

**CRITICAL ANALYSIS OF LAWS RELATING TO PREVENTION OF CHILD ABUSE
IN UGANDA**

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**A RESEARCH DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN
FULFILLMENT OF THE REQUIREMENTS FOR THE A WARD OF
A BACHELORS DEGREE IN LAW OF KAMPALA
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DECLARATION

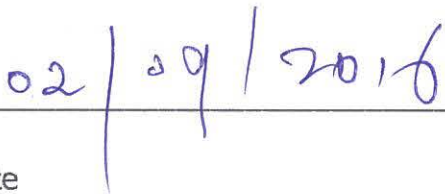
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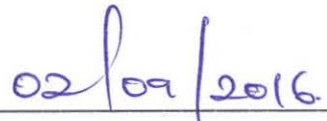
This research has been duly supervised and submitted for examination with my approval as a University supervisor.

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Signature



Date

DEDICATION

This research work is dedicated to my parents Mr. Wakaza Simon and Mrs. Alinza Beth whose financial and moral support helped complete the dissertation successfully.

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LIST OF ACRONYMS

ACERWC:	The African Charter on the Rights and Welfare of the Child
AU:	African Union
CSEC:	Commercial Sex Exploitation of Children
FGM:	Female Genital Mutilation
HIV:	Human Immune Virus
ICC:	International Criminal Court
ICCR:	International Charter of the Rights of Children.
ICESCR:	The International Covenant on Social and Cultural Rights
ILO:	International Labour Organization
LCC:	Local Council Court
MOGLSD:	Ministry of Gender, Labour and Social Development
OAU:	Organization of African Union
PEAP:	Poverty Eradication Action Plan
PSC:	Peace and Security Council of the African Union
UBOS:	Uganda Bureau of Statistics
UDHR:	Universal Declaration of Human Rights
UGHS:	Uganda Demographic Health Survey
ULII:	Uganda Legal Information Institute
UNCC:	Uganda National Council for Children
UNCRC:	United Nations Convention on the Rights of the child.
UNICEF:	United Nations International Children's Emergency Fund
UPE:	Universal Primary Education
USE:	Universal Secondary Education
WHO:	World Health Organization

STATUTES AND INTERNATIONAL INSTRUMENTS

The Constitution of the Republic of Uganda 1995

The Children Act Cap 59

Employment Act 2006

The Penal Code Act Cap 120 as amended

The United Nations Convention on the Rights of the Child

The Universal Declaration of Human Rights

The African Charter on the Rights and Welfare of the Child

The International Labour Organization

CHAPTER ONE

INTRODUCTION

1.1. Introduction and Background to the Research

Children's rights are a relatively new concept. Although Human rights have been discussed since the 17th century, it was not until the 19th and 20th centuries that the rights of children began to be considered. Initially the discussion of children's rights tended primarily to be focused more on protection rights for example outlawing child Labour rather than any concept that children were entitled to their own rights as equal citizens of the world.

At the beginning of the 20th century millions died in the First World War and many more were orphaned by the fighting. The League of Nations was formed after the First World War as an intergovernmental organization with the aim of trying to protect basic human rights standards.

Around the same time Eglantyne Jebb, a British teacher and founder of "save the children" drafted the declaration on the rights of the child which was adopted by the League of Nation as the "Geneva declaration on the rights of the child in 1924, which became the first international legal document on the protection of the rights of children¹

The Geneva declaration put the rights of children on another level as it urges member states to take measures against slavery, child trafficking, child Labour and commercial sex exploitation of children. The declaration reflects the assumption that children could and should rely upon the exclusive protection of adults to ensure the exercise of their rights. In spite of its short comings, the declaration has remained a moral frame work

¹ Children's Right history, research by Humanium an international Childs sponsorship NGO dedicated to stopping violations of children's rights throughout the world.

and Uganda's legal frame work on children's rights is almost a copy of the Geneva declaration.

In 1945 after the Second World War, the atrocities that the people at the time experienced were the catalyst to the setting up by way of internationally regulating human rights, where the United Nations adopted the universal declaration of human rights.

Although the rights of children were implicitly included, many argued that the special needs of children justified an additional separate document and in 1959 the United Nations General Assembly adopted a second declaration of the rights of the child.

Meanwhile the United Nations Human Rights Commission group started to work on the draft of the convention on the rights of the child, the commission took time and it was not until nearly 30 year later in 1987 that the work on the convention on the rights of the child was completed which was adopted by the United Nations General Assembly².

The United Nations Convention on the Rights of the Child has the status of an international law and it's essentially a promise to all children to protect and respect and fulfill all of their human rights. The convention entered into force in 1990.

In 2000, Optional protocols to the CRC were adopted by the United Nations, specifically on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography.

The optional protocols included the International Charter of the Rights of the Child. Today its idea and its forceful character are almost universally accepted. However, its

² *Ibid*

application could still be improved and the transformation of words into acts remains to be done³.

In 1990 the Organization of African Union which later became the African Union adopted the African Charter on the Rights and Welfare of the Child, also called the children's charter which became operational in 1999. Like the United Nation Convention on the Rights of the Child, the children's charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of the African child.

The African Charter on the Rights and Welfare of the Child recognizes that children in Africa are affected by many different types of abuses including⁴ economic and sexual exploitation gender discrimination in education and access to health.

The ACRWC is the only regional treaty that caters for the rights of the children on the African continent.

The charter defines a child as a human being below the age of 18 years. It recognizes the child's unique and privileged place in African society and that children need protection and special care, it also aims at protecting the private life of the child and safeguarding the child against all forms of economic exploitation and against work that is hazardous, interferes with the child's education or compromises his or her health or physical, social, mental, spiritual and moral development. It also calls for protection of children against abuse and bad treatment, negative social and cultural practices, all forms of exploitation or sexual abuse and illegal drug use.

³ *Ibid*

⁴ African charter on the Rights of the child

Although the Children's Charter originated from the United Nations on the Rights of Child, the drafters believed there was need to include important social, cultural and economic realities particular to African which the UNCRC had missed out⁵.

It should however be noted that during the colonial era, the British applied laws that were applicable to Britain without any modification which were included in the 1962 constitution⁶, which laws had little concern for the protection of Children Rights.

The Constitution of the Republic of Uganda 1967 changed little, however with the coming of the National Resistance Movement government in 1986, a lot has been achieved in the field of promoting children's rights and protection against different forms of abuse.

Under the NRM government, a new constitution was promulgated (The Constitution of the Republic of Uganda 1995) which provides for children's rights under chapter 4 and specifically article 34.

It is provided Under article 34 (1) of the Constitution of the Republic of Uganda 1995, that subject to laws enacted in their best interests, children shall have the Right to know and be cared for by their parents or these entitled by law to bring them up.

The constitution further protects children from social or economic exploitation and bars employment of children in 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 and social development.

⁵ Article 2, 4, 15 and 16 *Ibid*

⁶ Constitution of the Republic of Uganda 1962

Under Article 34 (2) of the Constitution of the Republic of Uganda 1995, children also have a right to education. Where a child offender is detained, it is provided under article 34(6) of the Constitution of the Republic of Uganda provides that children shall be detained in a separate custody from adults, but implementation of the provision of this provision has not gone without any challenges.⁷

The National Resistance movement government also passed the Children Act Cap 59 which replaced the children statute. The children Act acts as a strong weapon against child abuse⁸.

The Act guarantees children's rights and upholds the welfare principle which is the guiding principle whenever a decision relating to children's affairs is to be made.

Under the Children Act Cap 59, the welfare principles and the children's rights are set out in the first schedule to this Act which shall be the guiding principles in making any decision based on this Act⁹.

The welfare principle was defined in the case of **Walker Vs Walker (1981)** that "welfare principle" is an all-encompassing word; it includes material welfare both in the sense of adequacy of resources to provide a pleasant home and a comfortable state of living and in the true sense of adequacy of care to ensure good health and personal pride¹⁰.

⁷The Constitution of the Republic of Uganda 1995

⁸Section 3, Children Act Cap 59

⁹*Supra*

¹⁰ Walker Vs Walker (1981) ALLER 2007

In **Re Byamukama (An infant) Family Cause No. 148 of 2013**, It was stated that the welfare of the infant is the overriding principle in all applications this nature¹¹.

It was stated in **Nakaggwa Vs Kiggundu [1978]** that Court has a duty to act as a wise parent would do, which is considering the welfare and interests of the child. The welfare principle dictates that every circumstance surrounding the court is to ascertain whether it is in the best interests or welfare to grant the order sought¹².

Schedule 1 rule 1 provides that any person to determine any question with respect to the upbringing of a child or the administration of the child's property or the application of any income arising from it, the child's welfare shall be of the paramount consideration¹³.

In the determining any question relating to the welfare of the child, the Act under Rule 3 of the first schedule to the Children's Act provides the criteria for making the decisions. Any person shall have regard in particular to:

- a) The ascertainable wishes and feelings of the child concerned must be considered in light of his or her age and understanding.
- b) *The child's physical, emotional and educational needs.*
- c) The likely effects of any changes in the child's circumstances
- d) The child's age, sex, background and any other circumstances relevant in the matter.
- e) Any harm that the child has suffered or is at risk of suffering.
- f) Where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.¹⁴

¹¹ Re Byamukama (An infant) Family Cause No. 148 of 2013 (2014) UGHCFD 3 (20, January 2014)

¹² Nakaggwa Vs Kiggundu [1978] HCB 310

¹³ First schedule rule 1 to the children's Act cap 59.

¹⁴ Rule 3 of the first schedule to the children's Act.

The Act further guarantees children protection, care and maintenance and also establishes the family and children courts which can grant care orders, custody and parentage of the child, maintenance of the child which is both the responsibility of the parents and the state. For example under section 76 of the Children Act any person who has custody of a child and who is the mother of the child; the father of the child; or the guardian of the child, may make an application for the maintenance order against the father or mother of the child, as the case may be.

Also under section 46(c) of the Children Act an applicant for adoption must not have any criminal record.

The section was emphasized in the case of **Jesse Bree Mays (An Infant) Adoption Cause No.43/2006** where the High Court of Uganda held further that as the applicant had no criminal records and had not received or agreed to receive any payment from any person in consideration of the adoption, they had all qualities of prospective parent hence entitled to an adoption order.

The Children Act has almost everything any one needs to protect a child against any form of child abuse if used well with other laws like the Penal Code Act Cap 120 as amended¹⁵.

