

**A CRITICAL ANALYSIS ON THE LAW OF JUVENILE DELINQUENCY IN  
UGANDA.**

**CASE STUDY: KAMPALA DISTRICT.**

**BY**

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**REGISTRATION NUMBER: LLB/44333/143/DU.**

**A Dissertation**

**Presented to the School of Law**

**Kampala International University**

**Kampala, Uganda**

**In Partial Fulfillment of the Requirements for the Degree Of**

**Bachelor of Laws**

**AUGUST 2018**

### **DECLARATION**

I Kwarija Apophia hereby declare that this dissertation entitled A critical analysis on the law of juvenile delinquency in Uganda and its content is a result of my personal hardwork and to the best of my knowledge has by no means been presented to any institution for the award of any academic honor. Whichever information has been obtained from any other resource has been acknowledged for that reason.


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### **APPROVAL**

This is to certify that the dissertation entitled A Critical analysis on the law of juvenile delinquency in Uganda was prepared under my supervision and now I approve it for submission to the Faculty of Law for examination.

Supervisor: **Ms Apio Esther.**

Signature:.....

Date:.....

## **DEDICATION.**

I dedicate this research to my brothers, Singura Mathias and Kwikiriza Nahshon Trey and all my cousins ,the entire Tirwakunda family and friends who through their selfless ,loving ,commitment and support that was shown to me through my entire education.



## **ACKNOWLEDGEMENTS**

First and foremost I thank the Almighty God for the good health and wisdom throughout my education.

Very special thanks to Jo and Axel Nohre and their entire family, Jude and Richard ,Jane and Robert Sibald for their kind of love and support to me throughout my course and study.

Special thanks to my mom, Kwarikunda Loyce for her endless prayers, unconditional love and emotional support ,daily encouragements to press on, I am forever indebted. I would also want to thank my friends Ronald ,Jacob S for your support in doing this research, my sister Sharon Atuheire and all my friends for their educational material support.

Great and sincere thanks and appreciation go to my Supervisor, Ms Apio Esther for her commitment to guide me while writing this research paper despite her busy schedule.

## **LIST OF INSTRUMENTS**

- 1.The 1995 Uganda Constitution.
- 2.The Penal Code Act Cap 120.
- 3.The Children's Act 2016
- 4.The Domestic Violence Act 2010
- 5.The Local Government's Act 2010
- 6.Trial and Indictments Act
- 7.The Non-Government Organization Act
- 8.The Penal Code of Tanzania
- 9.The Juvenile Court Act 1899
- 10.Convention on the Rights of the Child 1989
- 11.The International Convention on Civil and Political Rights 1966
- 12.The African Charter on the Rights and Welfare of the Child 1990
- 13.American Convention on Human Rights 1978
- 14.Convention for the Protection of Human Rights and Fundamental Freedoms 1950
- 15.The Arab Charter on Human Rights 2009
- 16.UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- 18.The United Nations Rules for the Protection of Juveniles Deprived of their liberty(Havana Rules) 1990.
- 17.UN Convention Against Transnational Organised Crime
- 18.International Union for the Child Welfare 1947
- 19.Vienna Declaration on Crime and Justice.

## **LIST OF CASES**

Uganda vs Juvenile HCT-02-CR-SC-0377 OF 2014

Uganda vs Olega Muhammad Criminal Case no.33 of 2016 at High Court of Uganda

Uganda vs Mukulu Nasuru and 3 others HCT-03-CR-SC-0137-2007

Uganda vs Begayika Nancy 19 of 2016, High Court Criminal Juvenile Session

Roper vs Simmons 2005

Miller vs Alabama 2012 S.Ct 2455

Villagran Morales and others vs Guatemala

Graham vs Florida 2011

## **ABSTRACT**

*This study is a critical analysis on the law of juvenile delinquency in Uganda. The research addressed the problem that despite the numerous laws available in Uganda regarding juvenile delinquency such as the provisions in the 1995 Uganda Constitution, The Children's Act Cap 59, The UN, Convention on the Rights of the Child, The Domestic Violence Act 2010 among others, the law has not been followed by the dot and thus creating loopholes and uneffectiveness which the research sought to solve. The research objectives included critically analyzing the law relating to juvenile of delinquency in Uganda, to examine the legal framework and institutional legal framework of juvenile delinquency in Uganda, also to examine the international legal framework on juvenile delinquency, to find out the factors contributing to juvenile crime in Uganda as well as to suggest the possible recommendations to relevant recommendations to relevant institutions in Uganda and conclusions. The research questions arising out of the problem were that what are the legal and institutional framework on juvenile delinquency effective?, what are the international legal framework on juvenile delinquency effective?, what are the factors contributing to juvenile crime in Uganda? and what are the possible recommendations to relevant institutions in relation to juvenile delinquency in Uganda? The research further used the doctrinal legal research methodology which includes analyzing primary and secondary documents, the primary materials include statutes and Acts like, The 1995 Uganda Constitution, The Children's Act and the UN Convention on the Rights of the Child among others. Secondary materials included textbooks, articles and journals that are relevant to the topic. And in the last chapter the research discussed the findings of the study, and the researcher also looked at recommendations that can be incorporated in the law to ensure its effectiveness in handling issues relating to juvenile delinquency in Uganda.*

## **LIST OF ACRONYMS**

UN	United Nations
CRC	Convention on the Rights of the Child
ACC	African Children's Charter
ICCPR	International Convention on Civil and Political Rights
ACHR	American Convention on Human Rights
DCI	Defence for Children International
FCC	Family and Children's Court.



## Table of Contents

DECLARATION .....	i
APPROVAL .....	ii
DEDICATION .....	iii
ACKNOWLEDGEMENTS .....	iv
LIST OF INSTRUMENTS .....	v
LIST OF CASES .....	vi
ABSTRACT .....	vii
LIST OF ACRONYMS .....	viii
CHAPTER ONE .....	1
INTRODUCTION .....	1
1.0: HISTORICAL BACKGROUND .....	1
1.2: THE STATEMENT OF THE PROBLEM .....	12
1.3: JUSTIFICATION OF THE PROBLEM .....	14
1.4: RESEARCH OBJECTIVES .....	14
1.4.0 Main objective .....	14
1.4.1: The specific objectives of the study include the following; .....	14
1.5: RESEARCH QUESTIONS .....	15
1.6: RESEARCH METHODOLOGY .....	15

1.7: SCOPE OF THE STUDY. ....	15
1.7.0: Time scope .....	16
1.7.1:Geographical scope. ....	16
1.7.2:Content scope .....	16
1.8:LITERATURE REVIEW .....	16
1.9: ORGANISATIONAL LAYOUT .....	25
CHAPTER TWO. ....	26
EXAMINE THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING JUVENILE DELINQUENCY IN UGANDA. ....	26
2.0: Introduction.....	26
2.1: What are statutes in Uganda that provide for juvenile delinquency? .....	26
2.2:What is the institutional legal framework governing juvenile delinquency? .....	29
2.3:The Courts of Judicature .....	36
2.4:Conclusion. ....	41
CHAPTER THREE .....	42
EXAMINE THE INTERNATIONAL LEGAL FRAMEWORK ON JUVENILE DELINQUENCY....	42
3.0.Introduction.....	42
3.1:What are the vast international law instruments that govern juvenile delinquency.	42
3.2 : Finding from the international law instruments. ....	46

3.3: International recent cases relating to Juvenile Delinquency.....	49
3.4: Conclusion.....	54
CHAPTER FOUR .....	55
FACTORS CONTRIBUTING TO JUVENILE CRIME IN UGANDA.....	55
4.1: Introduction.....	55
4.3: Overview of the major factors of juvenile crime in Uganda over the recent years of 2011-2018.....	58
4.3.1: Economic factors.....	62
4.5: Conclusion .....	67
CHAPTER FIVE.....	68
FINDINGS ,CONCLUSIONS AND RECOMMENDATIONS. ....	68
5.0: Findings.....	68
5.1: RECOMMENDATIONS .....	70
5.2: CONCLUSION.....	72
BIBLIOGRAPY .....	75



## CHAPTER ONE

### INTRODUCTION

#### 1.0: HISTORICAL BACKGROUND

A juvenile delinquent is an individual who repeatedly commits a crime but is not prosecuted by laws as an adult due to their minor age.

The Blacks' law dictionary defines juvenile delinquency to refer children who act against the law .Anti-social behavior by a minor especially that would be criminally punishable if the actor were an adult but instead usually punished by special laws pertaining only to minors.

Juvenile delinquency can be traced way back from the beginning and as way old as man, according to the Holy Bible <sup>1</sup>,delinquency begun with sons of Adam when Cain attacked and killed his brother-Abel<sup>2</sup>, from which God cursed Cain for such a delinquent act. Over time delinquency continued to multiply and in the ancient times, delinquency was rampant among families of soldiers and the Vikings because the two groups could spend most of their time in camps ,wars and other government duties compared to the time spent with the children as well as their families and this aspect is very vital to the wellbeing and upbringing of character in children. In the middle ages, delinquency increased among middle class families who spent most of their time at work and this escalated with the industrial revolution in the 18<sup>th</sup> Century that had started in Great Britain by 1770s.

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<sup>1</sup> Genesis 4:8b

<sup>2</sup> The Holy Bible,King James version ,2000:4

However, based on the crime committed and severity of the crime, a juvenile may be prosecuted as an adult depending on the states law.

Prior to the 1800s<sup>3</sup> if a juvenile committed a crime, they were punished the same way in which an adult would be punished. The ideology of treating juveniles the same as adults all stemmed from the English Common law. Under the English common law juveniles were forced into working and were often trained into agricultural or domestic work . Furthermore, juveniles were apprenticed into adulthood .The same practices under the English common law quickly made its way into America and continued until the early nineteenth century. Although the same practices were established here and juveniles were being tried as adults for crimes in which they committed, civic leaders decided to focus on the alternative ways to alleviate the harsh conditions in which juveniles were being subjected to. Thus they begun to refer themselves as Child savers. The main goal of the child savers was to improve the behaviors of juveniles by creating programs ,activities and providing care to these youths.

The 1800s was the beginning of the Child Saving Movement. With this movement ,the child savers focus was to create programs that focused on reforming juveniles. To accomplish this, the New York House of Refuge was instituted in 1825.This institution was to take juveniles considered at a risk on the streets and reform them into setting that was conducive to them which was usually like a family setting. The House of Refuge opened its doors caring for under 10 youths and within a decade of its operation they had over 1600 youths in which they were working with.As the

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<sup>3</sup> [https:// study.com/academy/topic/nature-extent-of -delinquency.html](https://study.com/academy/topic/nature-extent-of-delinquency.html)

years went on and seeing its success, several other states constructed similar institutions. However, while there were several other states constructed similar institutions focused on reforming delinquent youths, there began to be growing concerns as to the treatment of these youths in the institutions. The institutions began to see an overcrowding of youths in the institutions. The institution began to see an overcrowding of youth, poor conditions in caring for them and issues with administration. Because of this, the child savers petitioned for there to be a juvenile court and the first one was established in 1899 in Illinois. Juvenile courts (1900s)

In 1899, the first juvenile court was established in Illinois. The development of the juvenile court was to allow for it to have jurisdiction over any child under the age of 16 who was guilty of violating the law providing care to those children who were being neglected and to ensure the separation of juvenile and child offenders. The establishment of the Juvenile Court Act<sup>4</sup> was a lot different than punishment handed down to adult offenders. The concept behind the juvenile justice system was to allow youths to admit to their guilt and focus on rehabilitating the juveniles through punishment but rather by identifying what the needs of the youths was and finding a solution to their problem. In the late 1900s there were major changes to how the juvenile justice system handled these cases. In 1960, the Supreme court decided juveniles should have the right to due process. This would mean that they would have the same rights as that of an adult offender to include the right to confront their witness, right to counsel and formal notice of charges against them.

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<sup>4</sup> Juvenile Court Act of 1899.



Delinquency exhibits a variety of styles of conduct or forms of behavior. Each of the patterns has its own social context, the causes are alleged to it bring about and the forms of prevention or treatment most often suggested as appropriate for the pattern in question ,Howard B<sup>5</sup> referred to the following four types of delinquencies:-

**Individual delinquency:** This refers to delinquency in which only one individual is involved in committing a delinquent act and its cause is located within the individual delinquent. Most of the explanations of this delinquent behavior come from psychiatrists. Their argument is that delinquency is caused by the psychological problems stemming primarily from defective or faulty family interaction patterns.

