

**AN ANALYSIS OF THE LAW PROTECTING STREET CHILDREN IN  
UGANDA**

**A CASE STUDY- KAMPALA METROPOLITAN AUTHORITY**

**BY**

**SSEMBUUSI DENIS**

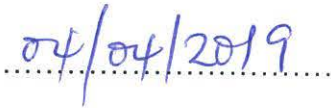
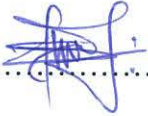
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## DECLARATION

I, SSEMBUSI DENIS hereby declare that this research work titled **An Analysis Of The Law Protecting Street Children In Uganda A Case study- Kampala Metropolitan Authority** is originally mine and has never been submitted in any other academic institution. I also declare that all secondary information used has been acknowledged accordingly.



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**APPROVAL**

This dissertation has been submitted with the approval of MRS EMMA SSALI as the university supervisor.

Signed

Date of Approval

.....*Emma*..... (Supervisor)

.....*4/4/19*.....

## **DEDICATION**

First I give praise and thanks to the almighty God for giving me strength and capacity to complete this work successfully. For all he has done to me, for his blessings, guidance, wisdom, knowledge, favors and endless blessings throughout my life and this far.

## **ACKNOWLEDGEMENT.**

I am deeply indebted to my supervisor Mrs. EMMA SSALI for her overwhelming support and supervision in compilation of this research.

Next in line I would also deeply love to acknowledge my beloved mother and father for their overwhelming and grateful help that they have endorsed in me throughout my curricular activities.

Lastly but not list I would love to acknowledge all my former classmates, friends and everyone who has been of great importance to the conclusion of this research.

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## **ABSTRACT**

This research thesis is intended to analyze the law protecting children rights, particularly in relation to street children in Kampala. The historical genesis and development of the children's rights provisions will generally be reviewed under legal framework, but much emphasis will be on the post independence period, specifically from 1990 up to date.

The Research will be geographically centered on Kampala metropolitan area as a case study, the rationale being that the said city is attended by a very high population of street children. This state of affairs, as the study will show, has, almost inevitably brought with it gross abuse of the said children's rights (expressed in the different Conventions and domestic legislations). The research will therefore focus on analyzing the day to day conditions of this category of children *vis a vis* the different laws purporting to cater for their welfare. Finally, the role of stakeholders such as government institutions and non government organizations in promoting and protecting children's rights and to what extent they have discharged the same will equally form part of this analysis.

## **CHAPTER ONE**

### **INTRODUCTION TO THE STUDY**

#### **1.0 INTRODUCTION.**

Society has always borne and continues to bear the moral responsibility (now days the constitutional responsibility) to protect the weak and vulnerable persons (Article 17 of the 1995 Constitution as amended). The label 'weak and vulnerable' is, in my humble view, squarely applicable to all children, who by law are defined to be persons under the age of eighteen (Article 257 (1) (c) of the Constitution). Sadly however, there's a section of children in our society (labeled 'street children') to whom the said protection does not seem apply. As their tag suggests, 'street children' have nowhere but streets to call home with no responsible adults, or any at all, to afford them the care and protection they so badly need (Bamugemereire, 1988). The same Author further notes that his has exposed these 'weak and vulnerable' beings to all manner of atrocities characterisable in decent terms as human rights violations. Society, which should naturally step up to assume a guardianship role over these little ones has done more than the contrary. It has occasioned all sorts of nightmares on these unfortunate children. The question that arises in the circumstances is what became of all the laws pertaining to the protection of children (including the so called street children)? It is this question that my research will attempt to answer.

By and large, the issue of street children is real and needs attention. With all due respect, those who have attempted to handle the street children problem have not done so with the seriousness it deserves.

## 1.1 BACKGROUND TO THE STUDY

Some authors have argued that the pre-colonial mode of production was ideal and easily provided for the basic needs (Kakama, 1993<sup>1</sup>). There were very close social ties with responsibility extending to members of the extended families or even clan members. Such extended families and the community at large would also be interested in the children's welfare. Bamugemereire<sup>2</sup> has stressed that that Production being labour based, children were viewed both as a potential source of labour force needed by parents in their daily work, and as economic surety for parents in their old age<sup>3</sup>. Therefore society cherished giving birth to a large number of children and ensuring that these children attained the age of majority, through proper care and discipline. Children born outside wedlock were in most cases absorbed in the society. Under such circumstances, abandonment and neglect of children did not arise. With the advent of colonialism however, society underwent structural disintegration, which precipitated the problem of street children.

Kyeyune pp 34 has noted with concern that Colonialism in Uganda, like in Europe after the industrial revolution, resulted in urbanization, unequal development between the rural areas and urban centres, poor living conditions for the workers; with the children taking to the streets whenever their parents could not afford to send them to school or were unable to feed them<sup>4</sup>; "As a result, industrialization produced congestion in the centres, extreme concentration of environmental inequalities, physical discomfort and

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<sup>1</sup>Kakama, p; children and their rights; village perceptions, 1993.

<sup>2</sup>Bamugereire, P; juvenile delinquents in Kampala; 1988

<sup>3</sup> Ibid

<sup>4</sup>Kyeyune, G.S; street children; why they are out, fountain publishers, Kampala, 1996.

poverty.... Poverty came to the peak during the 'Depression', and the initial emergence of street children," (Nyonyintono, pp 50<sup>5</sup>.)

## **THEORETICAL FRAMEWORK.**

### **Relevant Government Actors in Child Protection**

#### **The Ministry of Gender, Labor and Social Development.**

The ministry of gender has the mandate to promote the protection of children in Uganda<sup>6</sup>. The ministry has developed a national plan for orphans and other vulnerable children in which the ministry recognizes street children as a group in high need of support. The Youth and Children Affairs Department within the ministry designs and reviews programs, policies, and laws related to children; coordinates with stakeholders on child-related issues; promotes the participation of children in national development programs; supports the training of service providers; and ensures that all initiatives, programs, and laws address the concerns of children<sup>7</sup>. The semi-autonomous National Council<sup>8</sup> for Children within the ministry manages coordination, monitoring, and evaluation of all policies and programs for the protection of children,

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<sup>5</sup>Nyonyintono, B; protection of child rights; socio-economic impact, 1995.

<sup>6</sup> The Republic of Uganda, Ministry of Gender, Labour and Social Development, "National Strategic Programme Plan of Interventions for Orphans and Other Vulnerable Children 2011/2012-2015/2016," May 2011, [http://www.unicef.org/uganda/Final\\_Printed\\_OVC\\_Strategic\\_Plan\\_Uganda\\_-NSPPI\\_2.pdf](http://www.unicef.org/uganda/Final_Printed_OVC_Strategic_Plan_Uganda_-NSPPI_2.pdf) (accessed January 17, 2019), p. 5.

<sup>7</sup> Ministry of Gender, Labour and Social Development, "Youth and Children Affairs," undated, [http://www.mglsd.go.ug/?page\\_id=36](http://www.mglsd.go.ug/?page_id=36) (accessed January 16, 2019).