The NRM government put in place the Employment Act 2006, which under section 32 guides employers on the age at which children should be employed, it puts up a certain age at which a child should be employed and only allows children to be employed in light work under the supervision of an adult aged 18years and above¹⁶.

¹⁵ *Ibid*

¹⁶ Employment Act Cap 2006

However the NRM government retained the Old Penal Code Act although some sections have been repealed or amended over time. It contains sections which create offences and penalties relating to children for example defilement under section 129 (1) of the Penal Code Act Cap 120 as amended which states that any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

It further states under sub section 2 that; any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction liable to imprisonment not exceeding eighteen years.

Under section 129 (3) any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.

Section 129 (4) gives the circumstances referred to in sub section 3 of the same section and these include the following:

- (a) Where the person against whom the offence is committed is below 14 years
- (b) Where the offender is infected with Human Immune Deficiency Virus (HIV)
- (c) Where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed.
- (d) Where the victim of the offence is a person with disability; or
- (e) Where the offender is a serial offender

In conclusion, children like everybody else have human rights and children must be given the best they deserve during their childhood to ensure that they mold into upright and productive citizens in their adulthood. For the purpose of this research therefore

and as provided under Article 257 (1) (c) of the Constitution of the Republic of Uganda 1995, a child is a person below the age of 18 years and the law applicable when dealing with issues concerning children are the Constitution of the Republic of Uganda 1995, the Children Act Cap 59, The Penal Code Act Cap 120, the Employment Act 2006, the Police Act, the African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child.

1.2 Statement of the Problem

The future of Uganda lies squarely in the hands of the children. That being the case there are pertinent questions concerning the protection of rights and welfare of children that must be seriously addressed.

There are elaborate provisions for protection of children's rights; however the problem is the non-implementation of such provisions. Some of the instruments have some grey areas which considerably affect the level of protection a child has against the abuse of his/her rights considering the fact that children are very vulnerable and any loophole in the law will inevitably be exploited to the disadvantage of the child.

Despite the fact that there are elaborate laws on the protection of Children's Rights, incidents of child abuse are still in place which include child sacrifice, commercial sex exploitation of children, female genital mutilation, defilement, child neglect, Child Labour and extra. The above mentioned incidents of child abuse have been attributed to lack of seriousness on the part of law enforcement authorities, corruption and poverty in the country which has resulted into the continued abuse of children's rights in Uganda. This research will therefore critically look at the different ways the rights of a child are violated in Uganda, the causes of those violations and lastly and evaluation of the laws passed to protect children rights.

1.3 Objectives of the Research

1. To find out about the incidence of Child Labour in Uganda and what categories of work are hazardous, exploitative and harmful to a child's educational prospects, health, morals, physical and mental developments and then to link it to the rights of the child; to find out whether Child Labour can amount to the violation of children's rights.
2. To look into the right of children to education including issues like what amounts to the right to education and whether all children enjoy their right to education.
3. To look into the issue of physical and mental abuse of children and link it to the issue of children's rights
4. To look into the issue of child neglect and how it constitutes abuse of the rights of the child.
5. To help law makers fill the lacuna in the law seeking to guarantee the protection of children's rights by highlighting the loopholes in the documents on children's rights to the attention of the law makers.
6. To sensitize anybody who may read the research (dissertation) on the issue of children's rights and the importance of protection of children from any form of abuse.
7. To make recommendations on improvement of the protection of children from abuse of their rights.

1.4 Scope of the Study

My geographical scope will be Uganda however I intend to look at other areas since child abuse is a global phenomenon.

The work is divided into five chapters.

Chapter 1

The chapter covers the introduction to the study, the objectives, literature review, and significance of the study, scope of the study, methodology and the statement of the problem.

Chapter 2

Chapter two covers the forms of child abuse both physical and psychological.

Chapter 3

This covers the causes and effects of child abuse to the children during their childhood and adulthood.

Chapter 4

This covers the laws relating to the prevention of child abuse. Among the laws to be analyzed includes national laws and international instruments.

Chapter 5

This covers conclusion based on the analysis of the laws and international instruments protecting children against abuse. The chapter also covers the recommendation on what should be done to better the situation of children in Uganda.

1.5 Methodology

1. I will use library research to collect data for my research.
2. I intend to interview some children on their rights ranging from questions on their employment, education physical and verbal abuse and parental neglect.

1.6 Literature Review

J.M Aliro Omaro in his paper¹⁷ discusses the rights of a child as articulated in the Constitution of the Republic of Uganda 1995 and the children statute 1997. It goes on to suggest strategies for protection and promotion of those rights while recognizing the challenges of such customs, practices and belief. The paper is however silent on the strategies for the promotion and protection of the rights of children especially the girl child and the disabled child who are doubly as vulnerable as other children.

Boyden in his book, children of the cities¹⁸ focuses only on the rights of children in the urban areas of Africa. This however is not very exhaustive of the issue of children's rights because the book does not look into the rights of children in the rural areas, yet children in the rural areas are the most abused children, they are forced into early marriages, forced to work long hours in fields, sometimes at the expense of their education. This research aims at looking at all children and not only those in urban areas.

Kekurutso¹⁹ researched on child labour but he confined himself specifically to child labour in Kampala city and dealt with domestic servants and children who off load

¹⁷The rights of children in the constitution and the children statute, Strategies for the protection and promotion of those rights. A paper presented by Commissioner J.M Aliro Omaro of Uganda Human Rights Commission at a seminar on the rights of children and oppressive customs.

¹⁸Children of the cities by Boyden with Pat Holder, Zed books limited.

¹⁹Child labour in the informal sector. A human rights perspective. A case study of Kampala City
Kekurutso Syson

matooke in the markets in Kampala. However hordes of children in Uganda and in other parts of Uganda are subjected to oppressive hazardous and exploitative child labour and hence abuse of their rights, the plight of children being exploited in other parts of Uganda are subjected to oppressive, hazardous exploitative labour and hence abuse of their rights. The plight of children being exploited in other parts of the country both rural and urban needs to be brought to the attention of the law makers as a matter of urgency if such children are to be delivered from the yoke of their disguised slavery.

The report of Michael Hansene the director general of the International Labour Organization suggests that the organization and United Nations members states should adopt a time bound programme of action to eliminate child Labour focusing basically on degrading and particularly hazardous forms of work. He called for complete prohibition of work by young children under fifteen and protection for girls who are forced into domestic service or lined into prostitution and pornography²⁰. This is an excellent but sadly overzealous and ambitious strategy for a country like Uganda where there are no centres to deal with disadvantaged children apart from the Uganda Women's Efforts to Save Orphans (UWESO) organization which is a nongovernmental organization and cannot deal with all the orphans. I hope in this research to establish that the feasible approach should be improving conditions of work and remuneration for child workers where it is not hazardous or degrading and on eliminating all forms of hazardous and degrading work unless the Uganda governments take up the case of such children as a priority.

The international child welfare review focuses on children who miss out on education because of poverty²¹ and hence do not enjoy their right to education. However, children's rights to education are not violated only because of poverty but also because

²⁰ The report of the director General of the ILO Mr. Michael Hansene on Child Labour

²¹ The International child Welfare review. The child in the World Tomorrow

of neglect, pregnancy and hiring children to work. I hope to throw light on the other reasons why children fail to enjoy their right to go to school.

Hellerstein Hume and Offen²² in their book child molestation deal with child sexual abuse with their attention being put on the girl child. In these times many boy children are being sexually abused by house maids, grown women and even men. This is a serious problem which has to be sufficiently researched on because for a very long time the world has ignored the fact that boy children are susceptible to sexual molestation. Meanwhile the boy child has been suffering silently. I believe it is time to rescue the boy child under such circumstances because he is equally as vulnerable as the girl child.

1.7 Significance of the study

1. The research can be of help government undertake critical actions geared towards preventing and mitigating violence against children in Uganda.
2. The study will help government to design training materials and programmes for children and those working with them on tackling prevention of violence with child victims of violence in schools and gender dimension.
3. The study will help government to discover areas where child abuse is rampant and in turn the government can put more emphasis on such areas.

²²Child molestation - Heillerstein, Hume and Offen 1981, Pg. 363

a) The ideologies of children's Rights, Edited by Michael Freman - University College London UK and Phillip Veerman Defence for children International Jerusalem Israel - Martius Nizhoff Publishers Dordrecht/Boston London.

b) International Documents on children, Editor Graldine Van Bueren save the children Mathius Nizhoff Publishers Dordecht/Boston/London.

4. According to the information gathered about the subject matter, it has come to my awareness that gross child abuse does exist in Uganda. Therefore the research will be of great importance both to government and non-government organizations that concern themselves with the welfare of the children.
5. The research is also important in that it is one of the requirements in the passing of my course at *Kampala International University*.

CHAPTER TWO

FORMS OF CHILD ABUSE

2.1 Child Labour.

Child Labour refers to the employment of any person below the age of majority which is 18 years according to the Constitution of the Republic of Uganda 1995 as amended.

Mariam Webster, Mariam Webster dictionary defines Child Labour as the employment of a child in business or industry especially in violation of state or federal statutes.²³

According to the International Labour Organization, Child Labour is often defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to physical and mental development.

The definition of Child Labour is derived from the International Labour Organization Convention no. 138, 1973 on the minimum age of employment and the ILO Convention no. 182, 1999 on the worst forms of Child Labour. Both of these conventions are complementary to the 1989 United Nations Convention on the Rights of the Child (U.N.U.R.C).

The United Nations Convention on the Rights of the Child encourages member countries to protect children against economic exploitation and any work that is hazardous, Interferes with schooling or is harmful to their health and development²⁴.

²³ Mariam Webster dictionary

²⁴ ILO conventions no. 138, 1973 on the minimum age of employment and convention no. 182 1999 on the worst forms of Child Labour.

2.1.1 Back Ground of Child Labour.

Societies worldwide have at one time or another benefited from Child Labour. In the pre-colonial times, Children in the African traditional worked in accordance to their sexes. The boy child worked alongside his father, in activities like herding, clearing bushes for agriculture and hunting whereas the girl child worked alongside her mother in activities like fetching water, collecting firewood and cooking.

However with the coming of the colonialists, Child Labour increased with the emergency of activities like mining and large plantation agriculture and as a result, many children ended up either as Shamba boys, house maids, or office messengers of colonial masters²⁵.

According to Burns H. Weston in his book Child Labour and Human rights published 1st January 2005, the advent of Child Labour is linked to the industrial revolution in Britain, In the late 18th century and 19th, Employers recruited children to work in the industrializing economies of northern Europe, and Eastern United States.

