

THE PROTECTION OF THE RIGHTS OF JUVENILE DELINQUENTS IN UGANDA;

A CASE STUDY OF KAMPALA DISTRICT

By:

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DECLARATION

I, MUWONGE MICHEAL ALI, declare that this is my original work and that to the best of my knowledge, it has never been presented to any institution of higher learning for the award of academic qualification.

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APPROVAL

This Dissertation has been submitted under my supervision as a University Supervisor.

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Date

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DEDICATION

This research is dedicated to my loveliest wife PROSSY MUWONGE, whose determination has been the iron in my brain that I have always been looking back in order to accomplish every task ahead of me. You taught me to persevere even to the very last breath of my energy and you appreciated my brain power and trusted in me which have always been the engine in my life to achieve. Thanks dearest WIFE!!!

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In a special way, I wish to express my gratitude to all my family members. PROSSY MUWONGE, to you I owe more than I can mention for the support and friendly care extended to me at all times. JUUKO DAVID, no one else can ever desire not to be under you as a little brother or sister and am lucky to be one. A brother in need at all times is what you have always been and even did more than what any person understands could reason out. Your support has always kept me out of trouble even when I least expected to escape it. Thanks a lot dear brother.

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“LET THE ALMIGHTY LORD BLESS YOU ALL”

LIST OF CASES

1. RE GAULT 387 U.S 1
2. KENT VS UNITED STATES 397 U.S 358 (1998)
3. UNITED STATES VS BLAND 472 (F.2d 1329 D.C Cir. 1972)
4. SCHALL VS. MARTIN (1948)

LIST OF FIGURES AND TABLES

1. Figure 2a: Juvenile Justice System
2. Figure A.1: The pie-chart showing the distribution of the respondents by age
3. Figure B.1: A pi-chart showing sex distribution of the respondents
4. Figure C.1: Figure showing the distribution of the respondents by educational level
5. Figure F.2: Responses of respondents on the causes of Juvenile delinquency in Kampala
6. Figure F.4: The aspects of Juvenile rights and responses towards their protection in Uganda

LIST OF STATUTES

1. The 1995 Constitution of Uganda
2. The Children Act Cap 59
3. The Employment Act No.1/2006 Laws of Uganda

LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND CONVENTIONS

1. African Charter on Human and People's rights (ACHPR) adopted at the 18th conference of Head of States and Government of the Organization of African Unity (O.A.U) on 27th June, 1981, Nairobi Kenya, entered into force on 21st October, 1986
2. International Conventions on Economic, Social and Cultural Rights (ICESCR) adopted by General Assembly Resolution 220 (xxi) of 16th December 1966 and entered into force on 3rd January, 1976
3. The International Convention on Civil and Political Rights (ICCPR) adopted by General Assembly Resolution 220 (xxi) on 16th December, 1966 and entered into force on 23rd March, 1976
4. The United Nations Convention on Elimination of all forms of Discrimination (CEDAW) adopted by General Assembly Resolution, 1979
5. Universal Declaration of Human Rights (UDHR) adopted and proclaimed by the UN General Assembly Resolution, 1948

ABSTRACT

This research book covers “the protection of the rights of juvenile delinquents in Uganda; case study of Kampala District.” Throughout the exploration of this as the area of research, the researcher principally concentrated upon the ambits of juvenile justice, looking at its evolution, progression as well as the structure of the juvenile justice system of late in Uganda’s judicial system. The research further explores the rights of the juvenile offenders enshrined under the national laws, the extent of protection vis-à-vis the enforcement of the same. In undertaking this study, the researcher based on a couple of objectives as a direction for the research where in the causes of juvenile delinquency were expertly discussed hereunder, the laws governing juvenile justice administration, the extent of juvenile protection under the laws, as well as advancing recommendations for improved protection of the rights of the juvenile offenders. In prying this, the researcher used both qualitative and quantitative but majorly concentrated on the descriptive research design in establishment of a rapport under this research. Written information about juvenile justice and delinquency were reviewed for a better understanding of the research topic as well as establishing the gaps left by the other writers over this same area to give ample room to the researcher on how best this research can patch the gaps left therein by the previous authors. The research explored the national and international law in relation to juvenile justice and the written data was assessed by the empirical results obtained from the interviews held by the researcher through interviews for coding and establishment of the reality truth about the practice and norm of the same in Uganda. The findings obtained from the research were relied upon in advancing recommendations, drawing conclusions and further suggesting other possible avenues for further research under juvenile delinquency and justice that were ineptly handled hereunder, which ought to be addressed wholesomely.

TABLE OF CONTENTS

DECLARATION	ii
APPROVAL.....	iii
DEDICATION	iv
ACKNOWLEDGEMENT	v
LIST OF CASES.....	vi
LIST OF FIGURES AND TABLES.....	vii
1. Figure 2a: Juvenile Justice System.....	vii
LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND CONVENTIONS	ix
TABLE OF CONTENTS.....	xi
CHAPTER ONE	1
INTRODUCTION	1
1.1 BACKGROUND OF THE STUDY:.....	3
1.2 Problem Statement.....	7
1.3 Purpose of the Study.....	8
1.4 Research Objectives	8
1.5 Research Questions.....	8
1.6 Scope of Study.....	9
1.7 Significance of the Study	9
1.8 Methodology	10
1.8.1 Research Design.....	10
1.9.0 LITERATURE REVIEW.....	10
1.9.1 The Components and Processes of the Juvenile Justice System	10

John J. Wilson notes that the juvenile justice system is large and complex, and its processes and components vary greatly from State to State. There exists a relationship of juvenile corrections to the rest of the juvenile justice system. At the entry point, services and programs need to be very broad and serve the largest group of young people, with prevention programs for at-risk youth. With effective prevention

programs that include family-strengthening strategies and support of community institutions, progression of many youth further into the juvenile justice system can be averted.	10
CHAPTER TWO	21
CAUSES OF JUVENILE DELINQUENTS.....	21
2.0 Introduction:	21
2.1 Causes of Juvenile Delinquents.....	21
2.2 Effects of juvenile delinquency	24
Effects on the Victims.....	24
Effects on the Juvenile Delinquent	24
Effects on the Families	25
Effects on the Community.....	25
Effects on Society	25
2.3 Perspectives on Children’s Rights in Uganda:	26
2.4 Conclusion	30
CHAPTER THREE.....	31
THE STATE OF THE LAW ON THE RIGHTS OF JUVENILE OFFENDERS	31
3.0 Introduction	31
3.2.1 Domestic legislation.....	32
3.2.3 The Creation of Family and Children’s Courts and Family Protection Units of Police.....	35
3.2.4 The Remand Homes	35
3.2.5 The PEAP Framework of 2000	36
3.5 The Penal Code Act, Cap 120	37
3.6 The Employment Act No.1 of 2006	37
3.3 Role of Government in Protection of Children Rights	38
3.3.1 Ministry of Gender, Labour and Social Development (MGLSD).....	38
3.3.2 Ministry of Education and Sports	40

3.3.4 Ministry of Health	40
2.3.5 The Uganda Human Rights Commission (UHRC) and its role in the protection of children rights..	41
3.3.6 Establishment of the National Council for Children (NCC)	42
3.4 Progress Made by the Government of Uganda in fulfillment of the Enjoyment of Children Rights	43
3.6 Health and human rights of children	45
3.8 The International Recognition of Child rights.	46
3.8.1 Motivations and Problems in Combating Child Labour	47
CHAPTER FOUR.....	50
FINDINGS AND THE EXTENT OF PROTECTION OF THE RIGHTS OF JUVENILE OFFENDERS IN UGANDA	50
4.0 Introduction	50
4.1 Back-ground information of the Respondents.....	50
4.2 Aspects of the causes of the juvenile delinquency	52
4.3 The state of the law on the protection of the rights of the Juveniles in Uganda	53
4.4 Responses of the respondents on what causes the infringement of the rights of the juveniles in Uganda.	56
4.5 Conclusion	57
CHAPTER FIVE.....	58
DISCUSSION OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	58
5.0 FINDINGS.....	58
5.1 CONCLUSIONS	61
5.2 RECOMMENDATION ADVANCED	62
5.3 AREAS OF FURTHER RESEARCH	62
BIOGRAPHY:	63

CHAPTER ONE

INTRODUCTION

1 INTRODUCTION

A juvenile is a child or young person who is not yet old enough to be regarded as an adult.¹

Juvenile delinquency is a term commonly used in reference to the law and its application in relation to the juveniles.² Juvenile delinquency, also known as juvenile offending, or youth crime, is participation in illegal behaviour by minors (juveniles) (individuals younger than the statutory age of majority).³ Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers, and courts. A juvenile delinquent is a person who is typically under the age of 18 and commits an act that otherwise would have been charged as a crime if s/he was an adult. Depending on the type and severity of the offense committed, it is possible for persons under 18 to be charged and tried as adults.⁴ In recent years however, the average age for first arrest has dropped significantly, and younger boys and girls are committing crimes. Between 60–80% percent of adolescents, and pre-adolescents engage in some form of juvenile offense.⁵ These can range from status offenses (such as underage smoking), to property crimes and violent crimes. The percent of teens who offend is so high that it would seem to be a cause for worry. However, juvenile offending can be considered normative adolescent behaviour.⁶

The position is like that simply because most teens tend to offend by committing non-violent crimes, only once or a few times, and only during adolescence. It is when adolescents offend

¹ Siegel, Larry J.; Welsh, Brandon *Juvenile Delinquency: The Core* (4th ed.). Belmont, CA: Wadsworth/cengage Learning, 2011, pg 3

² Piquero; et al. "The Criminal Career Paradigm: Background and Recent Developments". *Crime and Justice: A Review of Research* 30: 359–360. JSTOR 1147702, 2003 p.2

³ Supra, Note 1 at pg 4

⁴ Supra

⁵ Steinberg, L. *Adolescence* (8th Ed.) New York, NY: McGraw-Hill, 2008, pg 2

⁶ Note 5 above

repeatedly or violently that their offending is likely to continue beyond adolescence, and become increasingly violent. It is also likely that if this is the case, they began offending and displaying antisocial behaviour even before reaching adolescence.⁷

Nearly all cultures possess a transition phase from childhood into adulthood. As the world changes, so did the transition into adulthood. Whereas before, in most now industrialized countries, this transition ranged from brief to almost non-existent, it is now a significant part of a person's development. It is known now as adolescence. In fact the popular term "teenager" was not coined until the '50s to describe this new group of people living through adolescence. It is believed that this new, drawn-out transition from childhood into adulthood that is common in the western world has left many adolescents in a sort-of limbo where they must seek to define their identity and place in the world, and delinquency may provide a way to do that.⁸ This is supported by the fact that crime is committed disproportionately by those aged between fifteen and twenty-five.⁹

However, contrary to popular belief it is highly rare for teenagers to become spontaneously aggressive, antisocial or violent simply with the onset of adolescence. Although there is a high percentage of offending among all teenagers, the majority of offenses which violate the law are one-time occurrences and most often non-violent. Only about 5-10% of adolescents commit violent crimes. In the United States, one-third of all of suspects arrested for violent crimes are

⁷ Cicchetti, D.; Cohen, D; Moffitt "Life course persistent versus adolescent limited antisocial behaviour" *Developmental Psychopathy*, (2nd ed.). New York: Wiley, 2006, pg 5

⁸ Siegel, Larry J.; Welsh, Brandon (2011), *supra*

⁹ Walklate, S. *Understanding Criminology – Current Theoretical Debates*, 2nd edition, Maidenhead: Open University Press, 2003

under eighteen.¹⁰ However, the position is rather different here in Uganda where parental control and guidance of persons under the age of eighteen years is at most cases respected.