**Group-supported Delinquency:**In this type delinquencies are committed in companionship with others and the cause is located not in the personality of the individual or the delinquent's family but in the culture of the individuals's home and neighbourhood.

**Organised Delinquency:** This type of delinquency refers to delinquents that are committed by developing formally organized groups. These delinquencies were analysed in the United States in the 1950s and the concept of delinquent sub-culture was developed. This concept refers to the set of values and norms that guide the behavior of group members encourage the commission of delinquencies, award status on the basis of such acts and specify typical relationships to persons who fall outside the groupings governed by group norms.

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<sup>5</sup> Outsiders: Studies in Sociology of deviance 1966, Howard Becker. (Pages 226-238)

Situational delinquency: The situational delinquency provides a different perspective where the assumption is that delinquency is not deeply rooted and motives for delinquency and means for controlling it are often relatively simple. For instance a young man indulges in a delinquent act without having a deep commitment to delinquency because of less developed impulse control or because of lesser reinforcement of family restraints and because he has<sup>6</sup> relatively little to lose even if caught.

### **Juvenile Delinquency in Africa**

In Africa, a juvenile delinquent is one who commits an act defined by law as illegal and who is adjudicated 'delinquent' by an appropriate court. The legal definition in most African countries is usually restricted to persons under the age of 21 years.<sup>7</sup> The exact lower and upper age limits differ from country to country for instance in most East African countries, the age is 8 years<sup>8</sup>. In Tanzania, all crimes committed by persons below the age of criminal responsibility can be legally defined as juvenile delinquency. Section 15<sup>9</sup> states that a person under the age of 7 years is not criminally responsible for any act or omission. Similarly in Kenya, a juvenile delinquent as earlier stated is a child between the statutory juvenile court age of 7 and 16 years who commits an act which when committed by a person beyond this statutory juvenile court age would be punishable as a crime or as an act injurious to other individuals or the public.<sup>10</sup> In Uganda, in the pre colonial era, juveniles who committed crimes were punished by elders

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<sup>6</sup> NPTEL-Humanities and Social Sciences- Indian Society: Issues and Problems.

<sup>7</sup> Perspectives on Juvenile Delinquency in Africa by Patrick Igbinovia

<sup>8</sup> Crime and deviance .East African literature bureau ,Nairobi by Mushanga T.M

<sup>9</sup> The Penal Code Act of Tanzania.

<sup>10</sup> Crime and Delinquency in Kenya 1975 ,pg 99 by Erasto Muga

as a norm and children belonged to the community. However, prior to the colonial times there were no specific provisions for juvenile crimes and rehabilitation. Uganda from 1971 to 1986 suffered massive dislocation, as a result of Amin's brutality and his mismanagement of the economy and government infrastructure and then the increasing civil strife and breakdown of law and order from 1979-86<sup>11</sup>. It was only from the mid 1980s that the assumption was challenged and the importance of community based care for children stressed whether in health (in community –Based Health Care Communities ) or disability (in Community –Based Rehabilitation ) or in the Probation and Social Welfare's (DPSW)<sup>12</sup>. It is worth noting the following statements:-All efforts to keep family intact shall be undertaken as the needs of children are best met in the family environment. A child shall only be removed from a family environment if is harmful to the child's welfare and interest and also that juvenile offenders shall as much as possible be taken care of within the community...<sup>13</sup> as according to the guidelines. The government of Uganda thereafter ratified the United Nations Convention on the Rights of the Child in 1990 which led to enactments of child laws in Uganda.

The history of juvenile justice systems in Africa is more recent compared to other contexts such as Europe and the USA. The development of juvenile justice systems in Africa was shaped by a colonial legacy under which the legal framework in most countries mirrored laws received from the colonizing country-Britain in the case of Kenya and most Anglophone sub-saharan Africa. This meant that a law received from

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<sup>11</sup> A case study of legal reform in Uganda as part of a strategy for promoting community based care by John Parry Williams.

<sup>12</sup> Policy Guidelines for the Vulnerable and Disadvantaged Children in Uganda [January 1991]

<sup>13</sup> Supra.



the British ,the Children and Young Persons Act of 1969,was the legal framework for dealing with issues affecting children,including juvenile crime for over four decades after Kenya's independence in 1963<sup>14</sup>.After enacting the Children's Act in 2001,the new law and subsequent constitutional reform processes motivated the inclusion of a comprehensive children's rights clause in Kenya's constitution in 2010 .Child law reform was impacted by normative legal standards regarding children's rights for instance the UN Convention on the Rights of the Child (the CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter ) which Kenya has ratified.

The historical context of Kenya's juvenile justice: From the 1960s until the 1990s ,most African juvenile justice systems mirrored the juvenile justice philosophies that informed the legal systems of their colonizing countries<sup>15</sup>Juvenile Justice systems in most of Africa in the period before the CRC in 1990 reflected debates about the influence of "welfarist," "back to justice /just desserts," or crime control theories.Thus ,examples from Kenya <sup>16</sup>,Nigeria<sup>17</sup>, Uganda <sup>18</sup> ,and Zimbabwe (Kaseke 1998) all former British colonies reveal that colonially inherited juvenile justice laws tended to mirror the philosophy of their British counterpart with a strong emphasis and welfarist-oriented provisions.Welfarist oriented juvenile justice laws were not the norm in all African countries.In the context of countries such as Namibia ,juvenile justice law encompassed

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<sup>14</sup> The history of juvenile justice systems in Africa.Godfrey .O.Odongo

<sup>15</sup> The Art and Mystery .Alemika and Chukwuma 2001

<sup>16</sup> UN Mongolia Development Portal .South Consulting 1999

<sup>17</sup> Street Children and Juvenile Justice .Owasanoye and Wernham 2004

<sup>18</sup> A case study of legal reform in Uganda as part of a strategy for promoting community based care .John Parry Williams 1993

the major features of what maybe described as a “justice model” informed by a theory of just desserts<sup>19</sup>

For Kenya and other former British colonies ,the legal architecture that anchored juvenile justice remained “welfarist” on paper despite changes in British juvenile justice ,including the end of the dual child care and crime jurisdiction of the family proceedings court and the ushering in of a just deserts approach allied with crime control through the Crime and Disorder Act adopted at the end of the twentieth Century. For Kenya ,the perceived benign and rehabilitative notions of the juvenile justice system mirrored what was recorded in the 1940s in the US context or earlier in the UK.

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The issue of juvenile delinquency in Africa began attracting the attention of researches in the early 1960s.In a pioneering work <sup>21</sup>,compared delinquents and non delinquents in Zambia and found that the real differences between two groups appeared to be concentrated in family relations and emotional instability.Clifford noted that the spread of urban culture appeared to be a far more important influence toward crime in Zambia than any local cultural or tribal influences.He concluded that crime and delinquent causation developing countries can be explained by urban pressures on the family rather than by cultural differences.

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<sup>19</sup> Juvenile Justice in Namibia.Schulz and Hamutenya 2004

<sup>20</sup> Godfrey.O.Odongo 2017: The history of juvenile justice sytems in Africa.

<sup>21</sup> Wiliam Clifford 1966



A cross-cultural inquiry was conducted by Clinard and Abbott<sup>22</sup> and compared town slums communities in Kampala, Uganda. One area had an exceptionally high crime rate and the other than a low rate. The low crime rate community was tribally homogeneous and its older generation selected their close friends from a limited variety of cultural backgrounds. The high crime rate area was characterized by less stable family relations and greater individual isolation. The more a country develops, the more crime increases, there is a relationship between the economic development of a country and the struggle against crime as stated by the president of the Ivory Coast Supreme Court in 1968.

The UN centre for social development humanitarian affairs connotes that delinquency is on the rise in the whole world and its trend is linked to the rapid and dramatic social, political and economic changes that have taken place in Africa. It further states the principal offences to include theft, robbery, smuggling, prostitution, the abuse of narcotic substances and drug trafficking.<sup>23</sup>

Also in a study carried in Ibadan Nigeria<sup>24</sup> Bamisaiye found a conspirous absence of the zonal pattern reported by Shaw and McKay where rates of delinquent residence were highest at the center of the city and decreased steadily toward the suburbs. He concluded that adult and juvenile delinquency offending is not a function of the

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<sup>22</sup> Clinard and Abbott 1976

<sup>23</sup> United Nations Centre for Social Development and Humanitarian Affairs. (ST/CSDHA/21) 1993

<sup>24</sup> The spatial distribution of Juvenile Delinquency and adult crime in the city of Ibadan 1974 by Bamisaiye A.

physical characteristics of an area but rather that it is related to the dynamics of family and community life in the district sectors of the city of Ibadan.

Although the other studies are some immediate relevance to the present study in that they provide the necessary theoretical background, they are parochial and particularistic to individual African countries. Thus, generalization to the whole of Africa are almost impossible. Nevertheless, all of the studies address critical issues and provide a baseline for further research. Other writers stress the history, philosophy, law and processes of the juvenile justice system in independent African countries, however these serve here to supplement other sources of evidence regarding juvenile delinquency in Africa.

### **Historical background: Uganda.**

In Uganda, in the pre colonial era, juveniles who committed crimes were punished by elders as a norm and children belonged to the community. However, prior to the colonial times there were no specific provisions for juvenile crimes and rehabilitation. Uganda from 1971 to 1986 suffered massive dislocation, as a result of Amin's brutality and his mismanagement of the economy and government infrastructure and then the increasing civil strife and breakdown of law and order from 1979-86<sup>25</sup>. It was only from the mid 1980s that the assumption was challenged and the importance of community based care for children stressed whether in health (in community –Based Health Care Communities) or disability (in Community –Based Rehabilitation) or in the

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<sup>25</sup> A case study of legal reform in Uganda as part of a strategy for promoting community based care by John Parry Williams.

Probation and Social Welfare's (DPSW) <sup>26</sup>. It is worth noting the following statements:- All efforts to keep family intact shall be undertaken as the needs of children are best met in the family environment. A child shall only be removed from a family environment if is harmful to the child's welfare and interest...and also juvenile offenders shall as much as possible be taken care of within the community...<sup>27</sup>The government of Uganda thereafter ratified the United Nations Convention on the Rights of the Child in 1990 which led to enactments of child laws in Uganda such as the Children's Act cap 59 in 1997.

Uganda adopted the Children's Act cap 59 of the laws of Uganda on 1 August ,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.

Like any other African country,juvenile delinquency grew with the coming of colonialism that was received by the continent as a vehicle of change.<sup>28</sup>It is important to note that the colonial impacts on social setting of Ugandan families and clan ties led to redundancy among children who thus found streets as their homes breeding into the most significant cause of juvenile delinquency in Uganda.

The biggest challenge concerning juvenile crime is the fact that some areas in the country have not been sensitized about these crimes and for the lack of awareness ,this has caused less punishment for the child offenders hence stimulating repetitive crimes

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<sup>26</sup> Policy Guidelines for the Vulnerable and Disadvantaged Children in Uganda" [January 1991].

<sup>27</sup> Supra.

<sup>28</sup> International Union for Child welfare 1947



by children. However, solutions towards punishment to children or youth that commit crime in Uganda have been directed at remand homes where they are detained for a period of time and in Uganda they include remand homes in Fortportal, Naguru, Gulu and Mbale and also Kampiringisa National Rehabilitation Center detains sentenced children from all over the country. In this way, juvenile delinquency has found justice and reflection on solutions towards reduction of crimes among children.

### **1.2: THE STATEMENT OF THE PROBLEM.**

The 1995 constitution of Uganda provides for the rights of the child under article 37<sup>29</sup> connotes the rights of children and that a child is a person under the age of 16 years. Moreover, that a child offender who is kept in lawful custody or detention shall be kept separately from adult offenders. The law also accords special protection to orphans and other vulnerable children. Also the Penal code Act cap 120 of Uganda provides for the different criminal offences under the laws of Uganda and the penalties and the general rules governing criminal responsibility. The law protects children by giving grave penalties for criminal offences committed against them. It is also important to note that children under the age of 12 cannot be held criminally responsible for their actions because they do not have capacity to understand the seriousness of their offences.

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<sup>29</sup> Article 34

The Children's Act of Uganda cap 59 which was amended in 2016<sup>30</sup> usually sets detention at a period of six months for children who have committed capital offences can be convicted and detained for a maximum period of 3 years.