The children were employed in two key industries of textile and coal mining and the conditions in which children worked provoked outrage thus "child Labour as born".²⁶

According to United Nation International Children's Emergency Fund, its healthy to engage children in any forms of work that are not harmful to them, however they are classified as Child Labourers when they are either too young to work or are involved in hazardous activities which may compromise their physical, mental, social or educational development.

²⁵ Racheal Hurst, the working child p.3

²⁶ Burns H. Weston, child labour and Human Rights

According to the statistics at the United Nation International Children's Emergency Fund, the prevalence of Child Labour is highest in sub-Saharan Africa. In the least developed countries, nearly one in four children aged a 5 to 14 are engaged in Labour that is considered detrimental to their health and development.²⁷

According to the New Vision publications of 1st June 2016 as reported by innocent Anguyo, Uganda had two million child workers aged five to 17 years as realized by Uganda Bureau of statistics in 2013.

According to the National Labour Force and Child Activities Survey 2013 the report unveiled by Uganda Bureau of Statistics at statistics house in Kampala establishes that the two million Child Labourers accounted for 16% of the entire population of 11.5 million children in Uganda.

It was also noted, child Labour is among the major causes of child abuse and exploitation and fundamental violation of children's rights²⁸.

The survey involved 7200 households from across Uganda. The survey was launched in 2011 with support from ILO.

According to the report, child labour is prevalent in sectors like agriculture, forestry and fishing accounting for 93% of the child labour in Uganda. According to the survey, Kampala ranked the most notorious employer of child labour with 79% of the city's child workers engaged in the services industry.

²⁷ UNICEF Report on nature and magnitude of child labour in Africa published on 1st Jan 2012.

²⁸ New Vision publications of 1st June 2016

The report is informed by the national labour force and child activities survey 2013 on child workers carried out by Uganda Bureau of statistics being the 1st of its kind in Uganda.

The report further indicates that 52.5% were males while 47.5% were female. One in every four working children which amounts to 26% carried heavy loads at their respective work places.

According to Wilson Nyegenye, the principle statistician, population and social statistics stated that children in rural areas were engaged in child labour more than their urban counter parts.

The report also shows that the orphaned children outnumbered non orphans in child labour according to Mr. Andrew Mukulu, the director population and social statistics at UBOS.

2.2 Sexual Abuse of Children

Sexual abuse of children

According to the American academy of child and adolescent psychiatry,

"Child sexual abuse can take place within the family, by a parent, step-parent, sibling or other relative; or outside the home, for example, by a friend, neighbor, child care person, teacher, or stranger. When sexual abuse has occurred, a child can develop many distressing feelings, thoughts and behaviors. No child is prepared to cope with repeated sexual stimulation. Even a two or three year old, who cannot know the sexual activity is wrong, will develop problems resulting from problems coping with the overstimulation. The child of five or older who knows and cares for the abuser becomes trapped between affection or loyalty for the person, and the sense that the sexual activities are terribly wrong. If the child tries to break away from the sexual

relationship, the abuser may threaten the child with violence or loss of love. When sexual abuse occurs within the family, the child may fear the anger, jealousy or shame of other family members, or be afraid the family will break up if the secret is told²⁹."

A child who is the victim of prolonged sexual abuse usually develops low self-esteem, a feeling of worthlessness and an abnormal or distorted view of sex. The child may become withdrawn and mistrustful of adults, and can become suicidal.

According to the Constitution of the Republic of Uganda 1995, any person below the age of 18 years is not allowed to engage in any sexual act, and under section 129 of the Penal Code Act as amended, any person who performs a sexual act with another person below the age of 18 years commits a felony known as defilement and is liable on conviction to suffer life imprisonment, besides that, there are other laws in Uganda which protect the Ugandan child against sexual abuse.

According to the available literature on sexual abuse, the girl child suffers more than the boy child.

Sexual abuse of children takes different forms as shall be seen later.

According to the African Network for the prevention and protection against child abuse and neglect (ANPPCAN) report released in 2016 It received 17 cases of minors who were defiled in just two weeks, In addition to that, the report on the notes of sexual abuse in Uganda shows that basing on the available police statics at least 21 children are defiled every day in Uganda, said Marion Agaba an ANPPCAN information officer. Those reported cases were however a tip of an ice bag as many cases are never reported.

²⁹ American Academy of Child and Adolensce Psychiatry (facts for families) on child sexual abuse

According to the country's annual and safety report 2011, 7690 cases of defilement were recorded that year, the report gives an example of a seven year old girl who was defiled and her uterus damaged, it also shows a case in Mukono where a pastor was caught in a lodge with a 17 year old girl.

The countries annual safety report 2011 indicates that perpetrators of these crimes are people who have responsibility over children like parents, teachers, religious leaders and guardians.

Although the media had been awash with cases of child sexual abuse especially defilement and Indecent assault, more people are still being caught on the wrong side of the law.³⁰

2.2.1 Commercial Sex Exploitation of Children in UGANDA.

According to ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) international, a non-government organization out of the total population of Uganda, 65% are in a situation of vulnerability due to multiple factors, including poverty, insecurity, diseases and conflict.

Due to the long insurgence in the north, many children were either orphaned or separated from their parents exposing them to all forms of abuse and many have ended up being exploited in organized commercial sex operations. This coupled with other factors explains the increasing numbers of young prostitutes we see today on the streets of the towns of Uganda.³¹

³⁰ African network for the preventions and protection of children against child abuse and neglect.

³¹ ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) international report of 11th Feb 2013

According to the few places I visited like Kimumbasa in Kawempe in Kampala, Kikubamutwe in Kabalagala in Makindye division, Mbiko in Jinja, Mafubira, commercial sexual exploitation of children is prevalent in slums. Basing on the interview I had on 20th April 2016 with one of the girls who preferred anonymity intimated to me that she was brought to Mafubira from Kabaale by her friend, who did not reveal what she does for a living, on her surprise she was told to accompany her on the street to learn how to seduce men, that since then prostitution has been the only source of survival.

2.2.2 Defilement

The penal code Act. cap 120 provides for penalties for people who violate children's rights, thus making it a very important instrument in the in the fight against child abuse. It creates offences relating to children and others which accommodate children by reason of being Ugandans.

Under section 129 (1) of the Penal Code Act Cap 120 as amended which states that any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

It further states under sub section 2 that; any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction liable to imprisonment not exceeding eighteen years.

Under section 129 (3) any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.

Section 129 (4) gives the circumstances referred to in sub section 3 of the same section and these include the following:

- (a) Where the person against whom the offence is committed is below 14 years
- (b) Where the offender is infected with Human Immune Deficiency Virus (HIV)
- (c) Where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed.
- (d) Where the victim of the offence is a person with disability; or
- (e) Where the offender is a serial offender .³²

According to the executive director of Africchild Center, David Mugawe at a symposium organized in 2014 by Child Fund an international organization dedicated to helping children in need with the aim of lobbying legislators to support end to violence against children, he said that 90% of the children are considered vulnerable to defilement in one way or another.

The grim statistics about the spate of sexual predation on children was confirmed by the commissioner General of prisons Mr. Johnson Byabasaija that 30% of the inmates incarcerated over capital offences are on defilement charges.

According to all Africa global media report on defilement cases it was reported that half of the criminal cases reported at police were about defilement of children which means that the biggest numbers of crimes committed in Uganda is against children.

It was submitted at the symposium under the Auspice of child fund an international organization by Mugawe that you cannot achieve any development benchmarks when majority of the population is threatened. Hon Banyenzaki, the Rubanda west MP by then was reported saying at the symposium that it's hard to get the true scale of sexual

³² Section 129 of the Penal Code Act cap 120.

crimes against children as most of the parents see it as chance to make a fortune from the defilers and as a result many end up unreported.³³

It was reported by John Okot of Monitor Publications Newspaper on the 2nd of April 2016 that at least 60 cases defilement are registered at Gulu central police station. Majority of which are aggravated defilement involving young girls of 14 years and below according to Mr. James Asubu the officer in charge of investigations at the police station.

To make matters worse, these young girls are being defiled by men who are HIV positive. The Gulu District Gender based Violence focal point person also said that most girls fall prey to defilers during market days, discos and funeral rites.³⁴

School children are lured into the act of defilement by promising them little money to buy food and clothing, the most at risk are girls in the upper primary classes (P.5-P.7). Some are well into their teens and by the time they reach six or seventh grade, because their academic progress was delayed due to lack of school fees, most of them from poor families see no future which makes them vulnerable to the advances of unscrupulous men.³⁵

2.2.3 Child Forced Marriages

The minimum age of marriage in Uganda is 18 yrs under the Constitution of the Republic of Uganda 1995. However people can marry at the age of 16years if there is consent by parents of the bride and groom.

³³ Monitor Publications of 9th/March/2014

³⁴ Monitor Publications of 2nd April 2016

³⁵ Peter Georges of the St Nicholas children Fund, a non-government organization providing orphans and vulnerable children with education and health care.

According to the United Nations International Children Emergence Fund report of 2016 on the state of the world of children, nearly 1 in every 2 girls in Uganda are married off by their parents before the age of 18 years. Child Marriage in Uganda is often as a result of poverty, limited access to education and social norms. It is alleged that parents marry off their daughters at a tender age in the hope of securing financial security. Also tradition dictates that girls are married at a young age in order to fulfill their roles as wives.

The practice is also rampant in war torn areas and among those living in refugee camps where the parents often feel unable to protect their daughters from rape, marrying them off to a war lord or other authority figure is seen as a form of protection.

However on the 16th day of June 2015, the government of Uganda launched its first ever national strategy to end child forced marriages and teenage pregnancy which was developed in partnership with civil society organizations including girls not brides members in Uganda and the UN agencies.³⁶

According to Uganda Women Network, victims of child forced marriages are forced to commit suicide, t to avoid the honor of living in forced marriage.³⁷

The increase in child marriage which is a human rights violation according to United Nations Population Fund, is attributed to persistency in poverty and gender inequality³⁸.

³⁶ UNICEF, the state of the world children, 2015, day for children, Uganda child early and forced marriages in Uganda.

³⁷ Uganda Women's Network Report of 25 Feb 2015.

³⁸ UNFP United Nations Population Fund.

2.3.4 Incest in Relation to Children

Many children in Uganda have been subjected to sexual abuse by lustful relatives in unstable marriages. According to Ngora district police commander Apollo Kyangunga said mothers do not report cases of incest to the police for fear of being battered by their husbands, that also when couples break up children are sent to live with relatives who may not be friendly to them.

