youngster. The extensive separation of youth from adults often contributes to considerable peer influence over other youths.

There are two basic strategies for working with adolescents

- (a) Emphasis on rethinking and redefining the place of adolescent in contemporary society, often taking the form of mainstreaming children's right.
- (b) Emphasis on interacting with individual delinquents is an adolescent first and a delinquent second.

The first strategy emphasizes making a comfortable crime free environment for adolescents and the second strategy emphasizes one-to-one interaction with adolescent. At the extreme, is the criminal and treatment model?

Promotion of children's rights is modeled on the belief that adolescent can make judgment as wisely as adults limiting intervention into the lives of youngsters will avoid doing unintended

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<sup>73</sup> UBOS (2006). Uganda National Household Survey 2005/2006,

harm. Adolescents should have the right to “learn by doing” some have argued that they should have the right to challenge parental authority as well. Dealing with delinquents is to result into combination of encouraging nurturance and self-determination.

The second strategy involves counseling. Adolescents though, in general are very difficult to work with. Delinquents present an even greater challenge.<sup>74</sup>

### **2.2.9 Handling the juvenile delinquents**

The legal basis for the juvenile court can be traced back to the concept of *parent's patriae* (parents of the country/ father of the nation/ the state acting as parents). The professed objectives of the juvenile proceedings at their inception was not to contest a criminal charge but to determine what could be accomplished in the best interest of the child. Several methods for the observance of this principle have been developed.<sup>75</sup>

The Convention on the Rights of the Child<sup>76</sup> is a comprehensive instrument setting out rights that define universal principles and norms for the status of children from being expose to delinquents. In its preamble, it is based on the Beijing Rules that are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.<sup>77</sup>

#### **(a) Caution/Bail**

The police are the first major component in the juvenile justice system to deal with the juvenile delinquents. The police have a great deal of the discretionary powers under section 89 of the Children Act to dispose of cases without going to court.<sup>78</sup> Many factors determine whether a youth is to be proceeded or not and whether he/she may eventually end up in the formal juvenile justice system. The decision is usually based on the circumstance surrounding the offence, the nature of the offence itself, and an assessment of the youngster's family situation. The children Act though requires police officers to apply caution and release rather than arrest and detention

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<sup>74</sup> Bill McCarthy.(1996). The attitudes and actions of others. British journal of criminology.

<sup>75</sup> Rubin, Trends in Javenile Court Philosophy, SOCIAL WORK April, 1962.

<sup>76</sup> Child Rights (1989).

<sup>77</sup> Preamble Convention on the Rights of The Child

<sup>78</sup> Section 89 (2) Children Act Cap 59

as the primary method of dealing with delinquents. The latter should be resorted to only when it is necessary.<sup>79</sup>

When a juvenile is eventually taken to court, Rule 25<sup>80</sup> require that he/she should be released on bail except where grant of bail is likely to pose a serious danger to the child. In both approaches therefore, there is a clear concerted efforts directed towards the avoidance of keeping juveniles in custody as much as possible.

### **(b) Custody**

The law on arrest is the same for juvenile as it is for adults. A police officer must have probable cause to believe that a suspected juvenile<sup>81</sup> has committed an offence before he can arrest him/her. Mere suspicion is not enough but even absolute certainty is not required either.

Once taken in custody, the juvenile enjoys the same rights as do adults i.e. notification of relatives, bond, medical attention<sup>82</sup> etc.

### **(c) Search and arrest**

The law governing search and seizure is the same for both adults and juveniles. One area of controversy though which pertains to adolescents but not to adults is the right for parents/school authorities to search students and their belongings. S. 36<sup>83</sup> empower children's courts to issues search and production orders in respect of juveniles.

### **(d) The juvenile court**

Section 13<sup>84</sup> sets up a court known as the family and children court for every district in Uganda Part 5 of the Act<sup>85</sup> provides for the making of supervision and care orders. These are made on application of probation or social welfare officer. A child is placed under supervision of a probation officer while in custody of his/her parents or relatives or by being placed in an approved home have or with a foster parent S.17<sup>86</sup> require that such orders be made only where court considers that in doing so it would be beneficial to the child (best interest of the child

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<sup>79</sup> Section 82 (6)

<sup>80</sup> The family and children court rule, 1998.

<sup>81</sup> The constitution of Uganda 1995.

<sup>82</sup> Article 23 of the Constitution, 1995.

<sup>83</sup> of the children Act.

<sup>84</sup> of the Children's Act Cap, 59.

<sup>85</sup> the Children's Act Cap, 59.

<sup>86</sup> Ibid.

principle). These orders, under S.21 of the Act, are made where a child is suffering or likely to suffer significant harm attributable to want of care parents or the child being beyond parental control. The case in point is *IN THE MATTER OF MIREMBE SARAH (JUSTICE ONGOM)* held,<sup>88</sup> that the guiding principle case of guardianship is the welfare of the child. The full impact of this principle cases is that the court will be inclined to grant guardianship of an infant to the applicant if to do so will be beneficial to the child. This will be irrespective of the nationality of the applicant. In this case, the child was produced in court and not only looked healthy but also seemed to have taken to the applicant as a child mother. In addition, in the circumstances the welfare of the infant would be greatly promoted by the agent of guardianship to the applicant

### **2.3.0 Prevention and reversal of delinquency**

Prevention efforts rest on the assumption that causes of delinquency, whether biological, sociological or psychological, can be identified and removed. There are generally two major categories of programs; pure prevention and rehabilitation.

#### **(a) Pure prevention**

These programs are usually two pronged; directly offering services to individual youths as well as strengthening the capacity of local efforts in communities with high delinquency rates. They combine youth's development strategies with strengthening the social structure of control. These programs though are usually un-coordinated and severely underfunded.

#### **(b) Institutionalization**

This takes place where juveniles are placed in remand homes or approved schools. This is a form of rehabilitative prevention. S.3 (2)<sup>89</sup> of the Probation Act empowers courts to order for an offender to reside in an institution approved by the Minister (usually approved homes). The period of residence in such an institution is not to exceed 12 months. Under S.29 of order, the maximum period is 3 years or until the child is 18 years, whichever is shorter. Reformatory schools are designed to keep custody of delinquents below 16 years for purposes of rehabilitation rather than punishment while approved homes are for keeping custody of convicted juveniles, for

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<sup>87</sup> Ibid .

<sup>88</sup> *[AN INFANT] MISC. APPLICATION NO. 58 OF 1992 [1992-1993] HCB 187*

<sup>89</sup> S. 19 (3) Ibid 27.

purposes of education in training and deterring them. In the latter case, parents are required to contribute to their up keep.