Moreso, the Convention on the Rights of the Child (CRC)<sup>31</sup> and instituted as international law in 1990 is instrumental in finding solutions towards juvenile delinquency and the laws governing it in Uganda. Under article 17<sup>32</sup> provides that treatment of children in conflict with the law shall respect their dignity and worth, reinforce the child's respect for the rights and freedoms of others and take into account their age and promotion of social integration. The CRC is widely recognised as the first legally binding human rights treaty that incorporates the full range of human rights, civil, cultural, economic, political and social into a single text. It was drafted to specifically promote and protect the well-being of all children, regardless of national boundaries as connoted by Jenni Gainborough and Elisabeth Lean<sup>33</sup>. However the law has not been followed to the dot and thus in practice, despite the different laws that are available many provisions such as the 6 months provision are in most cases not adhered to. It is against the dichotomy that the study focused on analyzing the interface between the law on juvenile delinquency and its effectiveness to adequately punish and reform child offenders.

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<sup>30</sup> Section 91 (5) a

<sup>31</sup> Adopted by the United Nations General Assembly 1989.

<sup>32</sup> Convention on the Rights of the Child

<sup>33</sup> The link connecting juvenile justice and Child Welfare.

### **1.3: JUSTIFICATION OF THE PROBLEM.**

- i) This study examined the significance of the law relating to juvenile delinquency to society in Uganda
- ii) The study also sought to suggest the possible recommendations to the loopholes affecting law relating to juvenile delinquency.
- iii) The paper purposed to address the apparent scarcity in the implementation of the law regarding the treatment of the problem.

### **1.4: RESEARCH OBJECTIVES**

#### **1.4.0 Main objective**

Critically analyse the law relating to juvenile delinquency in Uganda

#### **1.4.1: The specific objectives of the study include the following;**

- i) To examine the legal framework and institutional legal framework of juvenile delinquency in Uganda.
- ii) To examine the international legal framework on juvenile delinquency.
- iii) To find out the factors contributing to juvenile crime in Uganda.
- iv) To suggest possible recommendations to relevant institutions in Uganda and conclusions.



### **1.5: RESEARCH QUESTIONS.**

- i.What is the effectiveness of the legal and institutional framework on juvenile delinquency ?
- ii.What is the effectiveness of the international legal framework on juvenile delinquency ?
- iii.What are the factors contributing to juvenile crime in Uganda?
- iv.What are the possible recommendations to relevant institutions in relation to juvenile delinquency in Uganda?

### **1.6: RESEARCH METHODOLOGY.**

In an attempt to establish the effectiveness of the laws governing juvenile delinquency in Uganda, the research relied on doctrinal legal research method .Doctrinal research involves analyzing primary and secondary materials .The primary materials include statutes, Acts and conventions such as The 1995 Uganda Constitution, The Children's Act, The UN Convention on the Rights of the Child among others while the secondary materials include ,textbooks, journals, articles such as The history of justice systems in Uganda, Crime and delinquency in Kenya, Perspectives on Juvenile Delinquency in Africa among others that were relevant to the topic.

### **1.7: SCOPE OF THE STUDY.**

This study covered all the facts relating to the law on juvenile delinquency in Uganda .It established the forum of crime among juveniles as its direct and immediate effects towards juvenile justice and legislations in Uganda .

#### **1.7.0: Time scope**

It was conducted within a time period of 7 years(2011 -2018) due to the recent amendments in the law and tremendous increase in crime by children.

#### **1.7.1:Geographical scope.**

The study was conducted at Makindye division,Kampala District.

#### **1.7.2:Content scope.**

The study was based on the particular laws regarding juvenile delinquency in Uganda such as the 1995 Uganda Constitution,the Penal Code Act of Uganda cap 120,the Children's Act 2016,journals ,textbooks and articles.

### **1.8:LITERATURE REVIEW**

Literature review aimed at analysing the critical points of current knowledge and methodology approaches to the law relating to juvenile delinquency.

The researcher evaluated other research reports ,articles of other researchers or individuals and analyse documents containing information relevant to this study and will attempt to find out how this literature reinforces efforts aimed at achieving the objectives and purpose of this study.

Lewis D<sup>34</sup> discusses that juvenile delinquency reform movements turned from conceptions of individual responsibility to the effects of social environmental factors and concentrated their attack on protecting young people who were felt to be largely the victims of circumstances from demoralizing influences of criminal procedures.

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<sup>34</sup> Rights of Juvenile Delinquents:An appraisal of Juvenile Court Procedures 1957



Furthermore she discusses that juvenile courts which were found in the English courts of chancery as early as the 15<sup>th</sup> century have procedures to which they give rise in practice. The main purpose of the court is to help the child in trouble by a process of individualised treatment, the assumption being that there is no conflict between the child and the state.

However in "From legislation to Action? Trends in Juvenile Justice systems Across 15 countries"<sup>35</sup>, relates that legislations especially in Africa are not followed for example in Uganda, The Childrens' Act 2016 provides that children should not be held longer than 3 year but in practice the situation is different as the 6 months provision is not adhered to due to delay in court procedures.

Lening Z<sup>36</sup>, in his study, he sought to explain the political background of the law with respect to the patterns of delinquency in China. It also was to discuss the challenges to the enforcement of the law in the Chinese society which has lacked a legal tradition its history. The writers recognized that it was not effective to focus on juvenile protection

<sup>37</sup>

The writer further discusses that as part of the legal reform and as a response to deal with the increasing delinquency and other juvenile cases effectively. A special court was established in Shanghai in 1984 that had a collegial panel to hear juvenile cases as the first juvenile court.

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<sup>35</sup> By Defence for Children International Geneva 2007(DCI)

<sup>36</sup> China's Juvenile Delinquency Prevention Law :The law and Philosophy.

<sup>37</sup> Zhang Liu /China Juvenile delinquency Protection Law 545

According to this study in my opinion if African countries can seek to eradicate the challenges to the enforcement of the law that governs delinquency then the increasing crime rates among juveniles would go down.

Sandra S. G<sup>38</sup> points out 3 premises underlying the basic notion that young people who commit crime should be treated differently than adults as it was the juvenile criminal justice system that was conceived 40 years ago. They include that ;that the objective of the system should be principally rehabilitation with punishment ,a secondary goal ,that consistence with the principal aim ,the response of the system should be highly individualized and should focus on designing 'disposition' or sentence tailored to the needs of the teenager offender or rather than one linked directly to the seriousness of the crime and that the juvenile court judge should retain a high degree of discretion in order to design the proper sentence and that the system should be largely to protect offenders from lifelong stigma associated with an adolescent error in judgement.The researchers opinion is that ,these assumptions may not lead to proper effectiveness of the law because for a juvenile justice system to breed purposeful results .crime rate must be controlled first through thoughtful measures as this entails children and youth. Child Rights and Juvenile Justice an article from<sup>39</sup> ,it noted that effective child protection fundamental to avoid child exploitation and it can be ensured with adequate interventions at different levels. Child Rights and Juvenile Justice an article from<sup>40</sup> ,it

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<sup>38</sup> An introduction to Essays on Juvenile Justice 1994

<sup>39</sup> Best practices and lesson learned from save the children Italy National and Internal programs.

<sup>40</sup> Crime and Delinquency in Kenya 1995.

noted that effective child protection fundamental to avoid child exploitation and it can be ensured with adequate interventions at different levels.

The main issue discussed in this article is that Child rights governance as a strategic area related to justice for children. That if government has the capacity to deliver child rights it must be able to support it by offering technical assistance within juvenile justice law reforms and advocating for the establishment of national independent institutions. To sum it up ,that child protection systems can be strengthened through law reforms on child rights ,child friendly procedures and services ,awareness raising and adequate training.In agree with the writer because the main basic statutory instrument regarding children which under <sup>41</sup> provides that the best interest of the Child is key consideration in issues affecting the children. If this is observed,their rights will be protected hence purposeful observation of child law.

Erasto. M<sup>42</sup> defines a juvenile delinquent in Kenya to mean a child between the statutory juvenile court age of 7 and 16 years who commits an act which when committed by persons beyond this statutory court age would be punishable as a crime. In Kenya ,a person is considered an adult when he is nineteen years old. The government administers punishment to adults who commit criminal offences .However for the case of children crimes committed by them of delinquent nature ,the government after the necessary court procedures admits them first to remand homes and then to correctional or approved schools. In these institutions,the aim is not to

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<sup>41</sup> Article 3 of the CRC

<sup>42</sup> Crime and Delinquency in Kenya 195



punish the children rather to teach them to be useful citizens when they leave the correctional schools. The correctional schools teach them not to repeat the anti-social acts when they return to normal life in the society. At the age of seventeen years, persons who are criminals but who are first offenders, depending upon the nature of their offence, may be sent to Borstal institutions, instead of prisons at the discretion of the magistrates. The author further looks at the different causes of juvenile delinquency in Kenya ranging from the background of the children in rural and urban centres, the level of education of their children at the time of admission to remand homes and approved schools, parental background of the children, their level of education and occupation of the parents. It is important to note that jobless parents in modern Kenya are likely to be poor and unable to support their children and provide them with the necessary education, food, clothing and shelter and ultimately these conditions are likely to have adverse effects on the children and predispose them to delinquent acts.

The Kenyan system on juvenile delinquency is based on the background of the children and the kind of crimes committed by them given the circumstances. The Kenyan laws are not any different from the Ugandan laws on juvenile delinquency. I partly agree with the author however whereas the background of children is important in relation to their commitment of crimes, it is also fundamental to note that there are a vast key factors for juvenile delinquency such as peer or group pressure, social and economic elements among others.

Marianne. M<sup>43</sup>, notes Uganda's ratification in 1990 of the main International Convention which is the Convention on the Rights of the Child enshrining key principles in the The Children's Act cap 59 which includes a comprehensive outline of the rights of such children. The Uganda juvenile justice system entails arrest where a child is arrested and the police have the discretion to caution and release the child or dispose of the case without recourse to formal court. Bail and remand, the Children's Act 2016 sets out that remand in custody should not exceed 6 months in the case of an offence punishable by death and should not exceed 3 in the case of any other offence. However, majority of children are not remanded beyond the time limits. A minority mostly charged with capital offences are being remanded for a longer period. The courts are also the major part of this system and they entail three levels, local councils, which are meant to play a central role in the administration of juvenile justice legislation, Children and Family courts established by the Children's Act which have jurisdiction to hear and determine most criminal charges against a child except capital ones. Children charged with capital offences are seen in the High Court provided with lawyers and legal aid.

In support with the writers' overview on the laws governing juvenile delinquency, children tried in some courts as adults and given no priority, there is a backlog of children waiting for their cases to be heard thus delay in administering justice and purposes of the law to be fulfilled.

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<sup>43</sup> Juvenile Detention in Uganda 2010

## **The amended Children's Act of 2016**

Godfrey.O.O 2017 <sup>44</sup> discusses the history of juvenile systems and laws in Africa which is more recent compared to other contexts such as Europe and the USA. The development of the African juvenile system was shaped by a colonial legacy under which the legal framework in most countries mirrored laws received from the colonizing country Britain in the case of Kenya and most of Anglophone sub-Saharan Africa. He further discusses the extent to which children's rights, norms have shaped the legal framework for dealing with issues affecting children including juvenile crime. In 2001 the Parliament of Kenya enacted a new law- the Children's Act and the new law and subsequent constitutional reform processes motivated the inclusion of a comprehensive children's rights clause in Kenya's constitution in 2010. Child law was impacted by normative legal standards regarding children's rights ( e.g UN Convention on the Rights and Welfare of the Child (the CRC)) and the African Charter on the Rights and Welfare of the Child (African Children's Charter) which Kenya has ratified. The Kenyan Children's Act leaves the question of the legal status of children and issues of age of majority and minority to an old legal order which is the general penal code in which the minimum age of criminal capacity is set at 8 years. Children between the ages of 8 and 12 years are legally presumed to lack criminal capacity unless the prosecution provides evidence to prove (or rebut) this presumption. However, the code appears to enact a minimum age capacity of 12 years for boys in the case of sexual offences. I agree with the writer since Kenya has adopted the CRC and the African Charter to guide juvenile crime even

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<sup>44</sup> Godfrey O.Odongo The Juvenile Justice System in Kenya and challenges to law, policy and practice in regard to diversion.

though they do not explicitly specify an age below which children are deemed not to have capacity to commit crime or be deemed to bear responsibility for criminal conduct.

