A CRITICAL ANALYSIS OF THE LAW RELATING TO CHILDREN WITH DISABILITIES IN UGANDA

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DECLARATION

This is my original dissertation and has not been presented for any award in any institution of whatsoever.

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APPROVAL

This dissertation, "Critically analyze the Rights of Children With Disabilities in Uganda" has been done under my supervision and is due for submission to the Faculty of Law of Kampala International University.

Supervisor: Ms .....

Signature: Date: 3/4/2017

DEDICATION

This report is dedicated to my mother, who taught me that the best kind of knowledge to have is that which is learned for its own sake and that even the largest task can be accomplished if it is done one step at a time. My University lecturers who ensured I achieve my academic goals.

ACKNOWLEDGEMENT

God has been my pillar, I would like to thank Him for sufficient grace and mercies that have seen me through this project. Secondly, I would like to acknowledge my mother for sponsoring me financially, her presence, patience and unwavering love. By tolerating and supporting me throughout this course. Thirdly I would like to thank my supervisor, for her opinions, guidance, advice, support and encouragement throughout this research contributing to the success of this project proposal was valuable. Finally, I would like to thank all my classmates who helped me through this project, may God bless you all.

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LIST OF ABBREVIATIONS

WHO	World Health Organization.
CPR	Convention on the Rights of the Child.
CRPD	Convention on the Rights of Persons with Disabilities.
USDC	Uganda Society for Disabled children
NGOs	Non-governmental Organizations
UN	United Nations
L.C	Local Council
US	United States
EU	European Union
PRA	Performance Rural Appraisal
IRC	International Criminal Court
CICL	Children in Conflict with the Law
ILO	International Labour Organization
CFPU	Child and Family Protection Unit
UDHR	Universal Declaration of Human Rights
OAU	Organization of African Union
UPE	Universal Primary Education
USE	Universal Secondary Education
UHRC	Uganda Human Rights Commission

LIST OF STATUTES AND CASES

1. The Constitution of the Republic Of Uganda As Amended At February 15th 2016
2. The Domestic Violence Act 2010
3. The Equal Opportunities Commission Act 2007
4. The Sexual Offences Act 2010
5. Penal Code Act Cap 120
6. The Prohibition of Female Genital Mutilation
7. Family and Children Court.
8. Children (amendment) Act of 2016.
9. Persons with Disabilities Act.
10. Nakaggwa v Kiggundu(1978)HCB 310
11. Kalisa v Kalisa)(1974)HCB 408
12. Teopista Kayongo v Richard Sekiziyuru(1978) HCB 240
13. Habyarimana v Habyarimana(1917) HCB 139
14. Muwanga v Walji Bhimji Jiwani&Anor(1964) EA 171
15. Munyambala v Munyambala Divorce Case No 3/1998

CONVENTIONS

1. Universal Declaration on Human Rights (UDHR)
2. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
3. UN Convention on the Rights of a Child.
4. Minimum Age Convention 1973.
5. UN Declaration on the Rights of a child.

ABSTRACT

This research gives a clear and comprehensive coverage of how disabled children's rights can be protected under the local and the international laws.

Working children are the objects of extreme exploitation in terms of toiling for long hours for minimal pay. Their work conditions are especially severe, often not providing the stimulation for proper physical and mental development. Research revealed that many of these disabled children endure lives of pure deprivation. However, there are problems with the intuitive solution of immediately abolishing child labor to prevent such abuse. There must be an economic change in the condition of a struggling family to free a child from the responsibility of working. Family subsidies can help provide this support.

Child labor is especially prevalent in rural areas where the capacity to enforce minimum age requirements for schooling and work is lacking. Disabled children work for a variety of reasons, such as poverty and the induced pressure upon them to escape from this plight. Though children are not well paid, they still serve as major contributors to family income in developing countries like Uganda. Schooling problems also contribute to child labor, whether it is the inaccessibility of schools or the lack of quality education which spurs parents to enter their children in more profitable pursuits. Traditional factors such as rigid cultural and social roles in Uganda further limit educational attainment and increase child labor.

Therefore, the research recommends that the fundamental rights of disabled children be put into consideration by the government, stakeholders and civil society groups. This is objectively an important factor that will help enact more laws and policies to take care of their interests and rights.

CHAPTER ONE

1.0 GENERAL BACKGROUND

1.1. Introduction.

This study looks at the implementation of the law relating to the rights of children with disabilities in Uganda. Some policies and laws all over the world have been implemented regarding children in respect to children with disabilities[1].However some sectors have been ignored especially the education sector wich is very vital to productivity and economy of a country. The study therefore, taking a human rights-based approach, situates rights of children with disabilities as a human right, the realization of which should benefit all groups without discriminating against any.

This chapter presented the historical background of the study, statement of the research problem, the purpose of the study, objectives of the study, research questions as well as significance of the study, justification of the study, scope of the study, theoretical framework research methodology as well as the literature review of the study. Each of the sub section was discussed separately.

1.2. Historical background of the study.

A child is a person considered under the law who has not attained the majority.[2] This is similar to the children's Amendment Act of Uganda of 2016 which provides that a child is a person who has not attained the majority age (18 years).[3]Furthermore, a child with disability in accordance with the World Health Organization is one who faces any kind of restriction or lack of ability to perform in a manner or within a range considered normal for a human being.[4]

Disability is the consequence of an impairment that may be physical, cognitive, intellectual, mental, sensory developmental or some combination of these that results in restrictions on an

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[1] UN convention on Children's rights 2012

[2] Adams v Adams

[3] S.1 of Children Amendment Act 2016 & Articles 257(U)(C) of the 1995 Constitution of the Republic of Uganda

[4] WHO, 1996 World Health Organization Retrieved 11 August 2012.

individual's ability to participate in what is considered "normal" in their everyday society.[5] A disability may be present from birth or occur during a person's lifetime.

Society in every nation is still infected by the ancient assumption that people with disabilities are less than fully human and therefore, are not fully eligible for the opportunities which are available to other people as a matter of right[6]. Contemporary understandings of disability derive from concepts that arose during the West's scientific Enlightenment; prior to the enlightenment, physical differences were viewed through a remarkably different lens.

During the middle ages, madness and other conditions (epilepsy, e.g.) were thought to be caused by demons; on the other hand, they were also thought to be part of the natural order, especially during and in the fallout of the Plague, which brought impairments throughout the general population[7]. In the early modern period there was a shift to seeking biological causes for physical and mental differences, as well as heightened interest in demarcating categories: for example The European Enlightenment's emphases on knowledge derived from reason and on the value of natural science to human progress[8] helped spawn the birth of institutions and associated knowledge systems that observed and categorized human beings; among these, the ones significant to the development of today's concepts of disability were asylums, workhouses, prisons, and clinical spaces in which medicine was practiced.[9]

Contemporary concepts of disability are firmly rooted in eighteenth- and nineteenth-century developments. Foremost among these was the development of clinical medical discourse, which made the human body visible as a thing to be studied, manipulated, and transformed. These worked in tandem with scientific discourses that sought to classify and categorize and, in so doing, became methods of normalization. The concept of the "norm" developed in this time period, and is signaled in the work of the French statistician[10]

Quetelet postulated that one could take the sum of all people's attributes in a given population

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[5] ibid

[6] Justin Dart, disability rights activist, 1992, quoted in DEMOS, 2002)

[7] Braddock, David, and Susan Parrish, "An Institutional History of Disability," in Handbook of Disability Bury (Thousand Oaks, Calif Studies , ed. Gary Albrecht, Katherine Seelman, and Michael.: Sage, 2001)

[8] Stiker, H. A History of Disability. Ann Arbor, Michigan: University of Michigan Press, 2000 p. 91.

[9] Supra note 5,page 20

[10] Foucault, Michel,The History of Sexuality, vol.1. New York: Vintage. 1980,page 30.

(such as their height or weight) and find their average, and that this figure should serve as a norm toward which all should aspire.

This idea of a statistical norm threads through the rapid take up of statistics gathering by Western European states, Britain, and the United States during this time period, and it is deeply tied to the rise of eugenics. It also served as the soil out of which concepts of disability would gestate, since once a norm is defined, a set of other concepts non-normal; abnormal; normalcy adhere around it.[11].

The circulation of these concepts is evident in the popularity of the freak show, where showmen profited from exhibiting people who deviated from those norms.[12]. With the rise of eugenics in the latter part of the nineteenth century, such deviations were viewed as dangerous to the health of entire populations. With disability viewed as part of a person's biological make up and thus their genetic inheritance, scientists turned their attention to notions of weeding such deviations out of the gene pool. Various metrics for assessing a person's genetic fitness arose for example, IQ tests, still in use today which were then used to deport, sterilize, or institutionalize those deemed unfit.

During World War II, when many jobs were left vacant in the United States, adults with disabilities joined the workforce, showing their competencies, until returning soldiers replaced them in the years following the war.
At the end of the Second World War, with the horrible example of Nazi eugenics near at hand, eugenics faded from public discourse, and increasingly disability cohered into a set of attributes that medicine could attend to whether through treatment, rehabilitation, augmentation, and so forth. [13]

The following outlines some of those unfair treatments that were acceptable by different societies in given time periods; Killed or abandoned in the woods in ancient Greece, Kept as

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[11] Davis, Lennard, "Constructing Normalcy." In his Enforcing Normalcy: Disability, Deafness, and the Body(New York: Verso, 1995), page 23-49

[12] Bogdan, Robert ,Freak Show: Presenting Human Oddities for Amusement and Profit,1998,page 22

[13] https://en.wikipedia.org/wiki/Disability, 10.08.2016

jesters for nobility in the Roman Empire courts, Experienced acts of infanticide during the Renaissance, Drowned and burned during the Spanish Inquisition, In 1601, Queen Elizabeth's government divided the poor into three groups. The disabled poor were placed in the group labeled helpless poor.

Thankfully, during the 1960s and 1970s, the civil rights movement began and created an even more favorable climate for people with disabilities to continue to enter and succeed in the workforce and beyond. When the inhumane treatment of people with disabilities in institutions in the United States was exposed, this laid down a supportive stage for improving conditions inside and outside of schools for people with disabilities.

In the early 1970s, disability activists began to challenge not only how society treated people with disabilities but also the heavily medical approach to disability. Out of their work identifying how material barriers to access constituted conditions that functionally disabled them emerged what is today known as the social model of disability Coined by Mike Oliver in 1983, Shakespeare, and Tom.[14]

This phrase distinguishes between the medical model of disability under which impairment needs to be fixed and the social model of disability under which the society that limits a person needs to be fixed.

This led to the deinstitutionalization of people with disabilities and altered the way society viewed disabilities in general. Group homes became the norm rather than the exception, and more community integration came to be afforded to people with disabilities, with settings that promote independent living.

Appropriate education was advocated by U.S. presidents such as Harry Truman, John F. Kennedy, Lyndon Johnson, Ronald Reagan, Gerald Ford, George H. W. Bush, Bill Clinton, and George Washington.

Limitations may exist for those with disabilities, but many of the additional imposed anchors have been removed and replaced with not only life preservers to stay afloat, but also the opportunity for smooth and pleasurable sailing. The Education for All Handicapped Children Act of 1975 13[15] introduced a piece of legislation that drastically improved the way students

[14] "The Social Model of Disability." In The Disability Studies Reader, ed. Lennard Davis (New York:Routledge, 2006, 2d ed.), 197-204

[15] Public Law 94-14 Public Law 94-142

with disabilities were treated in school settings.

Consequently, through the decades that followed, peoples' attitudes toward children and adults with disabilities have become more accepting. The earlier subhuman institutions were replaced with mindsets that advocated community integration making people with differing cognitive, physical, and social abilities and levels primed to become happy and productive citizens and adults. So why can't we see students' difficulties as human variation rather than pathology?[16] Maybe one day we will!

In Uganda, epilepsy and rheumatism are classified as disabilities, although internationally they are not[17] Using the Ugandan definition of disability, 4 percent of the population[18] had a disability, compared to a figure of 3.3 per cent using the international definition.

These figures, recorded in 2002, are considerably higher than the 1.1 per cent noted from the 1991 census. This apparent increase in the number of people with disability may be partly due to improved method of data collection. The numbers of disabled people are not evenly distributed throughout the country. Statistics from the 2002 census show that northern region had the highest incidence of disability [19]while the western region had the lowest (2.9 per cent).[20] Article 34(4&5) states that children whether with or without disability are to be protected at workplaces without being subjected to forced labor.

The same is provided for under the Children Amendment Act 2011. That however much should work, should not be subjected to harsh labor. These percentages are always discriminated at work places which are in violation of provisions of the 1995 constitution of the Republic of Uganda.

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[16] Reid & Valle, 2004

[17] Uganda Bureau of statistics (UBOs), Ugandan Population and housing census, Fountain Publishers, Uganda, 2005.

source: Moes: Uganda education statistical abstract 2009, 2010 and a.

[18]Approximately 1,072,000

[19] 4.4 per cent

[20] Participation of disabled people in the PRSP/PEAP process in Uganda Disability Knowledge

1.4. Statement of the problem

Although Uganda's legal regime specifically the Constitution of the Republic of Uganda[21] upholds the principle of non-discrimination, equality in the enjoyment of human rights. A case in point is **"Articles 35 of the Constitution** [22]which gives persons with disabilities, rights to be respected and human dignity and provide that the state is responsible for ensuring that they realize their full mental and physical potentials. This is also provided under S.3 and S.4 of the Children Amendment Act.

According to the 2002 Population and Housing Census, at least 4 out of every 25, or 16 per cent of the population, are disabled[23]. Applying this estimate to today's Ugandan population (approximately 30 million1) would indicate that there may be some 5 million disabled people in the country. Disabled people in Uganda, as in most developing countries in the world, face extreme conditions of poverty, have limited opportunities for accessing education, health, suitable housing and employment opportunities despite the series of workshops, media education and sensitization of society on the negative effects of societal discrimination on disabled children and family members, these people continue to face discrimination from the public.

Moreover, children are discriminated against and are denied the rights to express themselves like every child should, this is because they are not able to report the abusers due to disability.[24] Law and policies to promote and protect the rights of children with disabilities are not specifically in place since the country relies on the 1995 Constitution of Uganda and the Children's Amendment Act of 2016 which give a general provision on protection of people with disabilities. Even the enforceability mechanisms of these general provisions on the rights of children with disabilities in Uganda are very poor. This is because the enforcers are corrupt and sometimes not facilitated by the government. It is against this background that the researcher got interested in carrying out this research to get findings and recommendations to government.

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[21] Article 21 of the Constitution of the Republic of Uganda 1995

[22] ibid

[23] Supra note 17

[24] UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, UNICEF. New York, 2005.

1.4. Research objectives.

i) To find out the rights of children with disabilities living in Uganda.

ii) To critically analyze the legal and institutional framework protecting and promoting the rights of children with disabilities living in Uganda.

iii) To discuss challenges faced by institutions in protection of rights of children with disabilities in Uganda.

iv) To discuss the findings, conclusions and recommendations of the study.

1.7 Research Questions

i) What are the rights of children with disabilities living in Uganda?

ii) What are the legal and institutional frameworks put in place to ensure protection of the rights of children with disabilities in Uganda?

iii) What are challenges faced by institutions in protection of rights of children with disabilities in Uganda?

1.6 Significance of the Study

The findings of the study will be of great importance to children who live with disabilities and their families as well as the wider society. The findings will enlighten the society on disability in children and factors influencing societal discrimination such as traditional beliefs which most society still holds on disability.