1.1 BACKGROUND OF THE STUDY:

Juvenile delinquency is as old as history of man and according to the Holy Bible, delinquency began with sons of Adam when Cain attacked and killed his brother- Abel¹¹ from which God cursed Cain for such delinquent act. Since then, delinquency continued to multiply throughout the world. In the ancient times, delinquency was rampant among families of the soldiers and the Viking because the two groups could spend most of their time in camps, wars and on government duties compared to the time spent with their children as well as their families. In the middle ages, delinquency increased among middle class families who could spend most of their time at work and this escalated with the industrial revolution in 18th century that started in Great Britain by 1770s. Juvenile justice developed from the notion of "*parens pantrea*." This tradition claims the State has both a right and a responsibility to intervene in family life and assume the task of rearing a child if the family is unable to do so. It has roots in English Poor Laws, which empowered the State to separate poor children from their families and place them in apprenticeships.¹²

The present American system of juvenile justice draws on hundreds of years of legal traditions and continues to be honed as social values and imperatives emerge and abate. In ancient Greece

¹⁰ Piquero; et al. "The Criminal Career Paradigm: Background and Recent Developments". *Crime and Justice: A Review of Research* p.359-360. 2003

¹¹ Holy Bible, King James version, 2000: 4

¹² Supra note 5

and Rome, there was little distinction made between the rights and expectations of children and those of adults. Children received treatment comparable to that of adults.¹³

English Common Law, which formed a foundation for the American justice system, also did not recognize a special category of juvenile crime. Rather, youthful offenders were treated as anyone else who committed a crime, and they were subject to harsh corporal, and even capital, punishment. Later, imprisonment replaced corporal punishment as the more prevalent way of dealing with offenders. Children and youth also sometimes were apprenticed to learn moral values and work skills.¹⁴

Gradually, in the early 1800's, children began to be viewed as persons at a unique stage of human development instead of smaller versions of adults with equal cognitive and moral capacities. During the late 19th and early 20th centuries, the United States experienced increased immigration and urbanization with accompanying social changes.

During this era, adolescence also became recognized as a distinctive stage of life between childhood and adulthood that provides the opportunity for physical, intellectual, social, emotional, and moral maturation. Reform movements during this period attempted to decriminalize delinquency. Youth were removed from the criminal justice system, and emphasis was placed on treating the youthful offenders rather than focusing only on the offences they committed.¹⁵

¹³ Holmes, S. E.; James, R. S.; Javad, K. "Risk Factors in Childhood that Lead to the Development of Conduct Disorder and Antisocial Personality Disorder". *Child Psychiatry and Human Development* 31 (3): 183–193. doi:10.1023/A:1026425304480, 2001, pg 22

¹⁴ Delisi, Matt, *Career Criminals in Society*. London, United Kingdom: Sage Publications. 2005, P. 39.

¹⁵ *Supra*, note 13

There were many attempts during the 1800's to shape and mainstream poor and immigrant children. One of the most enduring movements was the development of the public school system to provide education and cultural training for all children. At the beginning of the 19th century, children who committed crimes often were imprisoned with adults. Reformers, however, decried this practice, and houses of refuge (later called reform schools) were instituted for the treatment of juvenile delinquents. Inmates lived in congregate settings, and strict order, discipline, and moral teaching were imposed.

By the middle of the 19th century, alternatives were emerging. The cottage system sought to make institutions more family like by eliminating the large congregate living situations in favour of smaller cottage-type buildings grouped together. The "placing out" system also was used with delinquent youth in the mid 1800's. Children and teens from urban slum areas were placed with families, usually in rural areas, to work, learn, and receive guidance from the family.¹⁶ Military schools were yet another option, although they more frequently targeted youth from middle- and upper-class families who exhibited behaviour problems.

Other organizations attempted to diminish institutionalization while providing a way to learn responsibility. For example, the George Junior Republic was run like a small village where the residents engaged in self-supporting enterprises and administered their own laws.¹⁷

In contrast to these institutional approaches, probation was initiated as an alternative response to juvenile delinquency. In 1841, John Augustus, a shoemaker in Boston, Massachusetts, first began the practice of supervising offenders in the community. Not only were his efforts to reform his charges generally successful, but they also saved the State the cost of building new

¹⁶ Binder, Geis, and Bruce, National Center for Juvenile Justice, 1997, *Supra*

¹⁷ *Supra*, note 15

institutions. After Augustus' death, other volunteers carried on his probation work. In 1869, Massachusetts created a State office responsible for supervising children under the State's care. Several other States soon followed suit. All States now have some form of juvenile probation.

Special juvenile and family courts that removed juvenile matters from adult criminal courts were developed in the late 1800's and early 1900's. The juvenile court founded in Chicago, Illinois, in 1899 is generally recognized as the model for the juvenile court system that followed. That year, the Illinois legislature enacted the Juvenile Court Act, which was recognized by other States and countries as a model statute.¹⁸

In Germany, mentally and physically handicapped juveniles were exterminated under the policy of racial purification as a way to avoid delinquency which was expected in the Post World War-Germany with a view that, delinquents could be dangerous to the city population. Juveniles with conditions such as epilepsy, mental retardation or cerebral palsy were put to death for the good of the State and for the good health of the rest of the nationals in Germany. In Slovakia, over 2,000 juveniles were deaf and dumb, blind, mentally and physically deficient while in Yugoslavia, 20,000 juveniles were blind, amputees or severely facially disfigured from burns, and thousands of others were similarly affected.¹⁹

In Africa, Juvenile delinquency grew with the coming of colonialism that was received by the continent as a vehicle of change. Nonetheless, colonial impacts on the social setting of the African families and clan ties led redundant children who later found their safe haven on the street.

¹⁸ Supra, Note 15

¹⁹ Burleigh, M; *Ethics and Extermination: Reflections on Nazi Genocide*, Cambridge University Press: New York, 1997, pg 8.

In Uganda, 10,000 juvenile delinquents live on the streets of Kampala and it has been observed that most of them come to the streets because of mistreatment and lack of basic needs in their families and due to delinquency committed against their communities. Because of delinquency, communities and their families take little interest in them and this makes juvenile delinquents develop a survival instinct which leads them into more delinquency; they are isolated, expelled from their homes which force them to go to streets where the police and people of good will get them to RCs. Others are taken directly by their parents and guardians to Rehabilitation Centres (RCs) to get psychotherapy because of delinquency committed against their communities.²⁰

1.2 Problem Statement

A child according to the 1995 Constitution of the Republic of Uganda²¹ and the Children Act is a person below the age of eighteen years.²² Most youths below the age of 18 years are at best protected persons in regard to the enforcement of the laws against the criminals. The Children Act places the minimum age of criminal liability to 12 years²³ as it places the trial of the persons below the age of 18 years depending on the case committed.²⁴ The national and international laws prescribe the means through which the trial of minors should be carried out. Best reference for the Ugandan juvenile justice is as contained under the Children Act as well as other legislations. These laws provide for the rights of children which include the right to legal representation,²⁵ the right not to be tried in open court, criminal liability of the minors²⁶, the right to a bail²⁷ the juvenile reform centers to give them reformation as well as fundamental training

²⁰ Mcardle, D *Children of Europe*, University Press: London, 1951, pg 8

²¹ Article 257(1) of the 1995 Constitution of the Republic of Uganda

²² Section 2 of the Children Act Cap 59, Laws of Uganda

²³ Section 88 Cap 59 and Article 28 (3) supra note 21

²⁴ Supra note 22.

²⁵ Article 28 of the 1995 Constitution of the Republic of Uganda

²⁶ Supra note 23.

²⁷ Section 90 of The Children Act Cap 59

among others as shall be explored hereafter...²⁸ It's upon such a background that this research is undertaken to establish the extent at which the rights of juveniles are protected in Uganda with an analysis on the state of the law *vis-à-vis* the enforcement of the same.

1.3 Purpose of the Study

The study seeks to reconcile the state of the law and the protection of the rights of the juvenile offenders in Uganda.

1.4 Research Objectives

1. To find out the causes of juvenile delinquents in Uganda.
2. To examine laws governing the administration of juvenile justice and the rights of the juvenile offenders in Uganda.
3. To find out the extent of protection of the rights of juvenile offenders in Uganda.
4. To advance possible recommendations, if any, for better protection of the rights of the juvenile delinquents in Uganda.

1.5 Research Questions

1. What are the causes of juvenile delinquents in Uganda?
2. What are the laws governing the administration of juvenile justice and the rights of the juvenile offenders in Uganda?
3. To what extent do the laws provide for the protection of the rights of juvenile offenders in Uganda?

²⁸ Part X of the Children Act Cap 59

4. What are the findings, conclusions and recommendations?

1.6 Scope of Study

The geographical location is the republic of Uganda, with Kampala district selected for the statistical data and analysis as a representation of the whole country. The time scope is a period of ten years and all the developments ranging within 2003 to date is reviewed with proper analysis. The research shall review the laws relating to the rights of juveniles, the protection of such rights and the administration of juvenile justice in Uganda. There have been fundamental legal developments in the area of juvenile protection programs through NGOs that have compelled the examination of this context and as a result, it instigated the researcher to carry out the research under that theme.

1.7 Significance of the Study

The study shall be beneficial in communicating to the concerned parties and stake holders about the rights of juvenile offenders in the country, as the country boasts of a high number of youths who are in productive ages.

The research shall guide law-makers and other concerned parties about what ought to be done in regard to the law to further the protection of the rights of juvenile offenders in Uganda.

The research shall reconcile the national laws and the international laws in relation to the enforcement of and protection of fundamental human rights.

The research shall provide more relevant information for review in relation to this field of study for scholarly and non-scholarly purposes.

1.8 Methodology

This explores the means through which the researcher based or relied upon in carrying out the research. It explains why the empirical findings are as presented and the techniques employed during the researching process.

1.8.1 Research Design

The study adopted a cross sectional research design. Both quantitative and qualitative research designs were employed to establish the extent of correlation between the dependent and the independent variables of the research.

1.8.2 Data Sources

Both primary and secondary data was reviewed for proper analysis and understanding of the study variables. Secondary data like newspapers, journals, textbooks and research reports, interviews were all reviewed for comparison with the primary data in establishing the material facts about the study variables.

1.9.0 LITERATURE REVIEW

1.9.1 The Components and Processes of the Juvenile Justice System

John J. Wilson notes that the juvenile justice system is large and complex, and its processes and components vary greatly from State to State. There exists a relationship of juvenile corrections to the rest of the juvenile justice system. At the entry point, services and programs need to be very broad and serve the largest group of young people, with prevention programs for at-risk youth.²⁹ With effective prevention programs that include family-strengthening strategies and support of community institutions, progression of many youth further into the juvenile justice system can be averted.

²⁹ John J. Wilson, Jurisdictional Technical Assistance Package for Juvenile Corrections, Report - December 2000, Pg.5.