The author also discusses the causes of juvenile crime in Kenya to be attributed to high rates of poverty, unemployment and an increasing number of family and kinship structures under severe socio-economic difficulties. Hence poverty is a major factor accounting for the vulnerability of the Kenyan youth to commit crimes. He points out the questions of the effectiveness of Kenya's criminal justice system in achieving its broad goals of deterrence and the rehabilitation of offenders. A previous government survey has attributed a general increase of 76.9% in the number of recidivist offenders between 2012 and 2013 to the fact of "inadequate facilities and rehabilitation programs in prisons coupled with social stigma that ex-convicts experience from their communities upon release"<sup>45</sup>. In the researchers opinion, there should be more rehabilitation centres, homes and programs to reduce the shooting crime rates among juveniles.

Dunkel F<sup>46</sup> focuses on tendencies in youth legislation and on the sentencing practice of prosecutors and judges in youth courts. The recent developments in the system provide a contrary approach and they intensify youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation. The author advocates for restorative justice, that one development that appears to be common to Central, Eastern and Western European countries is the

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<sup>45</sup> Kenya National Bureau of Statistics 2015:252 Economic Survey .Nairobi

<sup>46</sup> Frieder Dunkel .Juvenile Justice Systems in Europe –Reform developments between justice ,welfare and 'new punitiveness'.

application of elements of restorative justice policies to young offenders. Victim-offender-reconciliation, mediation or sanctions that require reparation or apology to the victim have played a particular role in all legislative reforms of the last 15 years.

In some countries, legislation provides for elements of restorative justice to be used as an independent sanction by youth courts. In England and Wales, for example, this is done by means of reparation or restitution orders and in Germany by means of the victim-offender-reconciliation as an educational directive. He looks at the the legislation of juvenile law from a different perspective and the researcher agrees with the writers' content about other measures of ensuring justice as discussed above and in this way the law can be reformed hence securing a recognized mode of dealing with juvenile crime.

Other writers like Mangin 1975<sup>47</sup> discussed delinquency prevention policies appropriate to French speaking Black African colonies.

## **1.9: ORGANISATIONAL LAYOUT**

### Chapter one

Examined the legal and institutional framework of juvenile delinquency in Uganda. This contained the provisions of the existing legislations in Uganda concerning juvenile delinquency.

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<sup>47</sup> As cited in Perspectives on Juvenile Delinquency in Africa by P Igbinovia



## Chapter two

.Examined the international legal framework on juvenile delinquency .This chapter discussed and analysed the international laws governing juvenile delinquency.

## Chapter three

Examined the factors contributing to juvenile crime in Uganda

## Chapter four

Recommendations to relevant institutions governing legislation on Child Welfare sector in Uganda. This chapter suggested reforms for our law that could be legislated by law makers and conclusion to the topic.

## **CHAPTER TWO.**

### **EXAMINE THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING JUVENILE DELINQUENCY IN UGANDA.**

#### **2.0: Introduction**

This chapter examined the following national legal framework in relation to juvenile delinquency including the constitution of Uganda, the Penal code Act, the Children's Act among others.

#### **2.1: What are statutes in Uganda that provide for juvenile delinquency?**

1. The Constitution of Uganda <sup>48</sup> as the supreme law of the state provides for the rights of children and subsection 6 elaborates that a child offender who is kept in lawful custody or detention shall be kept separately from adult offenders. Under <sup>49</sup> a child means any person under the age of 18 years. The constitution of Uganda is to effect that children's rights are protected according to the general international instruments as stated earlier in article 34(6) of the statute confers separation from adult offenders. The question whether this provision protects juveniles has a positive answer as children may behave differently from adults while in custody thus the effectiveness of the provision.

2. The Penal Code Act cap 120. This Act provides for the different criminal offences under the laws of Uganda and the Penalties and the general rules governing criminal responsibility. The law protects children by giving grave penalties for criminal offences committed against them. It is also important to note that children under the

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<sup>48</sup> 1995 under Article 34.

<sup>49</sup> Article 257 Constitution

age of 12 cannot be held criminally responsible for their actions because they do not have the capacity to understand the seriousness of their offences. Under section 126<sup>50</sup>, abduction is as to the effect that a person who takes away or detains them against their will commits an offence. Child abduction is an offence and on conviction is punishable by seven years imprisonment.

A child to child sex under section 129(A), where the offender in the case of defilement is below 12 years of age, the matter shall be dealt with under part v of the Children's Act which refers to protection and care. Where the victim and offender of a defilement case are both above 12 years, the offence shall be dealt with as required by part x of the Children Act which deals with Children charged with offences.

3. The Children's Act 2016 is purposed to enhance the protection of children to strengthen the provision of guardianship of children, to strengthen the conditions for inter-country adoption to prohibit corporal punishment, to provide for the National Children Authority and also to provide for other related matters as it is also referred to the Principal Act.

The Act under<sup>51</sup> provides that in all matters relating to a child whether before a court of law or before any other person regard shall be to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child. It is the general rule that the welfare of a child is paramount. Furthermore

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<sup>50</sup> Penal Code Act

<sup>51</sup> Section 3(2)



under<sup>52</sup> provides for the right of a child to effective legal aid including representation in all civil, criminal and administrative proceedings. This is to effect the aim and purpose of the laws that govern juvenile crime and delinquency.

Part IIA of the same Act formulates the National Children's Authority and it's a body corporate and shall have perpetual succession and a common seal as it may sue or be sued. The functions of the National Children's Authority are stipulated under <sup>53</sup> to recommend legal, administrative or other reforms required for the effective implementation of the national policy for the prevention of child abuse, also to monitor the progress of all investigations and criminal proceedings relating to child abuse as well as the implementation of the laws relating to all forms of child abuse. Moreso, looking at section 104(2),<sup>54</sup> where a child is tried jointly with an adult in the High Court, the High Court shall make an appropriate order under this Act and a child shall not be sentenced to death.

4. The Domestic Violence Act 2010, domestic violence is defined to constitute any act or omission of a perpetrator which harms, injures or endangers the health, safety, life or wellbeing. Children in such cases are also victims of such violence. The duties of police official under section 7<sup>55</sup> are mainly to assist victims, giving them assistance, advice and also in obtaining shelter.

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<sup>52</sup> Section 4(1)k

<sup>53</sup> Section 9B, subsection e

<sup>54</sup> Children's Act

<sup>55</sup> Domestic Violence Act 2010

## **2.2:What is the institutional legal framework governing juvenile delinquency?**

### **The Local government institutions.**

These are corporate bodies created by acts of parliament and law making policies in the matters relating to juvenile delinquency such as the office of the probation and social welfare office which deals with child related issues among others.

#### **The National Children's Authority**

This was formerly the National Council for Children as repealed by the 2016 Children's Act Amendment. Part IIA establishes the National Children's Authority and among its function is to recommend legal administrative or other reforms required for the effective implementation of the national policy for the prevention of child abuse and also to monitor the progress of all investigations and criminal proceedings relating to child abuse as well as the implementation of laws relating to child abuse.

### **The Local Council System**

Local Councils are established under the local Government Act of 1997, as amended in 2010. According to <sup>56</sup> it is the general duty of every local government council from the village to the district level to safeguard and promote the welfare of children within its area and promote welfare of children within its area and to designate one of its member to be the person responsible for the welfare of children. This person shall be referred to as the secretary for children's affairs. The secretary for children's affairs shall, in the exercise of his or her functions in relation to the welfare of

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<sup>56</sup> Section 10 of the Children's Act Cap 59

children ,be assisted by such officers of the local government council as the local government council may determine. Section 10 of the Act further provides that in particular every local government council shall mediate the situation where the rights of the child are infringed and especially with regard to the protection of a child, the child's rights to succeed to the property of his or her parents and all the rights accorded to a child in the Act. In addition ,a local government council is mandated to keep a register of disabled children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children to grow up with dignity among other children and to develop their potential and self reliance. A local government council should also provide assistance and accommodation for any child in need within its area of jurisdiction who appears to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge.

Local Council Courts are established at village level in accordance with the Local Council Courts Act 2006, in the Children Act 1996. Under Section 92(2) of the Children's Act ,a village LCC shall, in addition to any jurisdiction conferred on it by the LCC Act 2006, have criminal jurisdiction to try a child for any of the following offences; affray ,common assault ,actual bodily harm ,theft ,criminal trespass and malicious damage to property.<sup>57</sup>

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<sup>57</sup> Prosecuting child-related cases in Uganda: A Handbook for Uganda Directorate of Public Prosecutions. 2016



### **The Directorate of Public Prosecution.**

This institution is established by the constitution of Uganda under article 120 and also stipulates for its functions stated here below.

The handbook<sup>58</sup> provides into regarding diversion of cases away from the criminal justice system and for none divertible (capital) offences. It further provides for information on child friendly court proceedings and appropriate orders that maybe made in such case. It aims to give prosecutors a guide on how to handle the sensitive nature of juvenile related crimes and child to child sex. The handbook further alerts prosecution on hidden forms of child abuse and tendency of abused and neglected children to end up in the criminal justice system as perpetrators of crime rather than as children in need of care and protection.

Under article 120<sup>59</sup> provides for the functions of the Directorate of Public Prosecutions and they include to direct police to investigate any information of criminal nature, to institute criminal proceedings against any person or authority, to take over and continue such criminal proceedings that have been instituted or undertaken by any other person or authority, to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by the Directorate or with the consent of court, those instituted or undertaken by any other person or authority among others.

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<sup>58</sup> Prosecuting Child related cases in Uganda 2016

<sup>59</sup> The Constitution of Uganda 1995.



Furthermore, The Prosecution Performance Standards and Guidelines of 2014, provides guidance for the DPP in child related cases under section 2.2, which states that: A prosecutor should always ascertain the age of child victims in order to determine the appropriate, during perusal and trial stage, prosecutors should always give priority to cases involving juveniles. Prosecutors should ensure juvenile offenders are always accompanied to court by probation officers or their parents, they should ensure that cases involving children in Magistrates' Courts are prosecuted within a period of 3 months, they should develop child friendly services while handling child witnesses. Also it provides that prosecutors should always request the presiding judicial officers for the trial involving a juvenile to be heard in chambers.

The Courts of Judicature: The Family and Children Court (FCC) is established under section 14<sup>60</sup> and is established in every district and any other lower government unit designated by the Chief Justice by notice in the Gazette. A magistrate not below the family and children court, hence Magistrates Grade 1 may also hear these cases. Under section 14, the jurisdiction of the Court is to hear and determine criminal charges against a child, applications relating to child care and protection and any other jurisdiction conferred on it by this or any other written law.

The High Court is granted jurisdiction under section 104 of the Children's Act to try offences where a child is accused of a crime punishable by death (for which only the High Court has jurisdiction) or where a child is jointly accused with an adult and

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<sup>60</sup> The Children's Act

after hearing the case, the High Court must remit the file to the FCC for an order to be made in accordance with section 100(3) of the Children Act. Moreover, under section 1<sup>61</sup> it is provided for that the high court shall have jurisdiction to try any offence under any written law and may pass any sentence authorized by law; except that no criminal case shall be brought under the cognizance of the High Court for the trial unless the accused person has been committed for trial to the High Court in accordance with the Magistrates Courts Act. This section is however superseded by section 100(3) of the Children's Act cited above, which grants powers of sentencing children to the FCC only. This means that after trying a child for a capital offence, the High Court should remit the case to the FCC for appropriate order to be made. It is important to note that section 94 of the Children's Act grants jurisdiction in all criminal cases concerning children to the FCC except where the offence is punishable by death and where the child is jointly charged with an adult. Also certain offences have been decriminalized for children such as idle and disorderly conduct and on rogues and vagabonds in the Penal Code Act. This means that no child can be convicted of behavior that amounts to breach of laws.

Furthermore institutions like schools are guided by the Children's Act which is the principal Act under section 106(a)<sup>62</sup> which provides that a person of authority in any institution of learning shall not subject a child to any form of corporal punishment. This also governs the rate at which juveniles may commit crimes or

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<sup>61</sup> The Trial on Indictments Act

<sup>62</sup> Children's Act

offences as persons of authority in institutions cannot inflict any corporate punishment unto the children by the command of this provision.