The findings will also assist the society understand the negative effects of societal discrimination which include psychological disturbances and financials constrains. Exploring problems that these children face and their parents may be a step in the right direction on which provision of care can be based in relation to patient management, education and teaching, and counseling towards the prevention of complications.

The Government of Uganda is committed to ensuring special protection for the most disadvantaged children, including children with disabilities (CwDs), upholding their human rights in line with the [25] and ensuring their unconditional access to all services a good example is Gulu Primary school which is a mainstream school with a unit for blind and

[25] Ibid

visually impaired children.

Pupils with disabilities and children without disabilities attend the class together. The cwds are active participants in all courses and non-disabled children are encouraged to assist their disabled peers when necessary.

Pupils with disabilities also have specific courses tailored for them, for example how to read and take notes in Braille (a tactile writing system used for the blind and visually impaired).

1.7. Scope of the study.

Geographical scope.

The geographical scope of the research covers all CwDs aged zero to 18 living in Uganda. For the purpose of this research, the target group will therefore be composed of persons below 18 who have physical, sensory, intellectual or psychosocial disabilities.

The research study covers the territory of the Republic of Uganda taking Gulu as the case study and as stated above, any child with a disability living in Uganda will be covered by this study.

The enjoyment of human rights by children with disabilities can be fully realized only in an inclusive society, that is, a society in which there are no barriers to a child's full participation, and in which all children's abilities, skills and potential are given full expression.

Content scope.

This study is intended to help raise the profile of childhood disability and to give impetus to the challenge of ensuring that children with disabilities are fully included in efforts to promote the human rights of all children.

It examines the situation of children with disabilities from a global perspective, considering countries and societies with widely differing levels of economic development and service provision, and a variety of socio-cultural realities that influence attitudes towards persons with disabilities.

It seeks to demonstrate that the inclusive policies and practices required to promote the enjoyment of the rights of these children are both feasible and practical.

Time scope

The year of interest is 2016 and the study lasted for 6 months and this is in consideration of the trends that support specific change in the process of establishing projected analysis. This timeline is enough and meets the fundamental tenets capitalized on the project.

1.8. Research methodology

The CRPD and CRC[26] which defines human rights that any child living with a disability is entitled to enjoy and exercise worldwide, are the foundations of this research study and Disability Situation of children in Uganda.

A mix of quantitative and qualitative research methods were used for the empirical analysis of the situation. Quantitative research allowed the gathering of statistical knowledge and an initial evaluation of the phenomenon, while qualitative research provided an in-depth assessment of the situation and how stakeholders perceive it. For instance primary and secondary data has been consulted.

The primary sources of data that were used included questioners, interviews and focus group discussions. These involved gathering of statistics, analyzing the role of government institutions, laws and policies as well as the mapping of programmes. Key informant interviews from parents and children facilitated the collection of factual information from the field.

The secondary data sources included review of the 1995 Constitution of the Republic of Uganda, Children's Act of cap 59 and the Amended Act of 2016, UN conventions on Children's Rights, journals, articles, and newspapers on children's rights.

1.9 Literature Review

This study presents literature on the analysis of the law relating to rights of children with disabilities in Uganda. It comprises of variables and research gaps, it endeavors to discuss and analyze other similar researchers who studied about the research problem and how it was conducted.

According to the author many children with disabilities for example in areas such as Mukono and Ibanda in Uganda face chronic poverty making them to miss out the benefits of current development intervention for example some of these children receive herbal medicine[27].

The author adopts Hulme and Shepherds' study that poverty among disabled children and their families continues from generation to generation, so children with disabilities born in poverty live in poverty and pass that poverty to their children. This is regardless of different

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[26] UN convention on the rights of a child and Convention on the rights of persons with disabilities

[27] Charles lwanga-ntale development research and training, April 2003 page 14.

macro and micro interventions.

This is similar to my study since children with disabilities in Uganda are denied the right to education due to poverty because special schools are very expensive therefore making it hard for the parents to pay their school fees.

However the author does not discuss the solutions available such as provision of free education in special schools and building of more special schools in northern Uganda for example in Gulu to increase accessibility of education. This may help to reduce poverty among children with disabilities and their parents in their generations to come.

The author has relied on information from community based rehabilitation recommended by the World Health Organization in 1989 formed to improve the quality of disabled people and their families[28]. According to the author, after carrying out a study on three districts, noted that children with disabilities in Uganda are loved and cared for by their families and a lot of money spent seeking a cure.

Furthermore, the author discovered that since the extended family systems are breaking down, most of the burden fall on the one sometimes two female care takers of the child.

This is similar to my study which also considers CBR and its role and the fact that it should not only focus on the disabled individuals but the whole family in order to ensure that the burden of taking care of a disabled child doesn't lie on one person.

More over the importance of being aware of the impairment of the child, the causes and treatment, however the author doesn't look at the challenges faced by children with disabilities such as stigmatization by the society and neglects by their fathers who reject them due to shame leaving all the burden to the mothers who at times are too poor to provide for their basic needs such as the health, education, food, clothing and shelter.

According to the author who uses programmatic approach in the study to discover how people perceive the convention of the rights of children and how children's rights in Uganda are adhered to[29]. The author discovered that due to the social consequences and changes in family life, there was an increase in the demand for children's participation in the day today

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[28] S. Harley,child care,health and development,volume 31,issue 2, page 167-180

[29] Baarey,Jan Olav,http:/urn.nb.no/URN:NBN:no-34524,1999.

life for example children whose parents had died due to HIV/AIDS were rejected and over loaded too much work at home.

Moreover a boy in Lubaga said that he doesn't understand why his parents were canning him yet they had brought him to this world. This was because of corporal punishments inflicted to children by their parents. Today the voices of children have a major impact in the process of understanding their rights and duties.

This is very similar to my study since until today, children with disabilities continue to face challenges such as corporal punishments from their teachers and even the society because they are not able to report their abuses due to their impairment and to the fact that they are stigmatized.

Furthermore their rights are not recognized. For example the right to education since most parents don't take children who are disabled to schools because they believe that it is a waste of money, for example the mentally impaired.

However the author doesn't consider the efforts put by nongovernmental organizations such as UNICEF in protecting the rights of children with disabilities in Uganda by building special schools and hospitals in Gulu. In addition the 1995 Constitution has enhanced enforceability of the rights of children with disabilities in Uganda.

According to the author, children with disabilities are vital and variable parts of the society yet the most marginalized and vulnerable group of persons in Uganda. They are abused, exploited and excluded from the society[30].

This is similar to my study since the rights of children with disabilities in Uganda such as the right to provision of basic needs is denied leading to these children exposed to stigmatization for example some hospitals in Gulu do not provide for accessibility for disabled children with wheel chairs. This therefore makes it impossible for them to access these hospitals.

However in my study I discovered that some areas in Uganda have built modernized buildings such as hotels and hospitals that have stairs which enable disabled children to access their facilities.

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[30] Nangosi David. New vision,2016,page 3

The author carried out a study on violence faced by children with disabilities in low income countries[31]. According to this author disabled children in Luweero district in Uganda face extreme violence such as physical, sexual and emotional. For both girls and boys furthermore the author states that disabled girls are at a higher rate of violence notably sexual violence in schools than boys.

This is similar to my study since disabled girls are exposed to violence through denying them their rights like equal education since they are not to be discriminated as per the 1995 constitution of the republic of Uganda.

However in my study I noted that the author did not consider the extreme violence faced by the disabled children such as corporal punishments and being denied the rights to express their views hence making them to live in fear such that they are afraid to report the abusers in case of sexual abuse.

Discusses three kinds of laws dealing with children, namely; the custody, Maintenance, and adoption laws[32]. She talked about the four concepts for the law makers. That in enacting legislation for the protection of the child, the law makers have to bear in mind the basic concepts and these are the best interest of the child, Parent-child relationship, the duty of the state to protect persons under a legal disability, and she stated that there is common law principle that presupposes that a child's best interest are well serves within the family set up. She added that in considering that child as a person under law, it is the duty of the state to protect those persons who are under legal disability for example children, idiots and lunatics. Under their principle, the state undertakes to provide adequate health, shelter and other services to ensure the wellbeing of a person and should consider limited capacity of the children to enter into enforceable transaction. She noted that during industrial revolution in Europe, children were used as cheap labor, living in poor uncertainty conditions, ill fed and badly clothed. But the wake of the women's rights issues crated awareness and in recent times, children's rights are no longer classed together with women' rights. There has been a shift and accorded children special place in the law.

Therefore, it should be the responsibility of every parent to take care of his or her child and where the natural parents of the children are dead, rental responsibility may be passing unto

[31] Karen M Davries, violence against primary school children with disabilities in Uganda, volume 1,2014,September 29,page 117

[32] Book published by the Oxford University Press 1990 on page IX

relative of either parent or by way of a care order to the warden of an approved home or to foster parent.

Caring for children is more than providing the basic needs. Every child is different in his or her own ways and their interest at times differ yet they equally need to be cared for. Children need to be given time to suggest though their suggestions may be binding[33].

1.1 Chapterization

This study will cover constitutional principles that should be propagated through civic education.

Chapter one will set out the content of the research, identify the background of the study, statement of the problem, objectives of the study, research questions, significance of the study, methodology, and literature review.

Chapter two will discuss the first the rights of disabled children, international conventions and the fundamental rights to care, employment and education.

Chapter three will cover the legal and institutional framework.

Chapter four will discuss the findings of the study. Key findings according to the underlined objectives will be discussed in detail.

Chapter five will discuss the general recommendations and conclusions. It's important to note that there will be an extensive in-depth analysis of the constitution throughout the study.

[33] CEDAW 13Art 16(1)

CHAPTER TWO

2.0 RIGHTS OF CHILDREN WITH DISABILITIES IN UGANDA

2.1 Introduction

The aim of the study was to establish a critical analysis on the law relating to children with disabilities in Uganda. This chapter is therefore divided and guided by the sub themes below; Children rights in Uganda, the causes of child abuse, mode of abuse of children's rights and other factors that affects the enjoyment of children's rights by children.

A child is defined as a person who has not attained the majority age.[34] A child is also defined as "any human being below the age of 18 years; the children's Act per section 2 defines a child as a person below the age of 18 years.[35] In Uganda the majority age is 18 years and above. Uganda has legislated a clear definition of the child and this should make implementation of child rights provisions possible in the long run. The purpose is to bring about a common concept and fair practices towards all children by assuring that the best interests of children are paramount[36] every child has similar rights regardless of religion, race or colour or even disability.[37]

2.2 Rights of children

According to the children Amendment Act of 2016 S.3 Welfare and guiding principles the welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising

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[34] UN Convention on rights of persons with disabilities, 2008

[35] Cap 59 As Amended, 2016.

[36] Response to the Government of Uganda Country Report on the Implementation of The UN Convention On The Rights of the Child, 1989.

[37] Universal Declaration of Human Rights,1948.

from that administration[38].

2.2.1 Rights to be protected from discrimination

This is provided for under S.4 of the Children's Act whereby children shall have the right to be treated without discrimination against any type of race, religion, colour, culture, gender nationality, citizenship or disability.

Protection from discrimination as per **Searle** and **Co.V Colny** [39]The Constitution requires a rational basis for the specific burden imposed on the disfavored class as well as a reunion for healing that class, differently .More as held over in the case of **Kadrmas V Pickirson** [40]public schools where Dicknyon schools charged a fee on their school bus and Kardrmas could not afford thus used private means

Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors. The Convention on the Rights of the Child (CRC) of 1989 defines a child as any human person who has not reached the age of eighteen years. Children's rights includes their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child, equal protection of the child's civil rights, and freedom from discrimination on the basis of the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics.

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[41]. The child shall enjoy special protection and shall be given opportunity by law and other means to enable him or her to develop physically, spiritually, and socially in healthy and normal manner, in conditions of freedom and dignity. In the

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[38] Children Amendment Act 2016

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[40]

[41] Children and youth", Human Rights Education Association. Retrieved 2/23/08.

enactment of laws for this purpose, the best interest of the child shall be paramount considerations.

Article 34. (1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.

(2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.
(3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs
(4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical. mental spiritual, moral or social development.
(5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.
(6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.
(7) The law shall accord special protection to orphans and other vulnerable children.

2.2.2 Right to know and be cared for by parents

This right states that, "subject to the laws enacted in their best interest, children shall have the rights to know and be cared for by their parents or those entitled by law to bring them up. Maintenance during divorce, separation or nullity, both parents shall continue to maintain and educate their children and where the child is in custody of one parent, the other parent shall reasonably access the child. [42]

This Act further states that in upbringing of a child (children) during separation, divorce, and nullity cases, there shall be joint contribution between the parents in bringing up the child where the circumstance permit and where possible.

[42] Article 34 of the 1995 Constitution and section 3&4 of the Children(amendment) Act of 2016.

The parents and guardians or caretakers are entitled to a duty to maintain their children and in particular that duty gives a child a right to education and guidance, immunization, adequate diet, clothing, shelter and medical attention. Any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.[43]

The Children (Amendment) Act of 2016 is an Act to amend the Children Act Cap. 59 of Uganda to enhance the protection of children; to strengthen the provision for guardianship of children; to strengthen the conditions for intercountry adoption; to prohibit corporal punishment; to provide for the National Children Authority; repeal the National Council for Children Cap. 60 and to provide for other related matters.

2.3 Right to Employment

(1) A child under the age of twelve years shall not be employed in any business, undertaking or work place.

(2) A child under the age of fourteen years shall not be employed in any business, undertaking or workplace, except for light work carried out under supervision of an adult aged over eighteen years, and which does not affect the children[44]

(3) A person shall not continue to employ any child under the age of fourteen years after being notified in writing by a labour officer that the employment or work is not light work meeting the criteria in subsection (2).

(4) A child shall not be employed in any employment or work which is injurious to his or her health, dangerous or hazardous or otherwise unsuitable and an employer shall not continue to employ a child after being notified in writing by a labour officer that the employment or work is injurious to health, dangerous or otherwise unsuitable for that child.[45]

(5) A child shall not be employed between the hours of 7 p.m. and 7 a.m.[46]

(6) Any person, including a Labour Union or employer's organization, may complain to a labour officer if he or she considers that a child is being employed in breach of this section

(7) A person who is aggrieved by a decision of a labour officer under this section may appeal to the Industrial Court.

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[43] Supra note 42.

[44] ibid

[45] ibid

[46] ibid

This is also provided for under the **Employment Act of 2006 and the 1995 Constitution**. The **Children's Act of 2016** provides that a person shall not employ or engage a child in any activity that may be harmful or hazardous to his or her health, or his or physical, mental, spiritual, moral or social development. Subject to subsection (1), the minimum age of employment of a child shall be 16 years.

The Right of Life.

Under **Article 22** of the 1995 Constitution of the Republic of Uganda, its stated that no person shall be deprived of life intentionally except! in execution of a sentence passed in a fair trial by court of competent jurisdiction in respect of a criminal offenses under the laws of Uganda and the conviction and sentences have be confirmed by the highest appellate court. It also stated that no person has a right to terminate the right of unborn child except as may be authorized by law.

Article.6[47]also brings out this inherent right of right to life and that the state parties shall ensure to the maximum extent possible the survival and development of the child. ''Development "means in its broadest sense as holistic concept, embracing the Childs physical, mental, spiritual moral, psychological and social development.

Right to Education

This right imposes a duty to the state and parents to provide education of their children, this is elaborated In **Article 34(2)**[48] **section 5(a)**[49] **and Article 28** of the Un Convention on the right of the child which provides that , state parties shall recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. Encourages the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriated measures such as the introduction of free education and offering financial assistance in case of need. **Case Pyler v Doe.**[50]

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[47] UN Convention on the Rights of a Child-1989.