### **(c) Probation**

This can be implemented in respect of first time, low risk offenders or as an alternative to institutional confinement. It is a tool of rehabilitation prevention. Under Section 2 (1)<sup>90</sup> However, for offender under 14 years of age, the order is not to be made unless the offenders express is/her willingness to comply with the requirement of the order e.g. residence etc. it is meant to ensure that the offenders remain under supervision so as to ensure good conduct and prevent a repetition of the same offence or commission and other offences.

S.7<sup>91</sup> is to the effect that a person sentenced to probation is deemed not to be a criminal offender but if such a person not being under the age of 17 years breaches the terms of probation as a result of which he/she is sentenced on the original offence, on such sentencing he loses protection of this section.

### **(d) Community service/restitution**

Mushanga Mwene<sup>92</sup> alludes to the Act<sup>93</sup> and how it permits the sentencing of offenders convicted of minor offences to community service instead of imprisonment. Technically, this Act permits the sentencing of children to community service. This though poses problems with question of child labour. As it is provided under The Constitution<sup>94</sup> which provide that children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

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<sup>90</sup> Probation Act Cap 13.

<sup>91</sup> Ibid 40.

<sup>92</sup> Crime and Deviance page 196.

<sup>93</sup> The community service Act Cap 115.

<sup>94</sup> Article 34(4) of The constitution of the Republic of Uganda, 1995.

### **2.3.1 The family and children court rules, 1998**

These rules were made pursuant to section 17, 19, 83 and 84<sup>95</sup> of the Children Act, they provide for the necessary details as to procedure laid down in the statute in respect of trial involving children. For instance, the rules provide that the general procedures relating to trials of criminal cases in the magistrates' court apply to the trial of criminal case in the family and children court.

The rules however, modify the procedure applicable in magistrate's court to suit the requirements of a special trial organized for a child. Evidence in the court is not to be given from a witness box. Further, the rules authorize the magistrate to apply any necessary precaution as he/she deems fit during the trial to safeguard the legal interest of the child under trial. This procedure is also to be followed even on appeal.

### **2.3.2 Jurisdiction and procedure in criminal cases**

Rule 24<sup>96</sup> provides that every case before the court should be handled expeditiously without unnecessary delay and should be conducted from day to day.

Rule 25 provides for bail and the procedure to be followed by the magistrate presiding over the court in granting bail to child. The rules also provide for the application of the provision of S.142<sup>97</sup> in respect of the summary trial. They further lay down the procedure to be followed in case the presiding magistrate decides to go through a full trial procedure. The court is also expected to promote reconciliation between the complainant and the child. This is done to minimize instances of detaining the in the National Rehabilitation Centre establish under S.97 of the statutes. The probation and social welfare is expected to make a report on the suitability of the places of detention

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<sup>95</sup> Ibid27.

<sup>96</sup> Family and children court rules .

<sup>97</sup> Magistrate Courts Act, CAP16.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.1 Research design**

The study used a quantitative and qualitative research design for making valid conclusions. Quantitative design which was classified in two broad categories, that is; experimental and general survey design examine juvenile delinquency analysis in relation to the law as an independent variable where as qualitative design involved the use of questions to obtain views from the respondents.

#### **3.2 Area and population of the study**

The study was conducted in Kampala District. The specific attention was made on probation officers. An assessment of juvenile delinquency in relation to the law in Uganda

#### **3.3 Sample framework**

The study population ranged from the probation officers at Kampiringisa rehabilitation centre and Naguru Remand Home. Most of the respondents comprised of inmates under custody.

#### **3.4 Sample size**

The respondents were randomly selected and categorized. They comprised of both sexes but of different marital statuses and age groups and the study used 50 respondents that is; this was done in order to get a variety of views and unbiased response that made the study a reality. In addition, this sample size was selected since, Sutton and David, (2004), state that a sample size should not be less than 30. Beyond basic description, it would be difficult for the researcher to undertake more complex statistical analysis, as most of these analyses require a minimum sample of 30.

#### **3.5 Sample Technique**

##### **3.5.1 Sample procedure**

The study both used random sampling and purposive sampling procedures. Purposive sampling was used to select different activities in the area of investigation in order to get the required data and information. Random sampling was used because respondents had equal chances of being selected.

### **3.6 Methods for collection**

#### **3.6.1 Instruments**

##### **(i) Interviews**

This involved face to face interaction between the researcher and the participant through discussion. The interviews were in two ways, namely:

*Structured interviews*, in which the responses by the participants were brief and specific.

*Unstructured interviews*, where the responses were long, elaborated and not specific, the interviews were conducted in group, individual.

##### **(ii) Questionnaires**

This was the discussion in written form whereby the responses of the participants were put on paper provided by the researcher, the questionnaires were also in two forms, namely:

*Open-ended questionnaires* in which the responses by the participants were free according to their understanding.

*The researcher provided the close-ended questionnaires in which responses* and the participants one of them accordingly, for example strongly agree, agree or strongly disagree.

The researcher left out questionnaires to mainly the literate group. These had guiding questionnaires that the researcher gave to individual respondents to fill. The researcher gave some two days to respondents to study and fill the questionnaires. He requested the respondents to ask for clarification where they did not understand.

### **3.7 Sources of Data**

Data was collected from secondary source:

##### **(ii) Secondary**

This data was got by extracting information regarding the right to bond by juvenile offenders in cells, by reading newspapers, journals, textbooks plus the already existing work on internet and magazines.

### **3.8 Reliability and validity**

In order to ensure and maintain a high level of reliability and validity in this study, the researcher did the following:

Questionnaires were pre-tested. Ambiguous questions were made clear and irrelevant questions deleted.

The researcher used accurate questions which were open ended in nature by use of questionnaires from the prisoners in custody, and police officers. The questions set had enough space to give appropriate responses. Close-ended questions were used.

### **3.9 Procedure for data collection**

After the approval of the proposal by the responsible authority at the police station, the researcher got an introductory letter from the Faculty of Laws at KIU to progress to the field for data collection. The researcher presented the letter to the station officer concerned at the police station who assisted him to make sampling frames with the help of other relevant respondents. The researcher made appointments with respondents on when to meet them. The interviews were conducted in offices and in compounds of the station. The structured interviews were of about 30 minutes. The in-depth interviews were for about an hour.

The researcher took the questionnaires to respondents preceded by a briefing about the purpose of the questionnaires and asked them to fill them on their convenience to allow them more time and flexibility. Later the researcher made a follow-up and collected the filled questionnaires. The researcher also carried out careful observation of respondents from the area of study.