<sup>8</sup> The council members are drawn from other ministries, regional representatives, civil society organizations, and "persons of integrity." The council is meant to coordinate all actors involved in child-related activities, not just those of the ministry of gender. Ministry of Gender, Labour and Social Development, "National Council for Children," undated, <http://www.mglsd.go.ug/?p=256> (accessed January 16, 2019).

though it is not an implementing agency.<sup>9</sup> The ministry is also responsible for remand and rehabilitation homes—detention locations for children in conflict with the law—across Uganda, including Kampiringisa National Rehabilitation Center, the juvenile detention center just outside Kampala.

### **Local Government**

Each district, through executive committees, is meant to have secretaries charged with children's health and welfare.<sup>10</sup> District councils are responsible for services for street children and they are the first line of response on child protection issues. These local councils are designed to provide assistance for children in need, and are in place to conduct family tracing, or should refer cases to district probation and social welfare officers.<sup>11</sup> These officers are also responsible for following up cases of child abuse and decide how to intervene to promote the child's welfare.<sup>12</sup>

### **The Uganda Police Force's Child and Family Protection Unit**

The police's Child and Family Protection Unit (CFPU), saw its birth in 1998, for the purposes of handling cases of child abuse and neglect, among other issues.<sup>13</sup> There are about 450 CFPU officers across the country,<sup>14</sup> the offices herein are charged with the duty of addressing issues of violence against children.<sup>15</sup> Street children in conflict with the law or those who need to access

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<sup>9</sup> Ministry of Gender, Labour and Social Development, "Youth and Children Affairs," undated, [http://www.mglsd.go.ug/?page\\_id=36](http://www.mglsd.go.ug/?page_id=36) (accessed January 16, 2019)

<sup>10</sup> Local Government Act, 1997, amended 1999, chapter 243, schedule 2, art. 16(4).

<sup>11</sup> The Republic of Uganda, The Children Act, 2003, Chapter 59, art. 10(7)

<sup>12</sup> Article 40 The Constitution.

<sup>13</sup> Uganda Police Force and UNICEF, "The Role of the Uganda Police," <http://sgdatabase.unwomen.org/uploads/Uganda%20-%20Police%20training%20manual%20-%20gov.unicef.pdf> (accessed January 25, 2019). p. ii

<sup>14</sup> Uganda Police Force to Human Rights Watch.

<sup>15</sup> Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the

police officers to report abuse should have access to an officer in the unit. The CFPU has no specific budget to carry out activities related to street children.

### **Kampala Capital City Authority (KCCA)**

The KCCA formerly Kampala Capital city Council is the governing body for the capital under the direct supervision of the central government.<sup>16</sup> The authority is mandated to provide, control, and manage services for the welfare of children in the city.<sup>17</sup> KCCA probation officers are tasked with assisting children, particularly when they are in conflict with the law or “when their rights are infringed upon.”<sup>18</sup> The officers should investigate such cases and seek court judgments. Regarding street children, KCCA manages a transit center in Kampala where children are meant to be rehabilitated before resettlement in their home districts, though the KCCA does not describe the extent of its rehabilitation activities.

## **1.2 STATEMENT OF THE PROBLEM**

The United Nations Convention on the Rights of the child(UNCRC) affirms the rights of children to enjoy a privileged status, in order to enable them develop physically, spiritually and morally. The convention further stipulates that children should enjoy special care, protection, affection, moral and material security which include; adequate nutrition, housing, education, recreation,

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Child on the Sale of Children, Child Prostitution and Child Pornography – Uganda,” August 16, 2007, <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.UGA.1.doc> (accessed January 25, 2019)

<sup>16</sup> Parliament of the Republic of Uganda, “Kampala Capital City Authority Act,” 2010, 3rd schedule.

<sup>17</sup> Kampala Capital City Authority, “Services rendered by KCCA,” Child Care and Protection, 2019, [http://www.kcca.go.ug/services.php#youth\\_and\\_community\\_development](http://www.kcca.go.ug/services.php#youth_and_community_development) (accessed January 17, 2019).

<sup>18</sup> Kampala Capital City Authority, “Services rendered by KCCA,” Child Care and Protection, 2019, [http://www.kcca.go.ug/services.php#youth\\_and\\_community\\_development](http://www.kcca.go.ug/services.php#youth_and_community_development).

medical services; and declares that every child should be protected against neglect, cruelty, exploitation and shall be accorded special relief in times of disaster. These interesting aspects have been incorporated into our very own Children's Act Cap 59 vide the Children's Amendment Act of 2016

However, the unfortunate fact remains that there are children who still lack these basic necessities; and despite the existence of penal sanctions, they end up living alone, undernourished and without proper shelter or security (Evgenia Berezina,1997).<sup>19</sup> They survive by expedience, theft, and violence. Worse still, they are used unscrupulously by others, mistreated, imprisoned and even harassed by society itself. The children also often get entangled in the issues of their parents due to parents' recklessness for example in scenarios of domestic violence and drug abuse by the parents. There are also children abandoned by their parents for fear of responsibility, not to mention, failure to take custody of those children by relatives when their parents pass away. These burdens bring with them early responsibility as some children often have to take care of their siblings thus pushing these children to find comfort on the streets(Flowers, R. Barri, 2010)<sup>20</sup>.

In view of those problems therefore, do the provisions introduced by the said Children's Amendment Act of 2016 and the laws preceding it adequately address the problems of street children in Uganda, and indeed, in Kampala Metropolitan area? I venture to think that they do not. The said laws address

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<sup>19</sup>Evgenia Berezina (1997). "Victimization and abuse of street children worldwide" .*youth advocate program international resource paper*. Yapi. Retrieved 30 November 2012

<sup>20</sup>Flowers, R. Barri. *Street kids: the lives of runaway and thrown away teens*. Jefferson, N C: McFarland &, 2010.

children in general terms and are, to that extent, terribly detached from the realities facing street children in Uganda today. Clear evidence of this void in the law is supplied by the lack a precise definition of street children in the existing laws. My efforts to find one drove me as far as Mexico in a document known as..... This research will therefore embark on highlighting the gaps in the current laws with respect to street children and accordingly supply my humble recommendations on the same.

### **1.3 PURPOSE OF THE STUDY**

The main objectives of this research was to analyze the law protecting street children in Uganda

### **1.4 SPECIFIC OBJECTIVES:**

- i. To identify the law relating to children's protection in Uganda.
- ii. To examine the application of the said law in protecting street children.
- iii. To examine the problems faced by street children.
- iv. To find out the relevant state actors in enforcing the rights of street children.

### **1.5 SCOPE OF THE STUDY**

The study was undertaken in Kampala. This is because this area has the largest number of street children in the country and is therefore ideal for the study. Hence, it provided the best picture of what is happening to the street children in the whole country.



Children below the age of eighteen years constituted the sample of study. The study, to a large extent centered on the laws which protect children's rights.

### **1.6 JUSTIFICATION FOR THE STUDY.**

The study aimed at analyzing the law relating to the protection of street children and its effectiveness there too. The researcher collected in detail writings and available information regarding street children. The researcher went out to assess the effectiveness of the existing law on Children and its practicability especially to the Street children in Kampala Metropolitan area.

### **1.7 SIGNIFICANCE OF THE STUDY.**

The study helped the researcher to acquire more knowledge and acquaint himself with more information in regard to the law relating to children rights and in particular street children.

The researcher hopes that the research paper will be of great importance to the academia, students and policy framers in relation to getting information regarding the subject of research on Street children in Kampala.