This is illustrated in the figure below;

Figure 2:a Juvenile Justice System



John J. Wilson notes that at the next juncture of the system after prevention programming, youth who commit delinquent offenses are arrested. At this point, some youth will be released or diverted. If the crime is not a serious one and law enforcement officers believe a youth will not be a risk to himself or herself or to the public, a youngster may be released without further involvement in the juvenile justice system. Other youth will proceed further in the system and be scheduled for formal processing in juvenile or family court, and they may or may not be held in detention.³⁰ **John J. Wilson** further noted that a few who have committed the most serious offenses may be waived to (adult) criminal court. Youth who are formally processed in the juvenile justice system will be adjudicated. Some of these cases will be dismissed, and the youth involved will be released from further involvement with the court. Others will be adjudicated as delinquent and will proceed to juvenile corrections programs or other dispositions.³¹ The system narrows the number of youth at every successive point, resulting in fewer youth reaching the most restrictive correction programs at the end of the system.³²

³⁰ Under the USA legal system

³¹ Supra

³² Supra

Juvenile corrections programs work with the smallest number of youth, but they usually have the most intensive involvement with them. Correction programs include community supervision (probation), non-residential programs and services, and residential programs such as group homes, ranches or camps, and institutions. Boot camps and day treatment programs recently have been developed, contributing to the full spectrum of juvenile corrections programs. In addition, aftercare programs or parole may be used to supervise and assist youth with reintegration into the community following a residential placement. There are many subcomponents of each type of corrections programming, such as intensive supervision and electronic monitoring within community corrections. Residential programs may serve general populations with standard services or special groups of youth with services that are specific to their problems, such as substance-abuse or sex-offender treatment.

Looking at **John J. Wilson's** conceptual juvenile system, it only conceptualizes a system where there is access to information through computerized criminal control methods a thing that is yet to find its way into the legal system of developing nations like Uganda. As such, there is need to address the juvenile system under poor or developing economies for the protection of the rights of the juvenile offenders.

A more common view of the juvenile justice system is a linear one that depicts the progress of youth through the system.

Bureau of Justice Statistics under the USA legal system, when a crime is witnessed or reported, law enforcement personnel investigate, apprehend, and may arrest the youthful offender. Depending on the crime, community resources, and community values and norms, some youth may exit the juvenile justice system after apprehension and/or arrest. Programs, such as

educational and recreational programs, drug prevention or treatment, and counseling services, to which law enforcement personnel can refer youth whose delinquent behaviour is not serious are in place in some communities. Youth referred to these programs may have no further involvement with the juvenile justice system as noted by Bureau of Justice Statistics, 1997.³³

Bureau of Justice Statistics states further that youth who are arrested will go through an intake process. They may be held in detention prior to their initial hearings or released to their parents or guardians. An intake process begins within a short time after arrest so that the court can determine whether formal proceedings will occur. Some youth remain in detention until their cases are prosecuted and adjudicated, whereas others are released until they return to court. Some youths may exit the juvenile legal system after the intake hearing, through either a total release or referral to a diversion program. For youth who have committed very serious crimes, are nearing legal adulthood, and/or are chronic offenders, a waiver or transfer process may result in the (adult) criminal court taking jurisdiction over the case.³⁴

A case that proceeds for formal processing by the juvenile court usually involves a prosecuting attorney and juvenile court judge. A defense attorney is also available to the youth. In some States, juries may be used in juvenile cases. After the adjudication hearing, the youth either is determined to be a delinquent or is released. If the court finds the youth delinquent, it makes a disposition. Usually, this involves placing the youth on informal supervision or formal community supervision or in a residential facility. Informal supervision may place some requirements or restrictions on the youth for which they are responsible to the court. For example, a youth may have to pay restitution or perform community service. When that obligation is completed, the youth is released. If the youth does not abide by the agreement, he or

³³ Under the USA legal system

³⁴ Bureau of Justice Statistics, 1997.

she may be returned to court for a more formal disposition. Juveniles under formal community supervision are placed on probation and supervised by a probation officer. Usually, the judge imposes conditions on the youth while the youth is on probation.³⁵ The probation officer is responsible for making assessments, case plans, and referrals; supervising the youth's progress; enforcing the court's conditions; and returning the youth to court, if necessary. After completing probation, the youth may be released.³⁶

Some youth, particularly those who are serious, violent, or chronic offenders, are placed in residential facilities. This confinement may be considered necessary for public safety or for the treatment of youth. Residential programs are responsible for the youth's total care, treatment, and well-being. Following a residential placement, youth usually receive aftercare services through which professionals supervise, monitor, and assist them with reintegration into their families and the community.³⁷

Delinquency among juveniles is a result of social pressure from delinquent peers and parental responsibility. According to **Ronald Akers**,³⁸ while parental responsibility starts from the time of pregnancy, social pressure from the delinquent peers start when juveniles have grown up. Though social pressure from the delinquent peers and parental responsibility are held important by Ronald Akers and Robert Burgess³⁹ believes that delinquency among juveniles is a result of troublesome environment which juveniles encounter in their early-age.⁴⁰

³⁵ e.g. obeying all laws, participating in treatment, performing community service.

³⁶ Bureau of Justice Statistics, 1997.

³⁷ Supra

³⁸ Ronald Akers and Robert Burgess, 1966.

³⁹ Ronald Akers, "Delinquency and the Third World, a critical examination", Butterworths London, 1966 P. 187.

⁴⁰ Michael Ratter , 1995:432

le corrections programs work with youth for longer periods and more comprehensively
other parts of the system. Because of this, they also require a disproportionate amount of
sources, especially residential corrections.

Mehlbye J & Walgrave L, talked about the establishment of the juvenile court in 1899 in Cook County, Illinois created a separate system of justice for “children.” The principles underlying this court were that children were developmentally immature and required protection; they were malleable and could be rehabilitated; the court should aid children with a broad range of problems including dependency and neglect, abuse, status offenses as well as crime. Because they were children it was further assumed that hearings should be informal and that judges should have broad discretion in the handling of their cases so that the proceedings themselves would not have a negative impact upon youth. The primary focus of the Court was on rehabilitation or habilitation.

Soon after its implementation in Cook County, the juvenile court spread throughout the rest of the country, and it has been modeled in many Western countries.⁴¹ The authors talked about the juvenile court and its establishment in Cook County as well as its spread throughout the country but they never discussed how the system works which this research is to concentrate upon.

Rosenheim, M. K, noted that by 1925, every state had established a juvenile justice system to process the criminal and non-criminal offenses of youth as well as to provide protective services for children.⁴² Along with the court a variety of other agencies and institutions were created under the auspices of child welfare to meet the needs of children. In some parts of the U.S. many

⁴¹ Mehlbye, J., & Walgrave, L. *Confronting Youth in Europe: Juvenile Crime and Juvenile Justice*. Copenhagen: AKF Forlaget, 1998, pg 36.

⁴² Rosenheim, M. K. The modern American juvenile court. In M. K. Rosenheim, F. E. Zimring, D. S. Tanenhaus, & B. Dohrn (Eds.), *A Century of Juvenile Justice* (1st ed.,). Chicago: The University of Chicago Press, 2002, pp. 341-359.

of these organizations were private while in the western half of the country the majority was established as county and state agencies. In all instances the need for state intervention was accepted to advance the well-being of children. The author looked mainly on the protection of the welfare principle as a cardinal rule in the administration of juvenile justice without reviewing the societal experiences, if the juvenile offenders are not brought before justice. Thus, this research shall seek to analyze how society can be affected if the juvenile offender is not brought to justice.

Puritz, P., Burrell, S., Schwartz, R., Soler, M., & Warboys, L. noted that prior to the establishment of the Juvenile Court, children who were charged with delinquent acts were primarily tried in the criminal justice system, but age did play a role in presumptions of criminal responsibility. Individuals under the age of fourteen were presumed not to possess the sufficient criminal responsibility to commit a crime, though the presumption was refutable between the ages of seven and fourteen.⁴³ Individuals fourteen and older were presumed criminally responsible. The creation of the juvenile court altered this presumption in part, providing almost exclusive jurisdiction over individuals under the age of eighteen in most states. The authors under this reviewed the justice system before the creation of the juvenile justice system but never reviewed the rationale of the age of criminal liability under the old system as a cornerstone for the administration of the juvenile justice system in today's world which the researcher shall examine under this research.

The juvenile court differed from the adult criminal court in many ways through its philosophy and practice. First, its terminology did not speak about guilt, innocence, trials, or sentences, but

⁴³ Tanenhaus, D. S; The evolution of transfer out of the juvenile court. In J. Fagan, & F. E. Zimring (Eds), *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* Chicago: University of Chicago Press. (2000), (pp.13-43).

created a framework similar to civil transactions by speaking of adjudications and dispositions.⁴⁴ Second, the focus of the court was less on the immediate offense behaviour of the child, and more on the needs or “best interests” of the child. Rehabilitation and treatment were considered the primary goals of the system rather than punishment. Third, the court structure featured an informal procedural system that allowed very broad judicial discretion. Fourth, privacy was an important function of the juvenile court system and proceedings and records were closed to the public.

Finally, the juvenile court maintained jurisdiction over youth for both criminal and non-criminal behaviour. These tenets constituted a separate system of justice that recognized differences between children and adults.

Downs G. Jr.⁴⁵ noted that in the 1960s critics addressed the operation of the juvenile court, charging that despite its rehabilitative rhetoric, it often treated children punitively, largely on the basis of race, class, and gender. Because of the volume of cases that were processed in many urban courts, implementation of rehabilitation was nearly impossible. Moreover, some criticized the court for having a conflict of interest in its legal processing of children while at the same time serving as a services provider. This conflict was particularly apparent in the handling of youth in detention both before and after adjudication. During the 1960s and 1970s, the decades often referred to as the Human and Civil Rights Era; there were national commission reports, legislation and Supreme Court decisions that led to many new federal initiatives.

⁴⁴ Puritz, P., Burrell, S., Schwartz, R., Soler, M., & Warboys, L. A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. Washington D.C.: American Bar Association Juvenile Justice Center, 1995 pg 23.

⁴⁵ Supra

These initiatives had positive effects in several areas of the juvenile justice system. Policies of decriminalization, deinstitutionalization, community-based programs, and the extension of education were implemented and extended in many states.⁴⁶ This progress was associated with the extension of social justice and human rights to persons of color, women, children, the disabled and mentally ill. With regard to the juvenile court, Supreme Court decisions provided children with several due process protections, but stopped short of equating juvenile proceedings with adult trials. Children were still acknowledged to be less competent and culpable because of their immaturity and limited experience. By the 1970s, the progress made in the 1960s resulted in substantial reductions in institutional placement, the development of community-based services, and procedural checks on the court.⁴⁷ The researcher reviewed the evolution of the juvenile system to what is presently practiced but never looked at the challenges faced during the evolution process and what had to be surrendered in the process, thus the researcher shall, under this research look forward to bridge this gap herein.

The progress of the 60s and 70s was dramatically reversed in the 1980s and 1990s with the passage of federal and state legislation that emphasized incarceration and punishments, along with withdrawal of the distinction between juveniles and adults as far as certain criminal behaviour was concerned. As we “celebrated” 100 years of juvenile justice in 2000, the laws and philosophy had returned to many of the practices in place prior to the invention of the juvenile court. Thousands of juveniles were held in adult jails and prisons, often under extremely punitive conditions. Zimring posits that legislative changes have not reduced the power of the court, but, instead, have re-oriented its mission toward punitive ideals.⁴⁸

⁴⁶ Downs, G. Jr. *Bureaucracy, Innovation and Public Policy*. Ann Arbor, MI: University of Michigan, 1976.

⁴⁷ *Supra*, Note 26

⁴⁸ Zimring, F. E., *The Changing Legal World of Adolescence*, New York: Free Press, 1982, pg 19.