### **3.10 Data processing**

#### **3.10.1 Editing and spot checking**

The researcher edited and spot checked during and after each interview with the respondents. This ensured that information given is logical, accurate and consistent.

Obvious errors and omissions were corrected to ensure accuracy, uniformity and completeness so as to facilitate coding.

### **3.10.2 Coding**

This ensured that all answers obtained from various respondents are given codes as they were entered in computer package called Ms-Excel into meaningful forms for better analysis.

### **3.10.3 Data analysis**

The data filled in the questionnaires were copied and analyzed by tallying it and tabling it in frequency tables identifying how often certain responses occurred and later evaluation was done.

The information was later recorded in terms of percentages:

The recorded data was later edited and interpreted which ensured uniformity, legibility and consistence. In addition, interview results were coded on frequency tables and be calculated in terms of percentages and presented in this study.

### **3.10.4 Ethical considerations**

It was important during the process of research for the researcher to understand that participation is voluntary; participants are free to refuse to answer any question and may with draw any time.

Another important consideration, involves getting the informed consent of those going to be met during the research process, which involved interviews and observations bearing in mind that the area bears conflict.

Accuracy and honesty during the research process is very important for academic research to proceed. The researcher should treat the project with utmost care, in that there should be no temptation to cheat and generate research results, since it jeopardizes the conception of research.

Personal confidentiality and privacy are very important since the thesis was public. If individuals have been used to provide information, it is important for their privacy to be respected. If private information has been accessed then confidentiality has to be maintained (Stephen, P. 2002).

## CHAPTER FOUR

### PRESENTATION OF FINDINGS

#### 4.0 Introduction

In achieving these findings, the researcher visited the areas where the study was limited to, that is: - Kampiringisa Rehabilitation Centre and Naguru Remand Home. The researcher handed out questionnaires to mainly the literate group who included relevant stakeholder that is parents, youths and policy makers. These had guiding questions which the researcher gave to individual respondents to fill. The researcher gave two days to respondents to study and fill the questionnaires, interaction with the local and non-participatory fill in the missing word accompanied by documentary review at offices of the remand homes where the study was limited. During the field survey various issues were found out and these ranged from; the causes of juvenile Delinquency in the post mentioned visited areas, ways how juvenile offenders are handled, the measures that can be put in place to curb juvenile delinquents in Uganda.

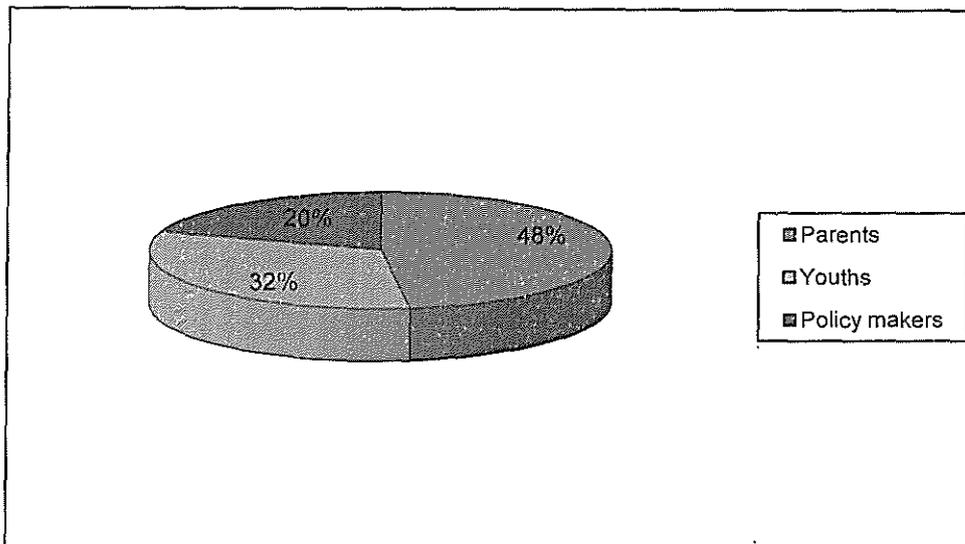
The data-filled questionnaires were copied and analyzed by tallying and tabling in frequency polygons while identifying how often certain responses occurred and later evaluation was done. The information was then recorded in terms of percentages. The recorded data was later edited and interpreted which ensured uniformity, legibility and consistency. In addition, interview results were coded on frequency tables, which were calculated in terms of percentages and presented in this study as illustrated below.

#### 4.1 Data Gathering Procedures

The data-filled questionnaires were copied and analyzed by tallying and tabling in frequency polygons while identifying how often certain responses occurred and later evaluation was done. The information was then recorded in terms of percentages. The recorded data was later edited and interpreted which ensured uniformity, legibility and consistency. In addition, interview results were coded on frequency tables that were calculated in terms of percentages and presented in this study as illustrated below.

#### 4.2 SECTION a: Background Characteristics of the respondents

Figure 1; Category of Respondents who participated



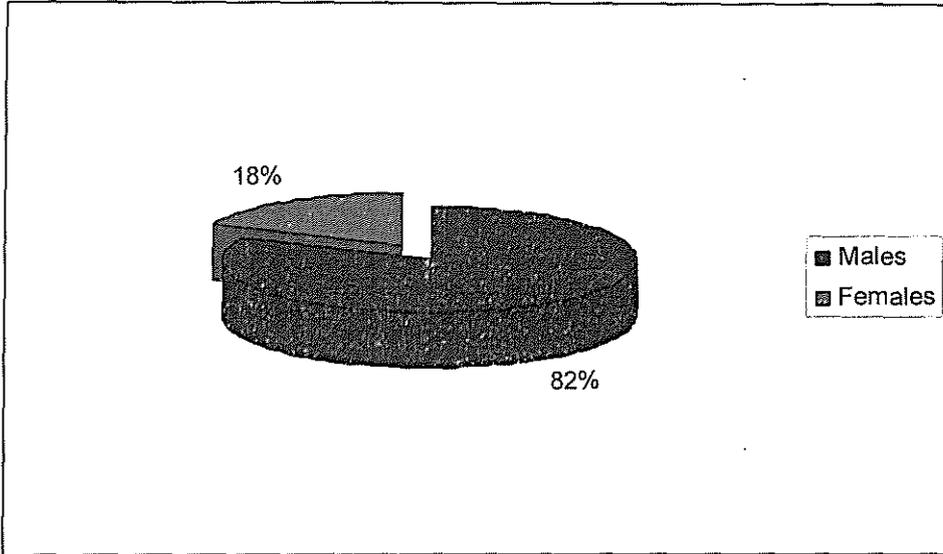
#### Source: Primary Data

During the field survey, it was found out that the biggest percentage of respondents were parents as represented by 48% followed by youths who were represented by 32% whereas 20% of the interviewees were policy makers implying that, parents greatly participated in the study as illustrated in figure 1 above.