### **Conclusion.**

In comprehending all that is said and done, chapter in purpose examines the historical and reasons as to why the study is justified. It informs the whole purpose of this research paper and shows why this research is warranted. The researcher herein gives abroad insight into the topic and shows why despite any existing academia articles there is a lacuna he intends to address by this research paper in the area of the law relating to children specifically for the protection and promotion of the rights of street children in Kampala Metropolitan.



## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.0 Introduction**

This chapter presents existing literature on the street Children in Kampala and beyond, it makes a comparison of how street children are treated and the problem dealt with in Uganda, the rest of Africa and the world at large. The researcher compares and analyses data of other researchers on the same research problem question especially in Kampala metropolitan. The researcher by this discussion identifies the existing gaps especially in the Ugandan Jurisprudence where the subject has not been so much researched.

#### **2.1 Academic Review**

Most academic work on street children originates in Latin America. For example, Felsman, 1981; Aptekar, 1988; Valverde and Lusk, 1989; Lusk, Peralta & Vest, 1989; Connolly, 1990; Glauser, 1990; Lucchini, 1993a, 1993b, 1994a, 1994b; and Green, 1997. Work on a more global level includes Agnelli, 1986, Boyden, 1991 and Ennew, 1994. In contrast to other continents, relatively little is known about the street children of Africa and Uganda in particular<sup>21</sup>.

Many researches have been carried out in different countries by different researchers to collect data on street children in areas of their socio-economic migration and educational backgrounds. This data has sufficiently proved to show in detail the children's lives in terms of work, play, eating and sleeping

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<sup>21</sup> The African Child Policy Forum (2008) The African Report on Child Wellbeing: Country Briefs Uganda

habits. It further has explored the interpersonal relationships of the children, their experience of abuse, both at home and on the streets, their involvement in crime and substance abuse and, finally, their health status.

In Kampala, street children use the street for a variety of activities, both day and night (Young, 2000). Particular places provide different opportunities for survival as street children are often drawn to those parts of the city where income can be earned. At different times and in different places the street becomes a place for work, as many engage in activities such as begging, stealing, selling in markets, carrying luggage, minding or cleaning cars and any other informal tasks that opportunistically present themselves. However, some areas will be avoided as they are less productive, such as residential areas, or are well-controlled spaces, such as near police stations or government offices<sup>22</sup>.

In Kampala, the majority of homeless children on the streets are boys aged between 8 and 17. Girls are also present but less visible and in smaller numbers. Children are there for a variety of reasons. Although most have run away due to problems in their homelife, being abandoned or abused by step-parents and guardians<sup>23</sup>.

Marginalization is only one aspect of street children's socio-spatial interaction with Kampala's urban environment. Much of their survival is bound up with the functioning of the city as they depend on 'street activities' such as picking vegetables in the markets as they 'fall' from the trucks, snatching under the anonymity of a crowded area, begging from passers-by and the many shops

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<sup>22</sup> African Committee of Experts on the Rights and Welfare of the Child (March 2010) Recommendations and Observations sent to the Government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter on the Rights and Welfare of the Child. Addis Ababa, Ethiopia.

<sup>23</sup> Ibid

and restaurants in the city, and dominating 'street children's niches' in the city by reducing their appeal to other street users. For survival, it is necessary for street children to contradict their excluded 'out of place' image and exert an influence on the urban milieu.

Street children's geographies of resistance take place through encroachment into crowded public areas and under the cover of darkness when the dominant commercial and business functions of the city have become dormant<sup>24</sup>.

Street children are not only accepted in the cityscape because they co-exist with society's norms, but in some cases, they become incorporated into society by the nature of their activities. This is particularly true of adolescents who develop a sense of responsibility and engage in legal work. In the evening it is normal that the south of the city, around the markets and taxi parks, becomes awash with activity as numerous informal traders flood onto the streets. Many people engage in this work, unregulated, including some older male street children. They dress smartly and blend into the mass of hawkers and traders. It is not possible to identify them as street children at this time, as they have become completely immersed into the functioning of the street and legitimized by their activities<sup>25</sup>.

Holloway and Valentine (2009) highlight that the most important contribution geography and geographers can make to the 'new social studies of childhood' is to emphasize the importance of place. Matthews and Limb (1999) also stress the need to recognize the diversity of childhood experience and the difference in their social and spatial constructions. As interest in children's geographies has grown, so too has the proliferation of work examining the

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<sup>24</sup> African Union (1999) African Charter on the Rights and Welfare of the Child

<sup>25</sup> Ibid

different relationships children, as social actors, have with their everyday surroundings and exploring children's interactions with diverse 'spaces, places, environments and landscapes' (Philo, 2000:245). This has situated children's geographies within the realms of the home (Christensen et al. 2000); school (Fielding, 2000); institution (Smith and Barker, 2002) and public space<sup>26</sup>.

That street children are a heterogeneous population was noted very early in the literature. For example, Unicef (1984) describes three main categories: children at risk, children of the street and children on the street. The largest group in this typology is the "children at risk" category. These are the children of the urban poor and they form the reservoir from which street children emerge.

"Children on the street" come to the streets to work in order to supplement their families' income, and they will return home to their families at night-time. A significant number attend school on a part time basis. Worldwide, these children perform similar tasks - they shine shoes, wash and mind cars, sell lottery tickets, magazines and newspapers, carry goods and peddle cigarettes and chewing gum. Extreme poverty has forced them to become at least partially self-supporting<sup>27</sup>.

For "children of the streets", the street is their main living place. Family ties may exist but are remote and their former home is visited infrequently. A sub-category of street child in the Unicef typology is that of "abandoned children". This category includes orphans, runaways, refugees and others who have no contact with significant carers. In terms of lifestyle and daily activities, abandoned children are very similar to children of the street. They are

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<sup>26</sup> Defence for Children International (2009) Juvenile Justice Newsletter No. 13

<sup>27</sup> Ibid

distinguishable in that all ties with family have been severed, either through death, displacement or abandonment. Children of the street, on the other hand, have occasional contacts with their families. Of all street children, the category of the street and abandoned is the smallest. Only an estimated 5% to 10% of street children belong to this group of children of the street (Taçon, 1992). These children are more likely to make their livelihood by illegal means:

“They become premature adults and develop behavior patterns which can be summarized in a rejection of authority, aggressiveness, an absence of limits, independence and a lack of affection. They are also ... characterized by problems with drug addiction, alcoholism, delinquency, prostitution and moral and physical abuse” (Unicef, 1984).

Worldwide, there is a higher incidence of street boys than street girls. Espinola, Glauser, Oritz&Oritz de Carrizosa (1987) reported that 90% of the young street workers engaged in vending or service occupations in Asunción were boys. For example, females may work as maids in bars, back street hotels and private houses. Street boys, on the other hand, typically engage in more visible activities such as car washing, shoe shining and peddling.

The worldwide trend of relatively fewer street girls than street boys might be explained by the position the female child holds in rural peasant life. In Nepal, for instance, the UN Food and Agriculture Organisation (FAO) analysed the contribution of women and children to both household and agricultural activities. Females were found to work more than males in all age groups and it was the family's dependence on girls' labour at home and in the fields which was responsible for females' lower rates of school enrolment<sup>28</sup>. It is

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<sup>28</sup> Loeber and Stouthamer-Loeber (1986), *Family factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency*, Chicago, pp: 29-149,

reasonable to speculate that girls are prevented from working on the streets for similar reasons. In urban areas too, girls are more valuable to households due to their functions of looking after children and helping with chores, thereby freeing the mother to work outside the home.