There have been reports of perpetrators threatening to kill the victims if they ever disclose what happened to them even to the authorities. To make matters worse, the vice is being practiced by elites who are expected to sensitize the public about the rights of children.³⁹

In 2013, a member of parliament Hon. Kakooza was taken to Makindye by his wife claiming the Honorable had sexual intercourse with his biological daughter although he was cleared of the charges by Makindye chief magistrate court for lack of evidence by the prosecution.⁴⁰

Even the few cases which are taken to court, most of them don't pass the test of beyond reasonable doubt. In **Baguma Vs Uganda Criminal Appeal no. 7 of (2004) [2005]**, The appeal arose from the judgement of Court of Appeal upholding a high court decision in which Buguma was convicted of defilement of Agnes Nalusiba, a girl below the age of 18 years. The case against the appellant was that on the 16th of April 2001, he took Agnes to his house and had sexual intercourse with her. The Supreme Court sitting in Mengo decided in favour of the appellant saying that the prosecution had failed to prove the case beyond reasonable doubt.⁴¹

³⁹ Report by Richard Otim of all Africa

⁴⁰ Red Paper Publications of 4th Dec 2013.

⁴¹ Baguma Fred Vs Uganda criminal Appeal no. 7 of [2004] [2005]

2.2.5 Homosexuality

Under section 145 of the penal code Act cap 120, it's an offence to have carnal knowledge of any person against the order of nature and where one is guilty, he or she shall be liable on conviction to suffer life imprisonment. Homosexuality entails men having sex with fellow men and women having sex with fellow women. This is an example of carnal knowledge against the order of nature.

It was in 2014 alleged by the speaker of parliament, the right honorable Rebecca Alitwala Kadaga that the computers donated to schools by US culture warriors are installed with software and literature that promote homosexuality in the institutions. The speaker of parliament went ahead to say that homosexuals are recruiting members of religious institutions and adopting vulnerable children and turning them into gay. She also warned the Ugandan society to be on alert because the gays are here to distort our cultural heritage.

Kadaga's strong warning came from US conservatives like Scott Kinley and Leu Engle during their visit to Uganda where they urged Ugandan parents to reject UNICEF's books, saying the books distributed to schools by UNICEF normalizes homosexuality to teenagers. They were quoted saying that we expect a massive protest by parents who are mostly not aware that such materials even exist in their country, later on in their children's class rooms⁴².

The perpetrators seem to be very strong because efforts to have the anti-homosexuality law have been futile. It should be remembered that the parliament of Uganda had passed the anti-homosexuality bill into law however the same was annulled by the constitutional court with the reason that it was passed without Quorum. Even the few people who have been charged under the old law under section 145 of the penal code

⁴² Report by Kapya Kaoma of 3rd Dec 2014, political research associates challenging the right, Advancing social justice

Act Cap 120 which creates offences against the order of nature have been acquitted for lack of evidence.

Case in point is that of Chris Mubiru the former Sc villa boss who was charged, convicted and sentenced by Buganda Road Chief Magistrate under section 145 of the penal code Act Cap 120 for sodomising a 16 year old boy Emmanuel Nyanzi. However the culprit was later on the 19th day of April 2016 acquitted by High Court judge Willson Masaalu on grounds that the trial magistrate erred when she considered evidence from a video which had not been tendered in court⁴³.

In addition, the gay community seems to be very strong owing to the support they receive from the developed countries. It should be recalled that Uganda was widely criticized by the western countries for passing the anti-homosexuality bill into law where others ended up cutting off aid. It is alleged that the president of Uganda had to apologize for having assented on the bill.

Many of the child victims of homosexuality have suffered both physical and psychological torture and several children have resorted to self-destructive behavior including committing suicide.

2.2.6 Female Genital Mutilation

It was defined in 1997 by World Health Organization, United Nations International Children's Emergency Fund, and United Nations Population Fund as the partial or total removal of external female genitalia or other female genital organs for nonmedical reasons.

According to United Nations International Children's Emergency Fund, the practice is carried out by traditional circumcisers using a blade. Female genital mutilation is

⁴³ Uganda Vs Christopher Mubiru Kisingiri criminal case no. 005/2014.

conducted from days after birth to puberty and beyond. Most girls are cut before the age of 5 and the procedures differ according to the tradition or Ethnic group. It includes the removal of the clitoral hood and clitoral glands, removal of the inner and outer labia and closure of the vulva. A small hole is left for the passage of urine and menstrual fluid and the vagina is opened for intercourse and further for child birth.

According to The Godparents, a Non-governmental organization on female genital mutilation, the practice is rooted in gender inequality, attempts to control women's sexuality and aesthetics. It is usually initiated and carried out by women who see it as a source of honour and those who feel that failing to have their children (daughters and granddaughters cut will expose them to social exclusion.

This practice has however resulted into difficulty in urinating and passing menstrual flow, chronic pain, the development of cysts, and inability to get pregnant, complications during child birth, fatal bleeding and fistula. There is also no health benefits discovered as a result of cutting off external organs of these girls. The practice is prevalent amongst the Sabins in eastern Uganda from the district of Kapchorwa⁴⁴ who claims they are protecting traditional norms.

2.3. Child Sacrifice

Under article 22 of the Constitution of the Republic of Uganda 1995, no person is allowed to take away the life of another except in execution of a sentence passed by competent court in respect of a criminal offence under the laws of Uganda.

⁴⁴ UNICEF on child sacrifice in Africa

Child sacrifice is where a child is brutally murdered by people in search for wealth, political power and blessings from their ancestors. The perpetrators remove different body parts of the victims as directed by the witch doctors.

According to Clea Brond Hurst (World and its Voices) in her report of Jan 2016, at least six cases of mutilation and murder of children as "good Luck" sacrifices have been reported in past months in Uganda. Several children disappeared in the run up to the general elections and immediately after the February 18th polls.⁴⁵

People sacrifice children with the belief that they will get wealth and protection. They cut off children's body parts and mix them with drugs as demonstrated by the witch doctors. It's on record that perpetrators target children who are not circumcised, whose ears have no holes and people do this with the hope that their lives will change for the better.

There are also allegations that the practice is also rampant in the construction industry especially where tycoons who construct huge buildings end up burying children alive. This is to ensure that the construction is successful. It's also believed that the vice is prevalent in communities comprised of the poor people where children are surrendered for sacrifice either to get rich or money from tycoons.

The United Nations also reported that albino sacrifice was on the rise in Africa, in 2014 and 2015. The practice was worse in Tanzania but good enough the government of Tanzania made a crackdown on the traditional healers and witch doctors and most of them crossed to Uganda leading to the spread of the practice to Uganda.⁴⁶

⁴⁵ Clea Broad Hurst, the world and it voices

⁴⁶ Peter Sewakiryanga, the founder director of Kyampisi child care ministries, a non government organization working with survivors of attempted child sacrifice.

The practice according to Shelin Kasozi of Kyampisi Child Care Ministries, is rampant in the districts neighboring Kampala city, for example, Sembabule, Mubende, Mukono, Buikwe, all located in the central Uganda.

Moses Binoga, a coordinator of the anti-trafficking task force at the Ministry of International Affairs acknowledged that children had been reported missing during the just concluded elections of 2016 but could not confirm Kyampisi Child Care Ministries reports but confirmed that seven cases of children and six cases of adults had been reported in 2015.

Mr. Binoga said that mutilated bodies had been found, some without other body parts like private parts, heart and liver.

In 2012, 82 year old grandmother Hanifa Namuyanda was sentenced to 15years in jail for taking part in the ritual sacrifice of her granddaughter Shamim Nalwoga. The child was found with her tongue, eyes and genitals mutilated.⁴⁷

In 2008, Uganda received the horrific news of the ritual murder of a 12 year old boy Joseph Kasirye in Masaka by Kampala tycoon Kato Kajubi Geodfey who was sentenced in 2012 to life imprisonment on the 16th July 2012, by Justice Mike Chibita, the Masaka High court judge by then.⁴⁸

2.4 Child Neglect

Child neglect is a form of child abuse and is a deficit in meeting the child's basic needs including the need to provide adequate health care, supervision, nutrition, housing as well as their physical, emotional, social, educational and safety needs.

⁴⁷ Shelin Kasozi of Kyampisi child care ministries as reported on the 29th day of Feb 2016 (KOMS)

⁴⁸ Uganda Vs Kato Kajubi Godfrey (HCT – 06 – CRS (016/2009) [2010] UGHC 4 (23 April 2010).

Under Article 34 of the Constitution of the Republic of Uganda, children have a right to know and be cared for by their parents or those entitled by law to bring them up.⁴⁹

Parents are sometimes forced to abandon their children due to financial constraints, domestic violence and so forth disabling them to meet the basic needs of the young ones, child neglect is also attributed to unwanted pregnancies got as a result of defilement and rape, after giving birth, the mother will dump the baby at the roadside, hospital and dust bins, in 2012 there was a case in Jinja where the father abandoned the mother in Jinja hospital after giving birth to three babies at once (triplets) claiming he had no finances to take care of them.

Child neglect is one of the common forms of child abuse as it denies the child of the physical, emotional and mental development since they have no chance of attending school.⁵⁰

The neglected children end up on the streets where they face violence, physical abuse and sexual abuse. In addition while on the streets the children face police brutality, given the conditions they go through they end up turning into hardened criminals in the towns of Uganda, for example the Kifesi group in Makindye division Kampala, most its Mombasa are victims of child neglect.⁵¹, they steal and kill without fear in a documentary carried out by NBS reporter Mr. Sserwanja in March 2016 revealed that *these children steal because its these only way of earning a livelihood, one of them who preferred anonymity Said that they will only kill the victims if they put up resistance when they are stealing from them*⁵².

⁴⁹ Article 34 of the constitution of the republic of Uganda.

⁵⁰ US state and local child protection services.

⁵¹ Human Rights Watch

⁵² NBS documentary March 2016by Mr. Sserwanja

The increasing numbers of mothers who are now working has also led to an increase in the abuse of children, these mothers hire house girls who in their absence mistreat the babies due to poor pay though this does not call for mistreatment of the innocent child.

In 2014 a maid was convicted and sentenced to four years in jail for abusing a toddler in the case of **Uganda Vs Jolly Tumuhiire** which shocked the country after a graphic video of the violent act was made public, the chief magistrate Lillian Buchana told Tumuhiirwe that she had committed an "unjustifiable and inexcusable" crime.⁵³

It should however be noted that there are few able parents who can afford to install video cameras in their houses like Kamanzi Richard did in order for him to know what was happening, therefore there are many cases of the kind that end up behind the doors.