#### Gender of respondents

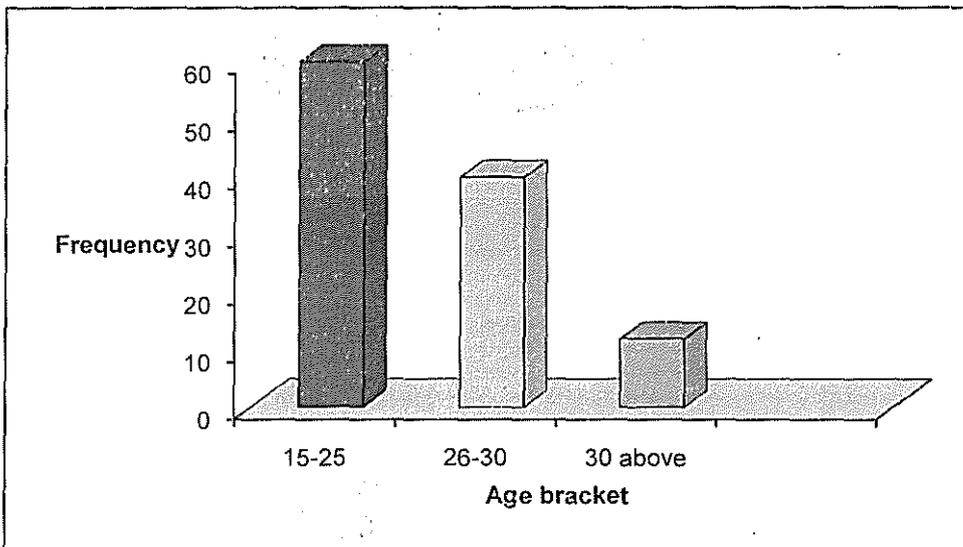
During the field, it was found out that, males took a greater percentage in the survey as represented by 82% whereas 18% represented females, implying that, males largely participated in the study because they are prone to bad habits that expose them to remand homes as portrayed in the figure 2 below.

**Figure 2: Gender of respondents**



Source: Primary data

**Figure 3: Classification of respondents by age**



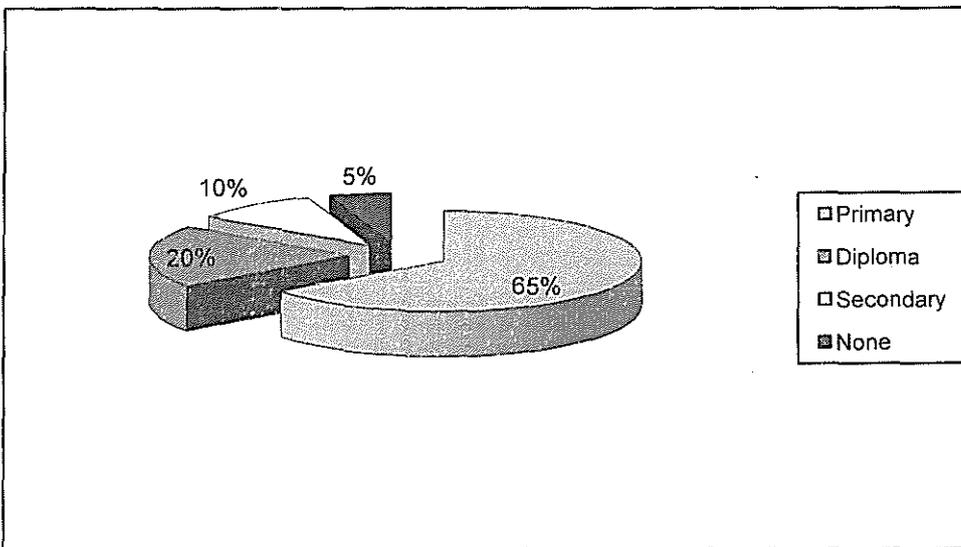
Source: Primary data

Figure 3 shows that the biggest percentage of the interviewees were in the age bracket of 15-25 years as showed by 60% while 40% represents interviewees who were in the age bracket of 26-30 years, 15% of the respondents were in the age bracket of 30 years and above.

### Respondents' level of education

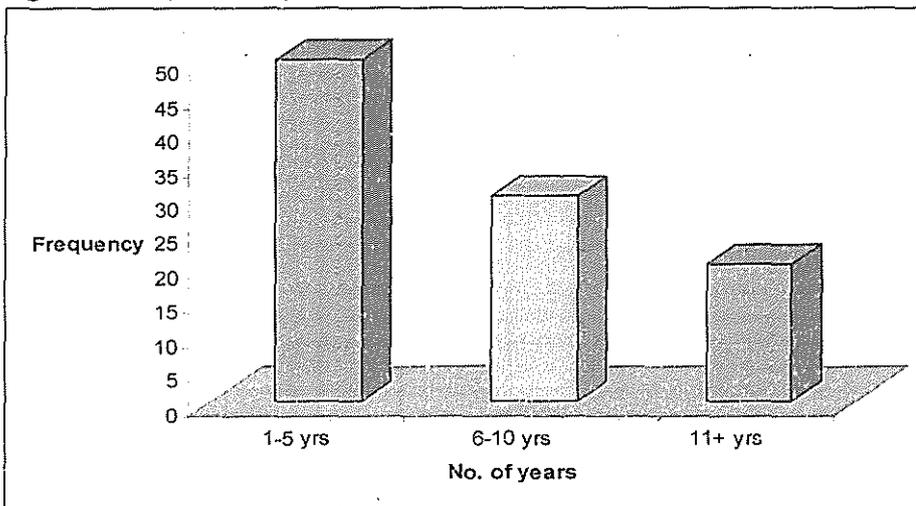
The biggest percentage of respondents were primary school drop-outs as it was revealed by 65% of the respondents, then 20% represented respondents who had completed diplomas (administrators) in different fields whereas 10% of the interviewees were secondary school drop-outs, and the least percentage had not attained any level of education as showed by 5% in the figure 4 below.

Figure 4; Respondents' level of education



Source: Primary data

Figure 5: Number of years of service of respondents



**Source: Primary Data**

From the figure above, it was found out that the biggest percentage of the respondents had been in the home for a period between 1-5 years as represented by 50% whereas 25% shows respondents who had stayed in the remand home for the period between 6-10 years, 15% represents interviewees who had stayed in the home for the period of 11 years and above.