A further explanation for the lesser numbers of street girls when compared to street boys may be parental fears regarding the dangers of street life to females. In a study of 23 families of Ethiopian street children, Veale (1993) reported that parents were concerned and worried about the dangers associated with working on the street. She found that 70% of parents were not happy with having their children working. Similar findings were reported by Chatterjee from Indian parents: "studies show that employment for girls outside the home often ceases around the time of puberty to conform with socio religious practice: parents are extremely reluctant to expose their daughters to male attention" (Chatterjee, 1992, p. 14).

The majority of street children worldwide are aged between ten and fourteen years. Before age ten, parents appear to be loath to allow the child to enter the harsh world of the street<sup>29</sup>.

Once engaged in street life, the child's street "career" is often terminated by his or her changing appearance, as he/she grows older. By about fourteen or fifteen years of age, adolescents are beginning to lose their appeal to passers-by. This is particularly true for those who survive by begging:

"Before that time [adolescence], the children were considered cute, which contributed to their success at begging for alms. But as they grew, the image changed; they were then perceived as thugs and treated accordingly. When the street children reached puberty, they became street people". Thus, the

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<sup>29</sup> Ibid



age profile of street children appears to be a function of the nature of the demands of street life. In Ethiopia, it is estimated that approximately half of all street children are less than twelve years of age. The average age of initiation to street life is approximately eleven years. As in many developing countries, children under sixteen years constitute 50% of the entire population<sup>30</sup>.

Street children have multiple place attachments given the high level of mobility needed to tap into a diverse range of survival niches (Aptekar, 1996; Marquez, 1999). This mobility is based on the temporality of the street as the city changes from friendly to unfriendly or from productive to barren at different times of the day or night (le Roux and Smith, 1998a,b). Their place attachments, however, are also often temporal as children occupy contested spaces and are moved on by police or have to change their location due to problems such as violence or hunger (Berman, 2000). It is this contested nature of these niches which suggests street children's 'out of placeness' in some city spaces (Connolly and Ennew, 1996), a concept which deserves closer attention. Street children have been a focus of attention for aid agencies and governments for little more than fifteen years. The issue first appeared as a major concern in the wake of the International Year of the Child (1979). In 1982 the Inter NGO Programme on Street Children and Street Youth was formed<sup>31</sup>.

In 1986 UNICEF'S Executive Board approved priority measures on behalf of "children in especially difficult circumstances." Special emphasis was placed on street children and for "developing strategies ... which would defend their rights, avoid their exploitation, and respond to their personal, family, and

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<sup>30</sup> Wright and Wright in 1994, *Family Life, Delinquency, and Crime: A Policymakers Guide*. Research Summary. Washington DC

<sup>31</sup> Ibid

community needs” (Taçon, 1991, p. 1). The UN Convention on the Rights of the Child (Unicef, 1995) contains a number of articles which require signatories to improve the health, education and housing of all children. Such articles are particularly pertinent to street children.

The delinquency of street children has been relatively well researched. A frequent observation has been the increasing involvement of street boys in theft, as they progress through adolescence

(Felsman, 1981; Aptekar, 1988; Lusk, 1989). Whilst younger boys mainly practice petty theft such as stealing food from shops/markets, older boys may become involved in more confrontational crimes such as pick-pocketing and robberies. Inevitably, such activities bring street children into contact with the police, or other security forces. They are frequently viewed as a threat to society, as delinquents or criminals. Slang words used by the police for street children include *kifeesi*<sup>32</sup>

Lusk (1989) outlined a three-stage typology of delinquency development in Columbia. A *pregamin* is a pre-adolescent child who lives at home but spends part of his time on the streets in order to supplement family income. While on the street, he is likely to engage in petty theft when the opportunity arises. A *gamin* is an adolescent with looser family ties and he spends more time on the street, even sleeping there. Typically, this type of youth lives with other gang members in a rented room or flat and may be self-supporting through illegal activity. Finally, the *largos* are the older adolescents who have fully taken on the street life and ethic. They are enmeshed in hardcore street life, and are likely to develop into adult criminals (Lusk, 1989, pp. 58-59).

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<sup>32</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children*

A number of authors have investigated the incidence of drug use amongst street children. For example, Lucchini (1993b) estimated 80% of street children in Brazil consume drugs (p. 17). The drugs most widely used by Brazilian street children are inhalants - glue, aerosol, varnish and stain remover. However, levels of addiction appear to be low. Indeed, many children are able to stop consumption at once (Lucchini, 1993b). It is primarily younger children who consume inhalants.

Cocaine use is rare and is practised only by the oldest adolescents.

Nevertheless, there are street children who do not restrict their indulgence in chemical substances - "the heavy users are easily recognised by their ragged clothing, soiled faces, and glazed eyes, and the effects of brain damage are observable among long-time users" (Howell, 1995, p. 144)<sup>33</sup>. (**outcomes** of street life) The degree to which street children are emotionally and intellectually well-adjusted was a primary finding of Aptekar's (1988) work. Felsman's (1981) work also highlighted the resilience and adaptability of street children and their apparent ability to thrive in difficult circumstances.

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<sup>33</sup> Howell, J.C. (Ed.). (1995). Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

## **CHAPTER THREE**

### **LEGAL FRAMEWORK.**

#### **3.0 INTRODUCTION**

Hereunder the basic law on the subject of children's rights will be reviewed. This law is not limited to Domestic legislation like the Constitution of Uganda (1995), the Children's Act, Penal Code Act, Employment Act; international treaties like the United Nations Convention on the Rights of the child and the African Charter on the Rights and Welfare of the Child as well as research writings on the subject in Uganda and the rest of Africa will be traversed.

#### **3.1 LEGAL FRAMEWORK.**

The Ugandan government enacted strong domestic child protection laws including the Children Act and laws prohibiting child labor. The Ministry of Gender, Labour and Social Development has put up a series of programs and policies for the purpose of realizing the rights of vulnerable children. The policy document in question is the National Strategic Programme Plan of Interventions for Orphans and Other Vulnerable Children, which for all intents and purposes also caters for street children. In a twist of events however, it is amusing that the Government of Uganda has by circumstance and necessary as is evident absconded from its constitutional duty and totally failed to meet its obligations to protect children on the streets from abuse at the hands of the police, local authorities, and other "predators", because of the shortcomings in the government's implementation of its child protection framework.

### **3.2 LAWS AND POLICIES FOR THE PROTECTION OF CHILDREN**

In 1993, the United Nations General Assembly recognized the particular plight of street children, urging governments to respect fundamental human rights and “actively to seek comprehensive solutions to tackle the problems of street children and to take measures to restore their full participation in society and to provide, inter alia, adequate nutrition, shelter, health care and education.<sup>34</sup>”

Uganda is party to a number of international and regional treaties that protect the basic and fundamental human rights of children, and has even matched its international obligations with strong, domestic legislation on child rights. With a robust framework and multiple government actors mandated to play a role in protecting children, Uganda could have the necessary legal and policy means to provide for and protect its street children.