[48] 1995 Constitution of the Republic of Uganda

[49] Children's Act Cap.59

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Right to medical treatment, health and health services.

Article 14[51], **Article 24**[52] and **sec (f) of the Children's Act**, states parties shall recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness And rehabilitation of Health, it should be ensured that no child is deprived of his/her right to access to such health care services.

They shall pursue full implementation of this right and in particular shall take appropriate measures to diminish infant and child mortality and to ensure appropriate pre-natal and post natal health care for mothers.

Section 9[53] **and 35(1) (2)**[54] affords special protection to orphans and other vulnerable children imposes a duty on the state to take appropriate steps to see that children with disabilities are assessed at an early stage to the nature of their disabilities and they should be afforded facilities for their rehabilitees on and equal opportunities to education .

This has been evident in **Article 23**[55], which recognizes the rights of the Disabled child to special care, encourage and ensure the extension the subject to available resources to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the Childs condition and to the circumstances of the parents caring for the child.

Right to Parental care and Protection

Article 34(1)[56] , states that children shall have the right to know and be cared for by their parents or those entitled by law to bring them up. **Section 4**[57] states that a child has a right to live with their parents not to be separated form their family or persons entitled to bring them up except in accordance with the law. As can be seen also under **article 19**[58] where its stated that every child shall be entitled to the enjoyment of parental care and protection and shall whenever possible have the right to reside with his/her parents.

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[51] African Charter on the Rights of the Child 1999

[52] UN Charter on the Rights of the Child, 1999

[53] Children's Act Cap 59

[54] 1995 Constitution of the Republic of Uganda

[55] UN Convention on the Rights of a child-1989

[56] 1995 Constitution of the Republic of Uganda

[57] Children's Act Cap 59

[58] African Charter on the Rights of a Child

No child shall be separated form his parents against his will except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child. And any child separated form or both parents shall have the right to maintain personal relation and direct contact with both parents on a regular basis.

In **Nakaggwa V Kiggundu**[59] it was held that the parent without custody have a right to access a child provided that such access didn't interfere or disrupt the rights of the child and court further noted a rigid timetable was not practical because in life there are emergencies.
In **Kalisa V Kalisa**[60]**,** the mother of the children had obtained custody, however she entrusted tem to her mother and went to Nairobi to look for work, she applied a court later to move the children to Nairobi, however court declined stating that the applicant had shown irresponsibility by going to Nairobi and leaving the children with their grandmother and as a result court granted custody of the children to their father. **Article 20**[61]**,** states that parents and other persons responsible for the upbringing of the child shall have the duty to ensure that the best interests of the child necessary of the child are their basis concerns and to ensure within their abilities and financial capacities, conditions of living necessary to the Childs development and that domestic discipline is administered with humanity and in manner consistent with the inherent dignity of the child.

In **Teopista Kayongo V Richard Sekiziyuru**[62] **, Nyamchoclto J,** Stated as concerns custody of the children of tender years , such children should normally stay with the mother unless she is not fit and proper person? Where the custody of children is taken away from the mother, the mother should be free to visit her children as often as she pleases. Hence for the issue of access to children by the mother, court said (per curium) " In my opinion the mother should be free to visit her children as often as she pleases.There may be reasons to compel her to make more visits....." Cases of separation of husband and wives do occur very often all over. The country after the breakup of marriage or cohabitation, custom allows the parents to visit the children. The majority of these parents don't seek court order to allow them to see

[59] (1978) HCB 310
[60] (1974) HCB 408
[61] African Charter on the Rights of a Child
[62] (1978) HCB 240

their children.

It's a good custom; it does away with unnecessary litigation. With this view, I order that the appellant should visit her children atleast twice a month on Sundays afternoons and in case of illness at any time during the day when the child is sick at home.

In **Habyarimana V Habyarimana**[63], the court was of the view that in such mattes of children , their welfare would be paramount . and in the circumstances of the present case, the welfare of the two children required that they be left with their mother.

Right to Protection against Harmful Social and Cultural Practices.

Section 7,8[64] **and article 34 (5)**[65] states that children are entitled too be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to Interfere with their education or to be harmful to their health or physical , mental , spiritual, moral or social development. **Section 21**[66]**,** adds that child marriage and the betrothal of girls and boys shall be prohibited an effective action, including legislation shall be taken to specify the maximum age of marriage to be 18 years.

Take appropriate measures to eliminate those customs and practices discriminatory to the child I the grounds of sex or other status.

Protection against Child Abuse and Torture

Article 16[67]**, Article 44(a)**[68] **and Article 37**[69]**,** states that no child shall be subjected to torture of other cruel, inhuman or degrading treatment or punishment and especially physical or mental injury or abuse , neglect or Maltreatment including sexual abuse while in the care of the child. **Article 27**[70] , state that a child shall be protected from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent the inducement , coercion or encouragement of a child to engage in any sexual activity. The use of children in prostitution or other sexual practices and the use of children pornography activities.

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[63] (1917) HCB pg. 139

[64] Children's Act Cap 59

[65] 1995 Constitution of the Republic of Uganda

[66] African Charter on the Rights of a Child

[67] African Charter on the Rights of a Child

[68] 1995 Constitution of the Republic of Uganda

[69] UN Convention on the Rights of a Child

[70] African Charter on the Rights of a Child

Right of Access to Information and Expression.

Article 41[71], states that every citizen has right of access of information in the possession of the state agency except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy to the privacy of any person. **Article 7**[72], that every child who is capable of communicating his/her own views shall be assured the rights to express his/her opinions freely in all matters and to disseminate his opinion subject to such restriction as are prohibited by law. **Article 13**[73] that every child have the right to freedom of expression ; this shall include freedom to seek, receive and impact information and ideas of all kinds, regardless of frontiers, either orally or through any other media of the Childs choice.

Right to maintenance by the parent or guardian

Section 6[74],and **section 4** imposes parental responsibility on every parents and where the natural parents are dead , this responsibility is passed onto the relatives of the parents. **In Suleiman Muwanga V Walji Bhimji Jiwani & Anor**[75] a school girl was 13 years old at her death. Her father had had predeceased her and on his death, the first plaintiff who was the paternal uncle of the deceased became her guardian according to custom and was responsible for her upbringing and education.

It was Held , that in the clan to which the deceased belong, the paternal system prevails and accordingly the first and second plaintiff were members of the family of the deceased.

In **Misc. Case No:229/1993**, in the matter of Sec.9 , Judicature Act, 1967 and in the matter of Okot Lawrence Ikeda and Beatrice Ikeda (infants).Kireju J said, " its now trite law that the guiding n cases of guardianship is the welfare of the child. Whatever decision is taken by the court, it must be in the interest of the child.....from the facts , lam satisfied that it is to the interest and for the welfare of the children that the court doth order that the applicant is hereby appointed legal guardian of the children until each of them attains the age of maturity or until further order of this court.

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[71] 1995 Constitution of the Republic of Uganda

[72] African Charter on the Rights of a Child

[73] UN Convention on the Rights of a Child.

[74] Children's Act Cap .59

[75] (1964) EA 171

In Mayambala V Mayambala[76] . court looked at the financial means of the father and the mother and the status of the life of the child in determining the maintenance sum to be paid. Where court is satisfied that the applicant is not a proper and fit person to have custody of the child or if that person s dead or is of unsound Mind or that person is imprisoned, then court may appoint a person to be a custodian of the child and the maintenance order is made to that custodian.

Adoption

Article 24[77]**,** that in cases of adoption, the right and the best interests of the child shall be the paramount consideration, such as to ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the Childs status concerning parents , relatives and guardians and that , the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counseling.

In the matter of Juliet Jane **Nakazibwe**[78]**, Wambuzi CJ, Held, Section 4 (5)**[79]**,** states "An adoption order shall not be made.... In respect of any infant unless he is a British subject or a citizen of Uganda and is resident in East African. Since the nationality of the infant was not known an adoption order couldn't be made merely because the infant was found abandoned in Uganda, it didn't render the child a Uganda Citizen.

Right to identify , Name , Nationality and Family Relations.

Article 8[80], States parties to respect the right of the child to preserve his/her identify , including nationality, name and family relations as recognize by the law without unlawful inference. And where a child is deprived of some or all of the elements of his/her identify, relevant authorities shall provide appropriate assistance and some or all of the elements of his /her identity, relevant authorities shall provide appropriate assistance and protection , with a view to speedily re-establishing his identity.

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[76] Divorce Case No: 3/1998

[77] African Charter on the Rights of a Child

[78] (1973) 1 ULR 140

[79] ibid

[80] UN Convention on the Rights of a Child

Article 7 requires that a child shall be immediately after birth be registered and shall have a right to acquire nationality , name and as far as possible, the right to know and be cared for by his/her parents.

Right to freedom of Thought, Conscience , Peaceful Assembly and Freedom of Association.

Article 8, 9[81] , and **Article 5**[82] states that every child shall have the right to free association and freedom of peaceful assembly in conformity with the law . and every child shall have the right to freedom of thought , conscience and religion and where applicable , legal guardians shall have to provide guidance and direction in the exercise of these rights, having regard to the evolving capacities and best interests of the child.

Right to adequate Feeding , Shelter, Clothing and Immunization

Section 5[83] , recognizes that a child has a right to immunization, adequate diet e.g. feeding , right to clothing and right to shelter which includes a roof that is habitable in the eyes of a reasonable person and this includes bedding.

Right to Leisure , Recreation and Cultural Activities

Article 37[84]**, Article 12**[85] states that every person has a right as applicable to belong, enjoy , practice, profess maintain and promote any culture, cultural institution , language , tradition , creed or religion in community. With others and that every child has a right to rest, leisure to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2.3 Enforceability

Within the last century, the idea that children need safeguards and protections separate from those of adults greatly impacted both domestic and international law. Although the children's rights movement has roots as early as the eighteenth century, it wasn't until the twentieth

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[81] African Charter on the Rights of a Child

[82] UN Convention on the Rights of a Child

[83] Children's Act Cap59

[84] 1995 Constitution of the Republic of Uganda

[85] African Charter on the Rights of a Child

century that children were viewed as more than a labor hand or an economic value. What began as an effort to protect children from long hours of labor and its corresponding health defects, turned into an organized and influential movement.

The children's rights movement promotes legal protections and safeguards for children, distinct from those of adults. After each world war, international legal instruments increasingly included protection for children across the globe. The League of Nations Declaration of 1924, and the successive United Nations' Declaration of the Rights of the Child in 1959, declared that children need safeguards and protections separate from those of adults and that these protections should begin even before birth.

The major global and regional legal instruments of the twentieth and twenty-first century are included in The Law Library of Congress' Children's Rights: International and National Laws and Practices, a superior and comprehensive analysis of the significant children's rights laws. Each domestic and international is summarized; relevant clauses and language are defined and highlighted; and the effects of each are described.

2.4.1 Disability

Disability is a contested concept, with different meanings for different communities. [86]
The definition of disability varies from one country to another, depending on the disability model upon which domestic legislation is based. Some definitions are still embedded in the biomedical model, wherein disability is identified with illness or impairment, with an emphasis placed on curing the disabled individual. This model attributes the causes of disability to medical conditions.[87]

Other definitions, especially those contained in most social welfare legislation, reflect the charity and economic dependency models, wherein disability is portrayed as a tragedy and persons with disabilities are considered as unproductive and burdens on society[88] A more

[86] Linton, Simi (1998). Claiming Disability: Knowledge
and Identity. New York: New York University Press

[87] 1http://www.westerncape.gov.za/general-publication/disability-definitions-models-and-terminology

[88] ACPF, The African Report on Children with Disabilities: Promising starts and persisting challenges. Addis Ababa. The African Child Policy Forum (ACPF), 2014.

recent definition of disability that is becoming increasingly accepted, emerges from the social model of disability.

This model views disability as a social construct, in that most of its effects are inflicted upon people by their social environment – for example, it is not the disability or the wheelchair that disables a person, but rather the stairs leading to a building. Definitions based on this model take the wider view that the ability of people with disabilities to engage in activities is dependent upon the extent of social intervention, and that activity limitations are not caused by impairments, but are rather a consequence of social organisation[89], the social model is an important framework for the following reasons[90]

Firstly, it provides a framework and language through which people with disabilities can describe their experiences

Secondly, it allows naming and challenging discrimination, exclusion and inequality

Thirdly, it offers a means by which the question of disability can be explained and understood in terms of wider socioeconomic conditions and relations

Fourthly, it provides a basis for support and collective engagement of people with disabilities.[91] Disability is considered as an "evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others" **CRPD (e)).**

According to World Health Organization, it is defined as: Any restriction or lack of ability to perform in a manner or within a range considered normal for a human being.[92] Elsewhere it has been defined as a physical or mental condition, which makes it difficult or impossible for a person, concerned to adequately fulfill his or her role in society. [93] According to the Ugandan definition, disability is a condition that denies a person a normal economic and social life, which has lasted, or is expected to last, six months or more[94]

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[89] Tregaskis, C, Social Model Theory: The story so far. Disability and Society 17 (4). pp. 457-470.], 2002.

[90] Barton, L, Inclusive education and teacher education: A basis of hope or a discourse of delusion. Pear Tree Press. Hertfordshire.], 2003.

[91] In the CRPD Preamble

[92] WHO, World Health Organization Retrieved, 1996.

11 August 2012.

[93] National Disability Survey of Zimbabwe, 1982

[94] Participation of disabled people in the PRSP/PEAP process in Uganda Disability Knowledge and Research

River blindness (Onchocerciasis) is one of the leading illnesses causing blindness in Africa, affecting mainly rural villages with unsafe water sources. It is a major health problem in 27 African countries, putting approximately 100 million people at risk.[95]

50 per cent of all cases of deafness and hearing impairments are avoidable through prevention, early diagnosis and management of meningitis, measles, mumps, chronic ear infections, malaria and tuberculosis (TB).

"The major causes of disability in Africa are communicable diseases, war, accidents, and inadequate prenatal and neonatal health care services". Among children in Africa, the leading cause of disability is illness acquired before the age of five years, accounting for one third to half of the cases.

50 per cent of cases of disability among children surveyed in Senegal, 38 per cent in Ethiopia and 32 per cent in Uganda resulted from illness.[96]

The majority of these disabilities are preventable. In Uganda, the major onset of disability among children is illness as evidenced in the [97] The second cause of disability is congenital or acquired around birth. The remaining reasons which are given are accidents and curse from God (or similar).

This suggests that people have acquired a better awareness of disability and its causes and that only a minority of people today attributes disability to a curse or a malediction. Although this is true that few Ugandan people still believe that a curse or God is the cause of disability, this is not considered as the main reason of disability any more.

2.4.2 Children's rights.

Rights" are things every child should have or be able to do. All children have the same rights. These rights are listed in the UN Convention on the Rights of the Child ratified in 1990. Almost every country has agreed to these rights. All the rights are connected to each other, and all are equally important..

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programme

[95] http://www.cbmuk.org.uk/pdf/River_Blindness_Factsheet.pdf

[96] African child Policy Forum (acPF), children with disabilities in Africa: challenges and Opportunities, Addis Ababa: The African child Policy forum, 2011, p. XXXV African Child Information Hub (http://www.africanchild.info

[97] Uganda Bureau Of Statistics Census 2002 and ACPF Report 2011.

THE 1989 CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Is the first binding instrument in international law the implementation of the CRC is monitored and promoted at the international level by the Committee on the Rights of the Child[98]

The CRC identifies four general principles that provide the foundation for the realization of all other rights:

- non-discrimination;
- the best interests of the child;
- survival and development;
- Respect for the views of the child.