2.2.5 Psychological Abuse

Psychological abuse of a child is a pattern of intentional verbal or behavioral actions or lack of actions that convey to a child the message that he or she is worthless, Flawed, unloved, unwanted, endangered or only of value to meet someone's else's needs. Withholding emotional support, isolation, or terrorizing a child are forms psychological abuse.

Domestic violence that is witnessed by a child is also considered a form of psychological abuse.

There are different categories of child psychological abuse as seen below.

⁵³ Uganda Vs Jolly Tumuhiire Criminal case file no. 826 of 2014

Rejection: to reject a child, to push him or her away, to make him feel that he is useless or worthless, to undermine the values of his ideas or feelings, to refuse to help him.

Scorn: to demean the child, to ridicule him, this can make a child to grow with a belief that he is worthy nothing.

Terrorism. To threaten a child or someone who is dear to him with physical violence, abandonment or death, it can also include a situation where a child is threatened with punishment if he does not comply with what is told to do.

Isolation: to physically or socially isolate a child to limit his opportunities to socialize with others.

Exploitation; To encourage inappropriate or deviant behavior, to expose the child to anti-social role models, to consider the child as a servant or to encourage him or coerce to participate in sexual activities.

Exposure to domestic violence

Abusive words and acts of violence between parents do not support a child's healthy development and wellbeing. Instead it creates an environment of fear, hostility or anxiety, a child is sensitive to the feelings, opinions and actions of his or her parents.

The absence of emotional response to show oneself as inattentive or indifferent towards the child to ignore his emotional needs, to avoid visual contact, kisses or verbal communication with him, to never congratulate the child can also make him feel rejected and unwanted by the parents.⁵⁴

⁵⁴ Healthy place, America's Mental Health Channel.

CHAPTER THREE

CAUSES AND EFFECTS OF CHILD ABUSE

3.0 Introductions

The effects of abuse affect each child differently, while the effects of abuse can be severe and long lasting, children who have abused can experience physical and psychological effects as seen below.

3.1 Causes

There is not any single fact which causes child abuse, abuse usually occurs in families where there is a combination of risk factors. Abuse and neglect of children occur most often in families where there is pressure and lack of support. There are a number of interacting causes of child abuse as shown below.

3.1.1 Poverty

This is the root cause of the forms of child abuse and despite claims to the contrary, poverty remains the primary cause of child abuse and the reason many children are removed from their homes.

According to the National Coalition for Child Protection Reform, states laws define neglect in such a way that is clear that neglect is caused by poverty for example that parents who must leave their children alone when they go to work because they cannot afford child care can lose their children for "lack of supervision" but the underlying problem is obviously poverty.⁵⁵

Poverty has forced parents to engage their children in child labour to supplement the family income. For example in Busoga region where there are many sugar cane plantations, you find children of below 14 years of age cutting sugarcane during school

⁵⁵ Report by Opposing viewpoints (on the causes of child abuse 2004)

hours instead of studying. One aged 16 in Mayuge district I endeavored to interview informed me that he is an orphan and that he has to look for his school fees and more income to cater for the mother. Poverty has led many parents to force their children to marry at tender years since they look at their girls as a source of wealth. This village mentality has persisted since the pre-colonial days to date.

On the 15th of June 2016, NTV Prime News ran a story of a girl in Karamoja region who was crying for help from any Samaritans who could help her with school fees because *the father was forcing her to marry in exchange for cows.*

In the story she was telling the parent to give her school fees and that she would buy him the cows after her studies.⁵⁶

According to Humanium an International Non-governmental Organization, in Uganda more than a third of all inhabitants live below the poverty line and children are the primary victims of this deplorable economic situations because their families cannot ensure their health, or their wellbeing more especially the remote areas of the country, as a result some children are sent to work as house girls or boys or to live with their relatives in the urban areas where its taught that their situation will change for the better. However, these children end up being exploited, defiled and engaged in criminal acts.

Also other rights are neglected due to poverty for example access to education is denied, although the government of Uganda introduced Universal Primary Education

⁵⁶ NTV Prime News of 15/June/2016

and Universal Secondary Education , the performance under these programs is poor compared to private schools where able parents take their children⁵⁷.

3.1.2 Unemployment.

Child maltreatment rates of abuse are higher in communities with high levels of unemployment. Such communities are also characterized by high levels of population turn over and over crowded housing. Unemployment causes poverty which adversely affects children through its impact on parental behavior and availability of community resources. As result children in these communities are exposed to all forms of child abuse for example child prostitution, child labour, emotional abuse and others.

In addition to that, Children are forced to leave their homes in search of food, clothing and good life and many of them end either on the streets or in people's homes where they are exposed to different forms of abuse.

In addition, in instances where parents are unemployed and cannot afford the basic needs for their families, young girls who cannot attend school as a result will easily accept a marriage proposal from any man in order to be taken care of.

3.1.3 Alcoholism in Families.

In families where mothers and fathers are drunkards, children are exposed to all sorts of abuse, first when parents get drunk they use all sorts of abusive language in the presence of their children, beating of the children and wife is the order of the day. Some parents sometimes remove their clothes and start to execute their conjugal duties when their children are watching, causing them bad memories never to be forgotten in their lives. In the end those who feel fed up end up fleeing their homes to the nearby

⁵⁷ Humanium, An international NGO dedicated to stopping violations of children's rights throughout the world.

relatives or to the streets where they are either engaged in child labor, commercial sex exploitation, homosexuality or being defiled by those who pretend to be helping them.

In addition to that, Alcoholic families neglect their responsibilities as parents to provide the basic needs to their children like education, food, health care which hinders their social and mental development.⁵⁸

3.1.4 Domestic violence.

This entails fights and abusive language in families and has been cited as one of the causes of child abuse which results into divorce leaving children in needy situations as they are sent to live with relatives or step mothers and fathers who turn them into working machines subjecting them to work meant for adults. In May 2016, NTV aired out news of a child who had been defiled by a stepfather and ended up being murdered.

3.2 Effects of Child Abuse.

Under Article 34 of the Constitution of the Republic of Uganda 1995, it is provided that subject to the laws enacted in their best interests, children have a right to be cared for by their parents or those entitled by law to bring them up. Therefore it's the responsibility of every parent and those entitled by law to bring them up to provide a safe childhood and a life free from violence. The experience of child abuse and neglect infringe upon that right⁵⁹.

The effects of abuse affect each child differently, while the effects of abuse can be severe and long-lasting as seen below;

⁵⁸ Interview with a number of women in Mufubira Jinja District and the chairmen LC 1 Mafubira A,B & C

⁵⁹ Article the 34 of the constitution of Uganda 1995.

3.2.1 Mental health problems.

Persisting mental health problems are a common consequence of child abuse and neglect in adults, mental problems associated with past histories of child abuse and neglect include personality disorder, posttraumatic stress disorders, dissociative disorders, depression and psychosis. Depression is one of the most commonly occurring consequences of past abuse or neglect. According to Cathryn Hunter, senior research officer with the child family community Australia information exchange at the Australian institute of family studies, adults who had experienced child abuse were two and halftimes more likely to have major depression and six times more likely to have posttraumatic stress disorder compared to adults who had not experienced abuse⁶⁰.

In a prospective longitudinal study in the United States by wisdom, Dumont and Czaja in 2007 found that children who were exposed to different types of abuse were at increased risk of life time major depressive disorder in early adulthood, the study also reveals that children exposed to physical abuse are at a risk of psychiatric disorders in adulthood than those not reporting such abuse, the study also indicates that adults reporting cases of child physical abuse also reported child sexual abuse and neglect⁶¹.

3.2.2 Suicidal behavior, self-destructive

Consistent evidence shows that children exposed to child abuse and neglect are at risk of attempted suicide. Children with adverse experiences in childhood were 12 times more likely to have attempted suicide than those who had no adverse experiences in childhood. The higher rates of suicidal behavior in adult survivors of child abuse and

⁶⁰ Cathryn Hunter, senior research officer with the child family community Australia information exchange at the Australian institute of family studies, published by the Australian institute of family studies.

⁶¹ Research by child family community Australia. On the long term consequences of child abuse and neglect

neglect have been attributed to the greater likelihood of adult survivors suffering from mental health problems.

According to Lindberg and Distad's 1985 in their research on victims of sexual abuse carried out a small study of 27 adolescents with incest histories and found that one third had attempted suicide. Marlene Steinberg in her hand book "the association of Dissociation" – A clinical guide published 1999 indicates that depressive symptoms and hallucinations significantly differentiated adolescent in patients with a history of sexual abuse from those with no history of sexual abuse, although it is not clear whether these behaviors come before or after the abusive experiences⁶².

3.3.3 Cognitive and Intellectual Consequences.

Cognitive and language deficits in abused children have been noted clinically. According to Augoustinos, 1987 in his research findings on the effects of child abuse found that abused and neglected children with no evidence of neurological impairment have also shown delayed intellectual development, particularly in the area of verbal intelligence, problematic school performance for example low grades, poor standardized test scores, and frequent retention in grade is a fairly consistent finding in studies of physically abused and neglected children.

According to Dodge and colleagues in their book intergenerational continuity in child maltreatment published in 2005, physically harmed children show deviant patterns of processing social information. Also related to aggressive behavior at the age of five years, physically harmed children are less attentive to social cues (an event that is a signal for somebody to do the same thing), more inclined to attribute hostile intent, and less able to manage personal problems. The study indicates that possible cognitive deficits in abused and neglected children affect the development of social information

⁶² Understanding child abuse and neglect 1993 by Cynthia Crosson Tower.

processing patterns which in turn lead to chronic aggressive behavior. The experience of severe physical harm is associated with the "acquisition of a set of biased and deficient patterns of processing social provocation information"⁶³.

3.2.4 Violence.

*Abused and neglected children mould into tomorrow's murderers and perpetrators of other violent crimes if they survive. Curtis (1963) says that number of small scale clinical reports described prior abuse in the family backgrounds of adolescents who attempted or succeeded in killing their parents*⁶⁴.

According to Lewis (1979) in his book *Children's Social Behavior*, neuropsychiatric vulnerabilities and histories of abuse and family violence distinguished the more violent subjects from their less violent delinquent counterparts, when these delinquents were followed into young adulthood, the abused delinquents who also most impaired neuropsychiatrically were found to have committed greatest numbers of crimes as adults⁶⁵.