### **3.3 DOMESTIC LEGISLATION**

#### **THE CONSTITUTION OF UGANDA 1995<sup>35</sup>.**

Enacted in 1995 after a very wide consultation, the Ugandan constitution has a full chapter four on Human Rights. Contained therein are a number of Articles either directly or by necessary implication that affect the rights of all children.

Under the National Objectives and directives of state policy, number **XIX** the state is obliged to take all necessary steps to protect and preserve a family. This objective once given a wide interpretation against the background that

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<sup>34</sup> United Nations General Assembly, “Plight of Street Children,” A/RES/48/136, 85th plenary meeting, December 20, 1993,

<sup>35</sup> Constitution of the Republic of Uganda

no one is has no family means that the state has a duty to protect street children. Interestingly however whereas there are express provisions under the Objectives of state policy for the purposes of safeguarding the interests of all special interest groups and other vulnerable groups, there is no specific provision under the national objectives that makes provision for the street children. This lacuna may explain the resilience and lackadaisical approach that the government has sometimes taken towards curbing the increasing problem of street children.

Under Foreign policy objectives, objective number **III** makes provision for the fact that Uganda shall give respect to international law and treaty. Obligations.

It should be noted at this point that Uganda is signatory to and has ratified different treaties that affect the rights of children. This therefore puts an obligation on Uganda as a nation and state to ensure that it puts in place policies and measures that make practical the fully the enjoyment of the rights of all children as provided under the International treaties to which Uganda is party.

**Article 21<sup>36</sup>** of the Constitution makes provision for Equality and freedom from discrimination. The Article inter alia states that all persons are equal before and under the law. The article outlaws all forms of discrimination ranging from, sex, race, color, religion, and socio or economic standing among others. Interestingly however socially and economically, the street children continue to be discriminated against socially. In Uganda in particular they are labelled as “Abakarimajong” since the Karimojong tribe form the highest number of street children.

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<sup>36</sup> Ibid

Under the same article, Parliament is mandated to make policies and programs aimed at addressing any imbalances in society brought about by socio-economic aspects. One however wonders whether this has been done. A lot seems to remain wanting especially in the corridors of the street children.

**Article 24**<sup>37</sup> outlaws all forms of inhuman treatment including but not limited to degrading treatment. That street children continue to suffer and leave in deplorable conditions is against the spirit of this provision.

**Article 31**<sup>38</sup> Makes provision for the rights of a family **31(5)** in particular states in black and white that children may not be separated from their families except in accordance with the law. Unfortunately however the Article seems to turn a blind eye to those children who from their birth are separated from their parents that is to say street children.

**Article 34** makes provision for the rights of children. The Article elaborates fully all the rights of Children. **Clause 1** states that children shall be cared for by their parents or those entitled to bring them up by law. The Article however falls short of the fact that in many circumstances as is normally with the street children, some street children know not of their parents, and again the Article seems to remove from the state the obligation to cater for those children that are destitute and indigent whose parents have either neglected them, or who are not in the care of their parents for various reasons. That is to say street children.

**Article 34 clause 7** in particular makes provision for the fact that special protection should be accorded to orphans and other vulnerable children. Street children are such of the vulnerable children and yet it on the on the

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<sup>37</sup> Ibid

<sup>38</sup> Supra

face of it Uganda, it looks that the government is doing totally nothing to protect the street children and the children of the street.

Under the Constitution of the Republic of Uganda **Article 51**, the Uganda Human Rights Commission is established and under **Article 52** charged with the protection of human rights and also taking note of the Human rights abuses as against all citizens Street children inclusive, the commission noted that the government's approach of "resettling and rehabilitating street children without addressing the factors that send children to the streets is an unsustainable solution in the long run" and argued that "there is an urgent need to address the causes and not just the symptoms."

The KCCA City council passed an ordinance that criminalized providing support to street children as one approach to curb the increasing number of street children. Such an ordinance is one of a kind that has been greatly criticized for failure to tackle the causes of the problem but rather run away from the problem. It is thus imperative that these provisions, designed to protect children, should not be implemented in a way that curtails the work of local NGOs providing assistance such as food, education, and rehabilitation programs for street children given the multiple gaps in available government services.

### **The Children's Act<sup>39</sup>**

#### **UPE Act.**

Additionally, the prohibitive cost of education can contribute to forcing children out of school and on to the streets. In 1997 the government introduced Universal Primary Education (UPE), which was meant to ensure

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<sup>39</sup> Cap 59



free education for all. But there are limited numbers of government-run schools and additional educational costs arise—from school uniforms to books and other supplies. As a result, poor families can choose to keep some children out of school and make them work at home. Some children reject being kept from school and decide to come to the streets, or they work on the streets to gather money to pay their own school costs.

### **3.4 INTERNATIONAL LEGAL STANDARDS**

Uganda has ratified and domesticated the African Charter on Human and Peoples' Rights (known as the Banjul Charter), which protects the fundamental civil, political, economic, and social rights of all people, including children. The Convention on the Rights of the Child (CRC), which Uganda ratified in 1990, and the African Charter on the Rights and Welfare of the Child (ACRWC), ratified in 1994, spell out the principal responsibility of the government under international law to protect the specific rights of children. The CRC calls on any actors working unofficially or on behalf of the state in official capacity to take all “legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury, and abuse.” Article 19 of the CRC requires that states protect children from “neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.”<sup>[160]</sup>

#### **The Convention on the Rights of the Child (CRC).**

Uganda ratified the Convention on the Rights of the Child in 1990 which require states to prevent torture, as well as other cruel, inhuman, or degrading treatment or punishment. This prohibition applies “not only to acts

that cause physical pain but also to acts that cause mental suffering to the victim,” and the infliction of such treatment can never be justified.

Article 33<sup>40</sup> requires states to take all appropriate measure “to protect children from the illicit use of narcotic drugs and psychotropic substances.”<sup>41</sup> In addition to drugs like marijuana, the substances used by children in Uganda, like glue and petrol, can be addictive, altering their state of mind.<sup>42</sup> The government should take legislative, administrative, social, and educational measures to protect children from misuse and forced ingestion or consumption of drugs as described in this report.

The CRC specifies that depriving children of liberty “shall be used only as a measure of last resort and for the shortest appropriate period of time,” and that “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”<sup>43</sup> As this report documents, the policy of routinely holding children accused of being idle and disorderly in custody violates the principle that detention should only be used as a measure of last resort.

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<sup>40</sup> The Convention on the Rights of the Child

<sup>41</sup> CRC, art. 33

<sup>42</sup> UNICEF, “Implementation Handbook for the Convention on the Rights of the Child, Part 3 of 3,” 2007, [http://www.unicef.org/publications/files/Implementation\\_Handbook\\_for\\_the\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child\\_Part\\_3\\_of\\_3.pdf](http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_3_of_3.pdf) (accessed May 23, 2014), p. 503.

<sup>43</sup> CRC, arts. 37(b) and 37(d)

Article 32 of the CRC similarly requires states to recognize the right of children to protection from economic exploitation and hazardous labor, but also labor which would interfere with a child's education.<sup>44</sup>

### **The Convention against Torture**

The CT provides among others for the Right to Protection from Abuse. Children have the right to protection from abuse, including from violence, deprivation of liberty, sexual abuse, and the illicit use of drugs.