### **The Non Governmental Organisation (NGOS).**

These derive their mandate from the NGO Act and are institutions created by people but in accordance with government laws relating to the welfare of a child. Such institutions include Save the Children, whose vision is ensure that every child attains the right to survival ,ptotection ,development and participation .In 2015,Save the Children developed a Restorative and Child Justice Manual using it to train 75 Justice ,Law and Order Sector stakeholders ,probation and social welfare officers,data clerks ,Prosecution and other judicial officers ,fit persons and prisons and police officers in Northern Uganda.The officers were equipped with skills in legal processes and aspects relating to childrens rights ,principles and procedures relevant to the expeditious and successful disposal of juvenile cases.This was in abid to promote restorative and child friendly justice principles and practices.

Save the Children as an NGO recognized the Children's Act 2016 amendement on 2<sup>nd</sup> March 2016 and noted that the law amended strengthens the institutional mechanism for the promotion of the rights of children through establishment of the Uganda National Children's Authority to coordinate child related issues.

Legal Aid Agencies dealing with children in contact with the law: A number of civil society organizations are working to promote the rights of children including those in



conflict or contact with the law .Legal Aid Services providers (LASPs) such as the Association of Uganda Women Lawyers (FIDA-U) and the Law Development Centre (LDC) Legal Aid Clinic (LAC) handle children's matters.FIDA-U handles hundreds of cases of child maintenance,while LAC is actively involved in presenting children in conflict with the law.Other NGOs such as African Network for the Prevention and Protection against Child Abuse Neglect (ANPPCAN) is involved in advocacy against child abuse and neglect and is actively engaged in reintegrating children in conflict with the law with their families.The Uganda Child Rights NGO Network is a network organization of various child rights NGOs working in the country.<sup>63</sup>

Other non governmental organisations include Amnesty International which is guided by the framework of the CRC.It seeks to develop its work on children around 3 key themes:juvenile justice,children in armed conflict and children in community and family.It connotes that although the CRC provides a comprehensive baseline for children's rights Amnesty international will continue to remind nations of their obligations under other human rights treaties to protect the rights of the child<sup>64</sup>.

Also The Human Rights Watch:Children's Division.,The Children's Rights Division examines the children's rights abuses in every part of the world ,sends fact finding missions to countries where abuses are alleged to be occurring and present reports to governments ,international oragnisations ,Non Governmental Organizations

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<sup>63</sup> Prosecuting Child related cases in Uganda:A handbook for the Uganda Directorate of Public Prosecutions 2016

<sup>64</sup> [www.amnestyusa.org/children/indexdo](http://www.amnestyusa.org/children/indexdo).



,policy makers and the media<sup>65</sup> Remand homes.These are known as institutions where children in conflict with the law are principally detained as the responsibility of the Ministry of Gender ,Labour and Social Dev development.In Uganda the remand homes include Fortportal,Gulu ,Naguru ,Mbale and then Kampiringisa rehabilitation center which detains sentenced children from the whole of Uganda according to Marianne Moore.<sup>66</sup>

The loopholes are in relation to the effectiveness of the law as it is not followed to the dot for instance delays in prosecution and also punishing children together with adults.The other big set back is focusing on central areas of the country by these institutions and neglecting the rural areas in which also juvenile crimes are rather rampant but go unpunished.

### **2.3:The Courts of Judicature**

Some cases prosecuted between 2011-2018 in Uganda relating to juvenile delinquency include the following:-

Uganda vs Juvenile<sup>67</sup>,in this case the accused was indicted of the offence of murder under <sup>68</sup> which stipulates the death penalty for murder and Hon.Lady Justice Margaret Mutonyi notes that it is not applicable in such a case.Court was of the view that the circumstantial evidence as led by the prosecution proved the case of murder of a 6 year old against the beyond reasonable doubt and accordingly referred to the Children's

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<sup>65</sup> Hrw.org/children

<sup>66</sup> Review of Ugandan Remand Homes and the National Rehabilitation Center 2010

<sup>67</sup> HCT-02-CR-SC-0377 OF 2014

<sup>68</sup> Section 189 of the Penal Code Act

authority for orders. The lady Justice also noted that the state should use relevant sections in the Children's Act as regards to penalty.

In *Uganda vs Olega Muhammad*<sup>69</sup>, the accused in this case was indicted with one count of aggravated defilement contrary to <sup>70</sup>, the victim was a child below 14 years and in this case, the judge convicted that the convict should be released from custody forthwith unless held for other lawful reason with knowledge that a fixed sentence for the specified term of imprisonment hangs over him and its execution or the lack thereof will depend on his conduct towards young girls henceforth.

In *Uganda vs Mukulu Nasuru and 3 others*<sup>71</sup> the first accused, a child admitted to the charges and was convicted to defilement under section 129(1) of the Penal Code Act. The case was however remitted to the Chief Magistrate's Court Junja for orders to be made under section 94 of the Children's Act. Where a child is tried alone or jointly with an adult in a court superior to a family and children court, the child shall be remitted to a FCC for an appropriate order to be made if the offence is proved against him or her.

Furthermore, in the case of *Uganda vs Begayika Nancy*<sup>72</sup>, a juvenile was convicted with murder contrary to <sup>73</sup> and the deceased Kafuba Asaad was aged 4 years at the time of his death on 1<sup>st</sup> November 2015. The issue was whether in view of section 23 of the Children's Amendment Act no.9 of 2016, the High Court has powers to pass a

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<sup>69</sup> Criminal case no.33 of 2016 at High Court of Uganda at Arua

<sup>70</sup> Sections 129(3), (4)a and (7)b of the Penal Code Act.

<sup>71</sup> HCT-03-CR-SC-0137-2007

<sup>72</sup> Case no.19 of 2016, High Court Criminal Juvenile Session

<sup>73</sup> Sections 188 and 189 of the Penal Code Act

sentence in a trial before it of the child offender who had been tried alone. In this case Hon. Justice Joseph Murangira held that the High Court has jurisdiction to sentence a child offender who is tried alone on a capital offence by the High Court as well as the child offender who is jointly tried with a person who is an adult.

Moreso, a report by the New Vision <sup>74</sup> six juvenile offenders got convicted over defilement where, Standing at the dock, a 14 year old minor, appearing before Justice Joseph Murangira of the High Court, pleaded guilty to defiling a six month old baby whose mother had left under the care of its sisters to go for work.

Presenting the case before the High Court, senior State attorney, Fatima Nakafeero said that on June 3, 2014, immediately after Magdalene Kyakuwa had bade farewell to her three daughters including the minor, the Juvenile, who was their neighbor, went to their home to borrow a sauce pan.

"He found the baby being carried by her five year old sister while their older sister was in the garden. The offender asked the girl to give him the baby such that she can prepare her (baby) food," Nakafeero narrated.

The victim's sister surrendered her to the offender and went to prepare the food. When she returned with the food, the Juvenile handed over the baby to her but to her surprise, the young girl was bleeding profusely from the private parts.

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<sup>74</sup> Wednesday 30/05/2018, New Vision Report by Betty Amamukirori

Nakafeero said that when the girl tried to ask the offender what had happened to the victim, he took off. This prompted her to call their elder sister who then informed their mother. Kyakuwa, a resident of Lusanja village in Wakiso district, returned, went to Kitezi police station and reported. The boy got arrested and he immediately confessed to the crime whereupon, he was indicted. Medical examinations were done and the baby's hymen was found to be broken. She also had abrasions on the private parts.

Yesterday, in a very low voice, he took to the microphone and pleaded guilty when the indictment was read to him. The minor is among six juveniles who confessed to the crime. On July 26, 2015, Sharon Amiya, a resident of Biina Zone, in Kampala, left her then 15 year old brother in law to watch over her 2 year old daughter. However, midway her journey to work, she decided to return home. She found the door closed but unlocked.

When she pushed it open, her eyes fell on her naked brother in law having sexual intercourse with the victim. She made an alarm, locked the door and rushed to Kirombe police post.

The Juvenile offender was consequently arrested and in his statement, he confessed to the heinous crime.

18 year old Asafu Mutumba, also pleaded guilty to defiling, impregnating and infecting a 15 year old mentally ill girl with HIV/AIDS. Mutumba who committed the crime at the



age of 17, said that they were in love and had had sexual intercourse several times.

According to the indictment, between March and July 2015, Mutumba, a resident of Senyondo village in Bugiri district befriended the victim who was by then under the care of her elder sister Judith Kabenge. "During that time, he would take the victim to his house and perform sexual intercourse with her. In July, Kabenge who suspected the victim to be pregnant took her to the health center for check and the report was in the affirmative," Nakafeero told court.

She said that when the victim was asked about the father of the unborn child, she mentioned Mutumba. The case was reported to police and the offender was arrested. Aggravated defilement under the children's Act, attracts a maximum sentence of three years and during sentencing, the judge must take into account the period spent on remand by the juvenile offenders.

For Mutumba's case, the state want him transferred to an adult prison since he has reached the age of consent. Murangira adjourned the cases to September 27, for sentencing.

From the above report, juveniles are tried in open courts because the laws explicitly provide for the management of their offences have not yet been passed and that the few laws that are available only provide for the protection of their identity before the media.

#### **2.4:Conclusion.**

The legal and institutional framework is constituted by the laws or legislations made by policy makers in the country and as presented above in this chapter. From the acts, provisions included govern the available institutions regarding juvenile delinquency in Uganda. These laws are enacted in accordance to the general international law principles and standards to mitigate the sole purpose and aims of laws and human rights.

## **CHAPTER THREE**

### **EXAMINE THE INTERNATIONAL LEGAL FRAMEWORK ON JUVENILE DELINQUENCY.**

#### **3.0.Introduction.**

This chapter discusses the international instruments that govern juvenile crime world wide and are binding on. countries that have ratified them States have an obligation to ensure that children in conflict with the law benefit from diversion and alternatives to the greatest extent possible. The importance of diversion and alternative detention for children in conflict with the law is to set out numerous international human rights law instruments <sup>75</sup>.

#### **3.1:What are the vast international law instruments that govern juvenile delinquency?**

##### **Convention on the Rights of the Child 1989.**

Under article 37(b)<sup>76</sup> of this convention provides for the deprivation of liberty shall not be unlawful or arbitrary and shall be used only as a last resort and for the shortest appropriate period of time.

The CRC further provides under article 40(1)<sup>77</sup> that treatment of children in conflict with the law shall respect their dignity and worth ,reinforce the child's respect for the rights and freedoms of others and take into account their age and promotion of social reintergration.

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<sup>75</sup> Unicef ,Toolkit on Diversion and alternatives to detention.

<sup>76</sup> CRC

<sup>77</sup> CRC

Moreso, under subsection 4 there is a provision that of proportionate alternatives to post trial detention shall be available which ensures that children are dealt with in a manner appropriate to their wellbeing.

### **The International Convention on Civil and Political Rights 1966 (ICCPR)**

Under article 10(2)<sup>78</sup>, it provides for the separation of children from adults, children shall be brought as speedily as possible for adjudication. Also under article 14(4)<sup>79</sup> it is provided for that procedures for children must take into account of their age and promoting their rehabilitation.

### **The African Charter on the Rights and Welfare of the Child 1990**

Under article 17(1)<sup>80</sup> children in conflict with the law have special treatment, consistent with their dignity and worth and which reinforces their respect for the rights and freedoms of others.

Also under article 17(3)<sup>81</sup>, the aim of trial and sanctions is the rehabilitation, social intergration of children in conflict with the law.

### **American Convention on Human Rights 1978.**

Under article 7(5)<sup>82</sup> any person detained shall be brought promptly to trial and maybe released pending trial through maybe subject to certain guarantees. It further notes that

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<sup>78</sup> ICCPR

<sup>79</sup> ICCPR

<sup>80</sup> African Charter on the Rights and Welfare of the Child

<sup>81</sup> African Charter on the Rights and Welfare of the Child

<sup>82</sup> American Convention on Human Rights

children have a right to protection as interpreted by the Inter American Court of Human Rights to encompass all the rights included in the CRC<sup>83</sup>.

### **Convention for the Protection of Human Rights and Fundamental Freedoms 1950**

The provision in this convention under article 5(1)<sup>84</sup> is to the effect that people have a right to liberty except in certain circumstances prescribed by law that is protection from arbitrary and unlawful detention and any legal detention must be reasonably considered necessary.

Article 5(3) anyone detained shall be brought promptly to trial and maybe released pending trial although release maybe subject to certain guarantees.

### **The Arab Charter on Human Rights 2009**

Under 14(1) and (2)<sup>85</sup> protection from arbitrary and illegal detention .Moreso, under <sup>86</sup> children in conflict with the law have the right to special treatment which promotes rehabilitation and reintergration.