Feld B. C argues that judicial, administrative, and legislative decisions have transformed the court into a second-class criminal court that does not serve the interests of children.⁴⁹

In many courts, the increased authority of prosecutors and the reduced authority of judges have produced pronounced differences in both the processing and outcomes for juveniles. This shift ceases to recognize differences in development, maturity, capacity, and culpability between children and adults. It primarily seeks punishment or “accountability” instead of rehabilitation, the hallmark of the original juvenile justice system and the focus of many human rights standards and rules.

Much of the transformation was “justified” because there was some increase in violent crime by juveniles between 1985 and 1994. Juveniles involved in violent crime were not viewed as children able to benefit from rehabilitation, and the vocal public sought to provide appropriate “adult” sanctions to these individuals. Legislatures focused on violent juveniles and responded with an emphasis on law enforcement and punishment, impacting the entire juvenile justice system. This occurred despite the fact that the actual numbers of juvenile involved in violent crime never equaled 10% of all of the juveniles arrested for delinquency. Thus, the entire system shifted towards punishment and accountability although the crime data did not support such a shift. Furthermore, punitive law making continued into the 21st Century despite the fact that juvenile crime, including violent crime, has declined dramatically to levels similar to those of the 1970s. As of this writing in 2002 there is no concrete evidence of change in the drift toward more punitiveness for juveniles.

⁴⁹ Feld, B. C., *The Juvenile Court Meets the Principle of Offense: Legislative Changes in Juvenile Waiver Status*. B. C. Feld (Ed.), *Bad Kids: Race and the Transformation of the Juvenile Court*. New York, NY: Oxford University Press, 1999, pg 28.

Looking at the above written data, the researcher shall seek to reconcile the different gaps left by different researchers to give a comprehensive analysis of the juvenile justice system in Uganda, the working and the administration of justice among the youths and how best it protects the rights of the juvenile offenders in Uganda.

CHAPTER TWO

CAUSES OF JUVENILE DELINQUENTS

2.0 Introduction:

A number of reasons have for a long period of time been advanced by different researchers to explain the causes of juvenile delinquents. Much as different researchers classify them under psychological, social, economic and cultural factors, what remains eminent is the fact that these factors are uniform from region to region to which, Ugandan youths have been established not to be an exception to.

2.1 Causes of Juvenile Delinquents

Although the roots of youth crime may be quite different from one youth to another, recent research has helped much more sharply on major underlying issues that often cause or are relating to delinquent behaviour. Blumstein attributes recent dramatic upturns in youth violence to the "deadly nexus" of three primary factors:

Availability of drugs.

Availability of guns.

Juveniles recruited into illicit drug trade.

Blumstein A. and others⁵⁰ theorize that, as the cocaine epidemic reached its peak in 1985, drug traffickers were recruiting young people to assist with drug distribution. These juveniles often

⁵⁰ Blumstein, Alfred, Farrington, David P., Moitra, Soumyo, Delinquency careers, innocents, disasters, and persisters. *Crime and Justice: An Annual Review of Research*. Chicago, IL: University of Chicago Press, 1985, pg 12.

acquired guns for protection. Firearms then began proliferating among gangs that were battling over territory and drug markets.⁵¹

As more firearms were used in inner-city gang- and drug-infested areas, other youth felt vulnerable and began carrying weapons for self-protection and as status symbols. Continued high levels of arrests for both drug offenses and firearm-related violence appear to bolster Blumstein's theory that guns have spread throughout many communities and are a major factor in high levels of youth violence.⁵²

In addition to the availability of drugs and guns, it is believed that several other factors that are contributory to delinquency, include:

- Too much idle time for children and adolescents.
- Lack of positive adult supervision.
- Scarcity of positive role models.
- Child abuse and neglect.
- Parents who lack the needed and required parenting skills for their children.
- Children with unmet needs for special education and mental health care.

Several conditions, attitudes, and behaviours increase the likelihood that a young person will engage in delinquent behaviour. Many of these factors also are related to other adolescent problem behaviours, including substance abuse, teenage pregnancy, dropping out of school, and

¹ Zigler E, Taussig C, Black K., "Early childhood intervention. A promising preventative for juvenile delinquency", *Am Psychol.* 1992 Aug; 47(8):997-1006.

² National Criminal Justice Association, 1997.

violence. Researchers assert that the more risk factors that are present, the greater the likelihood for juvenile problem behaviour.⁵³

Concurrently, there are factors that may provide protection to youth to help them surmount risk factors that may be present. To the extent that these protective factors can be enhanced, youth may be safeguarded from some of the effects of risk factors.

The Integrated Social Control model combines control theory, strain theory, and social learning theory to explain the origins of delinquent behaviour. Families, communities, and society usually exert social control to compel individuals to act in socially acceptable ways. According to this theory, when these controls are absent, subcultures develop that promote attitudes and perceptions favorable to delinquency and other deviant behaviour. Differences between a youth's aspirations and his or her opportunities cause frustration and failure. Strain theory argues that youth then turn to delinquent behaviour as a way of coping. Social learning theory assumes that childhood experiences, such as lax or harsh parental discipline, abuse, neglect, or violence, prevent bonding with others and diminish internal self-control.

Researchers suggest that there are three pathways through which male youth develop problem behaviour. The Authority Conflict Pathway begins before age 12 and consists of a progression from stubborn behaviour to defiance and disobedience to authority avoidance. Examples of authority-avoidance behaviours include truancy, running away, and staying out late. The Covert pathway begins with minor covert behaviour, such as shoplifting and frequent lying, progresses to property damage, and eventually leads to moderate to serious delinquency. Fraud, burglary, and serious thefts might fall in this group. The Overt Pathway may start with minor aggression, such as bullying or annoying others. Physical fighting may follow and eventually lead to serious

Zigler E, Taussig C, Black K. *supra*

violent acts, such as rapes and assaults. Progress from the initial to later stages of these pathways is not universal. Youth may show early signs of problem behaviour but not progress further along these delinquency pathways. Some youth also may progress in more than one of the pathways described.

Similar research on pathways of delinquency for female youth has not been completed. Girls traditionally have constituted a small portion of the juvenile delinquent population and, therefore, have been the subjects of much less research. Recently, however, increasing numbers of females have entered the juvenile justice system, and research agendas comparable to those for males are needed.

2.2 Effects of juvenile delinquency

There is a diversity of effects of juvenile delinquency as shall be explored herein below;-

Effects on the Victims

- The most obvious people affected by juvenile delinquency are the victims. Whether the crime involves theft, vandalism, or violence, the victim always suffers loss. The victim may incur expenses related to loss wages, health care, or psychological care in addition to the cost of replacing damaged or destroyed items.

Effects on the Juvenile Delinquent

- The juvenile who commits a crime also suffers effects that he or she is probably unable to predict. He or she may lose his or her freedom while being incarcerated or placed on probation. Although placement in residential detention centers for juveniles may be appropriate for the adolescent's criminal actions, it also puts him or her in relationships

with other delinquents, who may be more sophisticated or influential. This makes recidivism likely and, in many states, when a juvenile older than 14 becomes a repeated offender, he or she can be tried and sentenced as an adult. The delinquency may even have future consequences on the adolescent's college and career choices.

Effects on the Families

- The upheaval and trauma of having a family member who is a juvenile delinquent can create instability for the other relatives. Not only does the family have to cope up with the needs of the child who is in trouble, but they may also have to raise large amounts of money to pay for lawyers. In addition, the family has to face the ethical issues of responsibility to the victims of the child's crime. Families must usually attend group counseling sessions, which can be disruptive and costly during the time when the child is in detention or on probation.

Effects on the Community

- There is a correlation between juvenile delinquency and drug use, gang involvement, alcohol abuse, and sexual behaviour. All of these issues challenge communities by making neighborhoods unsafe and costing large amounts of public money to be spent on law enforcement and school safety.

Effects on Society

- Young people who commit serious crimes before they are 18 years old challenge the future for everyone involved. They may be acting out to protest perceived abuses that have been perpetrated against them. They may believe that there is no future for them

outside a life of crime. They may be expressing anger or frustration directed against another person or group or looking for approval from a gang. Whatever the motive, juvenile delinquency affects too many individuals, families, and communities. It is a serious problem that challenges the efforts of government agencies, politicians, educators, faith communities, and nonprofit organizations and the alike.

2.3 Perspectives on Children's Rights in Uganda:

The importance of rights and standards for the treatment of children is heavily contested terrain in Uganda, as is evidenced by the number of national reports on the treatment of juvenile offenders in the country. A number of perspectives exist regarding whether rights should be afforded to children.

Children are viewed as vessels needing care and guidance to develop into productive citizens, not as citizens who could or should possess and exercise rights. In Uganda, families are viewed as the primary institution to care and protect youth, but the state retains power to intervene in the "best interests of the child."⁵⁴ Children do not possess many substantive or procedural rights. They were afforded some procedural rights by the Supreme Court regarding court processing, free speech, search and seizure, reproduction and control over their sexuality. However, these rights were initially limited in scope and effect, have been limited by subsequent legal decisions and legislation, and are often not exercised given social realities concerning children.⁵⁵

Children must have substantive and procedural rights in their own person because families and the state do not appropriately care for children. The Human Rights Conventions and Standards

⁵⁴ Sec.3 of the Children Act Cap 59

⁵⁵ Allen, F. A. *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose*. New Haven: Yale University Press, 1981, pg63

underlie this view. The discretion of various actors is limited and there are specific safeguards to assure protection and treatment, along with monitoring to assure that interventions are effective, fair and humane. The research, policy and popular literature are filled with reports of the abrogation of children's rights today.⁵⁶

A compromise perspective regarding the extension of rights to juveniles is represented by Zimring's concept of a "learner's permit" as preparation for a juvenile to become a full citizen. He argues that we should view this developmental period as a time when juveniles need to be protected from full responsibility and need particular entitlements to develop, but they also need certain liberties to protect and provide them with the experiences necessary for full citizenship. **Zimring**⁵⁷ does not specify the age period to be covered by the so-called "learner's permit". Moreover, his perspective contrasts with that of Woodhouse who argues for dignity rights based on respect for the child, their needs and their capacities.

These perspectives highlight the competing ideas that exist regarding the treatment and view of children in and by society. Through this process, we seek to begin a discussion concerning the rights that children should possess in dealing with the justice systems and other societal institutions and the standards these institutions should adhere to in handling children.

A. Legal Representation of Children in the Juvenile and Criminal Justice Systems

⁵⁶ Woodhouse, B. B.; Children's rights. S. White (Editor), Handbook of Youth and Justice 2001, (pp. 377-410).

New York: Kluwer Academic/Plenum Publishers

⁵⁷ Supra

The 1995 constitution under Article 28⁵⁸ offers a similar position by providing for the right to legal representation and given further affirmation under the Children's Act Cap 59, Laws of Uganda.⁵⁹

Only in 1967 did the Supreme Court acknowledge juvenile's right to counsel in *In re Gault*.⁶⁰ In a famous line in that decision, Justice Fortas declared that "under our Constitution, the condition of being a boy does not justify a kangaroo court." Essentially, *Gault* held that despite the rehabilitative rhetoric of the juvenile court, children faced and often received punitive consequences. Therefore, the Court determined that children required safeguards in the juvenile court, including access to counsel.⁶¹ Several other cases regarding the juvenile court were decided before and after *Gault*. These decisions provided youth with a hearing before being transferred to the adult criminal court and required that evidence of a crime be proven beyond a reasonable doubt, but did not provide children with the right to trial by jury.⁶²

In conjunction with *Gault*, these cases were viewed as an opportunity to impose minimum standards and due process rights for children in the juvenile court, starting with access to counsel.