The principle of non-discrimination is reflected in article 2 of the CRC that expressly prohibits discrimination on the grounds of disability[99]

This principle is motivated by the recognition that segregated or separate facilities for education, health care, recreation and all other aspects of human life on the basis of disability can create and consolidate exclusion which gives a child with disabilities negative perception.

Certain children require additional or different forms of support in order to enjoy their rights. For instance, a child with a visual impairment has the same right to education as all children, but in order to enjoy this right and to ensure her or his participation, the child may require enlarged print, Braille books or other forms of assistance[100]

Disabled children, like all children, have important rights under the UN Convention on the Rights of the Child. These rights can be summarized as follows: Disabled children have the human right to be included in their local community and to do the kinds of things that non-disabled children do.

They have the right to support to help them do this. Article 23 of the CRC refers to the obligations of States parties and recognizes that a child with mental or physical disabilities is entitled to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community[101]

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[98] UN Convention on the Rights of the Child

[99] The innocenti digest no 13 promoting rights of children with disabilities UNICEF

[100] Government of Uganda, constitution of the Republic of Uganda, 1995

[101] Morris, Jenny Talk at 'Young and Powerful' Conference, organized by Disability North: 26 May 1999)

Thus these children can enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

Disabled children also have the human right to assistance provided in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

This is about recognizing disabled children as full human beings - something which continues to be important to stress as every day disabled people have experiences where they are treated as less than fully human[102]

The Children Act echoes the rights contained in Article 23 by requiring local authorities to provide services designed

(a) To minimize the effect on disabled children within their area of their disabilities; and

(b) To give such children the opportunity to lead lives which are as normal as possible? (Children Act, 1989, Schedule 2, Part 1, Paragraph 6) [103]

Article 23 is a human right: it is a right that disabled children have by virtue of the fact that they are human beings, that they are the same as any other child. It is a universal right too and is in fact enshrined in the United Nations Convention on the Rights of the Child: [104]

The child's right not to be separated from his or her family.[105] Services and assistance to support parents in their child-rearing responsibilities.[106] Protection from injury, neglect and any form of violence (article 19).

This is contained in Article 31 of the UN Convention on the Rights of the Child which recognizes: the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

It also requires governments to: respect and promote the right of the child to participate fully in cultural and artistic life and ... to encourage the provision of appropriate and equal opportunities for cultural, artistic, and recreational and leisure activity.

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[102] Morris, Jenny Talk at 'Young and Powerful' Conference, organized by Disability North: 26 May 1999)

[103] Government of Uganda, children act, 1996.

Schedule 2, Part 1, Paragraph 6)

[104] Morris, Jenny Talk at 'Young and Powerful' Conference, organized by Disability North: 26 May 1999

[105] Article 9 UN Convention on the Rights of a Child

[106] article 18 supra note 105

Article 32-39,[107] requires protection from abuse, sexual exploitation, torture or other cruel, inhuman or degrading treatment or punishment, and from deprivation of liberty, right to rehabilitative care for victims of neglect, exploitation, abuse or degrading treatment.

While under article 24 of the CRC, every child has the right to enjoy the highest attainable standard of health and to have access to facilities for rehabilitation and the treatment of illness. Children are entitled to protection from violence, exploitation and abuse, including from economic exploitation, sexual exploitation and abuse, sale, trafficking and any similar practices prejudicial to the child's welfare

Children with disabilities, like all other children, have a right to express their views freely in all matters affecting them, and to have these views given due weight in accordance with the age and maturity of the child.

Article 17 of the CRC asserts a child's right to information and material aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health. This is important since it helps the child improve access to quality services, increase participation in decision-making and create public awareness and demand.

Building upon the CRC, the principles summarized in article 7 of the Convention affirm the fundamental rights of all children with disabilities to the entire range of human rights inherent to all children.

For disabled children, guidance and regulations within the 1989 Children Act make it clear that, if a child has complex needs, communication needs or severe learning disabilities arrangements must be made to establish their views and that a disabled child cannot be assumed to be incapable of sharing in decision-making. The act requires local authorities to establish complaints procedures for children in need and looked after children.[108]

2.9 Conclusion

Understanding the rights of CWDs is very crucial in order to ensure that their rights are respected and they are not violated moreover, this would help stop the trend of discrimination and stigmatization of these children since the society does not understand what disability is,

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[107] ibid

[108] Morris, Jenny Talk at 'Young and Powerful' Conference, organized by Disability North: 26 May 1999)

the causes and what constitutes the rights of a child with disability

The researcher discusses the rights of children in general but emphasizes on a disabled child since all children are equal under the law and therefore shall be protected by the law. Furthermore, these rights are to the benefit of CWDs who over the years have suffered a great deal.

CHAPTER THREE

3.0 LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Introduction

The government of Uganda is committed to ensuring special protection for the most disadvantaged children including Children with Disabilities living in Uganda, upholding their human rights in line with the UN Convention on the rights of a Child (CRC) and the UN Convention on the rights of Persons with disabilities.[109]

This chapter therefore is aimed at discussing the legal and institutional framework spearheading the protection and promotion of the rights of CWDs living in Uganda. The legal framework includes both national laws and international laws while the institutional framework discusses the institutions whose aim is to protect and promote CWDs rights.

The researcher has therefore looked at the legal framework and the institutional framework in Uganda that is geared upon to protect and promote the rights of children with disabilities and to ensure that their rights are not violated.

Such laws geared towards promotion and protection of disability rights and needs of PWD in Uganda include, National Council on Disability Act 2003, Disability Act 2006, Equal Opportunities Commission Act of 2006 and Local Governments Act 1997.

3.2 Legal framework

3.3 National laws

3.3.1 The 1995 Constitution of the Republic of Uganda.

Article 2 of the 1995 Constitution which talks of supremacy of the constitution stipulates that the constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. [110]

Article 21 of the National constitution as amended in 2005 guarantees the right of all persons to equality before and under the law, to enjoy equal protection by the law and not to be

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[109] https://www.Uganda networks .org/.../Unicef.aspx accessed on 4th March 2017.

[110] Government of Uganda, Constitution of the Republic of Uganda 1995.

discriminated against on grounds of disability. This clearly protects CWDs living in Uganda.[111]

While under **Article 34 (2),** [112]A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.

(3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs

(4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental spiritual, moral or social development.

(5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.

(6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

(7) The law shall accord special protection to orphans and other vulnerable children.

The constitution clearly provides legal protection to children with disabilities in the society from discrimination, exploitation, and they are entitled to access to education and medical facilities also provided for under this article

Moreover under **Article 22** [113]protects children with disabilities with the right to life and ensures that the parties responsible to this children shall ensure to the maximum extent possible the survival and development of the child as per **Article 6.**[114]

The Ugandan Constitution therefore provides for the recognition of CWDs in Uganda and promotion for the development of a sign language for the deaf .It requires the state to take affirmative action to redress the imbalances that exist against CWDs.[115]

Article 35 of the 1995 constitution of Uganda, provides for the rights of persons with disabilities including children with disabilities, to respect and human dignity .It also imposes

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[111] CRPD, Uganda's initial Status Report 2010

[112] Supra note 110.

[113] Supra note 104

[114] UN Convention on the Rights of a child, 1990.

[115] CRPD, Uganda's initial Status Report 2010.

a duty on the state to make laws appropriate for the protection of CWDs living in Uganda.

3.3.2 Information and Communications Act cap 49 of 2013.

It provides that all persons including children living with disabilities in Uganda shall have the right to have free access to information. This means that children with disabilities shall have the pleasure to use sign language interpreters and use brails to obtain public information or in schools since these facilities are now available in special schools.

3.3.3 Persons with disabilities Act.

In consonance with the 1995 Constitution of Uganda in promoting the rights of children with disabilities Uganda has put in place persons with disabilities Act of 2006.After the Uganda National Policy was enacted in 2006, the rights in it were translated into PWDs Act which ensures legal protection for CWDs and equal opportunities for them for example social inclusion and inclusive right to education. [116]

3.3.4 Children Act cap 59 as amended 2016.[117]

According to this Act, the welfare of a child shall be paramount as per section 3.The Convention on the Rights of the Child goes further to define a child as any person whether disabled or not who has not reached the age of 18 and above

Such a child in Uganda shall be protected from discrimination as provided for under section 4 of this Act and as held in the case of **Kadrmas v Pickirson**[118] whereby public schools in Dickynon charged a fee on their school bus transportation but Kardramus could not afford thus they opted to take their child using private means. Court ruled on their favour that this was denial of a child's right to education. Furthermore disabled children in Uganda are protected in case their parents die under **section 6 of this Act** which imposes parental responsibility on adoptive parents or relatives of the parents.

In Mayambala v Mayambla [119]court looked at the financial means of the parents and the

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[116] Persons with disabilities Act of 2006.

[117] Government of Uganda, Children Act cap 59 as amended.

[118] ibid

[119] divorce court case No;3/1998

status of life of the child in determining maintenance to be paid.

3.4 International laws.

3.4.1 Salamanca statement and framework for action on special needs education.

Uganda as a government is a signatory to international agreements such as.[120]This instrument helps us provide for learners with special needs. It promotes the rights of children both with temporary and permanent needs for educational adjustments to enable them attend school.

It has enhanced children with disabilities attend school in order to participate in quality education and their inclusive right as equal members in the society.

3.4.2 The UN Convention on the Rights of the Child.

The Convention on the Rights of the Child is a UN Convention on the rights of a child. Uganda has already domesticated the rights of CWDs as enshrined under the CRC which was ratified by Uganda in 1990 [121]

By doing so Uganda has committed itself to accord to all rights stated in the UN Human rights to all children with disabilities living in Uganda.[122] And hence Uganda is bound to by international law [123]

This convention requires compliance with child policy and guardianship law including the right to life, name, identity, to be raised by parents within a family or cultural grouping and finally to have a relationship with both parents even if they are separated [124]

The convention also acknowledges that CWDs shall have the right to express their opinions heard and to have these opinions heard and acted upon when appropriate[125] however this is not the case since some of the opinions of CWDs are not considered or acted upon and they end up suffering from inferiority complex.

The CRC also protects and promotes CWDs rights by providing a provision that protects them from abuse or exploitation and their right to privacy is also protected. This ensures that their rights are not subject to excessive interference.

However, some parents due to having a child with disability want to interfere into the life of

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[120] Salamanca statement and framework for action on special needs education (1994).

[121] https://www.new vision.co.ug/.../challenges face...assesed on 4th March 2017.

[122] Supra note 121.

[123] https://www.en.m.wikipedia.org/../convention...

[124] Supra note 123.

[125] Ibid of 124.

their child excessively believing that the child is not capable to make their own decisions.

The CRC also has a provision that obliges signatory states which is Uganda, to provide separate legal representation for a CWD in any judicial dispute concerning the case and asks the child's viewpoint to be heard[126]

This provides for the child with disability right to be heard in case of a court hearing, to have legal representation and to have free and fair and impartial court hearing.

Moreover, the CRC protects and promotes the rights of CWDs by providing capital punishment for children as per **Article 19** [127].Whereby, all state parties must take all appropriate legislative administrative structures, social and educational measures to protect CWDs from all forms of physical or mental violence[128]

3.4.3 UN Declaration on the rights of a child 1959.

This is an international law that protects children with disabilities among states that have ratified it.DRC builds upon rights set forth in a Leage of Nations Declaration of 1924.

The preamble notes that CWDs need safeguard and care including legal protection before and after birth and it specifically calls upon voluntary organizations and local authorities to strive for the observance of the rights of CWDs living in Uganda. [129]

Its key principle is the special protection as well as provision of opportunities and facilities to a Child With Disability for normal physical, mental, moral, spiritual and social development.

Hence, the paramount consideration for this is to ensure that it is for the best interest of the child[130].Furthermore, under the DRC, a child is entitled to a name, nationality, nutrition, housing, recreation, medical services and education.[131]

Other principles are on protection against neglect, cruelty, exploitation, trafficking, underage labour and discrimination.

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[126] ibid

[127] UN Convention on the Right of Children with Disabilities.

[128] ibid

[129] Geraldine Van Bueren, The International Law on the Rights of the child 10-11(Dordiecht/Boston/London, Martinus Nijhoff Publishers, 1995.35 International Studies in Human Rights)

[130] DRC, principle 2, UN Declaration of the Rights of a child 1959.

[131] Supra note 122

3.4.4 Universal Declaration of Human Rights.

Universal Declaration of Human Rights of 1948 applies to all its signatory states in this case since Uganda is one of them ought to adhere to its principles in order to protect and promote the rights of children with disabilities living in Uganda.

The UDHR contains two Articles specifically referring to all children inclusive of children with a disability. **Article 25(2)** for example, states that motherhood and childhood are entitled to special care and assistance. All children whether born in and out of wedlock shall enjoy the same social protection.[132]

Article 26 calls for the right to education for all children inclusive of CWDs living in Uganda to access schools and to the aims of education. Thus meaning that education should be free for every child especially in the elementary stage and it should be compulsory.[133]

This is important since this law will assist CWDs to develop fully their personality and to the respect of their rights and their fundamental freedoms.

3.4.5 Minimum Age Convention 1973

The AIM of the MAC is to establish a general instrument on the subject of the minimum age of employment with an aim of achieving the total abolition of child labour.[134]

This law protects CWDs in Uganda from employment before they have reached the majority age and hence abolition of child labour by providing for the age of employment to a level consistent with the fullest physical and mental development for CWDs as per **Article 1.**

This means that state parties must specify a minimum age for admission to employment subject to certain exceptions set forth in the MAC for example, the minimum age must not be less than the minimum age of completion of schooling which is 14 or 15 years as per **Article 2.**[135]

Article 7 and 8 permits exceptions to the age limits for light work or for such purposes as participation in artistic perfomences. If employment harzadous to a CWD's health, safety or morals, the minimum age is generally not be less than 18 years as per **article 3(1).**[136]

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[132] Van Bueren supra note 122 or Http://www.african/union.Org

[133] http://www.international law/library congress

[134] Supra note 128

[135] ibid

[136] http://www2.ohcr.ord/english/law/ageconvention.htm(accessed on 6th march 2017.)

3.4.6 African Charter on the Right and Welfare of the Child 1990.

The ACRWC is the first regional treaty in childens' rights that builds on the 1979 Declaration on Rights and Welfare of the African child[137] Most of its provisions are modeled after those of the CRC.A child in the African society requires legal protection as well as particular care with regard to health, physical, mental and social development.

ACRWC sets forth the principles of non-discrimination and the best interests of the child and provides for the child's inherent right to life, name, nationality, education, rest, leisure, freedom of thought, religion, privacy conscience, association, expression and peacefull assembly as per **article 6-21**[138]

the death sentence is not applied to crimes committed by children as per **article 3-5.** Therefore, all these rights apply to CWDs in Uganda and special measures of protection are to be taken for handicapped children and they should enjoy physical, mental and spiritual health as per **article 13-14.**

They should be protected from all forms of exploitation, torture, maltreatment and abuse as per **article 16**, harmful social and cultural practices as per **article 21**, sexual exploitation as per **article 27**, use of narcotics and illicit drugs as per **article 28** and abduction, sale trafficking and use in begging as per **article 29**,

3.5 Institutions protecting and promoting rights of CWDs in Uganda.

3.5.1 Ministry of Education and Sports.

This ministry has put into place a department responsible for special need of children with disabilities in Uganda and also providing inclusive education .Hence allowing disabled children attend schools and have a right to participation in school activities beneficial to them just like any other child in school. .[139]

It also ensures that children are able to access special schools built for them and that these schools are equipped with facities required for disabled children such as accessibility to school

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[137] ibid

[138] Article 11 on education in the ACRWC and article 11 (3) ACRWC

[139] UNICEF) Uganda, Children with Disabilities living in Uganda, intermediary report-summary and Analysis of policies and Mapping of Programmes, 2014.

building for children with physical disabilities and brails for visually impaired children.