This charter further provides under article 33(3)<sup>87</sup> that children in conflict with the law have the right to protection ,survival ,development ,wellbeing freedom,dignity and to have their best interests considered.

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<sup>83</sup> Including articles 37(b),40(1),40(3)b ,40(4) and 19 CRC

<sup>84</sup> Article 5(1) Council of Europe Convention for the protection of human rights and fundamental freedoms.

<sup>85</sup> Article 14(1) and 14(2) Arab Charter on Human Rights

<sup>86</sup> Article 17 Arab Charter on Human Rights

<sup>87</sup> Article 33(3)



**UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)** as adopted by the United Nations in 1985 and under rule 7<sup>88</sup> provides for the basic rights of juveniles to basic procedural safeguards such as the presumptions of innocence, the right to be notified of charges, right to counsel among others. The idea for drafting the Beijing Rules arose during the Sixth United Nations Congress discussions on "Juvenile Delinquency: Before and After the Onset of Delinquency"<sup>89</sup>. The report of the Congress called for the development of "model rules on juvenile justice administration". On recommendation of the Seventh Congress, the Beijing Rules were adopted by the general Assembly.

The rules further stipulate under rule 13(1)<sup>90</sup> for detention pending trial to be used as measure of last resort and for the shortest period possible time.

**The United Nations Rules for the protection of Juveniles Deprived of their liberty (Havana Rules) 1990.** The main function of these rules is to ensure that juvenile justice system should uphold the rights and safety and promote the physical and mental wellbeing of juveniles. They connote imprisonment to be the last resort. That juveniles should only be deprived of their liberty in accordance with the principles and procedures. They were also intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms consistent with human rights and fundamental freedoms.

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<sup>88</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

<sup>89</sup> A/CONF.87/14/Rev.1

<sup>90</sup> Rule 13(1) of UN Standard Minimum Rules for the Administration of Juvenile Justice

### **3.2 : Finding from the international law instruments.**

The instruments provided discuss or emulate their power from the Convention on the Rights of the Child and they all almost advocate for the same intention and purpose in regard to juveniles .However in a study by National Collaboration for Youth and National Juvenile Justice Network<sup>91</sup>, a revision on the alternative to incarceration were discussed whereby under<sup>92</sup> states that youth should be incarcerated only as a measure of last resort and for the shortest appropriate time. Alternatives to institutional care such as counseling,probation and education ,vocational training programmes to ensure that youth are dealt with in a manner appropriate to the wellbeing and proportionate both to their circumstances and the offence.<sup>93</sup>Uganda as an African Country adopted the CRC as well as the African Charter on the Rights and Welfare of the Child.

Foreign law: To the extent that juvenile law practitioners become familiar with practices and procedures in other countries regarding juvenile offender ,those examples can be used to argue for the substitution of the best of those practices for what may be common in the lawyer's jurisdiction ,just like practices from other states.For example ,one issue attracting considerable attention at this time is the problem of false confessions,especially by juveniles or mentally deficient adults, and the development of rules regarding the video-or audiotaping of police interrogations involving such suspects.A few states require the recording of interrogations,but Great Britain has

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<sup>91</sup> Series of policy briefs.

<sup>92</sup> Article 37 of the CRC

<sup>93</sup> Article 40 of the CRC.

utilized the practice for about a decade because of some highly publicized false confession cases.<sup>94</sup>

International agreements are superior to domestic laws: When a ratified international agreement states that its normative rules are to be in force in the country, it takes precedent over national legislation if the two are in conflict with one another. As a result, judges and others involved in the legal system should enforce these international norms regardless of contradiction or repetition that can exist with national laws.<sup>95</sup>

The prevention of juvenile delinquency and status offence: The Committee on the Rights of the Child has commented that state party reports rarely address social factors leading to the involvement of juveniles with the system of administering justice or the social consequences of the decisions taken in that context. It also recognized that the child should be seen as a victim in situations of sex abuse, child prostitution and child pornography. Criminal responsibility should be based on objective criteria, excluding situations where the child is confronted with poverty and social exclusion. The UN Convention Against Transnational Organised Crime<sup>96</sup> realises the vulnerability of young people (either directly or indirectly) to organized crime. Further section<sup>97</sup>: Plan of Action for Juvenile Justice, calls on states to support the development of juvenile specific crime prevention practices that take into account the vulnerability of juveniles to criminal recruitment, including the need for timely assistance to juveniles in difficult

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<sup>94</sup> Robert.E.Shepherd Jr.:Juvenile Justice.

<sup>95</sup> Tirana (2007),Juvenile Justice in Albania: An analysis of the juvenile justice system and the situation of juveniles in Albania.

<sup>96</sup> Article 31 of the UN Convention Against Transnational Organised Crime

<sup>97</sup> Section xii of the Vienna Declaration on Crime and Justice



circumstances. It also calls for strengthening juvenile justice systems and promoting the re-education and rehabilitation of juvenile offenders.

One way of reducing children coming into conflict with the law is to eradicate status offenses. In its concluding observations on the Barbados state report, the Committee on the Rights of the Child took issue with the possibility of a child being brought before the juvenile court for the offences of talking back and wandering without proper guardianship.

### **3.3: International recent cases relating to Juvenile Delinquency.**

The Juvenile court system addresses court cases that involve individuals that are under 18 years. The system is over 100 years old and the U.S Supreme court cases that have impacted this system include the following, in 1963, the U.S Supreme court established that every citizen including a juvenile has the right to have an attorney in a criminal proceeding via *Gideon versus Wainwright*. Because of this case, the juvenile's attorney is integrated into the structure of the juvenile court process. The attorney answers any questions a juvenile may have and represents their legal rights in court. Also involved in the process is the juvenile's court judge to represent and notify the court of the best interest of the child. The attorney is appointed at the very beginning of the pretrial process. Depending on the seriousness of the offense and the juvenile's age when he committed the offense, he may be facing a bindover. A bindover is a proceeding to determine if the juvenile should be tried as an adult in court instead as a minor. Bindovers are mainly done in serious cases such as murder. The U.S Supreme court in 1966



ruled in Kent versus United States that a juvenile is entitled to a hearing where his attorney can have access to all record and in which the court provides a written statement of all the reasons to bind over to the adult system.

Today<sup>98</sup> the structure of the juvenile court remains essentially the same as it did decades ago. When a juvenile gets processed into the system, the juvenile can be held in custody at a detention home through out the entire court process without having bond. The juvenile court sytem places a large emphasis on moving the cases quickly however so pre trals and court hearings are set in a speedy manner. At the conclusion of a trial or if there is a guilty plea in a case, the juvenile is then adjudicated if the judge makes a determination that the juvenile committed a delinquent case.

The U.S stands alone in the widespread prosecution of juveniles in adult court .In March, 2014 ,the United Nation Human Rights Committee urged the U.S to end adult court prosecution of juveniles to end juvenile life without parole ,separate all juveniles from adults and end the practice of transferring juveniles to adult courts. The United States is one of the only two nations that has failed to ratify the UN Convention on the Rights of the Child (UNCRC)- the most widely ratified international human rights treaty to protect children's rights. UNCRC prohibits adult prosecutions of children. In United States Supreme Court ruled in the case of <sup>99</sup> that imposing the death penalty on offenders who were younger than the age of 18 at the time of the murder for which

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<sup>98</sup> Juvenile Justice System of the U.S

<sup>99</sup> Roper versus Simmons 2005

they were convicted violates the eighth amendment of the International Covenant on Civil and Political Rights<sup>100</sup> ratified on March 23<sup>rd</sup> .1976 as deprived from<sup>101</sup> .

Miller vs Alabama 2012<sup>102</sup>,the ruling in this case made it unconstitutional to sentence someone who was under the age of 18 at the time of the crime committed to mandatory life without parole.The ruling requires a judge to take into consideration the age of the offender before sentencing him or her to life without parole.

In the case of Villagran Morales and others vs Guatemala,the Inter –American court stated that ; ‘when the state apparatus has intervene in offences committed by minors ,it should make substantial efforts to guarantee their rehabilitation in order to allow them to play a constructive and productive role in society’.In his concuering opinion in the case of Nortier vs Netherlands,Judge Morenilla of the European Court ,quoted from both the preamble and article<sup>103</sup> in order to state that the child criminal justice system should afford children the necessary protection and assistance so that they can fully assume responsibilities within the community and prepare them to live an individual life in society by promoting the establishment of laws, procedures, authorities and institutions applicable to children alleged as accused of or recognized as having infringed the penal law.

In United States ,37 states and the District of Columbia still allow a juvenile to be sentenced to life for committing a non-homicidal crime.A law passed by the Florida

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<sup>100</sup> ICCPR Article 6(5)

<sup>101</sup> Amnesty International Executions of Juvenile since 1990

<sup>102</sup> [2012] S.Ct 2455

<sup>103</sup> 40(3) of the Convention on the Rights of the Child

Senate in 2014 states that a juvenile convicted of murder may only be sentenced to life in prison after a mandatory hearing at which his or her age and circumstances are considered. The law also provides the opportunity for judicial hearings and to review the sentences of offenders serving sentences for juvenile offences.<sup>104</sup> Also in *Graham Versus Florida* 2011<sup>105</sup>, the Illinois Supreme court reviewed the constitutionality of the automatic transfer statute and affirmed it but with a strong caution to the Illinois legislature that the automatic transfer statute needs to be amended. The court noted that the state needed to ensure juvenile justice reform, that it should work to tailor punishment to fit the offence and the offender as required by the federal and state constitutions. And that for juveniles, it should start with abolishing automatic transfers.

In Asian countries today<sup>106</sup>, the Central Narcotics Bureau assesses the facts and circumstances of each juvenile case before deciding whether to place the offender under CNB supervision, or to charge the person in Juvenile Court.

It would appear the Juvenile Court is the lynchpin here: If the judge orders probation for a drug abuser, he will be treated as a first-timer if he reverts to the habit later as an adult. But if the judge decides to send the abuser to a home, the adult rules would apply if he were to be charged for the same offence as an adult.

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<sup>104</sup><sup>104</sup> The Florida Senate CS/HB 7035-Juvenile Sentencing.

<sup>105</sup> [2011] 130 S.Ct

<sup>106</sup> Juveniles ;A case of forgive and forget? K.C Virjayan.



But troubled children are sent to homes for several reasons, including not having a proper home environment. This is done after careful assessment by the courts, not necessarily because the child deserved to be 'interned'.

Some may point to the example of Britain, which changed its equivalent of the CYPA(Children and Young Persons' Act) laws in 1997 to allow the courts to take account of Juvenile Court convictions for the purposes of sentencing adults.

But it is worth bearing in mind that the British system does not require mandatory caning and five-year jail terms for repeat drug offenders.

The Malaysian courts, which can impose sanctions identical to the Singaporean courts, have ruled that juvenile convictions are not to be registered - 'to protect a juvenile from being treated like an ordinary criminal'.

The issue will be settled in Singapore when the next case surfaces and reaches the apex court, said Senior Counsel Tan Chee Meng, who failed in his attempt to have the Noor Indra case heard.

But Professor Chong suggests this is an issue where Parliament should step in to clarify the law and decide if juvenile offenders should be given a 'second chance'.

'A drug offence committed when they were juveniles should not count as a prior 'conviction' at all should they be subsequently convicted by an adult court for another



drug offence,' Prof Chong argues. 'This is already the situation for juveniles who have been granted probation, and it should apply to other juveniles as well.

### **3.4:Conclusion.**

The effectiveness of these international laws is logical as some countries have adopted the conventions but the situation in practice is often different as stipulated by Defence for Children International Geneva (DCI,2007)<sup>107</sup> which illustrates the length of detention including maximum sentences and the duration of average sentences including maximum sentences and the duration of average sentences .In Africa while the legislation in the four countries surveyed that is Ghana,Sierra Leone ,Uganda and Niger ,it states that children should not be held longer than 3 years ,in practice the situation is often very different.For example in Uganda, the Children's Act of Uganda cap 59 under<sup>108</sup> sets detention at a period of six months for children who have committed petty offences while those charged with capital offences can be convicted and detained for a maximum period of 3 years. However this has not been followed to the dot and the six months provision is not usually adhered to because of delays in court proceedings.