Transferring Children to the Adult Criminal Court

The transfer of children to the adult criminal court represents another area where human rights standards are relevant to juvenile justice. Specifically, Article 40 (3) of the Convention on the

⁵⁸ The 1995 Constitution of the Republic of Uganda

⁵⁹ Section 89 of the Children Act Cap 59

⁶⁰ 387 U.S. 1

⁶¹ Other rights afforded to children include by the Court include: notice to charges, opportunity to cross examine witnesses, and protection against self-incrimination. *Id.*

⁶² *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)

Rights of the Child⁶³ states that “states shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.” Article 40 (3) (a) & (b) and 40 (4) further state that this system should establish a minimum age for children to maintain the capacity to infringe on the penal law, that measures should seek to process children outside of formal proceedings wherever possible, and that a range of dispositional alternatives should be created to insure that children are being treated appropriately based upon their circumstances. These provisions have been read to require a distinct system of justice for all children.⁶⁴ It is with regard to these latter provisions where Uganda’s provisions for the processing and incarceration of juveniles as adults contrast most sharply with principles of the UN Convention. Under the Ugandan laws, the minimum age of criminal liability is twelve years⁶⁵

The case of *Kent v. United States*⁶⁶ addressed the issue of standards and criteria for transferring youth to the adult criminal court and held that youth possessed an interest in juvenile court jurisdiction. The Court held that transfer required a hearing comporting to the minimum standards of due process, and, lacking statutorily enumerated criteria, the Court developed a list of criteria Known as *judicial waiver*, this mechanism provided increased protections to children considered for transfer because it required a judicial hearing and set of criteria that must be considered in the hearing based upon the evidence presented. However, standards still varied between states because individual states could set age, offense, and other criteria governing the transfer decision.

⁶³ 1989

⁶⁴ Hodgkin & Newell, 1998; Amnesty International, 1998

⁶⁵ Section 88 of the Children’s Act Cap 59

⁶⁶ 397 U.S. 358 (1966)

Under the Ugandan legal system, there is no waiving off of the cases once a person is proved guilty. However, in the case of juvenile offenders, the remission of cases under the Children Act⁶⁷ brings out the notion of judicial waiver.

In *United States v. Bland*,⁶⁸ the Court held that prosecutorial discretion provisions did not violate due process because prosecutors traditionally held the discretion to make determinations concerning the charge and forum. These two mechanisms serve to decrease the power of judges to make decisions regarding transfer and focus primarily on offense-related criteria in the transfer decision. Many states use a combination of different mechanisms, thereby spreading the decision-making authority to additional parties in the system.

2.4 Conclusion

There are a number of justifications for the protection of the rights of the juveniles and there are quite a number of laws in respect to the same. The effects of the juvenile delinquency are widespread all over society and marginalised. However, what remains questionable is what accounts for the failed protection despite the presence of the various laws in regard to the same.

⁶⁷ Section 100 of the Children Act Cap 59

⁶⁸ 472 F.2d 1329 (D.C. Cir. 1972), *cert. denied*, 423 U.S. 852 (1972)

CHAPTER THREE

THE STATE OF THE LAW ON THE RIGHTS OF JUVENILE OFFENDERS

3.0 Introduction

Consensus on defining children's rights has become clearer in the last twenty years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition". According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.⁶⁹

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection for children in state care; ensuring education for all children regardless of their origin, race, gender, disabilities, or abilities, health care and advocacy.

Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labeled as the right of empowerment and as the right to

protection.http://en.wikipedia.org/wiki/Children's_rights - cite_note-15#cite_note-15 One

Canadian organization categorizes children's rights into three categories:

⁶⁹ Mangold, S.V. "Transgressing the Border Between Protection and Empowerment for Domestic Violence Victims and Older Children: Empowerment as Protection in the Foster Care System, 2002, P. 13.

Provision: Children have the right to an adequate standard of living, health care, education and services, and to play. These include a balanced diet, a warm bed to sleep in, and access to schooling.

Protection: Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behaviour, and acknowledgment of the evolving capacities of children.

Participation: Children have the right to participate in communities and have programs and services for themselves.

Children's rights are the perceived human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing.

3.2.1 Domestic legislation

There is a multitude of laws in Uganda as well as incorporated institutions that are empowered to oversee the realization of juvenile justice in Uganda. These are as explored herein below:-

The Constitution of the Republic of Uganda, 1995

Article 34(3) of the constitution of the Republic of Uganda stipulates for the rights of children in general. It provides that: No child shall be deprived of any kind of medical treatment, education

or any other social or economic benefit by reason of religious or other benefits. The constitution of the republic of Uganda is not clear about the children's rights. It is a closed document because health does not only refer to medical treatment. Health cuts across; food and nutrition, sanitation, immunization, medical care, primary health care, etc. the Constitution further provides for the ambits of a right to fair hearing as espoused under Article 28 therein to include but not limited to the right to notice, the right to legal representation, the right to speedy trial, presumption of innocence, facilitation of adequate time and necessary documents to prepare defence, appearance for defence of case, interpretation among others, as Article 23 (6) provides for the right to bail.

These legal provisions are the basis of the enjoyment of individual rights and the yardstick for the incorporation under the Acts that relate to the same. Great reference is usually drawn on the supremacy of the constitution which provides for the application of any law and or custom there under in Uganda.⁷⁰

The Children Act Cap 59

The Children Act was enacted in 1996 as a comprehensive law to deal with all issues relating to children. It, as much as possible draws from the rest of the laws and provides guidance on how to handle children matters when they arise under specific laws. It aims at providing more protection for children. For many years, the Act has been implemented; law enforcement agencies, probation workers and other development agencies have identified flaws of the Children Act. Government in a bid to provide a safe and healthy environment for children has instructed the Uganda Law Reform Commission to review the law, a process that is on-going. Through broad consultative processes with policy makers, implementations, development partners,

⁷⁰ Article 3 of the 1995 Constitution of the Republic of Uganda

communities, local administration and children themselves, it is envisaged that the Act will even be more comprehensive on the rights and welfare of children.

Part III sub section I (a and b) and part II of the Children Act provide for the roles of Secretaries for Children Affairs right from LC I (village) to LCV (District) levels. These are based at the community level; each village has an LC Council out of whom one is a representative for children. The Secretaries for Children primarily represent the interests of children at the community level. They also ensure the best interests of the child are fulfilled in all matters affecting the welfare of children including education, health, legal matters and planning for development. In the past, the Secretaries for Children and other LCs were trained on children's issues by the MGLSD and its partners including FIDA, UCRNN, Save the Children and UNICEF. However, these political leaders are changed through elections from time to time demanding continuous training.

Part II, section 5 of the Children Act depicts and highlights the duty of parents and guardians or any one in custody of a child, including immunization and medical care, among others. This clearly stipulates the role of parents or guardians in providing the health requirements of their children. The Act in real sense does not give a clear picture of children's right to health. In comparison with other human rights instruments such as; UDHR, African Charter on the Right and Welfare of the Child, CRC, and the Constitution of the Republic of Uganda, the Children Act is closed especially on healthy rights of children. It simply emphasizes welfare without clearly defining the different groups of people. Furthermore, the Act does not clearly stipulate the methods and techniques of disseminating such important information, and more so, the need for effective communication at all levels of planning, implementation and evaluation. This therefore makes this research fundamental in filling in the gap.

3.2.3 The Creation of Family and Children's Courts and Family Protection Units of Police

Considering the protracted nature of accessing justice in a developing country like Uganda, the Children Act chose to overcome this anomaly for the sake of protection of children from long grueling court processes that take between many months to years. The Act provides for an alternative to settling cases of children that are of criminal nature, except those which carry the maximum death sentence and civil cases related to only applications concerning childcare and protection such as maintenance cases, or parentage cases. This is the Family and Children's Courts (FCC). Grade II Magistrates in the various districts in Uganda have the jurisdiction to handle cases brought to the FCC. While FCCs are not fully functional in all the districts, plans are underway to institute them in all districts.

Working alongside FCCs are Child and Family Protection Units offering emergency, preventive and supportive services to child victims of violence. The Units are intended to provide child friendly services addressing violence and abuse as well as engage in community outreach, sensitization programmes, counseling in communities and schools. Some locations also have Police Community Liaison Officers under the Community Policing Programme whose duties include intervention in juvenile crime cases as well as educating the public on legal issues generally and those pertaining to children specifically.

3.2.4 The Remand Homes

Uganda has instituted remand and detention centres for children who have to be incarcerated. The remand homes where they exist are supposed to operate on a regional basis while the National rehabilitation Centre is a national institution. This is an effort to separate children from adult criminals who not only can abuse them but can also drill them into being hard core criminals. The greatest challenge currently is the limited number of functional remand homes

which only exist in Kampala, Kabale, Mbale, Kabarole and Gulu, which is still impacting on the administration of juvenile justice.

Children are forced to move very far from their homes therefore detaching them from parental visits. It also affects the speed at which cases regarding children are settled due to large numbers in one place. The other challenge is the technical skill of deciding which child should be incarcerated and which one should not. Lack of knowledge for interpretation of the legal framework is a major cause of incarceration of children whose cases can be handled in community.

3.2.5 The PEAP Framework of 2000

Uganda in the past had a specific framework for all actors to protect the rights of children in areas of survival, development, protection and participation, the Uganda National Plan of Action for Children (UNPAC). Following the embracing of Sector wide approaches, Uganda developed a Poverty Eradication Action Plan (PEAP) that is the overarching national planning framework. Children's concerns have been integrated into the PEAP and are therefore in the Sector Investment Plans through which all funding is channeled.

Mainstreaming child rights issues in macroeconomic policies is one way to which resources can be channeled to promote the realization of children rights as provided for in the charter and other principal frameworks.

In addition to the PEAP and sector strategic plans, other recently developed policies that promote the rights and welfare of children are:

- Universal Primary Education (UPE) 1997, providing for free tuition to all children in primary school.
- The Gender Policy 1997, which has since been revised. It provides for gender mainstreaming and an action plan to implement it. It recognizes disparities that need to be addressed in order to eliminate disparities among children.
- The Youth Policy 1995 recognizing specific issues that apply to children including adolescent reproductive health needs.
- The National Orphans and other Vulnerable Children Policy (NOP) 2004, which highlights the plight of these unique groups and designs how to address them in order to have the rights and welfare of these categories of children realized.
- The Revised National Strategic Framework on HIV/AIDS Activities in Uganda that guides intervention on HIV/AIDS. Children are largely infected by HIV/AIDS through their mothers, thus the promotion of PMTCT. Children are also affected by HIV/AIDS.
- A draft National Child Labour policy aiming at guiding employers, parents, communities and children on employment issues relating to children. Children are often exploited by employers.

3.5 The Penal Code Act, Cap 120

The Penal Code, further amplifies this in sections 156, 157, and 159. The sections establish provisions against desertion of children; neglect to provide food, shelter and clothing and other necessities to children. Child kidnapping is heavily condemned as a felony, whose penalty is seven years of imprisonment.