In addition to that, many abused and neglected children have ended up joining streets where they are welcomed by hardcore criminals in the cities (towns) who train them to kill and steal using guns and other dangerous weapons like iron bars. They also use chemicals like chloroform when carrying out their operations of committing crime and terrorizing people.

⁶³ *Ibid* page 1679

⁶⁴ Curtis (1963) *Violence breeds violence*

⁶⁵ Lewis et al 1979 *Children's Social Behaviour*

3.2.5. Children also become runaways.

Abuse and neglect experiences may increase the chances of an adolescent's becoming a runaway. According to Cynthia Crosson Tower, it was noted that many runaway children do not runaway towards something, but rather ran away from something, a home life in which they were subject to abuse, particularly sexual abuse. Only a handful of studies have attempted to describe the extent to which adolescents who ran away report experiences with abuse. In two studies, sexual abuse victims were found to have run away from home more often during adolescence than clinical controls.⁶⁶

3.2.6. Alcohol Problems.

Recent research has called attention to alcohol problems that may be a consequence of child maltreatment. Researchers have hypothesized that for abused and neglected children, alcohol use may serve a number of possible functions. For example, to provide psychological escape from an abusive and aversive environment; it also serves as a form of self-medication in which the child tries to gain control over his or her negative life experiences; it also acts as a form of self enhancement to improve the child's self-esteem, to reduce feelings of isolation and wisdom. It may also serve as a coping strategy adopted by abused and neglected children. Despite the hypothesized association evidence supporting the relationship is sketchy.

Relatively few studies have examined alcohol problem in adolescent who were abused or neglected in childhood and even fewer have looked at these connections in non-clinical samples. One study found that physical abuse was significantly related to alcohol use in a cohort of high risk youth prior to the initial interview, but not later.

In addition, parental alcohol problem may be a result of child maltreatment and may have an important role in influencing the parents maltreating behavior, since most child abuse is committed by biological parents.

⁶⁶ Understanding child abuse and neglect 1993 by Cynthia Crosson Tower on page 219

3.2.7 Illicit Drug use or Abuse

Child abuse and neglect has always resulted into illicit drug use or abuse in adulthood, as a way of escaping bad memories of abuse and self-medication to control negative sensations. Drug use is also seen as a way of enhancing and improving self-esteem, many also claim that it helps reduce feelings of isolation and loneliness. Research has shown that people with histories of male sexual abuse used a variety of drugs than non-victims and used more drugs to self-medicate but did not report an earlier onset of drug use.

According to a study by Goldstone et al 1989 Department of Sociology, University of California in his book "Toward a Fourth Generation of Revolutionary Theory, it was found that drug abuse was more common among a control group of girls than sexually abused girls. A study of 444 adolescent girls admitted to chemical dependency treatment programs found that sexually abused girls did not differ in the overall prevalence or frequency of substance use from non-victims, although the victims were more likely to report regular use of particular drugs and to report an earlier age of onset of drug use⁶⁷.

3.3 Conclusion

In conclusion children who have been exposed to abuse, and neglect can experience severe and long lasting effects, however these can grow into upright and important Ugandans if they are rehabilitated at an early age; Therefore people should not look at these children as a curse since most of them are not in this kind of state because they want to be but because of the various situations and causes as discussed earlier. These children need to be supported and helped to overcome the effects of their abuse.

⁶⁷ Goldstone et al 1989 department of sociology university of California

CHAPTER FOUR
CRITICAL ANALYSIS OF LAWS RELATING TO THE PREVENTION OF CHILD
ABUSE IN UGANDA.

4.0 Introduction

There are a number of legal instruments protecting the Ugandan child from abuse, which range from national, regional and international laws.

On the national scene, we have the Constitution of the Republic of Uganda 1995, the Children Act cap 59, the Penal Code Act 120 as amended and The Employment Act 2006 (section 32) on the employment of children and others.

On the regional level we have, the African Charter on the Rights and Welfare of the child which deals with the rights of children on the basis of their special conditions of vulnerability. There is also the African Charter on Human and People's Rights which guarantees every person certain rights which are also being enjoyed by the children.

At the international level, there is the United Nations Convention on the Rights of the Child which was the first legal document in human history to recognize the rights of the children in the world established in 1924; second is the International Labour Organization Conventions No. 132 of 1973 and convention No. 182 of 1999 on the worst forms of child labour.

4.1 The Constitution of the Republic of Uganda 1995.

The Constitution of the Republic of Uganda 1995 particularly chapter four contains, numerous rights provision that apply to children as well as to adults, but also a large number that specifically address the rights of children.

Article 257 (1) (c) defines a child as a person under the age of 18 years. Under Article 34 of the Constitution of the Republic of Uganda 1995, children have a right, subject to laws enacted in their best interest, to know and be cared for by their parents or those entitled by law to bring them up. This article is against parental neglect, denial of the right to education and others which is a responsibility of the parents and or people entitled by law to take care of the child. Therefore non compliance with article 34(1) of the constitution amounts to violation of children's right guaranteed under the constitution.

Furthermore, the Constitution Under Article 17(1)(c) creates a duty for citizens to protect children and vulnerable persons against any form of abuse, harassment or degrading treatment. The constitution further guarantees the children as human beings protection from inhumane treatment which includes torture, cruelty, degrading treatment, or punishment.

Court cited Article 24 of the Constitution of the Republic of Uganda 1995 in **Kyamanywa Simon Vs Uganda** where corporal punishment was declared to be null and void as it was inconsistent with article 24 of the Constitution of The Republic of Uganda, 1995. This explains why caning/flogging of students in schools is no longer acceptable⁶⁸.

The Constitution of the Republic of Uganda, 1995 also protects the girl child against early and forced marriages. It provides that men and women of the age of 18 years and above have a right to marry and found a family and that marriage shall be entered into with the free consent of the parties. Where they are forced to marry against their consent, the marriage becomes voidable at the option of the aggrieved party; however enforceability of this article has proved to be impossible more especially in the rural

⁶⁸ Kyamanywa Simon Vs Uganda Constitution Court Const Re No. 10 of 2000-12/14/2001

areas where most of these cases that include child marriages end at police stations and local council courts but no justice is accorded to the child victims.

Article 34 (4) of the Constitution of the Republic of Uganda, 1995 also protects children against any form of social or economic exploitation. It bars employers from engaging children or making them 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, and social development. Therefore anyone who contravenes this provision violates the children's right guaranteed under the Constitution. This article also makes it a violation of the children's rights to engage them in commercial sex exploitation, subjecting them to psychological and other forms of abuse, which most of the times result into long lasting effects on their lives⁶⁹.

Article 34 (3), the Constitution of the Republic of Uganda 1995 further protects children against abuse where it provides that children have a right to medical treatment, education and other social or economic benefits which is a responsibility of the state and the parents to provide and that the same shall be enjoyed without any due regard to the child's religion.⁷⁰ The Uganda government has emphasized this right by providing free medical services in all government hospitals and the launching of universal primary and secondary education programs, where primary and secondary students can access free education. Therefore any parent who fails to take his or her child to school is held accountable for the violating the child's right to education. Resident district commissioners have tried to give life to this provision by arresting parents who fails to take their children to school.

⁶⁹ Article 34 (4) *Ibid*

⁷⁰ Article 34 (3) *Ibid*

Under Article 34 (6), the Constitution of the Republic of Uganda, 1995 also puts it onto the prison authority to gazette separate detention centers for child offenders. This is aimed at protecting children from being exposed to hard core criminals as well as protecting them from all forms of abuse by the adult criminals in prisons. Therefore it's a violation and abuse of the children's right to keep them in the same cells with adult offenders. The Ugandan government has tried to guard children against this form of abuse by building child detention centres like Naguru remand home, Bugungu, and others. However the remand homes are few and the few available ones accommodate more than they were designed to accommodate, hence the government ends up mixing these child offenders with adults criminal where instead of being rehabilitated they become hardened criminals⁷¹.

Besides being children, they also have a right not to be subjected to forced labour which right is enjoyed by all Ugandans⁷².

However the Constitution has loopholes, as seen below;

Under Article 34(2) where it states that children have a right to education which is a responsibility of both parents and government, there is no strong law that makes sure that this provision is implemented because children fear to petition courts to enforce their rights guaranteed under this provision.

The Constitution does not also define clearly activities which are likely to be harmful to children hence violation of Article 34(4). This is left to the interpretation of different persons, authorities and courts of law.

⁷¹ Article 34(6) *Ibid*

⁷² Article 25 *Ibid*

In conclusion, the Constitution has some good provisions relating to prevention of child abuse and if well interpreted and implemented, the Constitution of the Republic of Uganda 1995 can serve as a strong tool in the fight against child abuse.

4.2 The Employment Act 2006

The Employment Act guides employers on the age at which children should be employed.

Under the Employment Act 2006, a child of the age of 12 shall not be employed in any business undertaking or workplace. However a child of the age of 14 years can be employed in light work under the supervision of an adult aged 18 years and above provided the work does not affect the child's education.⁷³ Therefore the employment Act does not bar employment of children provided the work is healthy for the mental social and economic development of the child.

Under section 32 (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). It is further provided in Section 32 (4) that 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 child after being notified in writing by a labour officer that the employment or work is injurious to health, dangerous or otherwise unsuitable for the child.

The Employment under section 32 (5) also Barres employers from employing child between the hours of 7pm and 7am. This is meant to ensure that children who work are accorded enough rest and time to develop as normal children.

⁷³ Section 32 (1) and (2) of the Employment Act, 2006.

The Act further enjoins that any person, including a labour union or employers' organization, may complain to a labour officer if he/she considers that a child is being employed in breach of the provisos of the law.

On a sad note, the Employment Act does not define work which is light and non-hazardous to the health of the child. This leaves wide room for interpretation by the employers and could be used as a loophole to foster child labour.

The Employment Act is also not fair on the age at which children should be admitted to work because at 14 years, a child is still young and does not possess sufficient intellect to judge what is right or wrong for him or herself. This may divert the child from attending school which hinders their mental development.

4.3 The Children Act Cap 59.

The Children Act came into force in August 1997 and the aim was to further, reform and consolidate the law relating to children, that is to say, to provide for the care, protection and maintenance of children, to provide for local authority support for children, to establish a family and children's court and make provisions for children charged with offences and other connected purposes.

The Children Act under section 2 defines a child as a person below the age of 18 years.⁷⁴

Under sections 13 and 14 of the Children Act, it establishes the family and children's court in every district and any other lower government unit designated by the chief justice by notice in the gazette. The court handles criminal charges against a child subject to sections 93 and 94 and applications relating to child care and protection.