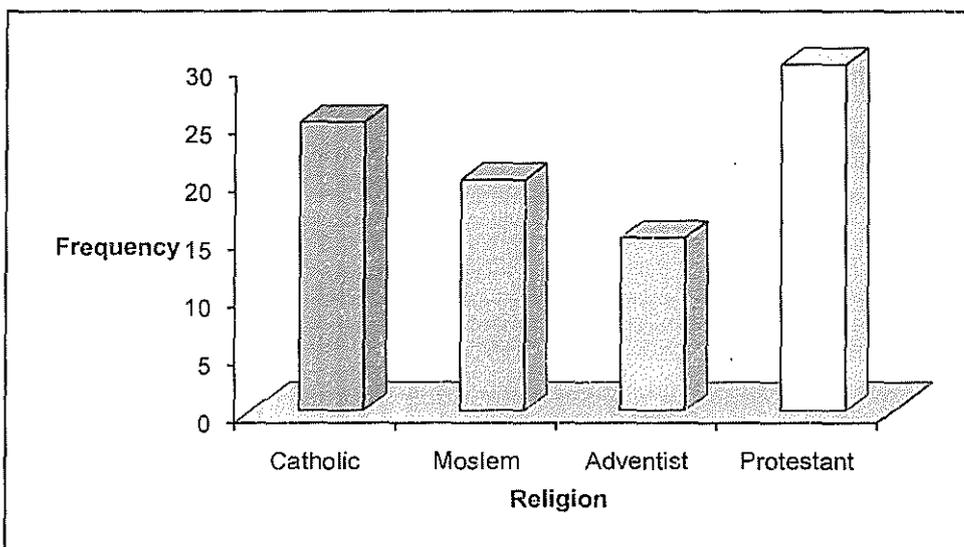
**Table 1; Respondents' marital status**

Marital status	No of respondents	Percentage
Married	20	40
Single	18	36
Separated	10	20
Living with partner	02	04
Total	50	100

**Source: Primary data**

An assessment of the respondents' marital status was as follows; the biggest percentage of the respondents were found to be married as shown by 40% where as 36% of the interviewees were single, 04% of them were living with partners but were not officially married lastly 20% of the respondents were separated from their spouses as illustrated in table 1 above.

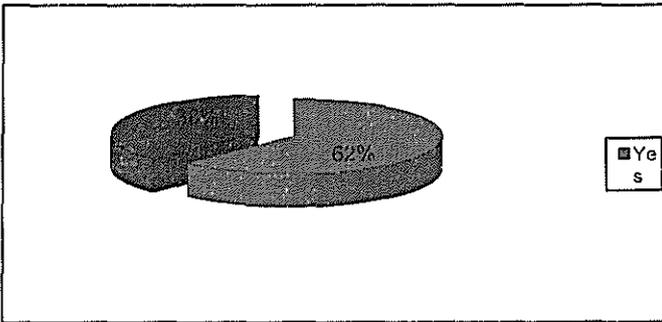
**Figure 5: Respondents' religion**



### Respondents' religion

During the field study, it was found out that majority of the respondents were Protestants making 30% of the respondents, 20% of the respondents were Moslems and 15% were Adventists and lastly the Roman Catholics that were revealed by 25% of the respondents in figure 5 above.

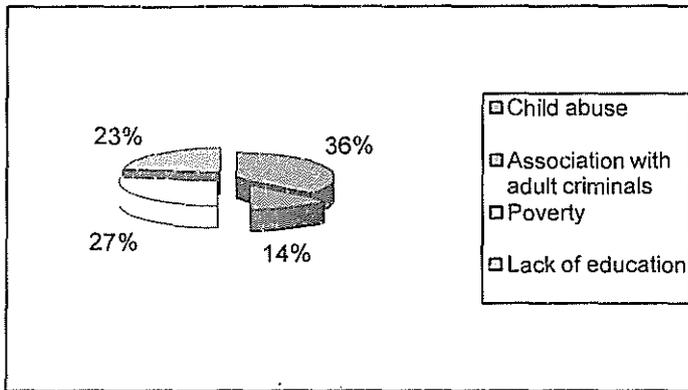
**Figure 6; Awareness of Juvenile Delinquency**



**Source: Primary data**

From the above figure, it was found out that the biggest percentage of 62% of the respondents were aware of the reason why they were at the remand home while 38% were unaware of the reason for their institutionalization.

### 4.3 section b: causes of juvenile delinquency incidences



**Source: Primary data**

### 4.3.1 Causes of juvenile delinquency in Uganda

#### Child abuse

From the questionnaires which could be answered, child abuse was the front-runner in causing juveniles delinquency in the visited areas. Several juveniles loiter in the areas of Kampiringisa Rehabilitation Centre and Naguru Remand Home committing petty crimes that comprise of delinquency. One child aged 15 years who used to spend his nights on the streets of Kampala and gave information after payment of some money. He said that he comes from Makindye division and he was tired of being punished every night by his alcoholic father, thus ran away from home and found himself at Naguru Remand Home. On being asked his means of survival he replied, "*Nze Nkuntula Deelu*" which literally means he engages in illegal transaction like picks pocketing and transacting in illegal substances like marijuana.

#### Poverty

From the research carried out it was found out that, poverty has greatly contributed to delinquency especially for the girl-child. Poverty has been used as an excuse to engage in prostitution as a means of survival. After parting with four thousand shillings, a group of respondents remanded for prostitution volunteered information. The group consisted of girls below and above 18 years; but all pointed to poverty as the cause of their plight. One of them who seemed to be a juvenile dropped out of school in senior two because the mother could not afford school fees. When the father of her child abandoned her, she had no alternative means of survival apart from prostitution that is delinquent behavior. In addition, since fact finding is both based on primary and secondary data; resort was had to Tibananya Mwene Mushanga<sup>98</sup>, Crime and Deviance in which he writes that poverty causes crime; that a bulk of the petty Thefts, burglaries and larcenies are committed by the poor. Clinard (1968) states that in a society with vast increases in national wealth, the result of increased industrialization, technology and the possibilities of social planning, poverty may be regarded as a form of deviation.<sup>99</sup>

Family factors which have an influence on offending include; the level of parental supervision, the way parents discipline a child, parental conflict or separation, criminal parents or sibling, parent abuse or neglect, and the quality of the parent-child relationship. Children brought up by lone parents are more likely to start offending than those who live with two natural parents,

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<sup>98</sup> Musa Mushanga Crime and Deviance –an introduction to Criminology

<sup>99</sup> Clinard, Marshall B., Sociology of Deviant Behaviour (Third Edition), (1968) pg 43

whoever once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others.<sup>100</sup> Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent, asserts that if a child has low parental supervision they are much more likely to offend. Many children have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending.<sup>101</sup>

### **Association with adult criminals**

Association as a cause of juvenile delinquency involves interaction between the juvenile and hard-core criminals. Professor Edwin Sutherland theorized this in his theory of differential association where he says that criminal tendencies are learnt through interaction with criminals. He says, "The principle of differential association asserts that a person becomes delinquent because of an "excess" of definitions favorable to violation of law over definitions unfavorable to violation of law. In other word, criminal behavior emerges when one is exposed to more social message favoring conduct than prosocial messages"<sup>102</sup>

The policy makers raised the problem of many cinema halls dubbed "Bibanda" and garages as a cause of juvenile delinquency in their areas. One respondent said that, young boys both school going and non-school going visit these cinema halls and interact with hard-core criminals who smoke marijuana, chew mairungi and sniff petrol. These adult criminals introduce this delinquent behavior to these young innocent children. He proposed that cinema halls that admit children below 18 years should be closed down.