Researchers like..... however note that torture against street children ranging from physical to psychological continues to haunt and destabilize the street children. From one of the interviews carried out as noted by (.....) street girls are sexually harassed by older men and boys.

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

Just like the CRC, the International Covenant on Civil and Political Rights (ICCPR), mandates states to prevent torture, as well as other cruel, inhuman, or degrading treatment or punishment. This prohibition applies "not only to acts that cause physical pain but also to acts that cause mental suffering to the victim," and the infliction of such treatment has no justification and no valid argument in its defense whatsoever. Street children in Uganda are at specific danger of prohibited abusive treatment by the police, KCCA, as well as by members of communities, and adults on the street. Many of the instances of police and KCCA abuse and extortion constitute cruel, inhuman, or degrading treatment; in some instances this ill-treatment rises to the level of torture.

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<sup>44</sup> CRC, art. 32(1).

Police beatings of children with batons, wires, bicycle locks, or other objects, and the use of tear gas, that cause severe pain or suffering and are intended to punish or intimidate children constitute torture. In cases where beatings and harassment of children by police do not rise to the level of torture, they may nevertheless produce a level of physical or mental suffering that constitutes cruel, inhuman, or degrading treatment or punishment. In addition, violence and exploitation of children by police and KCCA on the streets or in detention violate children's rights under the CRC.

These international treaties also impose an obligation on states at all levels of government to take measures to protect children against sexual violence and abuse. The government should provide a remedy where fundamental protections have been violated. The CRC requires that states "undertake to protect the child from all forms of sexual exploitation and sexual abuse."<sup>45</sup> This includes ensuring that perpetrators of sexual abuse and exploitation are brought to justice<sup>46</sup>.

Moreover, the CRC requires states to take all appropriate measures to promote physical and psychological recovery and social integration of child victims of any form of abuse. Such recovery and reintegration should take place in an environment that fosters health, self-respect, and dignity of the child<sup>47</sup>.

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<sup>45</sup> CRC, art. 34.

<sup>46</sup> Committee on the Rights of the Child, Concluding Observations: Benin, CRC/C/BEN/CO/2, para. 70(f).

<sup>47</sup> CRC, art. 39. See also Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of Child, CRC/GC/2003/4 (2003), para. 37.

The ICCPR, the CRC, and the Banjul Charter prohibit all arbitrary or unlawful deprivations of liberty.<sup>48</sup> There are a number of UN instruments that provide authoritative guidance under international law for interpreting treaties' provisions relevant to the treatment of children in conflict with the law.<sup>49</sup>

With respect to juvenile detention, the **ICCPR** highlights the need for the treatment of children appropriate to their age, and the **ICCPR** along with the ACRWC require that children either those suspected or found guilty of violating penal laws should be segregated from adults or not be detained alongside them.

Organized operations that round up large numbers of children as described in this report are arbitrary and unlawful, as are arrests intended to extort money or information from children. Even when the arrest or detention of children accused of being "idle and disorderly" or of "vagrancy" is not conducted in an arbitrary manner, it may still be unlawful if children are held for an extended period without being charged with an offence.

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<sup>48</sup> ICCPR, art. 9(1) and 9(3), and CRC, art. 37(b). The UN Human Rights Committee, in its interpretation of article 9 on the right to liberty and security, states that it is applicable to "all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc." UN Human Rights Committee, General Comment 8: Right to liberty and security of persons (Art. 9), Sixteenth session, June 30, 1982, para. 1.

<sup>49</sup> See the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53), U.N. Doc A/40/53 (1985); the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, 45 U.N. GAOR Supp. (no. 49A), U.N. Doc A/45/49/ (1990); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The U.N. Rules), G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (no. 49A), U.N. Doc. A/45/49 (1990); the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957

Furthermore, it violates the national laws Ugandan has enacted, as detailed in the section below.

According to the Committee on the Rights of the Child, the placing into institutions of orphans or children requiring alternative care should be a “measure of last resort and only when family-type measures are considered inadequate for a specific child, and that institutionalization is subject to regular review with a view to reassessing the possibility of reunification.”<sup>50</sup> The committee has urged countries to introduce well-resourced foster care systems as an alternative to institutionalized care.<sup>51</sup> Where institutionalization is necessary and in the best interest of the child, strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States must ensure effective and systematic inspection mechanisms to check on children’s welfare in all institutions, both government and private.<sup>[172]</sup>

### **The International Covenant on Economic, Social and Cultural Rights (ICESCR),**

Uganda is also a signatory to, The International Covenant on Economic, Social and Cultural Rights (ICESCR which it ratified in 1987. The instrument safeguards children from work that is harmful, dangerous, or likely to hamper their normal development, and requires signatories to prohibit and punish child labor.<sup>52</sup>

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<sup>50</sup> Committee on the Rights of the Child, Concluding Observations: Latvia, CRC/C/LVA/15/Add.261, para. 333. See also CRC, art. 10; and Committee on the Rights of the Child, Report of the fortieth session, September 2005, CRC/C/153, para. 670.

<sup>51</sup> Committee on the Rights of the Child, Concluding Observations: Nepal, CRC/C/15Add.261, para. 50.

<sup>52</sup> ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention),

## **The International Labour Organization (ILO) Convention 182.**

This convention specifically dealt with the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour prohibits the worst forms of child labor for all children under 18.<sup>53</sup> The convention defines “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the children.”<sup>54</sup> Sex work, commercial sexual exploitation, and forced begging are the worst forms of child labor.<sup>55</sup>

Article 3 of the ILO convention addresses forced and compulsory labor. The work police have children do in police stations and living quarters amounts to forced labor. The convention calls on states to take immediate measures to prohibit and eliminate this and all other worst forms of child labor.

### Right to Education

The right to education is enshrined in international human rights instruments, including the Universal Declaration of Human Rights (1948). The CRC, the ICESCR, the Banjul Charter, and the ACRWC all contain provisions requiring states parties to ensure that education leads to the full development of the child<sup>56</sup>.

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adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000), ratified by Uganda on June 21, 2001.

<sup>53</sup> ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention), adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000), ratified by Uganda on June 21, 2001.

<sup>54</sup>Ibid., art. 3.

<sup>55</sup> Ibid

<sup>56</sup> CRC, art. 29; UN Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, 2, U.N. Doc. CRC/GC/2001/1 (2001); ACRWC, art. 11; and ICESCR, art. 13

Both the CRC and the ICESCR require primary education to be compulsory and free without discrimination.<sup>57</sup> Similarly, the African Charter on the Rights and the Welfare of the Child provides that “every child has the right to an education” and stipulates that free and compulsory basic education should be achieved progressively.<sup>58</sup> Secondary education, including vocational training, should be made available and accessible. States are required to protect children from work that interferes with their education.<sup>59</sup>

### **The Ugandan Child Protection Framework**

Despite a strong framework in children’s rights, activists and NGO staff highlight the failure of the Ugandan government to implement child protection laws and policies across the country.<sup>60</sup> The 1995 constitution reflects many of the basic rights and protections for children set out in international standards. Under the constitution, children are guaranteed the right to all social and economic benefits free from discrimination;<sup>61</sup> they are protected from “any form of abuse, harassment or ill-treatment;”<sup>62</sup> and vulnerable children are accorded “special protection,” though what those protections entail is not specified.<sup>63</sup>

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<sup>57</sup> CRC, art. 28; and ICESCR, art. 13.