3.6 The Employment Act No.1 of 2006

The Employment Act accords every Ugandan community with powers to fight against employment of young persons, in an attempt to protect their fundamental rights to health. Section 32, of the Act forbids any person from entering into a contract with a child, employing young children, especially in activities dangerous to their health. It is important to note therefore, that the major role of the members of community in protecting the rights of the children is to report any anomaly or incident that is detrimental to the well being of the children in the communities where they live, to the rightful court or authority.

3.3 Role of Government in Protection of Children Rights

The Government of Uganda is committed to protect, promote and fulfill the realization of child rights. This is reflected in the many legislative and programmatic endeavors

According to the decentralization policy as set out under Article 176 of the Constitution, 1995, functions of a central government department include policy and legislative development, quality assurance (including monitoring and supervision) inspection, training, technical advice and guidance in their respective area of mandate. The Children Act ratifies international provisions relating to the rights of children. It does this through several departments.

3.3.1 Ministry of Gender, Labour and Social Development (MGLSD)

To fulfill its commitments to the child, government of Uganda has established and appointed the Minister of State for Children and Youth Affairs within the Ministry of Gender, Labour and Social Development. The Minister is charged with ensuring that government programmes for children are implemented on schedule and advises the Minister of Gender, Labour and Social

Development on the progress in this area. This Office is supported by the technical positions of Commissioner and Assistant Commissioner for Youth and Children in the MGLSD who are now squarely in-charge of technical matters to do with children. The Commissioner, with the support of the Principal Probation and Welfare Officer supervises and supports the Probation and Social Welfare Officers at the district level. They also have counter parts in the districts, the Community Development Officers (CDOs) and the Assistant Community Development Officers (ACDOs).

The Ministry of Gender, Labour and Social Development is mandated to promote social protection of poor and vulnerable children. It is the Secretariat for the Social Development Sector under the sector wide approaches. The ministry has a fully fledged department for Youth and Children, a child labour department and other departments that deal with marginalised groups such as disabilities. It is also a ministry charged with culture, community mobilisation and gender concerns that largely impact on children. The social development sector consists of the civil society and development partners who are implementing social sector interventions.

Within the same sector is the lead agency for co-coordinating and monitoring the implementation of child rights related programmes, the National Council for Children (NCC). The NCC is a semi autonomous body, the Ombudsman for children. Other ministries/departments are responsible for sectors that fall within their mandates. Under MGLSD, a Street Children's Desk (SCD) and the National Street Children Committee to ensure integration of children back into their communities has been set up in the department of Youth and Children Affairs.

3.3.2 Ministry of Education and Sports

The Education Sector Investment Plan (ESIP) 2004-2015 brings together Government, development partners, the private sector and CSOs to mobilise support and resources for the education sector. Working committees have been established to manage the ESIP. The working groups are responsible for: sector policy and management; financial planning and management; monitoring and evaluation; primary education; secondary education; technical and vocational education and training; tertiary; and teacher education working group. Each working group produces a report every six months and a composite report is compiled to form input into the biannual ESIP review. Government, through the Ministry of Education and Sports, has established the National Council for Higher Education and the Education Standards Agency (ESA). The Ministry of Education is the Secretariat for the ESIP. Through the sector, a number of policies and guidelines have been developed to improve the quality of education and provide a safe and healthy environment for children.

3.3.4 Ministry of Health

The Ministry of health houses the Health Policy (HP) and the Health Sector Strategic Plan (HSSP). The HSSP is implemented through the Health Policy Implementation Committee (HPIC), which consists of eight sub-committees, namely: Human Resources, Health Infrastructure, Basic Package, Finance and Procurement, Supervision and Monitoring, Decentralization, Research and Development and Public-private mix.

A Health Sector Review Committee (HSRC) has also been formed to: generate consensus of all stakeholders in the implementation of the HP and the HSSP; review and endorse reports and recommendations of the Health Policy Implementation Committee; and provide support and

guidance in the implementation of the HP in general. Membership to the HSRC is multi-sectoral and includes representatives from: central government departments, local authorities, higher institutions of learning, research institutions, NGOs parliament, civil society and traditional practitioners.

Consultative meetings and joint meetings are held bi-annually to review sector performance (expenditures and outputs) for each component of the sector, agree on the financial resource envelope for the following year and the revised draft annual plan of action for the next year. Membership to the meeting includes the government MoH; MFPED; MoLG; MoES; Department of Information, Development partners, representatives of NGOs and potential partners also attend. The institution of the National Immunization Days (NIDS) and booster immunization doses were meant to improve the health status of children in Uganda.

As a result of all these initiatives, a clear vision for the health sector has evolved, priorities have been agreed; agreement has been reached to use a common working arrangements with regard to planning, budgeting, disbursement, procurement, reporting and monitoring; the Government of Uganda and development partners are ready to operate through the Sector Wide Approach; and a partnership fund has been established to support preparatory activities of the HSSP. The Health Service Commission to take care of human resources issues has been set up under the Ministry of Health.

2.3.5 The Uganda Human Rights Commission (UHRC) and its role in the protection of children rights

This is an independent Constitutional body established to promote and protect human rights in Uganda. It is established under Article 51(1) of the Ugandan Constitution and by the Uganda

Human Rights Commission Act No.4 of 1997. The Commission is mandated to empower the public by giving them basic knowledge about their rights. In this respect, the Commission has a protocol with the UPDF and has a programme of training security agencies and sensitizes the general public in human rights issues including children's rights. It has up-to-date organized and held sensitization workshops and media programmes, published a number of materials; conducted education and training workshops for, local council leaders, teachers, youths and students with the aim of disseminating to the public the provisions of the charter enshrined in the domestic human rights instruments.

3.3.6 Establishment of the National Council for Children (NCC)

The NCC was created as an interim body in 1993 and later by statute No. 16 of 1996 (now the National Council for Children Act, Cap 60 in the revised laws of Uganda; to coordinate and monitor implementation of international, regional, national and local instruments on the rights and welfare of children in Uganda. Its objectives include:

1. Acting as a body through which the needs and problems of children can be communicated to government and other decision –making institutions and agencies in Uganda.
2. To coordinate and provide direction to all persons involved in child-based activities in Uganda.
3. To promote the adoption and utilization of the Programme of action by government, non-governmental organizations and external support agencies through participation in their planning and resource allocation exercise.

4. To maintain a data base on the situation of children and activities relating to children in Uganda.
5. To support the continuing analysis of the changing needs of children and promote discussions of emerging priorities.

The challenges facing the NCC include inadequate human, technical and financial resources. There has been a call to restructure the institution, provide it with more resources and equip it to have more power over government, civil society and development actors for children.

3.4 Progress Made by the Government of Uganda in fulfillment of the Enjoyment of Children Rights

Since the ratification of the international instruments protecting the rights of the juvenile offenders, several legislative interventions have been implemented. These include the revision of the Constitution in 1995⁷¹ to take into consideration issues arising from international and regional legal commitments, the enactment of a law for children, the Children Act⁷², the amendment of the Local Government Act and putting in place mechanisms arising out of these revisions and amendments.

The Children Act provides procedures for addressing children's concerns within the family, in institutions and in circumstances where they come into contact with the law. It also provides for other legal processes such as adoption and foster placement, among others. Under the Children Act Cap 59 Family and Children's Court (FCCs) have been gazetted and these are expected to handle legal matters related to children at lower levels.

⁷¹ Article 39 Of the 1995 Constitution of the Republic of Uganda

⁷² Cap 59 laws of Uganda

Government in collaboration with its partners such as UNICEF, Save the Children in Uganda and other Civil Society Organizations have been supporting training and sensitization of child rights to various duty bearers charged with protection, promotion and fulfilling child rights in Uganda such as law enforcement organs like the police, UPDF and Local Councils. There is also sensitization of bar owners, video owners not to employ children especially girls who are disguised to be employed and yet they are forced to practice prostitution.

The government, through the universal primary education programme (UPE) has provided more access to children to enter school through provision of tuition for them. There is increase enrolment as a result of this. The challenge of high dropout rates, however still stands. For purposes of gender parity in education, government is promoting affirmative action for girls' education; where those going to public universities are given 1.5 additional points to enable them compete with their male counterparts. This works as a motivation factor for girl children at the lower levels of education.

These government programmes are still negated by the fact that discriminatory practices continue to thrive against the girl child. There is evidence of discrimination against the girl child education in homes where the girls still do most of the household chores which deprives them of going to school and concentrating. Some drop out of school due to what parents choose to call lack of resources for scholastic materials while others are sent into early marriages. Community mobilization and empowerment for prevention of child domestic work is ongoing by both state and non-state actors.

3.6 Health and human rights of children

From a human rights perspective, interest in health is primarily focused on governmental actions taken in the name of public health and their impact on the rights enshrined in International Human Rights Law. Most actions are taken in the names of public health and carried out under governmental authority and responsibility. Most are actually performed by governmental agencies, and others are indirectly supported and organized by governmental funding and regulation. The right to health is a fundamental human right as provided for by International, Regional and Domestic Instruments, which entail all human beings including children to access the rights to health with no discrimination or favor based on color, religion and political opinion, sex or cultural background.

The right to health is a universal human right, to all human beings with no discrimination or favor basing on religion, color, race or physical appearance. Like any other human being children have the right to health. It is important to note that no other category of persons in Uganda has been subjected to more continuous pattern of Human rights abuse than children. From being child soldiers in various wars, to being the victims of defilement and adult predation on account of the AIDS scourge, and from being orphaned on account of both children remain among the most vulnerable of social groups.⁷³

They have the least legal protection. Steps to address this situation have culminated only recently in the adoption of 1995 Children Statute and a Law establishing the National Council for Children. (NCC). The former attempts to give legal effect to the proposals of the 1991 Report of the Child Law review Committee and to implement the country's obligations relating to the child

⁷³ Article 39 of the 1995 Constitution of the Republic of Uganda

specifically under the Convention on the Rights of the Child and the OAU Charter on the Rights and welfare of the African Child, which were ratified by Uganda, on 17th September 1990 and 17th August 1994, respectively, were not satisfactory.

The statute contains a comprehensive schedule for the rights of the child, support for children by local government Authorities, the creation of a family and children court, adoption, child care and protection, approved homes, the case of children charged with criminal offenses, and the obligations of parents.

The national laws are a bit fair in providing the right to fair hearing to juvenile offenders in relation to the administration of juvenile justice in Uganda. However, of more regard and emphasis is the extent of the enforcement of the rights herein provided and how best they bond into the national legal system for administration.

3.8 The International Recognition of Child rights.

The Universal Declaration of Human Rights emphasizes the right to health. Article 25 of the UDHR⁷⁴ highlights the right to health as a universal right. Everyone has the right to a standard of living adequate for health and well being of himself and his family, including food, clothing, and housing and medical care and necessary social services and right to security in the event of employment, sickness, disability, widow hood, old age or lack of livelihood in circumstances beyond control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection.

On November 20, 1989 the United Nations adopted the Convention on the Rights of the Child, a landmark for human rights. Here for the first time was a treaty that sought to address the

⁷⁴ Universal Declaration of Human Rights Adopted in 1948

particular human rights of children and to set minimum standards for the protection of their rights. On September 2, 1990 the document was ratified by the world summit for children rights.⁷⁵ Since then 194 countries has met and passed a declaration of the survival and protection of children and almost all countries has ratified the document except the United States of America and Somalia.