### **Lack of education**

This was another cause of juvenile delinquency that was pointed out. Lack of education is two-way that is as a voluntary act of the children and involuntary act brought upon by poverty. It was found out that in 10 juveniles, 4 do not go to school, and true to the saying, "An idle mind is the

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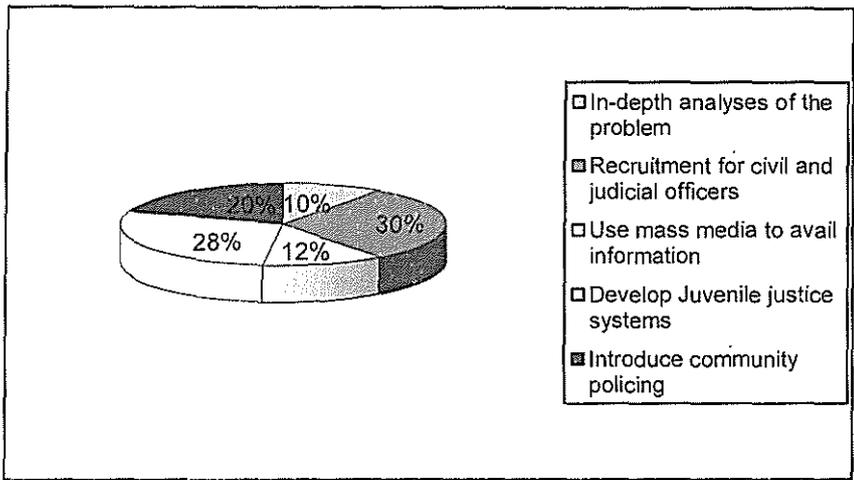
<sup>100</sup> Farrington, D.P. (2002). 'Developmental criminology and risk-focused prevention' in M. Maguire et al. (eds) The Oxford Handbook of Criminology (3rd edn.). Oxford: Oxford University Press.

<sup>101</sup> Supra note 98

<sup>102</sup> (1947). Principles of criminology. 4th ed. Philadelphia: J.B. Lippincott.

workshop of the devil” these non- school going children loiter around the mentioned visited slums looking for what to eat.

**3.4 section c: Possible measures that can be put in place to curb Juvenile Delinquency in Uganda**



*Source; Primary data*

Delinquency prevention is the broad term for all efforts aimed at preventing youth from becoming involved in criminal or other anti-social, activity. Increasingly, governments are recognizing the importance of allocating resources for the prevention of delinquency<sup>103</sup>. Because it is often difficult for nations to provide the fiscal resources necessary for good prevention, organization, communities and governments are working more in collaboration with each other to prevent juvenile delinquency. Prevention services includes activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering.

In addition, the delay in operationalizing institutions aimed at handling juvenile cases and recruitment of personnel has largely hindered full realization of access to justice and rehabilitation for children in conflict with the law. The establishment of the family and children court in 1998, therefore, appears to be a feature that Uganda was not adequately prepared to have and has now been rendered redundant.

<sup>103</sup> UBOS (2006). Uganda National Household Survey 2005/2006,

Family- every society should place a high priority on the needs and well-being of the family and of all its members. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

Education-education system should favour the needy children, in addition to their academic and vocational training activities, devote particular attention; teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child's own and for human rights and fundamental freedoms; promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential; undertaking activities that foster a sense of identity with and of belonging to the school and the community.

Community-community based services and programmes which respond to the special needs, problems interest and concerns of young person and which offer appropriate counseling and guidance to young persons and their families should be developed, or strengthened where they exist. For example in 1983, Missouri closed its only large training school and moved to a well-developed system of regional, small-scale correctional centers and community-based residential and nonresidential programs. The state also moved from an incarceration model to a rehabilitation model. In 1994, Missouri appropriated funds to construct 200 secure beds, with the condition that no facility could exceed a 50-bed capacity. By 2001, no juvenile correctional facility in Missouri contained more than 85 beds, and all except 3 contained 33 beds or fewer.<sup>a</sup> Missouri also created an objective decision making strategy to provide juvenile justice professionals with standardized procedures for screening, assessing, and assigning dispositions to juvenile offenders<sup>104</sup>

Because of these reforms, three-fourths of youthful offenders committed to Missouri's Division of Youth Services (DYS) are assigned to nonresidential community programs, group homes, and less secure residential facilities. Youth who are committed to the state's medium-and high-

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<sup>104</sup> (Hsia and Beyer, 2000).

security facilities enter a bright, no institutional environment that provides extensive, 24-hour-per-day therapy, quality education programs, strong family outreach and counseling, well-qualified and highly trained staff, and extensive aftercare support (Mendel, 2001).<sup>105</sup>

In such situations where juvenile delinquents are in the influential stages of their physical, emotional and mental development, the community should ensure that such development are not hampered by such provisions in the Children Act and it should, therefore, be revisited to incorporate this mode of treatment of juvenile delinquents if their interest are to be adequately protected. Human rights laws must be seen within the entire political, social cultural and economic setting of the country. If the goal of observing juvenile delinquents legal rights is to be observed, then the country's juvenile justice must be tailored to be country's state of economic development. Since there are no universal of legislation appropriate to all countries, each country must formulate her own rights laws, in particular, children laws that reflect its own realities.

Mass media- The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources. The mass media should be encouraged to portray the positive contribution of young persons to society. The media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence.

In some countries the concept of Juvenile Justice, as a social service, is perceived as having fallen short of the goals and objectives originally set. Factors such as rapidly increasing numbers of young persons, insufficient resources and aggravated social and economic dislocations have had a devastating effect on the ability and capacity of the juvenile Justice systems to deal effectively with the broad range of individual and social problems, which characterize Juvenile delinquency.