Furthermore the department is responsible for providing and upgrading instructional materials for children with special needs, licensing and registering institutions, release and allocation of funds, campaigning on special needs and finally inclusive education to stakeholders.

Thus this department has assisted deaf children with sign language interpreters, Braille transcribers in schools and access to resource rooms and specialized technology to assist students in special schools access curriculum and attain quality education.

Moreover, inclusive education approach focusing on children with disability in Uganda, has embraced modifications in curricular, teaching methods, learning resources and the environment to meet individual learning needs. Hence it is flexible and adjustable to the needs and potential of every child.

This approach is set to reduce factors that form barriers to children's participation in learning and development. It is meant to give every child an opportunity to play, learn, experience and to have a sense of belonging in order to achieve their potentials for their future,

Schools/institutions for children with disabilities in Uganda.[140]

- *Kampala School for the physically handicapped.*
- *Hill preparatory school.*
- *Batambala deaf school.*
- *Mbaale school for the deaf.*
- *Mulago school for the deaf.*
- *Ngora school for the deaf.*
- *Nancy school for the deaf.*
- *St.Francis primary school for the blind,*
- *Salama school for the blind*
- *Makerere University department of special needs.*
- *Kyambogo University Department of special needs.*
- *Machakos Technical school for the blind*

[140] ACPF page 52.

3.5.2 Uganda society for disabled children (USDC).

This is a local non-governmental organization founded in 1984 that is committed to recognizing and equating the rights of children with disabilities in Uganda. [141]

This non-governmental organization helps promote and protect the rights of children with disabilities by working through a national network of parent support groups (PSGs) and child rights (CRCs)

Its **main objective** is to help children with disabilities and their parents access the resources and opportunities such as education so as to enable them achieve their full potential such as employment in order to lead fulfilling lives.

Therefore USDC provides support such as medical and educational to individual children by working closely with schools and carrying out campaigns to ensure the protection of the rights of disabled children in Uganda.

It also achieves its aim by working closely with children, families, communities, government staff in the health and education sectors.

Impact of USDC in the society.

The USDC works through networks such as parent support groups (PSGs) and child rights clubs (CRCs) which support children and families.

The USDC also raises awareness about disabilities through campaigns and lobbies the Ugandan government on inclusive policies and programs and legislation. For example to amend or make new laws with regards to protection of the right with regards to children with disabilities,

This non-governmental organization currently operates in 18 districts. It emphasizes on the use of locally available resources. active involvement of parents within the home environment.

Furthermore, USDC has succeeded in its endeavor since 250000 individual disabled children have been assisted in terms of medical, educational placement or needs for training in vocational skills.

3.5.3 National council for disability (NCD)

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[141] https://www,ablechildafrica.org accessed on 23rdJanuary 2017.

The NCD organized a national stakeholder's coordination meeting on October 29 2009 whose theme was to implement and ensure progress in the ratified CPRD and came up with vital recommendations which are being implemented thus ensuring promotion and protection of rights of CWDs living in Uganda. [142]

Its functions are:

- Creating public awareness about disability and CWDs in Uganda
- Conduct public awareness campaigns to popularize CRPD and CWDs livimg in Uganda.
- Use public and private media to sensitize the public on CRPD.
- Supporting drama activities that mobilize communities at the grassroots to recorgnise the rights of children with disabilities living in Uganda.
- Give guidelines to organizations working for CWDs living in Uganda.
- Carry out investigations into different matters and incidents which affect children with disabilities living in Uganda for example violation such as sexual abuse.

The NCD organized a peaceful public demonstration on the day Uganda ratified the CRPD and its protocol to raise public attention to newly ratified law. Furthermore, it acts as a body at national level through which the needs, problems, concerns, potentials, and abilities of CWDs can be communicated.

3.5.4 Ministry of Gender Labour and Social development.

This is the ministry responsible for children issues and is in charge of setting standards, supervision of implementation, monitoring and evaluation. However due to resource constraints this is not being executed effectively. [143]

This ministry is responsible for children affairs under the department know as Commissioner for Youth and children affairs whose responsibilities are[144]

- Reviewing and dissemination formulated laws and policies on children.
- Reviewing the building capacity of the MGLSD, local governments and other

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[142] The state of Access to education by women and girls with disabilities, Geneva Switzerland, National Council for Disability,9th July 2014.

[143] footnotehttps://www.unicef.org/worldfitforchildrenaccessed on 30th January 2017.

[144] https//www.msld.go.ug. Accessed on 1st February 2017

stakeholders.

- Ensuring participation of disadvantaged children in development process and improvement.
- Carrying out activities for disabled children such as inclusive education.

This ministry therefore promotes social protection especially those of disabled children in affected areas in Uganda by ensuring equality, promoting children's rights and empowerment for disabled children using the social development sector (SDC).

In addition the MGLSD Uganda was created by **chapters 4 and 6 0f the constitution** which mandates government to empower communities harness their potential through skills and development.

Its **main aim** is to improve the welfare of disabled children through initiation and implementation of legislation, policies and programs relating to their empowerment and their social, economic and cultural development.

Moreover it carries out, its mandate through various programs such as

- The Community-Based Rehabilitation (CBR) program.[145]
- The Mine Victim assistance program.[146]
- **The** special grants for PWDs.[147]

3.5.4.1The Community- Based Rehabilitation (CBR)

WHO defines this program as one that focuses on enhancing the quality of life of children and their families, meeting basic needs and ensuring inclusion and participation .Hence it empowers children with disabilities in Uganda access education, employment, health and social services.

A core element of this program is to address the needs and rights of CWDs by identifying disabled children and assessing their needs with appropriate referral to health services, nutrition, counseling, rehabilitation, educational and vocational training and raising awareness of parent, caretakers and guardians to challenge their misconceptions about disability.[148]

This program helps disabled children in areas like Arua, Budaka, Buhweju, Buikwe, Butaleja,

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[145] Supra note 144.

[146] Ibid 145

[147] ibid

[148] Supra note 120

Busia, Hoima, Kaliro, Kasese and many others. Furthermore the MGLSD in partnership with parents of children with disabilities has set up rehabilitation centers with donor support where disabled children can access materials such as metal and leather useful in vocational training for free.

These centers consist of a psychotherapy unit, an orthopedic shop and a hostel to before or after surgery.

3.5.4.2 The Mine Victim assistance programe

This program has been in place since 2009 and as the name suggests it targets landmine survivors many of whom are children who have acquired a disability. They therefore assess their situation and support medical, psychological treatment, rehabilitation as well as livelihoods. UNDP has assisted this ministry with technology and mobility devices in several districts Tororo government in taking care if CWDs in Uganda

3.5.4.3The special grants for PWDs

This is a countrywide and decentralized programme that aims to support income generating activities for PWDs. At the moment non-disabled parents with CWDs cannot benefit from it but the MoGSL has put a proposal forward to address this with the support of the District Local Government whose responsibility is to allocate this funds.

3.5.5 National Council for Children (NCC).

This is a statutory body which is responsible for planning for children and monitoring implementation of those plans, documenting progress and advocating for gaps that need to be fulfilled. The council periodically carries out studies and produces reports to the government on the situation of children in Uganda as established by the NCC Act chapter 60.

The NCC is a semi-autonomous government body established by the NCC Act of 1996. Since 2012, the NCC has initiated work with CWDs and their respective organizations:

- The NCC and USDC in 2011 issued a report assessing the abuse, protection and promotion of rights of CWDs in Uganda.[149]
- The NCC on International Day of the African child with disabilities 2012 gathered

[149] Network on Disabled Children, Ugandan Society for Disabled Children(USDC),National Council for Children, The State of Abuse, Protection and Promotion of the Rights of Children with Disabilities in Uganda,2011.

approximately 100 CWDs in a national conference to campaign for accessibility to rights that was presented to the parliament in Uganda.

- The NCC chairs a National Disability Forum that meets four times a year with all government and non-government stakeholders working with CWDs living in Uganda to define strategic planning and coordination of activities in view of protecting CWDs.

The NCC organizes regular radio and tv talk shows as a means to raise awareness about children issues especially those of CWDs living in Uganda and their rights.

3.5.6 Family and Children Court.

This were created under the **Children (amendment) Act of 2016 section 93 to** hear all criminal charges against a child except: [150]

- Any offence punishable by death
- An offence in which a child is jointly charged with a person above 18 years old.

The word children include children with disabilities living in Uganda. The FCC has jurisdiction to hear criminal charges against a child with disabilities however, it has no jurisdiction to hear cases punishable by death or one which a CWD is charged with a person above 18 years.

Orders of the FCC as per section 94 of the C.A of 2016

Where a case has been proved against a child, the FCC has power to any of the following orders:

- Absolute charge
- Caution
- Condition discharge for not more than 12 months.
- Binding a child to good behavior for a maximum of 12 months.
- Compensation, resolution or a fine taking into consideration the means of the child but the court cannot make an order to detain a child if they fail to pay the fine.
- A Probation Order for not more than 12 months however, this order should not require a child to be put in a remand home.
- No child shall be subject to corporal punishment.

[150] Ibid.

Section 94 of the children (amendment) Act of 2016 subsection 6 provides that for avoidance of doubt, a CWD who has attained the age of 18 years at the time of sentencing shall serve the sentence in an adult detention centers.

3.5.7 The Ministry of Health

The MOH is in charge of policy formulation and implementation in the health center and the coordination of the provision of health services in Uganda. This ministry has 3 departments that conduct activities targeting CWDs[151]

- The Disability and rehabilitation Department: This consists of a head of Unit, three senior officers, some 'volunteers' and support staff such as a secretary.
- The medical health department.
- The child health department.

By law each Regional hospital should have physiotherapy therapy department with three physiotherapists and an occupational therapy department with one occupational therapist. Each district should have one practicing physiotherapist .Six orthopedic workshops are based in Gulu, Arua, Fort portal, Mbale, Mbarara and Mulago

Mulago is considered to be the national center and people from all over Uganda are referred there. These workshops built assistive devices locally and distribute them to CWDs,[152]

3.5.8 The Uganda Human Rights Commission. (UHRC)

This is a constitutional body established to promote and protect human rights including those of CWDs .This body monitors that chapter 4 of the 1995 Ugandan Constitution which is the bill of rights is adhered to and reports to the government and parliament of Uganda.

The UNHRC also educates the public about their human rights to prevent oppression. This body has a department for CWDs that processes all issues related to human rights violations of CWDs in Uganda.

The UNHRC in 2004 also established Vulnerable Persons' Unit to address issues raised by vulnerable groups that is CWDs living in Uganda. This is a platform that gives an opportunity to raise their issues to the commission center on education and accessibility to basic services.

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[151] ibid

[152] Bongole, Rose, Ministry of health(MoH),Interviewed by Nadenge Richie,2014.

3.6 Non-Governmental Organizations targeting CWDs living in Uganda.

Most of these NGOs are international running programs targeting CWDs living in Uganda. In addition with the adoption of the CRPD and ratification worldwide these INGOs are starting to focus more on CWDs.

An NGO is a Non-Governmental Organization which is run privately for example, at the UN virtually all types of private bodies can be recognized as NGOs [153].NGOs have to be independent from the government direct control, non-profiting and non-criminal.

3.6.1 Classification of NGOs

3.6.1.1 International NGOs

These NGOs are involved in activities in more than one country. They are powerful organizations in terms of visibility, operational capacity and influence[154]. Some of these are Able Child Africa and the African Child Policy Forum.

Some of these INGOs target CWDs living in Uganda. This is in addition with the adoption of the CPRD and ratification worldwide hence these INGOs are starting to switch their focus more on CWDs.

3.6.1.2 National NGOs

These operate at national level within the confines of a particular country. Their registration spells out their area of operation within the country[155]

Some of these NGOs protecting the rights of CWDs in Uganda are for example, Humane Africa, L'Arche, War Child, and World vision.

3.6.2 Functions of NGOs.

Targeting CWDs living in Uganda by supporting them through ensuring social inclusion for these children this is through for example building health centers that support children injured by the Ugandan civil war of 1970s and 1980s.This would ensure a world including Uganda where CWDs are fully included as equal members of the society and hence achieve their full

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[153] Non Governmental Organizations Quest for Development, Richard Nuwamanga Butamanya, Revised Edition page 13, March 2013.

[154] Non Governmental Organizations Quest for Development, Richard Nuwamanga Butamanya, Revised Edition page 14,March 2013.

[155] Supra note 129

potential. [156]

Writing reports on the situation of CWDs living in Uganda in order to create awareness of their situation to the government of Uganda and the world at large. Moreover to emphasize on the rights of CWDs for example inclusive education.[157] .Sometimes producing a study brief assessing the situation of CWDs by taking a behavioral approach.

To protect CWDs living in Uganda from harmful practices such as mutilation, removal of body parts, abuse physical and emotional and discrimination. They do this using a social norms process, communities' design and implement responses designed to bring the entire community collectively abandon these harmful practices.[158]

By dedicating themselves to institutional rehabilitation of CWDs living in Uganda.[159]A good example is L'Arche based in Kampala which has 19 children and 20 PWDs with learning disabilities who would like to study are welcome in the day provision service[160]

By providing psychological support, stimulating education and protecting children from violence [161]. War Child Holland for example has run the sport for social inclusion project in 2010 and recently decided to mainstream the perspective of deaf children into its psychosocial programs.

They work with children, families and their communities worldwide to reach their full potential by tackling the root causes of poverty and in justice for example World Vision mainstreams disability in all its programs and leads small-scale disability projects that taget CWDs.

Finally, NGOs enhance access of CWDs to infrastructure such as buildings, hospitals, and water and sanitation for example in Gulu district by the World Vision. Moreover, NGOs also assist CWDs by distributing wheelchairs to them in Kabale.

3.6.3 Limitations.

Inadequate human resources and skills: In order to engage government effectively, CSO/NGOs need to hire qualified experienced and skilled human resource. However most

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[156] Able Child Africa, https://ablechildafrica.org, (accessed 23rd January 2017)

[157] ACPF, http://www.africanchildforum.org/site/index.php/who-we-are.html, assessed 23rd January 2017.

[158] Humane Africa, https://www.humaneafrica.org, accessed on 20 February 2016.

[159] Ibid.

[160]L'Arche,http://www.ugandagodirectory.org/index.php?option=com_mtree&task=viewlink&link_id=126,(accessed 22february 2016)

[161] War child Holland. http://www.warchildholland.org /,2016(accessed 2nd May 2016)

NGOs cannot afford the level of technical and professional expertise needed hence influence hardly felt by the government officials.[162]

Lack of financial resources for most district networks has impacted on their operations; as they are not able to undertake any meaningful policy advocacy programs in the district and are incapable of coordinating the activities of CSOs in the districts.

Dependence on donor support to carry out advocacy activities undermines the credibility. So government either engages with them suspiciously or ignores them altogether.[163]

There are too many NGOs with diverse issues and interests. On many critical issues NGOs can only agree on a minimum agenda, for example the "the Civil Society Minimum Agenda for 2006 and Beyond." Most NGOs have no strategies for harmonizing their positions and interests to respond to policy issues to form a collective response to public policy issues.