Uganda ratified the United Nations Convention on the Rights of the child (UNCRC) in 1990 and in 1996 it domesticated the CRC by enacting a law for children now known as the Children Act⁷⁶ and on the 19th of August 2002 Uganda ratified yet an optional protocol to the CRC on the sale of children, children prostitution and child pornography which is a part of the UN Convention on Rights of the Child Committee; these rights were submitted by the state parties and are Under Article 12(1) of the Optional Protocol.⁷⁷

3.8.1 Motivations and Problems in Combating Child Labour

The UN CRC also became a landmark development in international law, enhancing and underlining the commitment to assisting working children. Child rights are also mentioned, albeit in passing, in the major UN Human Rights Treaties. For example, the International Convention on Economic, Social and Cultural Rights (ICESCR 1996) obliges state parties to criminalise employment of children under conditions deemed “harmful to their morals or health”⁷⁸ However, the CRC was framed specifically to address children’s concerns.

⁷⁵ Human Rights, Journal:164

⁷⁶ Cap 59

⁷⁷ Tamburini E, 2001-2002: 10-17

⁷⁸ Article 10 therein

gether with the ICESCR, it demands protection of the child against economic and social exploitation.⁷⁹

The CRC included novel aspects of child protection against sexual abuse and other forms of exploitation and against the recruitment of children to participate in any form of war activities. The ILO C182 also included aspects of child protection, prohibiting and demanding immediate elimination of the worst forms of child abuse such as slavery and forced labour, child trafficking, forced recruitment for armed conflict, child prostitution and pornography, production and trafficking of drugs. This categorisation, which reflects the global consensus to eliminate child labour, was unanimously agreed at the 1999 ILO Conference.

The Convention mandates national governments to determine the exact types of work to be prohibited as hazardous work. It also requires ratifying States to design and implement programmes of action to eliminate existing child labour and to prevent emerging instances. Such measures should include the rehabilitation and free education or vocational training for the children concerned. The ILO C138 has its ultimate objective as the effective abolition of child labour, using minimum age as an instrument to that end.

The CRC⁸⁰ provides for compulsory and free primary education to all children. Long before the convention, those people with keen interest realized there was a symbiotic relationship between child labour and compulsory education. As Stambler notes, "...compulsory education laws were

⁷⁹ Article 32 therein

⁸⁰ Article 28 therein

outtressed by child labour laws. The enforcement of these laws kept children in school longer and limited their job opportunities during school hours”⁸¹.

However, the first Compulsory Education Act which the New York State passed in 1874 lacked enforcement because it lacked funds. Child labour was also considered as a culture lag or an institutional carry-over from agrarian society into the new industrial framework, while the movement for compulsory education resulted from a growing technological society aiming at guaranteeing its manpower needs for survival for such a society. Thus, from the earliest efforts to eliminate child labour, legislation and compulsory education were logically interwoven. The enforcement of one would inevitably influence the other as a consequence.⁸²

Conclusion

There is a multitude of laws, both national and international that seeks to ensure the protection of the rights of the juvenile offenders through a properly defined legal system. The compound of the two give Uganda a proper legal system in the administration of juvenile justice but what remains eminent before the many Ugandans and NGOs in the country is the total failure of the same. On establishing the root cause for the failure of the same, it is yet to be proved whether the enforcing organs do have a direct bearing and attribution to the same which the researcher shall viably establish in the forthcoming chapters of the research.

⁸¹ Stambler 1968:189

⁸² Supra

CHAPTER FOUR

FINDINGS AND THE EXTENT OF PROTECTION OF THE RIGHTS OF JUVENILE OFFENDERS IN UGANDA

4.0 Introduction

This chapter explores the findings and its recordings as obtained from the primary and secondary sources and there presentation, judgments made in relation to the findings and all the possible discussions made there under. The chapter shall look into the responses of the respondents on the questions put to them as well as the co-relation with the secondary data.

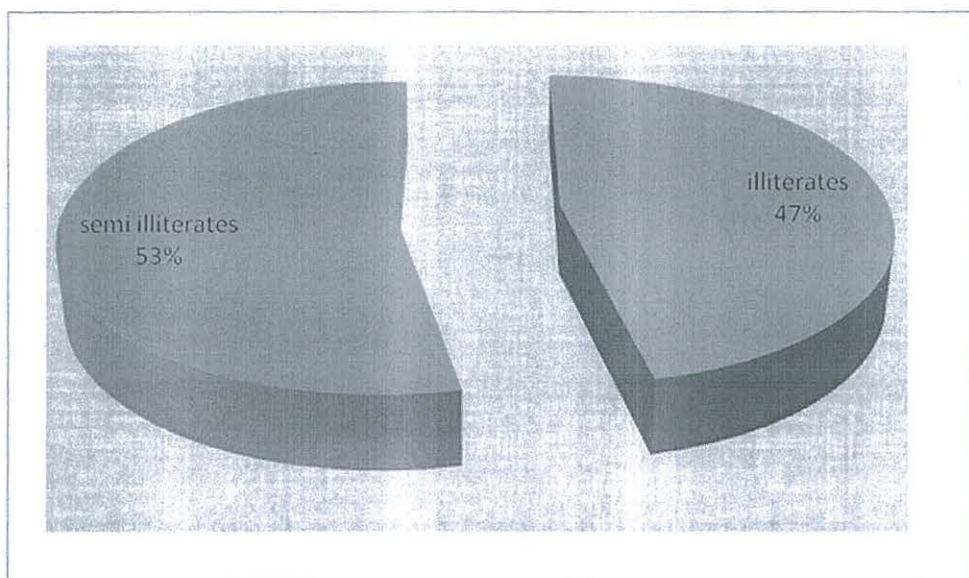
4.1 Back-ground information of the Respondents

The respondents were categorized by age, sex, educational background as discussed under the aspects below;-

Age aspect

The respondents were grouped under minors and persons of majority age. This classification was made to have a better understanding of the dependent and the independent variables of this research. The minors that were interviewed were juveniles in different detention centres and the adults that were interviewed were officers or persons in offices of responsibility in relation to the protection and promotion of the rights of the juveniles. In this research, the views of the juveniles were represented by 40% of the total respondents as the 60% respondents were adults. This is illustrated in the figure A.1 below;

Figure A.1: The Pie Chart Showing the Distribution of the Respondents by Age:

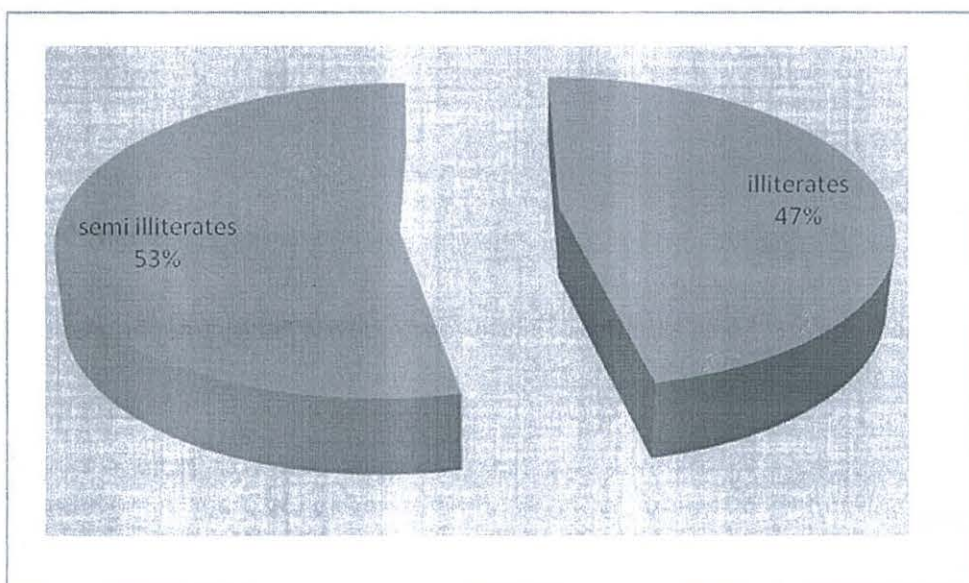


Sex Aspect

The respondents interviewed represent 36% females as 64% were males as is shown in the figure

B.1 below;-

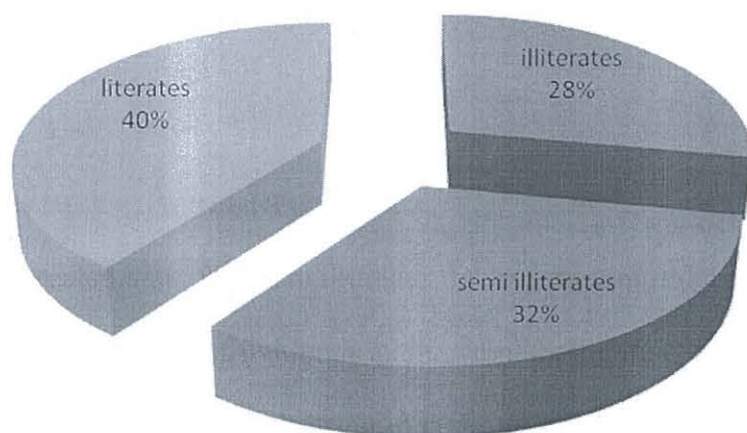
Figure B.1: A pie Chart showing sex distribution of the respondents



Aspect of educational level of the Respondents

The respondents revealed that 28% were illiterate, 32% were semi illiterate as 40% were literates and with qualifications. There distribution is as shown in the figure C.1 below;-

Figure C.1: Figure showing the distribution of respondents by educational level



The back-ground information of the respondents gives a basis upon which to co-relate the correctness of the information given in relation to the research. The researcher established that majority of the respondents who were juveniles were semi-illiterate and had dropped out of school for numerous reasons.

4.2 Aspects of the causes of the juvenile delinquency

There are numerous causes that were advanced by the secondary data that were lined together in establishing the extent at which they contribute to juvenile delinquency in Uganda. These were grouped and the respondent had to tick on the aspect depending on the knowledge and belief they had towards the given aspect. The beliefs were put in are strongly agree, agree, disagree and

strongly disagree. These are as shown in the table F.2 below with the corresponding percentages of responses from the respondents.

Figure F.2: Responses of respondents on the causes of juvenile delinquency in Kampala (all out of 100%):

Aspect	Strongly agree	Agree	Disagree	Strongly disagree
Drug abuse and usage of unauthorized drugs	70	25	2	3
Broken family	45	30	20	5
Individual psychological or behavioural risk factors	25	55	10	10
Peer rejection in childhood	15	25	30	30
Unemployment and poverty	45	35	15	5
Too much idol time for the Children	60	20	10	10

Source: primary data 2013

From the table above, the entire aspects advance by researchers and writers under the secondary data were admitted by respondents to be among the causes of the juvenile delinquency in Uganda.

4.3 The state of the law on the protection of the rights of the Juveniles in Uganda

The responses of the respondents on the state of the law towards the protection of the rights of the juveniles in Uganda were varied. As majority of the respondents admitted that the rights of

the juveniles are adequately provided for under the Ugandan laws, their enforcement is still lacking. Both Ms. Diana Musoke of the Uganda Law Society and Her Worship Lydia Mugambe of the Buganda Road Courts supported this conclusion in a personal interview. It was noted that the bodies in place that have to ensure the protection of the rights of the juveniles are still lacking and further stated that adequate protection ought to have been provided through training of the stakeholders, financing of the parties concerned, ensuring through, close monitoring of the responsible officers that their duties towards the juveniles are adequately administered without undue regard or unfairness.