⁷⁴ Section 2 of the children Act Cap 59

Under section 3 of the Children Act, it is provided that the welfare principles and the children's rights set out in the first schedule to this Act shall be the guiding principles in making any decision based on this Act⁷⁵.

The welfare principle was defined in the case of **Walker Vs Walker (1981)** ALLER 207 that "welfare principle" is an all encompassing word; it includes material welfare both in the sense of adequacy of resources to provide a pleasant home and a comfortable state of being living and in the true sense of adequacy of care to ensure good health and personal pride⁷⁶.

Schedule 1 rule 1 provides that any person to determine any question with respect to the upbringing of a child or the administration of the child's property or the application of any income arising from it, the child's welfare shall be of the paramount consideration⁷⁷.

In the determining any question relating to the welfare of the child, the Act under Rule 3 of the first schedule to the Children Act provides the criteria for making the decisions concerning the welfare of a child.

The person shall have regard in particular to:

- a) The ascertainable wishes and feeling of the child concerned considered in the light of his or her age and understanding.
- b) The child's physical, emotional and educational needs.
- c) The likely effects of any changes in the child's circumstances'
- d) The child's age, sex, background and any other circumstances relevant in the matter.

⁷⁵ Section 3 of the children's Act Cap 59.

⁷⁶ Walker Vs Walker (1981) ALLER 2007.

⁷⁷ I schedule rule 1 to the children's Act cap 59.

- e) Any harm that the child has suffered or is at risk of suffering.
- f) Where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.⁷⁸

The Act provides for children's rights under Rule 4 of the first schedule to the Act where it states that a child shall have the right:-

- a) To leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;
- b) To a just call on any social amenities or other resources available in any situation of armed conflicts or natural or man-made disasters;
- c) To exercise, in addition to all the rights stated in this schedule and this Act, all the rights set out in the united nations convention on the rights of the child and the organization for African unity charter on the rights and welfare of the African child with appropriate modifications to suit the circumstances in Uganda, that are not specifically mentioned in this Act.

The Children Act cap 59 provides for maintenance of children under section 76, where it provides that any person who has custody of the child and who is the mother of the child; the father of the child; or the guardian of the child, may make an application for a maintenance order as the case may be under section 76 (3). The application for parentage can be made during a subsisting marriage, during proceedings for divorce, separation or nullity of marriages or during pregnancy.

The Children Act also places penal sanctions on people who remove children from their parents or those entitled by law to have custody of them without authority provided the child has not attained 18 years of age.

⁷⁸ Rule 3 of the first schedule to the Children's Act.

Under section 76 (8), maintenance of the child shall include feeding, clothing, education and the general welfare of the child⁷⁹.

Where a maintenance order has been pronounced against a deceased person, the order shall be enforced against his or her estate and it is an offence to misappropriate maintenance money as provided for under sections 78 (3) and 81 of the Act⁸⁰.

The Act further provides for Guardianship of children. The Act does not define guardianship however, section 1 (k) of the children's Act defines a guardian to mean a person having parental responsibility for a child⁸¹.

Guardianship is defined under the Bromely's Family Law 18th edition to mean the legal process by which a person is given parental responsibility of a child⁸².

Parental responsibility is defined under section 2 (a) of the children Act to mean all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and under section 5 of the Act duties of a guardian include education and guidance, immunization, adequate meals, clothing, shelter and medical attention and any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect⁸³.

It was held in **Re-Okot Lawrence Ikeda and Beatrice Miscellaneous**, that the guiding principle in cases of guardianship is the welfare of the child and its interests⁸⁴.

⁷⁹Section 76 - *Ibid*

⁸⁰Sections 78 and 81, *Ibid*.

⁸¹ Section 1 (a) *Ibid*

⁸² Bromely's Family Law 8th Edition.

⁸³ Section 2 and 5 Children Act Cap 59

⁸⁴ *Re-Okot Lawrence Ikeda and Beatrice Ikeda* Misc cause no. 22 of 1993.

The children's Act under Part VII provides for adoption of children, the court shall before making an adoption order, be satisfied that the order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding⁸⁵, In **Ayta Joy and Mcquila Obonyo** Justice Kasule at Page 3 noted "the report of the probation and social welfare officer has to cover a period of 36 months; fostering of the child by the applicant; section 45 (4) of the children's Act places upon the probation and social welfare officer, a legal obligation to show in his report that the applicant has fostered the child for a period not less than 36 months under his supervision. That in this case the probation and social welfare officer's reports were not silent as to fostering, nor did the applicant state that he complied with the requirement as to the fostering period". Court further emphasized the welfare principle as the guiding principle in making any decision concerning the legal requirement of fostering the child for not less than 36 months. Court was not losing sight of those welfare principles plus rights of children, but actually enhancing them⁸⁶.

The Act protects children against harmful social or customary practices that are harmful to the child's health as provided for under section 7 of the Children Act. Also section 8 Barres employers from engaging children in any activity that may be harmful to their health, education or mental, physical or moral development.

Under section 9, parents of children with disabilities and the state shall take appropriate steps to see that those children are:-

- a) Assessed as early as possible as to the extent and nature of their disabilities
- b) Offered appropriate treatment and
- c) Afforded facilities for their rehabilitation and equal opportunities to education.

⁸⁵ Part VII (sec 48) Children Act cap 59.

⁸⁶ Ayat Joy and Mcquila Obonyo Adoption cause no. 52/2005.

In cases where a child has committed an offence and has not been released on bail, the court may make an order remanding or committing him or her to a remand home to be named in the order or any other place court considers safe for the good care of the child, but a child shall not be remanded in custody in adult prison⁸⁷.

However the Children Act has short falls in as far as protecting children's rights is concerned. Under the Children Act, the welfare officer is given too much power to place the child under the care of any person or place he or she feels safe for emergency purposes. This could be detrimental to the welfare of the children and could easily exposed them to potential sexual and psychological abuse. In addition, the probation and social welfare officer is given power to supervise those who apply for custody and sometimes they make false reports on which court bases to grant custody of children to unfit people who subject the children in issue to all forms of abuse.

4.4 The Penal Code Act, Cap 120

The penal code Act cap 120 provides for penalties for people who violate children's rights, thus making it a very important instrument in the fight against child abuse. It creates offences relating to children and others which accommodate children by reason of being Ugandans.

Under section 129 (1) of the Penal Code Act Cap 120 as amended it is stated that any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

⁸⁷ Section 90, 91 of the Children Act, Cap 59

It further states under sub section 2 that; any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction liable to imprisonment not exceeding eighteen years.

Under section 129 (3) any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.

Section 129 (4) gives the circumstances referred to in sub section 3 of the same section and these include the following:

- (f) Where the person against whom the offence is committed is below 14 years
- (g) Where the offender is infected with Human Immune Deficiency Virus (HIV)
- (h) Where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed.
- (i) Where the victim of the offence is a person with disability; or
- (j) Where the offender is a serial offender

Section 128(1), the Penal Code Act provides for the offence of indecent assault, which states that any person who unlawfully and indecently assaults any woman or girl commits a felony and liable to imprisonment for fourteen years, with or without corporal punishment, however corporal punishment was abolished by the constitutional court in the case of **Kyamanywa Simon Vs Uganda**. Where it was declared to be unconstitutional and inconsistent with Article 24 of the constitution of the Republic of Uganda 1995 which states that no person shall be subjected to any form of torture or cruel, in human or degrading treatment or punishment.

Section 128 (2) states that it shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act of indecency.

Under section 136, the Penal Code Act Cap 120 creates an offence against persons who live on the earnings of prostitution. Section 136 (1) states that every person who knowingly lives wholly or in part on the earnings of prostitution and every person who in any place solicits or importunes for immoral purposes commits an offence and is liable to imprisonment for seven years.

Section 136 (2) states that where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, a betting or compelling his or her prostitution with any other person, or generally, that person shall satisfy the court to the contrary, be deemed to be living on the earnings of prostitution.

Section 136 of the Penal Code Act Cap 12 can be a strong tool in the fight against commercial sex exploitation of children however few cases have been reported to police and charged and where they are charged, the files are not forwarded to courts for trial.

Under section 149 of the Penal Code Act Cap 12 provides incest. If a person has sexual intercourse with another person with whom, to his knowledge, any of the following exists commits an offence is liable to imprisonment for seven years or if that other person is under 18 years to imprisonment for life. This protects children against sexual abuse by lustful relatives.

The Penal Code Act under section 188 creates the offence of murder which states that any person who of malice forethought causes the death of another person by unlawful act or omission commits murder and where such person is convicted of murder shall be sentenced to death under section 189 of the Penal Code Act 120

The section protects the child's right to life as guaranteed under Article 22 of the Constitution of the Republic of Uganda 1995, which is to the effect that no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. Therefore in cases of child sacrifice the section can be invoked to ensure that culprits are brought to book.

In conclusion, the penal code act has almost everything it takes to punish perpetrators of crimes relating to child abuse if implemented. However it should be noted that many of these crimes end at police due to corruption, intimidation, and poverty on the side of parents, and the authorities responsible for the implementation of such provisions as provided for in the penal code Act cap 120⁸⁸. Many of those responsible for child abuse are therefore left unpunished and continue to live in society at the detriment of the wellbeing and welfare of the children. Laxity of charging of the offenders with the crimes committed poses a great threat to child safety and ensures continued violation of children's rights.

4.5 African Charter on the Rights and Welfare of the Child.

The African charter on the rights and welfare of the child also called the children's charter which came into force in 1999, was adopted by the organization of African union which later became the African union.

⁸⁸Section 149 *Ibid*.

The children's charter is a comprehensive instrument that sets out the rights and defines universal principles and norms for the status of children on the African continent.

The Charter resulted into the creation of an African committee of experts on the rights and welfare of the child whose mission is to promote and protect the rights established by the African charter on the rights and welfare of the child as required by party states. The charter defines a child as a human being below the age of eighteen years. It recognizes the child's unique and privileged place in African society and that African children need protection and special care. It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, religion and conscience. It aims to protect the private life of the child against all forms of economic exploitation and against work that is hazardous, interferes with the child's education or compromises his or her health or physical, social, mental, spiritual and moral development. It calls for protection against abuse and cultural practices, all forms of exploitation and illegal drug use. It also aims to prevent the sale and trafficking of children, kidnapping and begging of children.

Article 3 (1) of the African Charter on the Rights and Welfare of the African Child provides that in all actions concerning children, whether undertaken by public or private, welfare shall be of primary consideration.