Lack of experiential knowledge by NGO leader .For example, in Uganda, only 30% of NGO leaders are first generation descendants of poor parents. Most cannot have empathy with the poor because they lack first hand experience of poverty.[164]

There is also a danger of exaggerating or trivializing issues (petty, minor issues) in order to gain the headlines or capture the attention of the media. self promotion.

Internal wrangles erode the capacity of an individual NGO or the NGOs as a sector to engage in policy issues. Wrangle and conflicts divert energies and resources from focusing on strategic issues to self preservation or survival.[165]

At time pressure from donors dictates the pace and direction of NGO policy engagement. Because policy engagement is costly NGOSs have to depend on donor support. This compromises their independence and also places them in a suspicious position before government.

Access to public information Act 2005, in practice access is not easy. Often the process is long and cumbersome that some NGOs give up. One has to use a lot of informal contacts to get critical information that have a bearing on advocacy issue.[166]

Information sharing is often characterized by long delays and denial of access to critical information. But overall there is a supportive legal framework.

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[162] Supra note 154.

[163] Ibid 154.

[164] Ibid 154

[165] Ibid 154.

[166] Ibid 154.

Some NGOs receive funding from governments and often have to compete among themselves for it. This erodes their collaborative capacity in policy advocacy issues but also creates an avenue for government to influence their priorities, programs and activities.[167]

3.7 Conclusion

This chapter accessed the legal and institutional framework whose aim is to support children living with disability in Uganda. These laws and institutions have contributed greatly to promoting and protecting the rights of CWDs in Uganda.

They have built special schools, rehabilitation centers, made infrastructure available through campaigning for stairs accessible by the physically impaired in malls, building more health centers and finally creating awareness about CWDs and their rights through media.

All these have been to support CWDs in Uganda however, they have faced challenges which the government of Uganda is striving to find solutions.

[167] Ibid 154.

CHAPTER FOUR

4.0 CHALLENGES FACED BY THESE INSTITUTIONS IN ENFORCEMENT OF RIGHTS OF CHILDREN WITH DISABILITIES IN UGANDA.

4.1 Introduction.

The researcher discovered that measuring child disability presents a unique set of challenges because children learn and develop to perform basic tasks at different speeds therefore it can be difficult to assess function and distinguish significant limitations in normal development.

This study presents challenges institutions face in protecting the rights of CWDs living in Uganda one of them is the fact that data collected by these institutions for example the MoE, MoH, and the ministry of gender, is not similar or there is poor coordination between these government bodies.

Moreover, NGOs lack funds or have poor understanding on what disability is and how to enforce disability rights for children. Thus data collected is insufficient and inaccurate.

In addition, the data collected excludes children who are homeless, those with temporary impairments and children with sensory impairments who are deemed to perform activities within the normal range.[168]

There are a number of challenges faced by the government of Uganda and institutions that prevent the realisation of rights of CWDs living in Uganda which i identified in the cause of my study.

4.2 The Institutional Framework.

The institutional framework has faced two major bottlenecks that prevent the realization of the rights of children with disabilities living in Uganda. These are a lack of coordination among key stakeholders and duty bearers as well as gap in knowledge and capacities of those who engage with CWDs. The Institutional framework whose purpose is to promote and

[168] ACPF (2011).The lives of Children With Disabilities Africa: A glimpse into a hidden world Addis Ababa

protect the rights of CWDs has been established through various laws.[169]

4.2.1 Uganda society for disabled children (USDC).

This has been the most successful organization in addressing and advocating for the rights of CWDs living in Uganda however, this is an organization of adults speaking on behalf of children, children who are disabled and living in Uganda. It was established in 1984 and it advocates for inclusive education and modifies existing school environment by making it accessible.

Its MAIN AIM is making learning accessible by leaving no child behind.[170]**Most** CWDs face the challenge of limited access to a combination of factors including lack of a coherent national policy and technical support system to address their particular needs such as learning and empowerment needs.[171]

4.2.2 National council for disability

The NCD is responsible for laws and policies in their areas of expertise with regard to CWDs but has not been able to put in place an effective system.

Moreover, this body does not seem to have authority over other government bodies in the mainstream of protecting CWDs hence posing a challenge in the protection of rights of CWDs living in Uganda since these bodies should be coordinated.

4.2.3 Ministry of Gender Labour and Social development

This ministry has a department whose main objective is to protect CWDs living in Uganda headed by a commissioner under the political supervision of a state minister. At ministry level, this ministry is appointed as the lead ministry for disability affairs while all other ministries such as MoH and MoES are only responsible for matters relating to CWDs.

This therefore means that MoGLSD has the mandate to protect and promote the rights of CWDs in Uganda and to provide technical assistance to other sectors in disability mainstreaming.[172]

Moreover this ministry has not been granted powers to influence other ministries running

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[169] (UNICEF) Uganda, Children with Disabilities living in Uganda, intermediary report-summary and Analysis of policies and Mapping of Programmes, 2014.

[170] https://www.monitordirectory.co.ug/.../Uganda.

[171] https://pubs.sciepub.com/education/4/1/3/ Accessed on 14 February 2017.

[172] MoGSLD, Terms of references for the National Steering Committee on Disability 2013.

interventions targeting CWDs living in Uganda thus resulting in uncoordinated work for example data collection.

In protection of the rights of children with disabilities, the MoGSLD used the Uganda CBR MIS which is an information system however this system suffers from two main limitations: it is based on data gathered at the local government level which is mostly unavailable and it is only operated at the Districts covered by the CPR program which are 24 in Uganda out of over 100 districts in Uganda.

Due to lack of funding this ministry has not been able to use the CBR MIS on a large scale to produce data for CWDs living in Uganda and that is to say that up to now the MoGLSD has not been able to produce any figures using this tool.

4.2.4National Council for Children (NCC).

This is a government body under the ministry of gender in Uganda whose function is to promote and protect the rights of CWDs as established by its Act.It mainly has an advisory and monitoring role regarding CWDs living in **Ugandafootnote UNICEF,Research Study on CWDs –Validation Workshop 2014.**

The NCC is responsible for laws and policies in their areas of expertise with regard to CWDs but has not been able to put in place an effective system.

Another challenge is that the NCC has only used its power by quarterly chairing a restricted National Disability Forum.

There is a weak coordination between the government and the NCC as far as matters relating to children with disabilities living in Uganda are concerned.

4.2.5 Family and Children Court.[173]

Most children up with the Law have been locked up for theft, assault or fighting among themselves. CWDs with a history of drug abuse are known even to commit capital offences such as murder, rape or child to child sex.[174]

Drug abuse and alcoholism, broken marriage and single parents also tend to contribute to juvenile delinquencies.

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[173] section 93 and 94 of the children(amendment)Act of 2016.

[174] ibid

According to Maro, (The head of the Child and Family Unit in Uganda),police stations do not have special cells for children moreover they lack facilities required by a CWD who has been remanded and this one major challenge facing the FCC in protection of the rights of CWDs living in Uganda.[175]

In addition, because of police stations lacking cells, these children are held by a relative who will bring them to a police officer on a routine basis to the police station whenever they are needed.[176]

Moreover, these courts sre few and because of this CWDs are being denied justice as this is their right as Ugandan citizens. Kyaligonze on the other hand, says that there is lack of police rules[177]

The Children(amendment) Act of 2016 only puts criminal liability on children of 12 years and above however, a child officer said that those children are often exposed to an environment that makes them commit crimes for example a disabled child who is an orphan may be forced to steal in order to fend for himself. [178]

CWDs sometimes are not able to defend themselves in a trial for example the mentally handicapped or a child with autism might find it hard to explain to a court what happened and hence may lead to them being falsely accused or arrested.

Furthermore, adults use CWDs to enter into offices to steal and most of these children since they are disabled, are easily coerced, forced or may act out of undue influence .most of these children steal from their neighbours or families.

Lastly, cases have been reported in Kamwoky and Banda where some children have murdered their grandparents over food. CWDs may have to steal to survive as some of them are discriminated against and denied food.[179]

4.2.6 The Ministry of Health

The right to health in Uganda is provided for under **section xiv of the preamble** that all Ugandans shall have access to health services.[180]**.** The Children (amendment) Act of 2016

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[175] ibid

[176] ibid

[177] ibid

[178] ibid

[179] ibid

[180] Supra note.

also recognizes this right and entitles it to CWDs living in Uganda without any discrimination.

The CBR programs that have been in place for over 20 years have proven useful. However, today they are only available in 24 out of 112 districts in Uganda making it difficult for the MoH to achieve its goal in promoting the right to health for CWDs living in Uganda.

This means that there are not enough CBR centers throughout Uganda making some of them overloaded and unable to perform their duties effectively according to their mandate. In addition, due to the few centers we have in Uganda parents who live far away from them find it difficult to bring their CWDs to rehabilitation centers in order to benefit from their services.

Another challenge faced by this ministry is that parents or guardians fail to take their CWDs to hospital or health centers is because transportation is too expensive to go to District and regional hospitals.[181].

Moreover, some of them do not know where to bring their child for assistance a good example is in Kenya where a child with epilepsy is brought to a Kenya Association Welfare for Epilepsy.

This is an NGO that specializes on epileptic children and provides drugs at low prices hence, if a parent or guardian of An epileptic child is not aware of this association, he are she might not get the help for his child and this posses a great challenge to the health department.

This whole situation was described in 2002 by UNCRNN: Accessibility including distance to health and rehabilitation centers this problem still poses a challenge to CWDs in some areas.

Though service delivery is vested in the local authorities, this has failed to address the huge demand that increased with the eradication of cost sharing. Additionally, USDC which provides specialized rehabilitation services for CWDs living in Uganda has very limited coverage nationwide.

Lack of funds by the local government to run health programs, purchase relevant equipment, and to adequately furnish their facilities is another challenge the health sector is facing since support from the MoH is only technical, supervision and guidelines for planning processes.[182]

Furthermore, there are no sign language interpreters in most public places such as hospitals making it difficult for children who are deaf to access hospitals.

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[181] Bongole, Rose Ministry of Health, Interviewed by Nadenge Richie 2014.

[182]Uganda Child Rights NGO Network (UCRNN), Alternative Report to the Government of Uganda's First P eriodicReport,2002,p.38

4.2.7 The Ministry of Education and Sports.[183]

Government efforts towards inclusive education have been criticized and have been criticized of putting CWDs among able bodied children without adequate modification to the teaching and learning environment and with inadequate specialized teachers.

Another challenge facing this ministry is that there is no clear policy to support recruitment of staff to assist CWDs and teachers in schools such as sighted guides or sign language interpreters.

There is no policy in Uganda to provide for early childhood development and pre-school learning for children with special education needs since most early childhood programs are run privately.

Furthermore, most schools have not adhered to the accessibility standards despite the Infrastructure Accessibility Standards Tool of 2009.Therefore making it difficult for example a physically disabled child to access a building that only has stairs or the school environment such as classrooms, library, playgrounds and toilets. Because of this, CWDs drop out of schools because they cannot enter the buildings.[184]

Commuting to school is complicated for children with disabilities for example for children with physical disabilities like those using a wheelchair or even the visually impaired who neeed to be guided which can be inconveniencing at times.

However, boarding facilities are an option to this dilemma but they lack facilities for CWDs such as the buildings themselves, mattresses and food and such a measure is not necessarily taken as a priority.[185]

Lastly, there is only one university in Uganda that is Kyambogo with programs for training SNE teachers and other personnel working in the field of special needs to cater for CWDs and those with learning needs.

4.2.8 Non-Governmental Organizations,

Failure to create public awareness of disability hence there is presence of stigmatizing

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[183] Ibid.

[184] Uganda Society for Disabled Children, Interviewed by Nadege Richie , 2013.

[185]Baba Diri (Hon), Margaret, Women Member of Parliament for Koboko District, Interviewed by Nadege Richie ,2014

attitudes in the society which lead to neglect, abuse and marginalization of children with disabilities living in Uganda.

Lack of coordination between non-governmental organizations, the government and child movements have partly led to a fragmentation off the programmatic approach in addressing the needs of children with disabilities living in Uganda.

Current pragmatic responses by these organizations are limited in scale and scope since the only address the obvious and immediate needs of CWDs with the easy-to-reach children benefiting from the projects.

Lack of funds

Some of these INGOs and NGOs either lack funds or the funds are not enough to support activities promoting the rights of children with disabilities in Uganda. Some of them lack donor support which is important to ensure continuous flow of finance to provide for needs such as monies required to pay for tuition fees for children in special schools which are too expensive for children who are disabled in order to prevent them from dropping out due to poverty.

Furthermore some of these NGOs are not able to complete their projects because their funds run out and they are no longer able to generate income. Such projects are for example building medical centers for children with disabilities living in Uganda and hence the right to medical services is not promoted as required and this leads to CWDs not being able to access hospitals.

In addition these hospitals are not accessible since they lack facilities such as signs required by the deaf or stairs required by the physically impaired and this is another problem which would have been avoided of the NGOs in Uganda would be assisted by the government of Uganda.

Negative attitudes remain a big challenge and it largely derives from factors such as ignorance, poverty, cultural beliefs and customs. Hence, in order to enable CWDs access facilities such as education and capacity building creation of awareness is needed.

These NGOs have limited knowledge and capacities to engage with the protection and promotion of the rights of CWDs living in Uganda.[186]

Additionally, they do not understand the needs and knowledge of rights of CWDs and they

[186] Byamugisha ,Isidor, Uganda Parents of Persons with Intellectual Disabilities (IPPID), Interviewed by Nadenge Richie,2013.

fail to synthesis the difference between child rights and disability rights, thus slowing down and preventing the full realization their equal opportunity.

Indeed many INGOs working with children have now integrated some aspects linked to the needs and rights of CWDs but often childhood disability remains a marginal concern.[187]

Most of the projects run by these organizations such as the CBR programs, building toilets and special schools, are small-scale and lack long term sustainability over time. Hence these programs do not address need for structural changes that are likely be of great impact on the lives of CWDs in Uganda.

Furthermore, very few NGOs have demonstrated successful programs that address the needs of CWDs in Uganda.[188] and the only organization advocating for the rights of CWDs in Uganda as enshrined in the CRPD is the USDC.

4.9 Other challenges.

Less attention has been given some facilities such as talking elevators in malls and road crossing signs to assist visually impaired children.[189]

Some sectors have been slow in embracing necessary realignment to ensure accessibility for CWDs living in Uganda regardless on the Local Government's effort to upgrade structures to suit requirements that allow accessibility to infrastructure for CWDs. Some of these sectors include the hospitality sector that is hotels and shopping malls.

Lack of coordination between the law enforcement departments and the associations protecting CWDs and as a result most of these law enforcement departments are not aware of what is happening to CWDs. At times these associations are reluctant to fully involve law enforcement institutions in resolving violations and abuses faced by CWDs.

Uganda has not established a clear and effective monitoring and complaints mechanisms that would enforce and protect the rights of CWDs living in **Ugandafootnote ibid**

The only network gathering government and non government stakeholders is the National Steering Committee on Disability which manages general disability matters but has not engaged with issues concerning CWDs.

Some of the provisions in the 1995 Constitution and the C.A of 2016 to realize them do not

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[187] Able Child Africa, **http://ablechildafrica.org/resource,2014**, (Accessed 2 April 2014).

[188] Ibid.

[189] ibid

meet the standards expected by the CRC and the UN CPRD and as a result CWDs living in Uganda have suffered disproportionately,[190]

CWDs suffer from inferiority complex: CWDs always underestimate themselves before others in the society. Hence they feel like they do not fit in the society like other able bodied children do. They suffer from low self esteem and self pity and since there are few avenues to report any human rights violations against them.[191]

It is painful that CWDs have to go to go through a lot of suffering in their day to day lives. Inadequate nutrition at a young age prevents CWDs from developing properly both physically and cognitive.