The respondents out of which, 45% admitted that the state of the law is lacking in the protection of the juvenile offenders noted that a separate law ought to have been made just like in the U.S to cater for the juvenile administration system in Uganda.

It was further noted that although the Constitution of Uganda ratifies international law⁸³ and gives room for its application, it was noted that majority of the respondents did not know of it forming part of the law for the protection of the rights of the juveniles in Uganda.

The respondents had mixed views on the protection of individual rights of the juveniles in Uganda as Figure F.4 shows the different aspects of the rights of the juveniles and the extent of their protection in Uganda.

⁸³ The 1995 Constitution of the Republic of Uganda

Figure F.4: The aspects of juvenile rights and the responses towards their protection in Uganda

Aspect	Strongly Agree	Agree	Disagree	Strongly Disagree
The detention of a juvenile in a juvenile centre	25	20	35	20
Charging Juveniles in Juvenile Courts	30	20	40	10
Conviction of juveniles under the Juvenile laws	15	10	40	35
Juvenile rights as per the Children Act	25	15	35	25
Determination of the Age before trial	40	30	20	10

Source: primary data 2013

From the table above, it was established that the majority of the aspects under the juvenile rights are not protected in Uganda. A visit to Wangegeya Police Station on 25th June 2013 established that the police had detained a 16 year old with adults for idol and disorderly.⁸⁴ With the poor state of the law and its enforcement in Uganda, it remains to be established whether the rights of the juveniles in Uganda are afforded any consideration by the stake holders. The 2010 Annual police report on crime and road Safety established that out of the juvenile offenders in Uganda,

⁸⁴ Contrary to section 106 of the Children's Act Cap 59

only 3% are females. It is these male percentages that contribute to the adult crime rates when they attain the age of majority if not handled with due consideration.

Basing on the above findings, its' rather prudent to establish the recommendations as advanced by the respondents on the improved protection of the rights of the juveniles in Uganda.

4.4 Responses of the respondents on what causes the infringement of the rights of the juveniles in Uganda.

The respondents noted a number of things that ought to have been put into consideration for the effective protection and promotion of the juvenile rights in Uganda. There absence are capitalized upon for the infringement of the rights of the juveniles in Uganda and these are as discussed below;-

It was noted therein that the government through its institutions of police are the cornerstone for the promotion of and protection of the rights of people in Uganda, and as such, ought to play a central role towards the protection of the rights of juveniles in Uganda. The juvenile offenders are handled by the police first and every sense of the infringement starts at the time of arrest. A discussion of the matter with one of the Juveniles from Naguru Remand home noted that the police sometimes do not mind to establish whether you are a minor or not. Such facts are established upon their production in court.

It was also noted that the ignorance of the state of the law towards the protection of the rights of the juveniles in Uganda is among the causes of the infringement of the rights of the juveniles in Uganda. The persons charged with the duty of apprehending criminals only know a few areas of the law and are not adequately trained in legal matters to handle criminals depending on their grouping.

The respondents also noted that the general public is not given guidelines on what to do upon the establishment of the infringement of the general rights. Such ignorance deters them to pursue their individual rights and so are the juveniles who often form part of the victims.

It was further established that the probation officers who are charged with overseeing the treatment of the children are not adequately financed to effectively dispense their duties. The areas of operation are too big with no means of transport to overlook the treatment of the many children within their geographical jurisdiction.

Upon such facts, it is worthy to note that the protection and promotion of the rights of the juveniles in Uganda needs a lot to be elevated from the sorry state it is in.

4.5 Conclusion

From the discussions above, it can easily be established that the people are not contented with the extent of the protection of the rights of the juvenile offenders. Despite the presence of the laws protecting such rights, the persons charged with the duty of enforcing such laws are not adequately dispensing their obligations as mandated to them thereby causing a challenge to the protection of the rights of juvenile delinquents.

CHAPTER FIVE

DISCUSSION OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 FINDINGS

First, constitutional revisions demand long parliamentary debates. Is it practical to request three separate amendments to judicial practice? In fact, the amendments proposed are not constitutional in nature. They modify instead the Children Act cap 59, and need only the approval of the Attorney General. The petition of a large body of lawyers expedites this process.

Critics argue further that the State struggles to pay for adult legal defence. Are financial resources available for children? Contrary to popular opinion, the majority of imprisoned adults needing state-funded aid have in fact been adequately assisted.

Furthermore, statutory representation for children eases the financial burden of overcrowded remand homes. Finally, private lawyers have been historically willing to assist children without inflated financial incentives. Mr. Jacob Oulanyah, for example, of Mao, Owor, Oulanyah and Co. Advocates, revealed that firms do not generally refuse child-oriented state-briefs (Oulanyah, interview). Recalling the availability of law students and graduates, the State must concede that funding constraints might be legitimately overcome.

One final note deserves mention. Sceptics inevitably describe Uganda's penchant for delaying practical reform. But even if social gears turn slowly, advocates should not refrain from overseeing the legislative embodiment of fundamental human privileges. Above all, the Uganda Law Society must be thanked for its commitment to this principle. It also deserves thanks for receiving this letter, which closes with a simple observation. Neighboring countries, particularly Kenya, are currently revising their child-related legislation. Uganda's position as an East African

leader insures that it will be analyzed, if not mimicked. Have we set a responsible example? We are confident that Society members will continue to prioritize this question.

Most of the children caught up in conflict with the law, have either been locked up for theft, assault or for fighting among themselves. Compared to boys, majority of the girls involved in commission of crime, are those working as maids.

Carol Bankusha, the Probation and Welfare Officer at Kampala City Council, says most of the girls facing the juvenile courts struggle with trumped up charges by their bosses. She says some girls working as maids in homes and restaurants are accused of stealing money or babies, as a way of denying them what is due to them. The Children Act only puts criminal liability on children of 12 years and above.

Child welfare officers say, the environment in which children are exposed to, leads them into committing crime. For example orphans left to house helps, have very little guidance to give to the children. Adults are also known to use children to enter into offices where they open for adults to steal.

Drug abuse and alcoholism, broken marriages and single parents contribute to juvenile delinquencies. Children with a history of drug abuse are known even to commit capital offences like murder, rape and child-to-child sex. Cases have been reported in Kamwokya and Banda where children have murdered their grand-parents over food.

Most of the children however steal for survival like to get something to eat. Others are more involved in crimes because many of them are not in school and are doing petty trade for a living.

Children were formerly held for defilement but later changed it to child-to-child sex because the law did not favor boys. Today if a parent reports defilement then both the boy and girl are

arrested. According to Bankusha, though some children are known for stealing from their families and neighbours, Christine Alaro, The head of the Child and Family Unit in the Uganda Police Force, says police never arrests children but they are brought to police stations by their parents, neighbours or bosses.

Unlike adults, children are rarely locked-up at police stations. According to Alaro, police stations do not have special cells for children so they always hand them over to a relative who will bring them whenever they are wanted at police. At police the children accept their offences.

However, some parents do believe that their children are locked up for some time to change and are booked into Kampiringisa. Doreen Kyaligonza, says such children normally develop into habitual criminals who start off as petty offender and end up as robbers. She says some children prefer to commit crime so that they are taken to the remand. Kyaligonza says cases of children arrested for petty offences their cases should be heard and disposed off within three months. While children commit or abet in the commitment of capital offences their cases should be heard and disposed off within six months. Kyaligonza says absence of police files; lack of family and children courts was denying children justice. According to her many children always find themselves returning to crime and in remand home due to conditions at home.

In Kampala, children who act against the law are taken to Mwanga II court, Makindye court, Nakawa court and Nabweru court. They are locked up in Naguru Remand Home and Kampiringisa rehabilitation center. The probation and welfare officer Kampala Carol Bankusha advises adults to keep a watchful eye over children and even help them pursue education to keep them out of crime.

5.1 CONCLUSIONS

It has been established throughout the research that the extent of the protection of the rights of the juveniles in Uganda is still wanting. Though majority of the juveniles are victims of circumstances, adequate consideration ought to be put on reforming the juvenile offenders to reduce on the crime rate in the country. No harm can be faced by the country if, the rights of the juveniles are given adequate consideration and their protection adequately managed by the stake holders.

Upon such background, the research established that the greatest violator of the rights of the juveniles in Uganda is the Uganda police and all its wings of the executive who are the first informed parties in crime prevention.

A special group of persons ought to be put in place to handle only child-related crime matters and such persons should be given adequate legal training to see them through the handling of the children related criminal matters with maximum protection of their individual rights.

. Though the cost of establishing such a system might seem hefty for the government, it might save a great deal as justice shall adequately be facilitated to the juvenile offenders on time.

Contrary to the trend toward more formal proceedings for juveniles, in the case of *McKeiver v. Pennsylvania (1971)*, the Supreme Court determined that the jury trial is not required in juvenile proceedings.

Basing on the above, it is worth noting that there are recommendations that can be advanced to ensure that the rights of the juveniles are adequately protected in Uganda.

5.2 RECOMMENDATION ADVANCED

The researcher and the respondents advanced numerous recommendations for the adequate protection of the rights of the juveniles in Uganda. These are as discussed below;-

Formulation of the juvenile justice administration system just as was noted in the case of In *Schall v. Martin (1984)*, in which the Supreme Court ruled that "juveniles, unlike adults, are always in some form of custody" and thus subject to parental and State control.

Training of individuals for the administration of the juvenile justice who are not persons who are qualified as judges but who can administer justice based upon morality and good conscience.

Establishing of the remand places for the juveniles at police stations to avoid mixing of the juveniles with adult offenders.

5.3 AREAS OF FURTHER RESEARCH

The researcher advanced a number of research areas for further research in lieu of the juvenile justice.

- What ought to be done to ensure effective protection of juvenile rights in Uganda?
- The juvenile offender, society and the law. How best can all be reconciled?
- The Notion of juvenile justice and the rights of juveniles in Uganda.

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APPENDIX 1:

RESPONDENT'S QUESTIONNAIRE

Dear respondent,

I, MUWONGE MICHEL ALI OF KAMPALA INTERNATIONAL UNIVERSITY, A STUDENT OF LAW THEREIN, am currently conducting a research on "THE LAW AND PROMOTION AND PROTECTION OF THE RIGHTS OF JUVENILE DELINQUENTS IN UGANDA; A CASE STUDY OF KAMPALA DISTRICT" I am seeking for information from you as it shall strictly be used for educational purposes. The researcher undertakes to hold any information obtained to be confidential to the best of his knowledge and skill. Please avail me with necessary information to aid me conclude my research successfully.

A. Background information

(Please answer briefly in the spaces left) (You can elect not to answer where you deem uncomfortable)

1. Age of the respondent.....
2. Sex of the respondent.....
3. Educational level of the respondent.....
4. Residence of the respondent.....
5. Have you ever been charged of a criminal offense? (if yes, what offence(s))

B. Knowledge And Practice On Juvenile Delinquency In Uganda

1. Who is a juvenile?.....
2. Where are juveniles kept in Uganda?.....
3. Do you know the rights that accrue to juveniles in Uganda?.....
4. If yes, what are some of those rights?
.....
.....
.....
.....
5. Are there adequate laws for the protection of the juveniles in Uganda?

10. To what extent are the juvenile rights enforced in Uganda? (tick where applicable)

Aspect	Strongly Agree	Agree	Disagree	Strongly Disagree
The detention of a juvenile in a juvenile centre				
Charging Juveniles in Juvenile Courts				
Conviction of juveniles under the Juvenile laws				
Juvenile rights as per the Children Act				
Determination of the Age before trial				