<sup>58</sup> ACRWC, art. 11.

<sup>59</sup> CRC, art. 28; and ICESCR, art. 13.

<sup>60</sup> Olive Eyotaru, “Child protection should be priority for post 2015, says activists,” *Daily Monitor*, March 9, 2014, <http://www.monitor.co.ug/News/National/Child-protection-should-be-priority/-/688334/2236326/-/xgry5tz/-/index.html> (accessed April 2, 2014)

<sup>61</sup> Constitution of the Republic of Uganda, 1995, art. 34(3).

<sup>62</sup> *Ibid.*, art. 17(c).

<sup>63</sup> *Ibid.*, art. 34(7).



## **Children in Police Custody**

The Children Act provides the legal framework to protect and promote the rights of children. The age of criminal responsibility is 12,<sup>64</sup> though with only four percent of births registered between 1999 and 2003 determining the age of children can be arbitrary and inaccurate.<sup>65</sup> According to the Committee on the Rights of the Child's general comment on juvenile justice, 12 years is the absolute minimum age of criminal responsibility.<sup>[188]</sup> Article 89 of the Children Act, which addresses children in conflict with the law, outlines the procedures of police interaction with children, including discretionary powers on whether or not to caution and release children without recourse to formal hearings;<sup>[189]</sup> how police must contact a probation and social welfare officer at the time of arrest to partake in interviews with children; and that if children cannot be taken immediately to court and the charges are not serious, the children should be released on bond.<sup>[190]</sup>

Both the Children Act and the constitution stipulate that children should be kept separately from adults during detention,<sup>66</sup> and children are not to be detained for more than 24-hours if they are not taken to court in that timeframe.<sup>67</sup> In its response to Human Rights Watch, the Uganda Police Force said that children's cases follow the "guidelines in place as outlined in the Children's Act." And yet, as documented in this report, street children report that they are routinely detained in police custody with adults, girls were kept

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<sup>64</sup> Children Act, 2003, art. 88.

<sup>65</sup> UNICEF, "Strengthening Birth Registration in Africa: Opportunities and Partnerships Technical Paper," undated, [http://www.unicef.org/esaro/Technical\\_paper\\_low\\_res\\_.pdf](http://www.unicef.org/esaro/Technical_paper_low_res_.pdf) (accessed February 02, 2019).

<sup>66</sup> Children Act, Section. 89(8); and the Constitution of the Republic of Uganda, 1995, art. 34(6).

<sup>67</sup> Ibid., Section. 89(7)

with boys and adults,<sup>68</sup> and in some cases well beyond the 24-hour holding limit. The Ugandan police's mixing of children with adult criminal detainees—as well as the mixing of children of different ages, backgrounds, and legal status during detention—in addition to the lengthy detention periods, places children at risk of torture, ill-treatment, and exploitation. These practices violate children's rights under both domestic and international law to be held separately from adults and to be treated with humanity and respect and in a manner which takes into account their needs.

### **The 2006 Employment Act, and the 2006 National Child Labour Policy**

The legal framework that governs the employment of children presently is a composition of the, The constitution,<sup>69</sup> the Children Act,<sup>70</sup> the 2006 Employment Act, and the 2006 National Child Labour Policy that make provision for the the protection of children from exploitation and harmful employment. The Employment Act lays out the terms for employment of children under 18 and forbids the employment of children under 12.<sup>71</sup> No child should be employed in work that is detrimental to their “health, dangerous or hazardous or otherwise unsuitable.”<sup>72</sup>

The child labor policy outlines a framework to mobilize actors to eliminate child labor, outlining the governmental response to it and its institutional framework.<sup>73</sup> “Light work” outlined in the Employment Act, is deemed acceptable under Ugandan law for children over 14 years, which could be

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<sup>68</sup> The Children Act, 2003, stipulates that female children in custody should be under the care of a female officer, Section. 89(9).

<sup>69</sup> The Constitution of the Republic of Uganda, 1995, art. 34(4).

<sup>70</sup> Children Act, 2003, art. 8.

<sup>71</sup> The Republic of Uganda, Employment Act, 2006, Section. 32(1).

<sup>72</sup> Employment Act, 2006, Section. 32(4).

<sup>73</sup> The Republic of Uganda, National Child Labour Policy, 2006

applicable to some of the small jobs street children perform, if supervised by an adult and should not affect a child's education.<sup>74</sup>

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<sup>74</sup> Employment Act, 2006, art. 32(2).

## **CHAPTER FOUR**

### **RESEARCH METHODOLOGY, PRESENTATION AND ANALYSIS OF THE FINDINGS ON THE OBJECTIVES.**

#### **4.0 INTRODUCTION**

This chapter looked at research methodology, data presentation, analysis and interpretation of the findings on “analysis of the law relating to the protection of street children” The data analyzed under this chapter is in accordance to the library research, online research, and journals reviewed. The presentation was guided by the following research objectives; to evaluate the efficiency of the Law street children.

#### **4.1 RESEARCH METHODOLOGY**

##### **4.2.2 Research design**

A descriptive case study design was used during the study. The reason as to why a descriptive study was used is that it assisted in describing a single problem as it represented other wider problems. It involved only doctrinal method of data collection. Doctrinal method emphasized the importance of looking at the available Literature in the area of research. It was important since the researcher accessed the existing gaps and drew a conclusion thereafter with formidable recommendations on how the law can be amended to provide for better protection of Street children. Detailed data was gathered through reading Journals and other existing legal scholarly materials. Furthermore, it is argued that such instruments assisted in capturing quality

information because it was written. Forms of the data collection included online and library research.

#### **4.2.3 Area of study**

The study focused on Kampala Metropolitan area by closely looking at and discussing the different laws that affect the welfare of street children and how these laws and policies have influenced the policymakers.

Application in England, the doctrines of Equity and Indian laws at the time being in force has realized significant growth since its inception with more projects.

#### **4.2.4 Research instruments.**

#### **4.2.5 Documentary Study**

The researcher used various textbooks, references Journals, Reports, Newspapers and legal scholarly relating to the research study. These looked at the already existing data that had been published regarding the problem of the study.

#### **4.2.6 Online Research.**

The researcher also reviewed the existing scholarly writings on the subject of Street Children in other Jurisdictions to better appreciate the existing loopholes in the Ugandan Jurisprudence on the same Area. This helped the researcher appreciate why despite being an old fracas, the problem of street children has continued to haunt Uganda even in the presence of very good laws.

#### **4.2.7 Data analysis.**

The researcher edited the information after being collected, and then the collected data was summarized such that it became more concise and precise to make it easier for analysis.

#### **4.2.8 Research procedure**

The researcher spent time in the Existing libraries in Uganda like the KIU Law Library, Makerere Library and The Law Development center to get better acquainted with the best existing material on the subject of research. The researcher also used internet sources like Google Scholar to get the most recent opinions and scholarly writings in the Area of Street Children and the Law.