This has therefore led to poor health due to lack of food security.

Lack of community mobilization and advocacy. This has been because of weak institutional framework as a result of lack of coordination between government institutions and civil society organizations of CWDs.[192]

4.0 Conclusion

This chapter assessed the barriers faced by institutions either governmental or non-governmental as they strive to protect and promote rights of CWDs living in Uganda.

The researcher observed that these institutions face a common problem of poor coordination among themselves which would be tackled with if they all come together in unity and use their resources to understand disability, disability rights, child rights and create awareness to prevent stigma and violence on the CWDs living in Uganda.

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[190] New vision, Tuesday February 21,2017.

[191] Supra note 149.

[192] ibid

CHAPTER FIVE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the research discussion of the findings obtained while contextualizing the study findings based on personal studies on effects of violation of children's rights. Comparisons were drawn with available literature on causes of violation of children's rights. The chapter also provides conclusions that can be drawn from the research and offers suggestions for future research into causes, effects, and possible ways of protecting children's rights in our community.

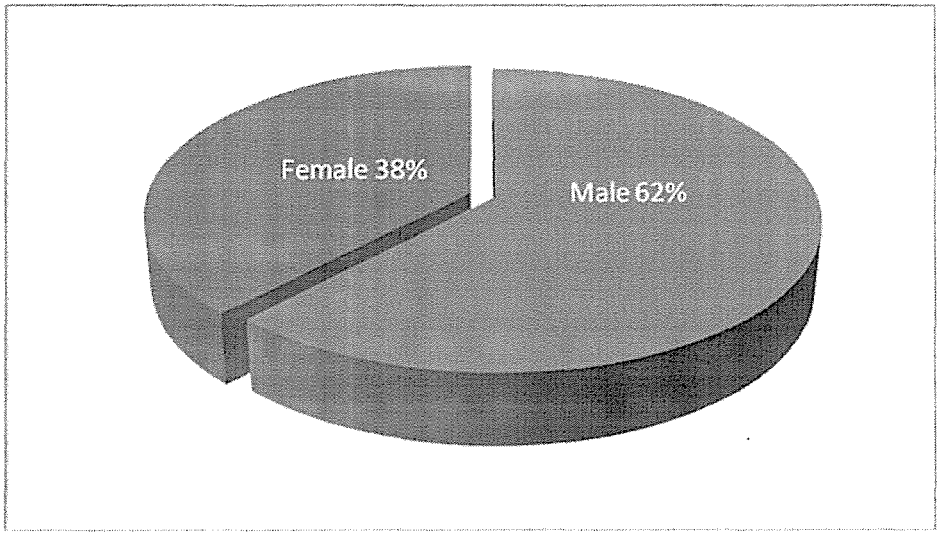
This chapter presents, interprets and analyses the empirical findings of the study from the field results. It starts with the socio-economic characters of violation of children's rights which are fundamental in examining the effects of violating children's rights. It discusses directly statistical data pertaining to the variables included in the study which is centered on the research questions of the study presented inform of tables, graphs, pictorial charts and tables.

5.1 The Socio-Economic characteristics of the respondents

The socio-economic character of the respondents is presented by sex, age, and level of education, religious affiliation which altogether remained fundamental to interpret and discuss the effects of violation of children's rights. It starts by presenting gender groups of the respondents in percentages which according to the research carried out; the result is represented in the pie chart and bar graphs. A total of 70 questionnaires were distributed to various respondents in Makindye Division. Of these, 65 questionnaires were returned. This presents a return response rate of 94%. However, 2 (3%) were not filled and 2 (3%) questionnaires were not returned. Therefore, the result of 65 (94%) of respondents who completed the questionnaires in the study are illustrated in the subsequent sub-sections and were also used to complete part of the primary data.

The socio- economic characteristics of the respondents is presented by age. According to the research carried out in the field, the information is presented in the pie chart below;-

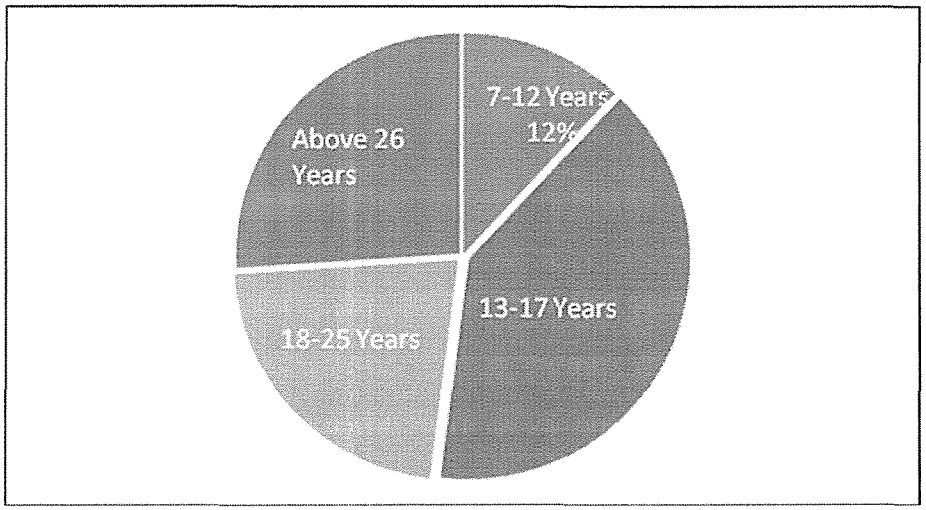
Figure 2: Sex of the respondents in percentages



Source: *Primary Data*

The information in pie chart one above implies that violation is common among male juveniles as opposed to the female juveniles. This is because male juveniles are found of adventuring into many social economic activities compared to female juveniles and out of such activities, they become big headed. The researcher discovered that female juveniles are easy to be educated, accepted, and transformed to their families and communities compared to the male juveniles. This is because female juveniles easily confess and accept their mistakes compared to male juveniles who are hard core espec`ially when they do something wrong (62% Male and 38% Female).

Figure 3: Age groups of the respondents in percentages

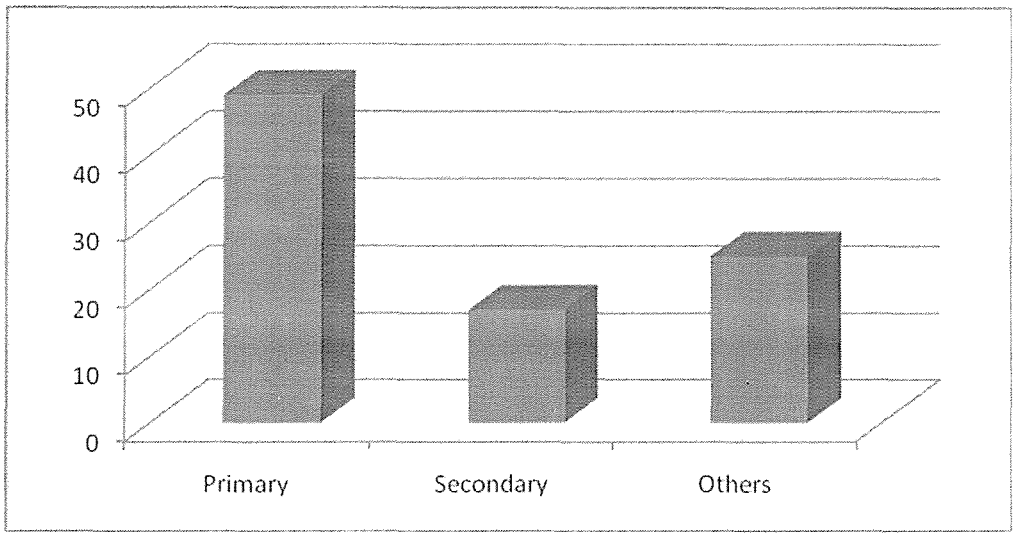


Source: *Primary Data*

Analysis from the above pie chart reveals that violation increases with the adolescent stage but decreases with adulthood. This is because during the adolescent stage, male juveniles attempt to venture into various fields of life some of which become avenues for the growth of bad behaviors. The researcher discovered that such groups of people are easy to reform because behavior which they portray is learnt. It was also affirmed that transforming adolescent group is easier compared to adult groups because the adolescents can listen and always imitate what the seniors or elders (models) do which is not the case to the adult behaviors because the adult delinquents are rigid to the advice from their parents (26% Adults and 74% Juveniles).

Education distribution was another characteristic of the respondents as presented on the bar chart below;

Figure 4: Levels of education distribution of the respondents in percentages

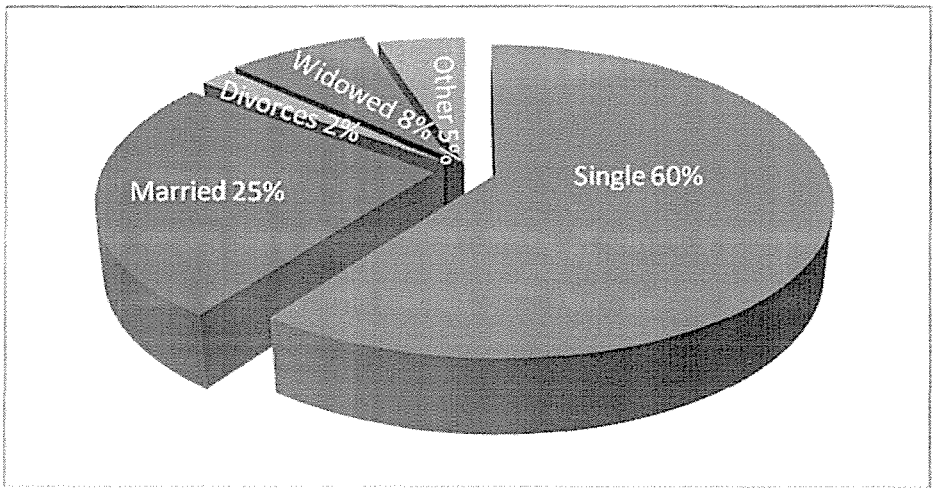


Source: *Primary Data*

It can be explained that the high percentage of children is from primary schools compared to the rest of the levels of education and this is due to the fact that many of the children were form poor families who could not even afford the little to support their children in secondary schools (49% Primary, 26% Secondary and 25% other levels of education).

The marital status of respondents was another characteristic and according to the research carried out in the field, the results are presented on the pie chart two below;

Figure 5: Marital status of the respondents in percentage



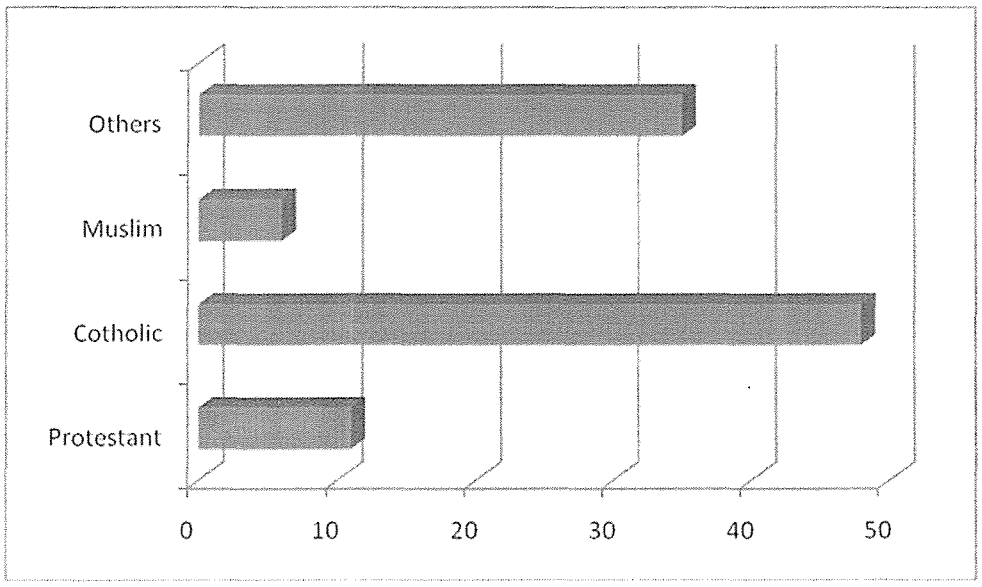
Source: *Primary Data*

Using the results from the pie chart above, it can be interpreted that majority of respondents were juveniles who are still staying with their parents and most of them are still in schools.

Although it was revealed by parents and police officers that most violation occur from home and such victims are easy to reunite them with their parents, it was at the same time revealed that juveniles from the rest of the communities have got hard spirit that is very hard to reunite.

Religious affiliation constituted another characteristic of the respondents and according to the finding, the information is presented on bar graph twos;

Figure 6: Religious affiliations of the respondents in percentage



Source: *Primary Data*

Because of religious backgrounds, it can be asserted that pro social behaviors can be easily instilled among juveniles as long as the behaviors were brought up in fear of God. Besides that, it was revealed during the study carried out in the filed by the police officers and parents that religion is an important tool in instilling morals and discipline among young children. This is done through religious services and counseling.

5.1.1: Respondents level of agreement by effects of violation of children' rights

It was very useful for the success of the researcher to rate children by effects of violation of children rights as illustrated in the table below based on a likert scale of SA= strongly agreed, A =agreed, DA=disagreed, SDA= strongly disagreed and UD= undecided .

Table 7: Level of agreement by effects of violation of children's rights

Level of Agreement	SA %	A%	DA%	SDA%	UD%	Total %
Children should have the rights irrespective of age, sex, etc?	32	31	20	15	2	100
Children should be treated with more honor than adults?	52	32	12	2	2	100
An indiscipline child should be burnt with fire in order to change?	11	3	35	48	2	100
A young girl can be defiled by the person in authority over her?	6	20	43	31	-	100
Children in need of protection include those ill-treated or neglected?	34	15	28	11	12	100
Majority of legitimate children come from poor families?	46	23	15	14	6	100
Visiting children in custody gives protection to them?	46	25	11	12	6	100
A child best interest is well serves within the family set up?	80	14	5	2	-	100
Children are good source of labor?	6	-	9	85	-	100
Parental rights over a child are the right to custody of the child?	18	43	14	17	8	100
It is the duty of the state to protect children who are under legal disability?	55	32	3	3	6	100
State undertakes to provide basic needs for children?	24	60	8	6	2	100
A child under child labor can live without his or her parents	69	17	9	5	-	100
Insecurity in the north led to serious violation of children's rights?	43	12	32	9	3	100
People who report children's violation lack what to do?	7	8	38	49	-	100
Government policies on protection of children's rights are weak?	35	48	11	3	3	100

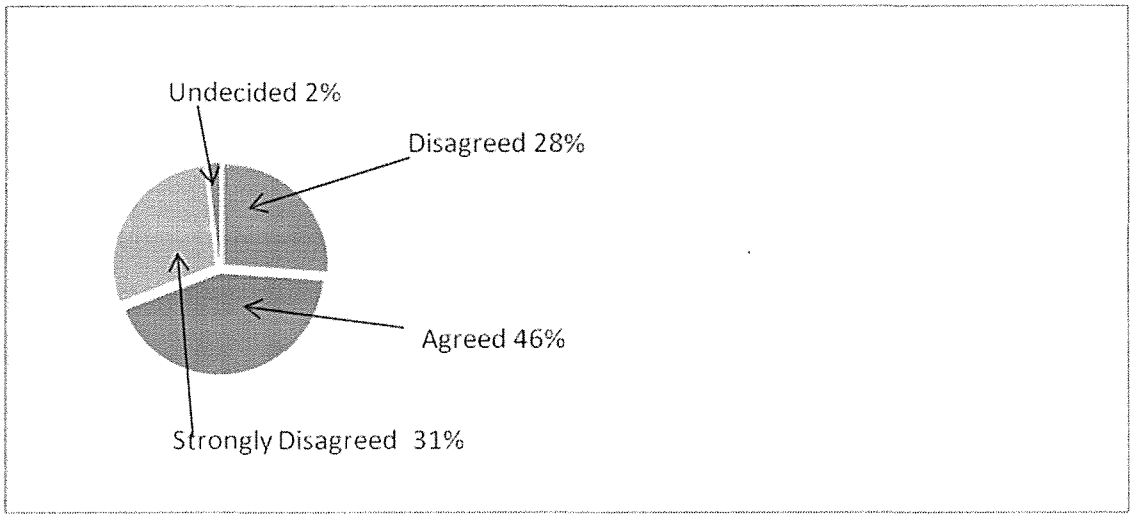
Source: *Primary Data*

From the above table, most respondents disagreed that children are the best source of labor represented by 85%, 9% disagreed while 6% strongly agreed with the statement. Most respondents further reported that the child's best interest is serves within the home with 80% and they strongly agreed, 14% agreed, 5% disagreed while 2% strongly disagreed. The table also indicated that 60% of the respondents agreed that state undertakes to provide basic needs for children. Generally, findings revealed that majority of the respondents were majorly children whose rights are highly being violated represented by 69%, 17% agreed, and 9% disagreed while 5% strongly disagreed.