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<sup>107</sup> "From Legislation to Action?" Trends in Juvenile Justice Systems Across 15 countries(DCI,2007)

<sup>108</sup> Section 91(5)a

## CHAPTER FOUR

### FACTORS CONTRIBUTING TO JUVENILE CRIME IN UGANDA

#### 4.1: Introduction.

This chapter discusses the vast factors that lead to juvenile crime in Uganda and stipulate the criminology theories as to why people especially children commit crimes.

Theories have been advanced from time to time as to the causes of crime amongst juveniles but in the last ten to fifteen years have extensive scientific investigations been carried out on these problems. Officers of the juvenile courts, child welfare associations, educational bodies and mental hygiene clinics have been instrumental in bringing together a vast amount of data on juvenile delinquency from which conclusions have been drawn. Delinquency itself is socially inadequate on the part of individual situations. The factors which go to make up these difficult situations together with the mental and physical conditions which influence an individual's capacity to adjust constitute causes of juvenile delinquency.

Each juvenile offense is an outcome of a complexity of causes some of whose origins date back years before the committal and others whose origins are more obviously and immediately connected to the act of delinquency.<sup>109</sup> (BanHam Bridges)

Most criminological theories portray juvenile crime as resulting from rather than causing social problems. According to this view, crime among a group of anti-social behaviors that cluster together and typically involve family dysfunction, sexual and physical abuse

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<sup>109</sup> Factors contributing to juvenile delinquency by K.M BanHam Bridges.

,substance abuse ,smoking ,precocious sexuality and early pregnancy,educational underachievement,suicide attempts ,sensation seeking and unemployment.<sup>110</sup>

Factors looked at by BanHam Bridges <sup>111</sup> are classed under six general headings which include physical factors ,mental factors ,home conditions ,school conditions,neighbourhood conditions and occupational conditions.The first two groups include all factors dependent upon the bodily and mental condition of the delinquent.These are the product of both heredity and environment.The last four groups consist of environmental factors : unfavourable conditions in the school environment,the neighbourhood and occupational environments.However the less important factors need to be stressed as they are the most likely to be overlooked.

Physical factors for a developing country like Uganda may include malnutrition whereby there is too little food ,sufficient food may not be provided either through poverty or mere carelessness breeding into street lives.Overcrowding in homes whereby the space available for accommodation is less compared to the beneficiaries.

In addition to setting the child at a disadvantage in competition with others and possibly making him a target for childish ridicule ,speech defects block one of the most essential means of self expression and social expression for the individual.These result into mental defects thus such a child may on the hand

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<sup>110</sup> Page 291 Criminology by Larry J.Siegel.

<sup>111</sup> Factors contributing to juvenile delinquency.

become cynical and foster a grudge or a get-even complex with consequent anti-social results.

School and neighbourhood conditions may incite vices such as drug addiction and exposure to violence. Drug addiction is not an important aspect in juvenile delinquency though it may play apart in adulthood. It is a delinquency in itself but like truancy it may also be a casual factor in other delinquency such as stealing, sex offences or disturbing peace and order. A great variety of mental, physical and environmental factors contribute to drug addiction as to any other form of desirable behavior.

Exposure to violence<sup>112</sup>. Persons who are constantly exposed to violence at home, at school or in the environment may adopt violent methods themselves. Some exposed at an early age to violence in the home, an example is when Ira Hutchison and J. David Hirschel studied domestic violence cases in North Carolina, they found that in more than half of the cases children had witnessed assault and two thirds of the cases children were there when the police arrived<sup>113</sup>.

In some cases, people who are exposed to violence when they associate with violent peers, those who choose aggressive or violent friends are more likely to begin engaging in anti-social behavior themselves and suffer psychological deficits. In conclusion, exposure to violence can also occur when people are forced to live in violent, dangerous neighbourhoods.

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<sup>112</sup> Pg 336 Criminology by Larry J. Siegel.

<sup>113</sup> "The Effects of Children's Presence on Woman Abuse", Violence and Victims 16, (2002):3-17. by Ira Hutchison and David Hirschel.



Poverty and unemployment. Upon these causes alone depend many others such as ill health, overcrowding, neglect, ill-tempered parents and so forth. Cyril Burt<sup>114</sup> says "55 percent of young delinquents in London come from homes that are below poverty line". Thefts and all kinds result from primal urge for food, clothing and shelter and from the jealous desire for some of life's luxuries. Unemployment causes a similar condition of affairs as it leads to theft, depressions in trade to increase in number.

Inadequate facilities for recreation, superior education of children, excess material things, congested neighbourhood and slums among other factors may cause delinquency.

#### **4.3: Overview of the major factors of juvenile crime in Uganda over the recent years of 2011-2018**

Uganda being a developing country with the highest of its population as young person between the ages of 15-24, the rate at which delinquency occurs over time increases and below are some of the factors thereof:

##### **4.3.0: Social factors.**

##### **Family background.**

This is an essential factor for the growth of delinquency among juveniles in that the norms, values and morals from the family unit create an internalized blue print for juvenile personality, beliefs and attitudes. Families with marital instability are fertile

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<sup>114</sup> The Definition and Diagnosis of Moral Imbecility by Tredgold .A.F, Burt Cyril, Hamblin Smith, M Rees, Thomas W and Shrubsole F.C

grounds for dysfunctional norms .It is observed that when marital instabilities exist within a family ,the observable outcomes are seen through juveniles.<sup>115</sup>

Furthermore,families play a vital role in the development of children and youth.Studies of juvenile delinquency show that the family environment can present as either a risk or protective factor.<sup>116</sup>Factors related to family dynamics and functioning may include; ineffective parental behavior such as poor supervision,over permissiveness inconsistently overly strict discipline,a weak bond and affection and the liability to set out clear limits,parentaland sibling criminality ,family conflicts ,mistreatment during childhood for instance victims of violence ,neglect ,physical and sexual abuse and parental substance abuse.This factor also encourages the juvenile to commit the offence in society.Sutherland<sup>117</sup> said that the family background has the greatest influence on the criminal behavior of offender or juvenile.The children divert themselves towards juvenile tendencies if they find their parents or family members behaving in a similar manner.A child who has grown up in a hostile aggressive parenting atmosphere become easy prey to criminality. There is lack of parental support and control over their children due to separation ,divorce or desertion which may indulge in criminal act.The regular fights among the parents ,domination of one over the other,step motherly behavior ,depravity of parents,povertry,unpleasant family atmosphere,unemployment, low income or parents continued absence from home may lead the child to fall into bad company

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<sup>115</sup> Relation of family problems to patterns of delinquent involvement among urban youth;in a Journal of Abnormal Child Psychology Vol 15.Gorman Smith D,Tolan P.H Lowerber and Henry D.B (1998:5,26)

<sup>116</sup> Families at Risk ; The impact of familial Environment on juvenile delinquency.July 2011.

<sup>117</sup> Sutherland E.H and Cressey D.R Juvenile Delinquency .New York :Mcgrawhill Book Co.1949.

and indulge in criminal activities. Some of the same factors which emanate from the family background are as under;

(a) Family structure: The structures of the family background are responsible for figuring out the personality or character development of the child. A healthy and educated family provide good atmosphere and encourages growth, confidence and make him a responsible and sensible citizen. Delinquents mostly belong to poor and inadequate homes <sup>118</sup>. Also a study by Dornbuschs revealed that "both the patterns of family structure and decision making contribute distinctly to adolescents behavior"<sup>119</sup>.

(b) Broken Homes: Broken home means a home where there is instability present in homes due to any one of the missing family member like either the parents are dead or living separately or are divorced. If parents are drunkards or drug addicts or often fights with each other also disturbs the mind of such children. In such conditions, the child feels insecure and in that way finds his path. He or she is attracted towards the anti-social elements, which he chooses to be happy himself and in this process, he is led towards the path of delinquency.

(c) Child's birth order in the family: Lees and Newson (1954) found that the sibling position could be an attributing factor for the differences among the delinquent. According to their study, middle children are likely to get less attention and care compared to the older and younger children resulting in inattention

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<sup>118</sup> Carr, Lowell J Delinquency Control 1950 pg 166

<sup>119</sup> Dornbuschs, S.M et al, Single Parents Extended Household, and the control of Adolescents Special Issue. Child Development, 56(2), 1985.



deficit disorder. Such children are prone to involvement in criminal activities and their number is also considerably large in group of delinquents.

(d) Family size and type: It also a recognized factor in reason of delinquent behavior. Delinquents mostly belong to joint and bigger families as compared to the smaller and nuclear families as less attention is likely to be paid toward children in bigger families. Glueck 1950 found "delinquent children were more likely to come from joint and larger families" Similarly, several studies have been done which have emphasized upon the large size of the population to be a contributing factor to the growth of juvenile delinquency.

(e) Parental-Children Relationship: The most significant factor in behavioral development of a child is the relationship with their parents. The relationship with a family is shaping the inter-personal behavior and cognition of the Child (Glueck and Glueck 1950 and Nye, 1958). According to Desai (1979), the child needs to feel that there is at least one solid dependable fact in the changing confusion of his social relationships, that he need never doubt his parents' affection for him." But in many cases, understandings, hard feelings and open conflicts occur between parent and the child.

The infrequent delinquents showed greater bonding with their family than the habitual or the professionals. Lakshmann (1982) reported that "juvenile delinquency is affected by the differential treatment given to the children by their parents".<sup>120</sup>

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<sup>120</sup> Shipr Lavania, 'Juvenile Delinquency' (1983) Pub. by Rawat Publications, Jaipur pp.1517.



Other factors relating to the neighbourhood or area of residence which are risky include ;the presence of criminal elements e.g crime ,young offenders ,youth gangs ,living in disadvantaged neighbourhood ,availability of illicit or illegal goods among others.

The level of education of the children's parents.In a research<sup>121</sup> conducted by Erasto.M,the vast majority of families only a few had had a very meagre primary education ,they were either semi illiterate or illiterate.The level of education of the parents indicates how able the parents might be able to support their children if their standard of education enables them to acquire well paying jobs.If they have a meager education or if they have any formal education at all then it means that they are unlikely to have well paying jobs which would enable them to provide for the needs of their children .Very poor homes are likely to create situations which can pre dispose children and adults alike to criminal and delinquent behavior.

#### **4.3.1:Economic factors**

The status of working class families important aspect for the growth of juvenile delinquency.In the middle class families ,parents put a lot of pressure on juveniles due to involvement in peer groups and nature of life style portrayed by juveniles.Such pressure is never liked by juveniles and in order to set themselves free from the parents' pressure ,juveniles resort to delinquency.

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<sup>121</sup> Crime and Delinquency in Kenya at Pg 120

Erasto M further noted that the occupation of the parents is critical in the issue whether children become delinquents or not. He noted that jobless parents in Kenya are likely to be poor and unable to support their children and provide them with the necessary education, food, clothing and shelter. These conditions are likely to have adverse effects on the children and predispose them to delinquent acts. The parents who are employed and are earning very low wages are also not in position to adequately supply the needs of their children. Erasto further analysed the occupational background as he deemed it necessary as it might give a clue as to why their children become delinquent.

Moreso, the poor and underclass people have got more chances of producing delinquents. This group is commonly found in urban centres with chronic cycle of poverty that does not please juveniles. Because of poverty, juveniles lack opportunities to go to school and pay attention. Scholars have observed that in suburbs where such groups are living, cultural norms and family ties continue to weaken overnight and this increases permissiveness among juveniles which is associated with delinquency. Education therefore is an influential factor for the outcomes of delinquency among juveniles. It has been observed that in an ideal environment, educational opportunities should be available to all juveniles.

Furthermore, socio-cultural conditions are critical in causation of juvenile delinquency: The socio-cultural condition is also a contributing factor for juvenile delinquency. When a child living in a society he meets two different types of persons

some who are engaged in criminal activities. The anti-social elements in the society have a tendency to change the normal children into delinquents for their multiple benefits like to get their illegal work done and to earn profit by attracting them initially in petty crimes like theft, extortion, cheating, pick-pocketing etc. This affects the future and character of these children and it also creates serious law and order problems for the administration also.