The modern trends of community policing the world over require that the community should benefit from the efforts of the perpetrators of the law in the society.<sup>106</sup> The traditional

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<sup>105</sup> (Krisberg and Howell, 1998, p. 362).

punishment by incarceration is therefore increasingly discouraged particularly in some cases where the offender is convicted of a crime of a less serious nature. Protagonists of this school of thought argue that it is both decent and rehabilitative to commit a person convicted of a criminal offence to community service in the local area where the offence was allegedly committed<sup>107</sup>. It is further suggested that members of the family of the convicted person should not be denied of this/her ordinary domestic rights and obligation, especially where such a person is the sole breadwinner of the family.

A visit at Naguru Remand Home, disclosed that, the facility is too small to accommodate the escalating number of juvenile offenders. It was found out that the cell which was built to accommodate at most 50 offenders, accommodates over 100 offenders due to lack of enough infrastructures. A warden at the Remand Home said that, on average they receive 30 juvenile offenders per day and they have no facilities to accommodate them hence the congestion in the small cells available.

The warden further noted that the congestion has led the rise of the problem of homosexuality among the juvenile offenders. This is because; of late, many of the offenders are sex-related criminals such as defilement and rape.

It is contended that for a law to adequately address the problem of juvenile delinquents in Uganda, it should be made after exhaustive consultations have been made and funds in place for the necessary infrastructures required to facilitate its enforceability. This virtual significantly absent in the process of law making in Uganda such as the Children Act which seemingly envisaged a situation whereby government and donor agencies would rapidly come in to save the situation in this field, but all in vain.

The Children Act attempts to make provisions which are in line with the international normative demands for the enforcement and observance of juvenile legal rights, yet it has failed to keep pace with the social, provision redundant it is not changing with society but the society is

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<sup>106</sup> (1934). Principles of criminology. 2nd ed. Philadelphia: J.B. Lippincott.

<sup>107</sup> Supra note 102 pg 483

changing. Since the statute was enacted, a number of social-economic changes have been taken place. There is need for the government to take the necessary measures for its implementation to meet the intention for which it was enacted for example provide free legal services to the delinquents.

## CHAPTER FIVE

### SUMMARY OF KEY FINDINGS, RECOMMENDATIONS AND CONCLUSION

#### 5.0 Introduction

This chapter mainly deals with summary, conclusion and recommendation related to the juvenile delinquency under the laws of Uganda drawn from the findings and analysis made after conducting the study. Juvenile delinquency aspect was characterized by the causes, effects, copying mechanisms in relation to the laws protecting them<sup>108</sup>.

#### 5.1 Summary of Key Findings

Over the past several decades, it has become apparent that juvenile delinquency is a problem on the rise around the world. The problem is a lingering threat for the years to come for the generation of the young adults of today, basing on the field results. There are probably a million beliefs on what actually causes this delinquency among children and teenagers<sup>109</sup> but in the end they all seem to be linked back to poor parenting and lack of care by their loved ones. The end to this problem is no where in sight, but as a simple suggestion to parents, love those whom you have brought into this world and do not allow them to fall victims to the society that surrounds them.

In case a juvenile has been found guilty of a criminal offence, detention or custodial sentence should be used only as a last resort.<sup>110</sup> Where other options like community labor can be enforced, then custodial sentence should be avoided. Where a child has been arrested or custodial sentence has been imposed on the child, he or she should not be detained with adults as guaranteed by the Children Act. Female children should be detained separately from male detainees.

The government should take immediate intervention steps to avert possible future unhappy incidents such as have occurred in the developed countries where school children killed their schoolmates and teachers by shooting on the school premises for example The Ohio School

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<sup>108</sup> Otto. Dissertation on Child delinquency, Makerere University, 1997.

<sup>109</sup> Ibid. Beatrice Obbo in her article contained in the Magazine "Uganda's Stress Children".

<sup>110</sup> A paper presented at a public Islamic University in Uganda, Mbale Campus on May 30, (1998) in commemoration of 30 years of the Ugandan Crisis of 1998.

shootings<sup>111</sup>. Street children did not commit indeed these atrocities but teenage coming from home, preventive measures should be put in place so that such incidents should not happen in Uganda

A widespread nationwide guiding principle on the prevention of juvenile delinquency is urgently needed, possibly by bringing together various government bodies, including NGOs and other multi-sectoral institutions such as religious organizations that would play a positive role for moral and spiritual rehabilitation. Such guidelines and programmes would develop strategies towards more positive public attitudes on civil, economic, social and cultural values Mechanism need to be developed for more co-ordination that is effective for NGOs, government departments, local governments to fully participate in matters relating to prevention of child delinquency.

In order to ensure effectiveness of juvenile justice officers should be given special training in juvenile case management so that during their trials children rights main inviolable as required by the law. Indeed, training of judicial officers requires a lot of financial backing therefore, the government should be prepared to meet these challenges, if the goals step-forth in the children Act are to be realized. Since the subject of child delinquency calls for a national concern, further research should be carried out particularly on the causes of this phenomenon with a view to finding better preventive measures rather than place all hopes in court that should be used when all other means have exhausted. Issues regarding children delinquents should be addressed and resolved at community level whenever possible. The local community should be given adequate sensitization on children issues, guidance on how to handle juvenile's cases and technical advice whenever required; community sensitization, therefore, should be adopted as major tool in this regard.

Arresting officers should be given special training on interrogation techniques in a humane manner and where possible in the presence of a close relative, guardian or the probation and social welfare officer as provided by the Children Act. In all cases, interrogations should be conducted by a person of high moral integrity acting as a person? Intimidation or threats

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<sup>111</sup> <https://www.google.co.ug/search?client=opera&q=Ohio+School+Shooting&sourceid=opera&ie=utf-8&oe=utf-8&channel=suggest>

conducted as expeditiously as possible to avoid undue delay. The law has to be put in practice not on paper.

Upon release, a child should immediately be reintegrated into society for moral and social rehabilitation with the assistance of the probation and social welfare officer and other civic leaders such as church leaders among others. Where a child has no know home to the authorities, such should be sent to a child's home designated for that purpose on the advice and recommendation of Probation and Social Welfare Officers. It is therefore recommended that government should recruit and equip a sufficient number of Probation and Social Welfare Officers throughout the country at local and national level.