#### **4.2.9 Limitations.**

One of the main obstacles that this study faced is the dearth of academic literature and sources of reliable information on Street Children in Uganda. Most of the documentation relating is not readily available either due to little and or limited research in this area or due to the fact that the responsible institutions do not normally consider it an area worth researching. However, there are a few Ugandan academics who have engaged with issues pertaining to this research and, therefore, their works have been frequently cited to support the arguments that I make and to question some common assumptions. It may also be stated that there is a fear among Ugandans of criticizing the ruling government because of the level of intolerance towards alternative views. This made it difficult for this study to elicit the free opinions of Ugandans which would have enhanced this study. For these reasons, the purview of this thesis has been limited to exploring a the few available local sources supplemented by newspaper articles, web blogs and the work of

international and regional academics for the purposes of sketching and probing the conclusions made by this study.

Newspaper articles and website blogs have been used to supplement academic literature. While these sources may not be found to be authoritative, they have been drawn on in an attempt to highlight both the realities in Uganda and the opinions formed on the issues concerning this research. In order to address the challenges posed by the shortage of a variety of sources, I relied extensively on opinions in the Newspapers and Journals where judges, lawyers, journalists, members of civil society and with the academic community have written or been written about in order to challenge common perceptions and to supplement the available information.

#### **4.2.10 Chapterization.**

This report consists of the introductory chapter, three substantive chapters and a concluding chapter. The contents of each chapter are discussed at the beginning of every chapter therefore, only an outline of the issues dealt in this study is provided under this section. Chapter one provides a background to this study and the problem statement and the objectives of the research. The main aim is to provide a comprehensive platform for a critical analysis of the legal construction of the Law on Street Children and their Rights in Uganda. Starting with the Historical genesis of the Menace of street Children. A discussion of the causes of street life adoption, the insight into how and why they are on the street.

Chapter two discusses the existing literature on the subject of subject of the rights of street children. The researcher revisited the existing scholarly articles and journals thereto in order to in depth identify existence and come up with authoritative information on the subject matter.

Chapter three discusses the existing legal framework as established under the 1995 constitution as amended. Furthermore it explains how the Constitution, statutes and International Conventions and laws make provision for the rights of children. The chapter is analytical of the laws, and hence a core of the research.

Chapter four provides observations and findings of the study.

The final chapter of this study provides recommendations and a final conclusion to the research proposal.



## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSION**

#### **5.1 INTRODUCTION.**

In this final chapter the researcher presents the recommendations he deems best suited to fill the gaps that the researcher found wanting in the system after carrying out the research. The chapter is divided into two parts, the Recommendations and the conclusion. The researcher herein gives the recommendations mainly on reform and forms the opinion that assessors are still need in the judicial system only if reform can be made for them to suit the changing demands of society.

The government should ensure that street children are afforded the same rights and protections under domestic Ugandan law and regional and international provisions as all other Ugandan children. Human Rights Watch calls on the government of Uganda to meaningfully implement its child protection system and ensure that authorities in child protection at the district level have the means, support, and training to adequately perform their duties. The ministry of gender and local government officials should cease ordering roundups of children and arbitrary arrests. They should instead focus on ending the stigma associated with street children by providing education and positive campaigns on the rights of all children throughout the country. Uganda's Universal Primary Education (UPE) system should be used to ensure that the basic educational needs of all Ugandan children are met. The government should work to eliminate the extra costs of what is supposed to be free primary education under the UPE system and prevent future generations of children from ending up on the streets. NGOs

seeking to support street children should be regulated but not face threat of criminal sanction for offering assistance.

Uganda should support civil society organizations working in child protection and activities directly targeting street children throughout the country. Any funds should be carefully monitored to ensure they reach intended beneficiaries. Uganda's international partners should also actively voice their concerns regarding child protection and the treatment of street children at the hands of police and other authorities, and encourage the Ugandan government to uphold its international, regional, and domestic obligations to child rights.

## **5.1 KEY RECOMMENDATIONS**

### **To the Government of Uganda**

#### **To the Ministry of Gender, Labour and Social Development**

- End the ministry's involvement in or promotion of roundups of street children in Kampala and elsewhere in Uganda.
- Empower the National Council for Children to act as a focal point to promote the protection of street children and monitor law enforcement practices related to street children.
- Ensure that sufficient budgets are allocated to ministry-led interventions that target street children specifically, working with nongovernmental organizations assisting street children to address gaps in programming.

- Take measures to fight stigma and discrimination against street children, for example through awareness-raising campaigns about the rights of all children, and creating a campaign and improving mechanisms to report child abuse to police. Such mechanisms should be available and accessible to both children and adults, like a free hotline and desks dedicated to receive reports in the offices of district-level probation and social welfare officers.
- Incorporate information on how to respect the rights of children into existing trainings of police officers, justice officials, health workers, district probation and social welfare officers, and others who interact with vulnerable children.
- Allocate sufficient funds to construct and maintain alternative facilities for children not in conflict with the law in each district as an alternative to remand homes and the national rehabilitation center.
- Carry out regular monitoring visits of the Kampiringisa National Rehabilitation Center and the four remand homes in Naguru (Kampala), Mbale, Gulu, and Fort Portal, to ensure the health and well-being of children in the centers.

#### **To the Ministry of Education and Sports**

- Formulate and implement a national strategy to progressively reduce and eliminate costs related to education that often prevent children from going to or staying in school, such as the cost of meals, books, writing instruments, and uniforms.

### **To the Ministry of Local Government**

- Ensure that all probation and social welfare officers are trained in child rights.
- Allocate sufficient budgets to probation and social welfare officers to carry out their work on child protection, and implement programs for officers to conduct regular surveys of the number of children in their district to improve interventions and assistance.
- Allow, in the absence of government services, NGOs to operate assistance programs for street children and ensure that district ordinances do not impede the work of NGOs.

### **To the Kampala Capital City Authority**

- End the roundups of children and the practice of taking them to Kampiringisa or forcefully returning them to their homes.
- Ensure that all KCCA officers are trained in child rights and enforce the prohibition of abuse of children by KCCA officers.

**Initiate investigations into complaints concerning the abuse of street children, and disciplinary measures and criminal sanctions should occur where appropriate. To the Parliament of Uganda**

- Approve the pending amendment of the Children Act that would bring greater protection and access to family community courts for vulnerable children who have committed petty and non-capital offenses.

### **To the Uganda Bureau of Statistics**

- Include questions relating to children living, working, and sleeping on the streets in the next August 2014 census, in addition to existing questions relating to orphans.

### **To the Uganda Police Force**

- End arbitrary arrests, detention, and roundups of street children.
- Investigate all allegations of beatings and violence of street children by police and consider bringing charges under Uganda's 2012 Anti-Torture Act.
- Enforce the prohibition against police brutality of street children.
- Improve its investigative and forensic capacity to combat child abuse.
- Increase the number of Child and Family Protection Unit (CFPU) officers to ensure that they are located in every police station.
- Provide adequate support, including resources for transportation and communication, to the CPFU to carry out its work on child protection.
- Improve safeguards for children in police custody.

### **To Uganda's International Partners**

- Urge the government of Uganda to investigate abuses of street children committed by the Uganda Police Force (UPF) and KCCA.
- Condemn roundups of street children regularly when they occur and consistently raise concerns with Ugandan government officials,

especially the inspector general of police, the minister of gender, labour and social development, and the executive director of the KCCA.

- If considering support to the government, provide technical and financial assistance specifically to improve the protection of children's rights.
- Promote the role and work of nongovernmental organizations in Uganda working with street children and help coordinate among NGOs and the government on child protection issues.

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