5.1.2 Respondents' overall agreement with increase in violation of children's rights

It was useful for the success of the research to investigate on the level of agreement as to whether there is increase in violation of children's rights. Data was received as illustrated in Figure 3 below;

Figure 7: Level of Agreement with increase in violation of children's rights in percentages



Sources; *Primary Data*

The figure revealed that in terms of overall agreement, the majority of respondents agreed that there is increase in violation of children's rights with a percentage of 46%, n=27, 31%, n= 20 strongly disagreed, 28%, =18 agreed while 2% n=1 was undecided whether there is increase in violation of children's rights or not.

5.1.3 Is the violation of children's rights in the decrease?

Table 8: Showing decrease in the violation of children's rights

Response	Frequency	Percentage
Yes	6	9%
No	59	91%
Total	**65**	**100%**

Source: *Own calculation.*

From the table above, the majority of respondents 91%, n=59 disagreed that there is decrease in violation of children's rights because Government policies on protection of children's rights are weak while 9%, n=6 agreed.

5.1.4 Is there any human rights activist in Kampala District?

Table 9: Showing any human rights activists in Kampala District

Response	Frequency	Percentage
No	43	66%
Yes	22	34%
Total	**65**	**100%**

Source: *own calculations*

The table above revealed that there are no human rights activists in Makindye Division and Kampala District as a whole represented by 66%, n=43 while those who disagreed were 34%, n=22.

5.1.5 Do Children whose rights are being violated report to the responsible bodies?

Table 10: Access to humanitarian bodies

Response	Frequency	Percentage
Yes	5	8%
No	60	92%
Total	**65**	**100%**

Source: *Own calculation*

The table above indicates that majority of children do not have access to humanitarian assistance incase their rights are violated represented by 92%, n=60 while 8%, n=5 agreed that they have access to humanitarian help.

5.1.6 Have you ever been abused?

Table 11: Showing many children ever been abused

Response	Frequency	Percentage
Yes	23	35%
No	42	65%
Total	**65**	**100%**

Source: *Own Calculation*

From the table above, Children agreed that they were once abused and this is represented by 26%, n=17. While 48 respondents represented by 74% disagreed that they have never been abused.

5.2 Conclusion

This chapter has provided an overview of the findings obtained from the field that were based on empirical analysis done to answer the research questions, and tested the hypotheses and their interpretation as discussed above.

5.3 Discussion and analysis

In Makindye Division, violation of children's rights is a common occurrence. Available data show that about four or five of every child was once abused. However, the effects of violation of children's rights are not well documented. The main objective of the study was to explore the consequences of violation of disabled children's rights in Makindye Division and provide programmatic recommendations to guide policy makers for interventions.

Findings indicate that violation of disabled children's rights is highly prevalent in the town council and that it is the most serious of all the harmful traditional practices. The results of this comprehensive survey confirmed that most disabled children are left to sit at home and do housework, garden work, babysitting among others instead of being taken to school. This is in line with Universal Declaration of Human Rights in 1948 (though referred to by the ILO as early as the 1920s) which states that out of the vast majority of countries that signed up, and ratified, international conventions (such as the UN Convention on the Rights of the Child) far fewer have integrated these rights into their national constitutions or provided the legislative and administrative frameworks to ensure that these rights are realized in practice. A number of disabled children of 12 to 17 years were interviewed and most of them said that they studied but stopped on the way due to the ignorance of their parents / guardians as well as school fees problems. Today, the right to education is still denied to millions of disabled children around the world. Inevitably, a lack of government support for the right to education hits the poorest hardest. In Makindye Division, the study revealed that most disabled children are forced to marry under 18 years of age and that most parents have abandoned the introduction of both UPE and USE by the government arguing that UPE is contributing little towards their disabled children's education for it is not compulsory, more so disabled children are being promoted to the next class even he or she has failed.

Further findings revealed that most cases for the violation of disabled children's rights go undetected but extremely serious ones are officially reported. It also indicated that in cases where serious injuries are inflicted on a child, the matter is not reported to police but parents only take the victim for treatment to hospital or private clinics. This is in line with the Sunday monitor of May 18th 2014, vol.138 pg. 8 which stated that Police of Old Kampala rescued three disabled children, two boys and one girl from the wrath of their father who was staying with them without their individual mothers. The violations sometimes involve family members and natural parents and people fear to drag their names into court and suffer embarrassment. Parents sometimes fear to disclose even to Doctors the truth if they are involve, but instead invent some stories to cover up themselves. Thomas James said that parental rights over disabled children are naturally the first consideration that is the right to the custody of the child. One should know that disabled children cannot lawfully live with any other person who is related to him her unless it is an order imposed by the family and disabled children's like a care order, supervision order, interim care order etc. then the child is removed from where he or she stays to foster home or approved disabled children's home.

During the study, the researcher also discovered that most disabled children suffer unwarranted shouting, scolding, abusive, and failure to provide basic needs of life like adequate food, clothing, food, education among others. This is not far from the publication in the New Vision of Tuesday March 6th 2007 which stated that "Thirteen years old Damale Fortune (Not her real name) attracted public sympathy after she was burnt in mysterious circumstances. The controversies surrounding Damale's case show that matters of disabled children's well-being in our society are the responsibility of every person and not the parents alone. It's a responsibility of us all to make sure that those disabled children are safe in the hands of those who interact with them. Everybody is a potential of disabled children's rights.

The studies also revealed that majority of young girls are always defiled, assaulted indecently, but no action is taken. This was witnessed during the IDPs time because parents could negotiate for money such that the cases do not reach the police. This matches UN Secretary's General reports that , reported cases of rape and other sexual assaults carried out against disabled children increased from 115 to 128 during the period from 16 March 2007 to 15 March 2008 in Somalia alone. Of the rape cases of disabled children reported by child protection monitors, only a minority are alleged to have been carried out by parties to the

conflict. Nonetheless, the continued fighting has rendered women and disabled children more vulnerable to sexual violence because of displacement, destitution, the breakdown of the rule of law and the re-emergence of armed groups and freelance militias as a result of the ongoing conflict. The same incident was the order of the day during LRA war in northern Uganda. To date, girls have become source of money in their families.

Findings of the study also indicated that detention of disabled children in male adult cells still exist at Police. At Kampala Police Station, there are no juvenile's cells whereby disabled children of capital offences in nature are sometimes detained together with adults criminals. This contradicts Disabled children's Act which states that, "No child shall be kept in adult prison". The family and disabled children courts is a special court for handling disabled children's cases and should be handled by a Magistrate not below the rank of Grade II. The court hears disabled children's cases except those which carry maximum sentences such as murder, aggravated defilement, and rape.

Further findings of the study also indicated that in adequate information makes it difficult to assess accurately the extent to which the disabled children's rights are being violated, whether it is growing or dying out. This is in line with The African Charter on the Rights and Welfare of the African Child OAU Doc. (1990) which stated that there is no way to thoroughly enumerate the various ways in which disabled children around the world are economically exploited and physically mistreated. But the numbers are great and the suffering widespread. While victims of injustice and poverty have always had trouble being heard, none have had more trouble, historically, than disabled children. Evidence of three categories of violation in Uganda manifested in Makindye Division during this study such as Physical abuse by step parents, step mothers in polygamous and broken marriages.

According to UN General Secretary General's Report on Somalia in 2007, he noted that cases of abduction of disabled children are criminally motivated in Somalia. The result further shows that abducted disabled children do experience haunting from the dead bodies, continuous hearing of sounds of gun shots, and finds it difficult to relate with other disabled children. Parents confirmed that abducted disabled children came back home when they were completely changed with others being attacked by the spirits of the people they butchered

while in captivity and others infected with HIV/ AIDs. However, majority of abducted disabled children were taken to GUSCO, World Vision, Invisible Disabled children, and Save the Disabled children for rehabilitation before they are reunited with their parents and relatives. Findings also revealed that in Makindye Division, disabled children are denied rights to own property. This contradicts Land Act, the 1995 Constitution which states that any ownership or use of land shall be null and void. This article seals the right that disabled children have to own their land but not they belong to or taking of them. Most African Traditional Societies treasure land so much that disabled children has no say as far as land issues is concerned.

Further studies and findings revealed that most disabled children in Makindye Division are still being exploited either by their parents or those in their guardianship. This contradicts Disabled children Act which states that "it shall be unlawful to subject a child to social or customary practices that is harmful to the child's health. It is a constitutional duty for everyone to protect disabled children against social economic exploitation. Disabled children make their decisions to work only 80% of the time (Syed et al 1991). Parents in developing countries use their disabled children because they can be profitable.

Finally, the result of this study indicated that disabled children in Makindye Division cannot participate in any decision making and this is considered a taboo by the elders. This is in line with the convention on the rights of the child which does not explicitly set for the disabled children's rights to participate except as a goal for disabled children with disabilities. There is however a cluster of participation article that when interpreted together, provide the argument for the child's right to participate. The growing recognition of disabled children's right to participate, in accordance with their evolving capacity, in local or national decision-making processes and to contribute to the development of their own societies has been among the most significant advances of the last decade. It should now be noted that the views expressed and proposals made by disabled children need to be followed up formally, and adults need to learn to give them due weight, not least within legal and administrative proceedings. Participation is closely linked to freedom of expression, including the rights of access to information and freedom of association.

After significant data collection in the four wards, the researcher discovered that violation of

disabled children's rights was the only thesis of the study to be investigated because majority of disabled children are still being abused. The problem of violation of disabled children's rights is complex and of much concern. It would appear that its causes, and the serious consequences it has on disabled children, family, nation as well as future generation are invariably many but can be controlled by introduction of concrete measures in order to fight it.

However, scientists and scholars have expended considerable efforts to site out those effects of violation of disabled children's rights in Uganda (ISPCAN, 1986). Disabled children whose rights are highly violated are majorly from poor families and they are vulnerable to child abuse in this setting. Therefore, very little research has emerged about major protection constraints affecting disabled children globally and I have sought to address some of those causes of violation of disabled children's rights in Makindye Division.

The solution lies in education review and reform of relevant laws relating to the welfare of disabled children, rehabilitation of moral values, and improvement of the economy of the country with emphasis on control to the high rate of inflation and general improvement on the standard of living.

The police should identify some commonly violated rights of the disabled children. Most parents produce disabled children out of choice, when they feel the time is right and are both happy about having them. So juveniles are conceived and born normal disabled children but in most cases the unfriendly and cruel environment in which they are raised results into them being abused. At this point, one would call upon the police and all the stake holders to put their approaches onto the environment that led to the violation of their rights rather than juveniles.

The respondents who were included in this study strongly agreed that violation of disabled children's rights are on the increase (46%, n=27). These findings conform to the general perceptions of this study that child neglect is leading followed by child desertion. However, few respondents agreed that there will be decrease in violation of disabled children's rights in Makindye Division and Kampala District as a whole (9%, n=6) in the near future but cannot be achieved unless government come up with policies on protection of their rights.

Findings also revealed that disabled children suffer from ill treatment from their parents and the guardians, who take custody of them, they feel they are the ones who produced them or taking their custody hence treats them like their own properties. Therefore, it has been concluded that violation of disabled children's rights has become a matter of concern both at national and international communities hence more focus should be taken in order to fight the vice.

5.5 Recommendations for juveniles

Civil Society Organizations, NGO's and other stakeholders need to work extensively with community members, local leaders, and government to find equitable solutions to violation of disabled children's rights both the short and long term. Relying solely on government is insufficient given problematic issues on disabled children rights. This is because violation has been an ongoing practice but with little attention from the government.

Law enforcement, a more rigorous enforcement of existing laws and policies is required to discourage Child abuse. Allow anonymous reporting, work with the police and others, and make it clear that Child abuse is a major violation of the rights of disabled children.

Create options to light punishing disabled children like exercising, digging, light caning denial of other Privileges a child likes most like riding a bike.

Local leaders should sensitize the public on the dangers of child abuse and give alternatives forms of punishing to a child.

There should be Child Rights awareness program by Human Rights, NGOs and Police Family department to the public to reduce cases of child abuse.

Education of parents, guardians, and in charge of care taking both formal and informal education programmes that should be reviewed to provide an effective approach towards the rights of disabled children. Government should also put more schools to address the child violation still under education especially in areas affected by wars like northern Uganda.

Government should on a continuous basis, as a matter of priority, review legislation

procedure and practices relating to disabled children in order to ensure protection of all disabled children and enforcement of their rights.

A lot of violation of disabled children's rights is due to poverty and poor housing especially on IDPs. For this reason, government and the people should take definite steps to improve the situations.

Child agencies and all institutions caring for disabled children for example, remand homes, disabled children's homes, NGOs, Save the Disabled children, UNICEF among others which take custody and rehabilitation of the abused disabled children in Uganda be provided with adequate funds, transport and other resources to enable them run these projects effectively.

The recruitment of child soldiers in the national army and rebel groups should stop in conformity with the optional protocol on the convention on the rights of the child.

Remand homes should be built in every district to avoid incarcerating child offenders with adults in conformity with the UN minimum standard rules for the international convention on civil and political rights.

Probation officers should follow up disabled children who have been resettled to see that they are properly integrated in the community.

There is need to improve economic circumstances in order to reduce complain on lack of schools fees.

There is need to realize the potential of disabled children in the development programs through education.

5.6 Recommendations for future research

Empirical findings of the study are based on aggregate analysis of time series data as compared to violation level data. Conclusions based on such methods are likely to be misleading. Future study should concentrate on the major protection constraints faced in protecting disabled children's rights.

Further research should empirically examine the reasons as to why disabled children's rights

continued to be violated by different stake holders amidst the existing laws.

Another effort should also be put by future researchers to study factors that affect performance of disabled children whose rights are violated by their immediate mentors like teachers and parents.

Finally, this analysis leads to certain implications for the international community. Further investigation into this subject is required before calls are made for banning child abuse across the board. By establishing partnerships with humanitarian organizations, the future researchers can focus on immediately solving the remediable problems of working disabled children.

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