## **5.2 Conclusion**

From the study carried out, it was identified that, a lot or research has been carried out on the subject of juvenile delinquency in Uganda. Most of this research has been carried out by social scientists who seek to establish the causes of criminal behavior in children. However, legal research in this field is still inadequate. Due to this fact, juveniles' rights remain to be violated in this country. Attempts by the Ugandan government to realize juvenile, too are hampered by the commitment, resources are diverted to infrastructure development being a developing country, and Uganda cannot afford to implement the standards set at the international level. Willingness to observe and the enforcement of these standards without a sound economic backing national policy are too idealistic to insure that the desired goal is achieved.

It is noted that there are disparities in pace of making the law and putting in place other mechanism to facilitate the enforcement of this law. This include the government to adequately focus its attention not only at making the law but also at its implementation and enforcement

The law relating to the protection of juvenile delinquents has failed to keep pace with modern trends in the social, cultural, economic and political development in Uganda, hence it has remained inadequate. The way forward is to implement the children Act and observe the relevant articles in the constitution of Uganda for these laws all take Child welfare as paramount.

## BIBLIOGRAPHY

- African Network for the prevention Against Child Abuse and Neglect (ANPPCAN). *Handbooks on Child Rights and Child Protection for Police Officer in Kenya Nairobi*: ANPPCAN
- Anderson, D., and Killingray, D., (eds.) (1991). *Policing the Empire: Government, Authority and Control, (1830-1940)*. Manchester: Manchester University Press
- Aos, S., Miller, M, and Drake, E. (2006) *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, Olympia: Washington State Institute for Public Policy Can Acad Child Adolesc Psychiatry; 19(1): 32-9, (2006)
- Barnoski, R. (1997) *Washington State Juvenile Court Recidivism Estimates: Fiscal Year (1994) Youth*. Olympia: Washington State Institute for Public Policy, P. 93 (June 17, 1996)
- Beck, A. (2001) *Recidivism: A Fruit Salad Concept in the Criminal Justice World*. Justice Bohannan, Paul (ed.), *African Homicide and Suicide, Princeton University Press. U.S.A.*
- Concepts, Inc., Longman Publishers Company, Vol 2; (Pg 262-268)
- Clinard Marshall B., *Crime in Developing Societies*, New York, Holt, Rinehart and Winston.
- Clinard, Marshall B., *Sociology of Deviant Behaviour (Third Edition)*, (1968)
- Clinard Marshall B., *the Black Market*, New York, Holt, Rinehart and Winston
- Cloward, R.A., and Ohlin, Lloyd, E., *Delinquency and Opportunity-A theory of Delinquent Gangs*, New York, Free Press
- Cohen, A. K., *Delinquent Boys-The Culture of the Gangs*, New York Free Press.
- Cohen, Frank J. (ed.) *Youth and Crime*, International University Press.
- Cressey, D.R. and Ward, D. A., *Delinquency, Crime, and Social process* Harper and Row, (1969)
- DJJ Research Quarterly, Volume III (April, 2005) *Juvenile Recidivism in Virginia*, Virginia Dept of Justice, Vol; 2: (Pg 35-44).
- Data & Evaluation Recidivism Reports (2005). *Oregon Youth Authority & Oregon Juvenile Department Directors' Association*
- Gibbens, T., *Cultural Factors in Delinquency*.
- Gold, Harry and Scarpitts, Frank, R., *Combating Social Problems-Techniques of Intervention*, New York, Holt, Rinehart and Winston
- Harting, Frank, E., *Crime, Law and society*, Wayne State University Press
- Hirsch, A., Roberts, J. and Bottoms, A (eds.) . (2003) *Restoratives Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford Hart Publishing

- Jones, Howard, *Crime in a Changing Society*, Penguin Books
- Lemert, Edwin H., *Human Deviant, Social Problems and Social Control*, Englewood Cliffs New Jersey.
- Matza, David, *Delinquency and Drift*, New York, Wiley, (1964).
- McClintock, F. H., *Crime in England and Wales London*, Heinemann, (1968,)
- Quinney, Richard, *the Social Reality of Crime*, Little Brown and Company, Boston (1970).
- Republic of Kenya-Ministry of Home Affairs, *Annuals Report on the Administration of Prisons in Kenya (1965-1970)*, Government Printer, Nairobi
- Sutherland, Edwin, H., and Creassey, Donald R., *Criminology, 8th Edition*, J.B. Lippincott Company.
- Sellin, T. and Wolfgang M.E. (ed.), *Delinquent: Selected Studies*, New York, Wiley.
- Sutherland, Edwin, H., *White Collar Crime*, Holt, Rinehart and Winston
- Timms, Noel, *A sociological Approach to Social Problems*, Routledge and Kegan Paul.
- Walker, Nigel, *Crime Courts, and Figures (Harmondsworth)*, Penguin Books, (1971).
- Wolfgang, Marvin E., *Patterns in Criminal Homicide*, Philadelphia, (1958).
- Foucault, M (1977). *Discipline and Punish; the Birth of the Prison*. Harmondsworth; Penguin
- Garland, D. (2001). *The Culture of Control; Crime and Social Order in the Contemporary Society* Oxford University Press
- Hood roger (1974). *Crime, Criminology and Public Policy*, Heinemann London. Jewkes Yvonne. (2002). *Criminology*, SAGE
- Karstedt Susanne. (2000). *Social Dynamics of Crème and Control*, New Theories for A World in Transition, Oxford Portland
- Maguire, M. Morgan, R. and Reiner, R., (eds).( 2002). *The Oxford Handbook of Criminology, 3<sup>rd</sup>( ed)*. Oxford University Press
- Muga Erasto, *Crime and Delinquency in Kenya*, East African Literature Bureau, Muncie, J;
- McLaughlin, M.(Eds.), (1996). *Criminological Perspective*, London; SAGE
- Murray. C. (1997). *Does Prison Work*. London: IEA Health and Welfare Unit
- Mushanga, Tibamanya *the Development Process as a Generating Milieu for Crime and Crime Diversity in Law and Rural Development in East Africa (Kisumu, 18-22 July 1977)*
- Mushanga, Tibamanya; *Crime and Deviance; An Introduction to Criminology*. Nairobi, East African Literature Bureau

Mushanga, Tibamanya; Criminal Homicide in Uganda. East Africa Literature Bureau

Schabas, W., (1997), *the Abolition of Death Penalty in International Law*. Cambridge University Press

Walker Nige & Padfield Nicola, (1996), *Sentencing Theory, Law and Practice 2nd Ed*. Butterworth

White Rob and Haines Fiona (1996), *Crime and Criminology 2nd ed*. Oxford University Press

Edwin H. Sutherland and Donald R. Gressey *Criminology (8th Ed.)*

Marvin Wolfgang, Leonard Savitz and Norman Johnson (Editors); *the Sociology of Crime and Delinquency (2nd edition)*