Article 3 (2) of the African Charter on the Rights and Welfare of the African Child is to the effect that state parties undertake to ensure that the child's protection and care as is necessary for his or her parents, legal guardians or other individuals legally responsible for his or her welfare and to this end shall take all appropriate legislative and administrative measures.

The charter also prohibits the recruitment of children in armed conflicts and armed forces.

Under the African Charter on the Rights and Welfare of the Child, Article 21 protects children against harmful social and cultural practices, where it urges state parties to take all appropriate measures to eliminate harmful social and cultural practices that affect the welfare, dignity, normal growth and development of the child and particularly customs and practices prejudicial to the health or life of the child. Uganda has responded by formulating the female genital mutilation Bill which became law in a bid to end female genital mutilation in eastern Uganda especially among the Sabbins.

Article 21 of the African Charter on the rights and welfare of the child also discourages child marriages. The charter urges state parties to prohibit and take effective action, including formulation of legislation to specify the minimum age of marriage to be 18 years.

However to a small extent under the following Articles the African Charter on the Rights and Welfare of the Child has some loopholes.

Article 31 (a) it urges children to work for the cohesion of the family, however the article does not specify the kind of work suitable for children hence promoting child labour.

Under Article 20 (1) (c), parents are given the responsibility to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child⁸⁹. The Article should have provided in details how the domestic discipline should be administered. Therefore there seems to be a loophole as parents

⁸⁹ Article 20 (1) (c) *Ibid*

sometime over state their mandate by giving children harsh punishments like denying them foods, school fees and some are chased away from homes.

In conclusion, the African Charter on the Rights and Welfare of the Child has good provisions on the protection of children against child abuse. The charter provides for the rights of the child, the mechanisms for the implementation and therefore if utilized well by the Ugandan government can be of a great deal in the fight against child abuse.

4.6 The United Nations Convention on the Rights of the Child

The Convention was adopted and opened for signature, ratification and accession by general assembly resolution no. 44 of / 25 of 20 November 1989. The wonderful work of drafting the convention was done by the UN commission on Human rights and the convention entered into force in 1990.

The United Nations Convention on the Rights of the Child is the most widely ratified convention in the whole world and it comprises of 54 Articles which tackle everything any country would want to make sure that children are protected from all forms of abuse.

Under Article 1 of the United Nations Convention on the Rights of the Child, a child is defined as a human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

The United Nations Convention on the Rights of the Child puts it to the government of Uganda to make the rights of children a reality and children are also given a right to education, right to live with the parents, and to be cared for unless its harmful for them and where they cannot live with their parents they have a right to special protection; where they are adopted they have the right to have the best care.

The United Nations Convention on the Rights of the Child grants children who are refugees the right to special protection. The Convention grants disabled children the right to special care and protection where it states that disabled children either mentally or physically shall have a right to special care and protection to help them develop and lead a full life⁹⁰.

Article 3 (3) of the United Nations Convention on the Rights of the Child urges states parties to ensure that the institution, services and facilitates responsible for the care and protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health in the number and suitability of their staff, as well as competent supervision.

Article 32 of the United Nations Convention on the Rights of the Child urges Uganda as signatory to the convention to recognize the rights of children to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To ensure that this provision is implemented the convention puts it unto state parties to provide for a minimum age or minimum age for admission to employment; to provide appropriate regulations of the hours and conditions of employment and also put in place appropriate penalties or other sanctions to ensure the effective enforcement of the present Article⁹¹.

The United Nations Convention on the Rights of the Child further protects children from sexual abuse, dangerous drugs, kidnap, cruel punishment, torture and discrimination

⁹⁰ Article 22 of the United Nations Convention on the Rights of the Child

⁹¹ Article 32 *Ibid*

most of these provisions have been domesticated and made part of the Children Act Cap 59 of Uganda⁹².

However the Convention has some short falls

Although the United Nation Convention on the Rights of the Child provides for penalties where a country violates Children's Rights, the mechanism of implementation is not strong owing to non-compliance by states parties. It is on record that many heads of states and war lords who have been indicted by the international court of justice for crimes against humanity which includes those like recruitment of children into armed conflicts have not been arrested for trial; a case in point is that of Omar Al Bashir the president of Sudan.

In conclusion, the United Nations Convention on the Rights of the Child has all it takes for the country to realize the rights of children if utilized properly, however implementation of its provisions has not fully been done due to the economic support needed for the implementation of the provisions of the United Nations Convention on the Rights on the Child.

⁹² Article 32, 33, 34, 35, 36 and 37 of the United Nations Convention on the Rights of the Child

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusions

Basing on my research as seen in the preceding chapters, child abuse is a serious problem and still on the rise. Child abuse threatens the child's rights to education, safety, physical growth, moral and mental development. Child abuse often results into mental health problems, suicidal behavior, violence, alcoholic problems and cognitive and intellectual consequences.

Uganda's signature on the United Nations Convention on the Rights of the Child, the African Charter on the Rights and the Welfare of the Child, and other international instruments on the Rights of the Child as well as the inclusion of children's rights in the Constitution of the Republic of Uganda 1995 and other legislations represents the government's acknowledgement of responsibility for protecting all children from harm. The Ugandan community, in turn has a responsibility to ensure that this becomes a reality.

The price of child abuse is too high in human costs, human resources and monetary terms to ignore. Despite government's efforts to prevent child abuse through the Constitution of the Republic of Uganda 1995, the Children Act, other legislations, government departments and international conventions, implementation has always been the worst problem owing to corruption among the law enforcers, poverty on the side of the parents of the victims and ignorance of the law on the rights of the children. Therefore, there is need to strengthen the implementation mechanism because the vice seems to be growing everyday as it is reported on almost a daily basis of incidences a child who had been assaulted, mutilated, sacrificed, burnt or dumped at the road side.

5.2 Recommendations on the prevention of child abuse

Basing on my research on the critical analysis of the laws relating to the prevention of child abuse, I have come up with recommendations which I believe will help the government of Uganda in its bid to prevent and or curb child abuse.

Street children are some of the groups whose rights are heavily violated by different authorities. The government of Uganda should end police and Kampala Capital City Authority law enforcement officer's roundups and abuses against street children. The government should investigate violence directed at homeless children found along the streets of Kampala. The government should make sure that those responsible for abuse are prosecuted and punished and should also provide a safe haven for such children. International partners should also denounce such abuse against street children and coordinate with government and non-government organizations to carry out child protection systems.

Government Economic Empowerment programmes such as bonabagagawale (prosperity for all which is kind of loan provided by government), NAADS Program should give priority to the poorest in the community, including the vulnerable children.

This would help to improve their standard of living hence a reduction in child abuse cases.

Children must be educated on their rights and be encouraged to fight against all forms of physical abuse against them. This can be done by government incorporating child rights in the education curriculum. The government should also encourage dialogue amongst all the concerned parties in school on issues relating to child rights.

The government of Uganda should build more remand homes to ensure that child offenders are separated from Adult offenders if they are to be rehabilitated.

Public awareness campaigns on sex crimes against children especially early marriages and defilement must be undertaken. People are ignorant on the fact that marriage to a person below the age of eighteen and subsequent sexual intercourse with such a person is a capital offense of defilement. Such practices are common especially in the rural areas where girls as young as thirteen are married off to men that are much older.

There needs to further disseminate information through the mass media on all forms and manifestations of child sexual abuse? Since most members of the Ugandan community are illiterate, this should be in the local languages so that everyone gets the message and appreciates the dangers of child sexual abuse both to the victim and the offender.

Parents should be educated on how to recognize the signs that children are being sexually abused. These may include the following

- Withdrawal into themselves, fear of particular sex of people and discharge from their private parts.
- Acting out in an inappropriate sexual way with toys or objects
- Nightmares/ sleep problems
- Becoming un-usually secretive
- Talk of new or older friend and unexplained money or gifts.
- New adult words for body parts and no obvious
- Sudden unexplained personality changes, mood swings and seeming insecurity.
- Physical signs such as unexplained soreness or bruises around genitals or mouth, sexually transmitted diseases, pregnancy.

In addition parents should be educated never to leave their young children with a friend or relative of the opposite sex while being very trusting of such a person. Reports have

revealed that such people to whom children are entrusted are the very ones who end up defiling them.

People who batter children must be arrested and charged with assault or causing grievous bodily harm regardless of who is the offender. Some parents overstretch their parental responsibility of disciplining children and fall short of manslaughter. Another lot here are teachers especially those of primary schools who batter children like they are punching bags. Such teachers on top of being suspended must be forced to treat the child until any injuries inflicted on the child have completely healed, be arrested and prosecuted by the courts of law. The ministry of Education and Sports should also make sure that a teacher who has been pronounced guilty of any offence relating to abuse of a child is disqualified from the teaching profession.

There is need to educate the parents on the dangers of emotional abuse and its effects on children. Parents must be taught to shower their children with love and praise where praise is due and to rebuke them gently with love where a child has made a mistake.

Children who are suffering from effects of psychological abuse for example low self-esteem and fear, inferiority complex and insecurity, should be put into rehabilitation centers set up for that purpose. These centers should focus on rebuilding a child's confidence and self-worth.

For children to be effectively protected and cared for, the government should ensure that all children, including those on the streets can find shelter and get an education, children should be treated with dignity and have the opportunity to find a safe way off the streets, putting in mind that the future of Uganda lies in the hands of those little children.

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INTERVIEW GUIDES

I am Wakaza Abel a fourth year semester II Kampala International University pursuing a bachelor of laws.

I am doing research on the critical analysis of laws relating to the prevention of child abuse in Uganda.

I have formulated questions which I request you to answer so that I can able to gather the relevant information to my research

The questions am going to ask you are for study purposes and therefore guarantee to you that the information you will provide is for research purposes.

A. Interview guide for prostitutes (child).

(i) How are you?

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(ii) What is your name?

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(iii) How did you end up here?

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(iv) What problems do you face?

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- (v) If you are given a job can you stop prostitution?

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.....

B. Interview guide for child workers.

- (i) How are you?

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- (ii) What is your name?

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- (iii) How old are you?

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- (iv) When did you start working?

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.....

(v) Then why are you doing this work which is meant for adults?

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(vi) If you are given chance to go back to school can you do it?

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C. Interview guide for street children.

(i) How are you?

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(ii) What is your name?

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(iii) How old are you?

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(iv) When did you come to the streets?

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(v) Why do you stay on the street?

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(vi) Where are your parents?

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(vii) How do you survive on the streets?

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(viii) If given an option to go to school and stay in children's home, would you go?

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