According to Clarence Darrow<sup>122</sup>, the child criminal is now common and for the most part is a product of the city. All crime is doubtless much more common in the city than the country, and the young criminal especially, is the product of the crowded community.<sup>123</sup>

### **Influence of the media on psychological development of children.**

This is profound because of the progressive industrialization of many parts of the country, this problem will soon assume the same proportions as in many of the western countries.<sup>124</sup>

The media has been held very important to the growth of delinquency among juveniles. All over the world, television and movies have popularized heroes who promote justice through physical elimination of their enemies. Researchers have concluded that young people who watch such movies tend to behave in violent manners when provoked in order to eliminate their offenders. This is common among juvenile males between 8-12 years. Media brings individual violence by

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<sup>122</sup> Crime, its causes and treatment 75

<sup>123</sup> K. Kusum, 'Juvenile Delinquency - A socio-legal study' (1979).

<sup>124</sup> Juvenile Delinquency in Kashmir Mr Mushtaq Ahmad Bhat

demonstrating violent acts to the spectators and such violent acts are transferred to juvenile spectators. The influence of the media according to scholars is temporary and can last for several hours and days.

Role of the press: Press plays a vital role in creation of good and bad impressions on the mind of the children. Children are generally paying attention to those headlines of newspaper and clipping of news channel which news of gambling, lottery, loot, robbery, rape, how to earn easy money etc. Children also learn how they can commit the offence and earn easy money and become rich. Cases of robbery, loot, kidnapping, gambling etc reported on daily and shown repetitively are also misleading factors to the juveniles. Jerome Motto<sup>125</sup>, says that "newspaper is one of the factors in encouraging suicide." He relied on his research result, that suicide rate in the Detroit area dropped by 20% during the ten months strike when newspapers were not available. He blamed the newspaper for their constant emphasis on violence, aggression, sexuality, power and notoriety.

Cinemas: Movies and social-sites are also considered as cause of crime or delinquency because 'children are easily attracted by the movies. What they watch on the movies are based on sexual crime and criminal actions scenes like robbery, theft, hurt, rape etc. The parents must give attention to their children and be careful that what their children are watching on movies and television and especially

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<sup>125</sup> Jerome Motto, Professor, School of Medicine, California, in the Hindustan Times. 30.1.1970



try to keep them away from cinema which contains undesirable pictures and crime scenes.

In 1960s, Albert Bandura conducted a series of experiments on observational learning, collectively known as the Bobo doll experiments. The researchers pre-tested children for how aggressive they were by their observing. Children who observed the aggressive model made far more imitative aggressive responses than those who were in the non aggressive or control groups. From this finding therefore children act and behave more likely from what they watch and what they are exposed to. In this era of computers, video games and advanced technology, children are more likely to commit crimes.

### **Urbanization**

In developing countries, urbanization is a major factor in influencing juvenile delinquency is on the rise in the whole world and its trend is linked to the rapid and dramatic, social, political and economic changes that have taken place in Africa. The principal offences committed by juveniles are theft, robbery, smuggling, prostitution, the abuse of narcotic substances and drug trafficking according to the UN-Centre for Social Development and Humanitarian Affairs<sup>126</sup> As observed many of urban poor live in slums and squatter settlements with overcrowded, unhealthy housing and lack of basic services. It is here that the majority of urban and youth live<sup>127</sup> and it has been a source of the serious street and orphaned children who turn into delinquents.

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<sup>126</sup> United Nations Centre for Social Development and Humanitarian Affairs (ST/CSDHA/21) 1993.

<sup>127</sup> Urban Management Programme 2003:3

In Asian countries, juvenile crime and delinquency are largely urban phenomena and its statically true else where young people constitute the most criminally active segment of the population. The most noticeable trends in the region are the rise in the number of violent acts committed by young people ,the increase in drug related offences and the marked growth of female juvenile delinquency.<sup>128</sup>

The relationship between urban and rural areas delinquency is to the effect that serious offences committed in urban centres are also shown in a descending order of magnitude which is similar to rural areas according to Erasto .M<sup>129</sup>. However many offences committed in urban areas are not reported to police or authorities concerned because of lack of reporting agencies or no police stations .In rural areas ,some cases such as rape are not reported because of stigma attached to it which is not in the case of urban centres.

#### **4.5: Conclusion**

In Uganda as discussed earlier, juvenile delinquency is related to most socio-economic factors of unemployment of both children and parents, breeding into poverty ,poor education ,lack of awareness of the laws and reluctance of law enforcing authorities. This therefore leads to some crimes committed to go unpunished hence the increase of juvenile delinquency .

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<sup>128</sup> Juvenile Delinquency in Kashmir. Mushataq Ahmad Bhat

<sup>129</sup> Crime and Delinquency in Kenya Erasto Muga

## **.CHAPTER FIVE.**

### **FINDINGS ,CONCLUSIONS AND RECOMMENDATIONS.**

This Chapter seeks to suggest any reforms, recommendations for our laws that could be legislated by law makers and conclusion of the topic.

#### **5.0:Findings**

The children's age before detention. The researcher found that lack of proper age for children detained in remand homes because a child in Uganda is considered a person under the age of 18 and the minimum criminal age responsibility is 12 years. As a result, less than 4 percent of the children aged between 12 and 18 years have birth certificates yet determining a person's age can be a substantive process. A research study by Marianne M<sup>130</sup>, she recommends that efforts to improve the registration of births should be continued by the Ministry of Gender, Labour and Social Development. A national framework for assessing a child's age should be agreed upon between the Uganda Judiciary and the Uganda Police Service and disseminated to all relevant agencies. This is done to ensure that the remand homes and the national rehabilitation center do not house young people outside of the appropriate age boundaries.

#### **The juvenile justice system**

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<sup>130</sup> Juvenile Detention in Uganda. Marianne Moore 2010

Arrests; The researcher also found that children are arrested and usually the police has the discretion to caution and release the child or dispose of the case without recourse to formal court. Since the children's parents are not aware of the arrests and thus children appear in court unaccompanied thus the magistrates deny them bail. As a recommendation, police officers should receive training on their powers to caution and release or release on bond and the necessity of contacting the child's parents or guardian on arrest. The detention of children in police cells should be monitored by an independent auditor to ensure that it does not exceed the official 48 hours and that the children are separated from adults.

### **Bail and remand**

The Children's Act Cap 59 under<sup>131</sup> sets out remand in custody should not exceed 6 months in petty offences and in offences punishable by death should not exceed 3 years. The study further discovered majority of children are not remanded beyond the time limits. The Ministry of Gender, Labour and Social Development should ensure to employ an independent auditor to periodically assess the length of pre-trial detention in accordance with the national commitments of the law governing juvenile delinquency.

### **The Courts.**

There are three levels of courts that can administer juvenile justice, the local councils, the children and family courts and the High court. Local councils are meant to play a central role in the administration of juvenile justice legislation but have been

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<sup>131</sup> Section 91(5) of the Children's Act



constrained by their lack of training on the law and on juvenile justice issues and often refer the children on to remand homes.

The researcher found out that Family and Children courts (FCC) established by the Children's Act ,have the jurisdiction to hear and determine most criminal charges against a child except capital ones.However,there are often delays in court proceedings as well as many children facing trials without representation.Children charged with capital offences are seen in High Court and are provided with lawyers and legal aid.

### **5.1:RECOMMENDATIONS**

The researcher recommends that efficiency of the FCC should be improved through training of the judiciary ,employing more social and welfare officers and funding for the legal aid .All children's cases should be heard at the FCC as opposed to the High Court.

Among other recommendations ,the state should ensure that young people are offered physical and psychological safety and security. Structure that is developmentally appropriate with clear expectations for behavior as well as the increasing opportunities to make decisions to participate in governance and rule making and to take on leadership roles as one matures and gains more expertise. Young people ought to be equipped with emotional support ,opportunities for adolescents to experience supportive adult relationships .Opportunities to learn how to form close ,durable human relationships with peers that support and reinforce healthy behavior ,to feel the sense of belonging and being valued and also opportunities to develop positive values and norms.

There should be a distinction between juveniles in conflict with the law and children in need of care for instance the children on the streets .The state should make provisions for and constitute special personnel units upon the police to handover juveniles in conflict with the law and then immediately hand them over to the juvenile justice system for prosecution.Reference of children in need of care and protection to Child Welfare sector committees unconditionally and make sure the sector is constituted.No child below the age of 18 years should be tried in a normal court.

Moreso,the state ought to ensure the wellbeing of the Child.It is noticeable that the 1997 Guidelines give consideration to relationships over and above the family,referring to those with a legitimate interest in the child'.It also makes the provision that such contact will only be justifiable if it is in the best interests of the child.This is in line with the approach of Article 9(3) of the UN Convention.The Committee on the Rights of the Child also recognizes the importance of encouraging families to have closer and more frequent contact with children placed in institutions and also to participate in how the child is treated in institutions and also to participate in how the child is treated.One of the conclusions from the day of discussion was that 'the child's socialisation should be promoted through increasing the involvement of families in children's programmes and through facilitating the release of children for home visit'.

Another facet of promoting the child's sense of wellbeing is that in all cases where children are alleged as,accused of or recognized as having infringed the penal law' they should ,according to the Convention on the Rights of the Child ,be treated in a manner consistent with promoting their sense of dignity and worth, and which

reinforces their respect for human rights. Any treatment should take into account the child's age and the desirability of promoting their reintegration and their assumption of a constructive role in society.

Article 40 of the CRC does not incorporate the concept of a child's 'rehabilitation'. This is defined as an aim of the administration of juvenile justice by article 14(4) Convention on Civil and Political Rights. The attention of states to the revision of thought which occurred since the adoption of the International Covenant and the risk of the states abusing rehabilitation as an undesirable form of social control should be considered.

## **5.2: CONCLUSION.**

The researcher also found that delinquency is not in-born; it is acquired and gradually grows within an individual turning him or her into a juvenile over time depending on the environment such a child lives in. However, available laws in regarding juvenile delinquency are less implemented due several factors such as non reporting of crimes committed by children except by being cautioned and let free. Another issue for non-implementation is delay in court proceedings as a finding drawn from this study.

The future well being of the country depends on raising a new generation of skilled and competent and responsible adults. However, a large percentage of youth in this country are at risk of not achieving "productive adulthood" and face such risks as substance, adolescent pregnancy, school failure and involvement with the juvenile crime.

Public investments in programs to counter such trends have grown significantly therefore major funding should be allocated to the prevention and control of juvenile delinquency and crime.

The <sup>132</sup> emphasized a few recommendations in regard to juvenile delinquency; A number of reforms need to be put in place to ensure a justice friendly system for both juvenile and child victims, ANPPCAN would like to reinstate its position on detention, children ought not to be held in the same cells with adults as this violates their rights.

The government should allocate appropriate resources towards the construction of separate cells for child offenders so that they are not exposed to secondary abuse from adult offenders. Cases involving children either as offenders or victims should expeditiously be handled by the police and courts of law to enable them obtain justice.

Relating to general child-friendliness in the justice system, the judiciary should create a conducive environment under which juvenile justice is administered to ensure safety of children and their active participation in justice. In addition to this, social workers should be recruited and trained as intermediaries to prepare children for the court two weeks to trial. These should work closely with the courts of law and preferably be part of court staff. There is need to disseminate and orientate Police Officers and Magistrates on the Penal Code Amendment Act as it relates to children. ANPPCAN, noted in this report that many child abuse victims and children in conflict with the law do not access the justice they deserve due to the absence of the legal provisions that

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<sup>132</sup> African Network for the Prevention and Protection against Child Abuse and Neglect Uganda, in a report Media Brief on Juvenile Justice in Uganda. June 2012



engender a friendly service for children within the justice system and the lack of adequate support service for children interfacing with the justice system. In many instances investigations are delayed leading to negotiations between the family of the offender and the family of the victim to have the matter settled outside the court. Sometimes the files take too long at the state attorney's desk and on some occasions the files are sent back to the police for further investigations while the suspects are released from police custody without notification of the survivor and the witnesses in which case they go out to intimidate the victims further.

The researcher recommends privacy while prosecuting children because often children stand alone, intimidated and scared in the witness box, often facing a relative as the accused person. This child is expected to give the testimony against the relative facing her/her from the dock and this is more than a child can handle. Children quite often become anxious and forget facts and as a result, this makes their testimonies less reliable and less valuable in the prosecution. For a child who is already intimidated by the presence of the accused person in court, direct cross-examination by the defense lawyer intimidates them further. Without a child friendly medium between the defense lawyer and the child, quite often the children break down and are reduced to silence which has quite often unfairly but effectively won the cases for the defense.

Children deserve child friendly proceedings all throughout the prosecution if the judicial officers are to acquire positive results and thus this will add meaning to the laws and their effectiveness towards juvenile delinquency.

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