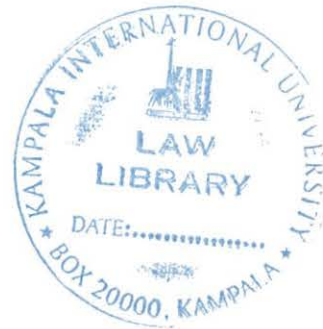


**PROMOTING AND PROTECTING HUMAN RIGHTS OF STREET  
CHILDREN IN JUVENILE JUSTICE SYSTEMS: THE  
LAW AND PRACTICE IN UGANDA**

**BY**

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**SUPERVISOR: MR.CHIMA**



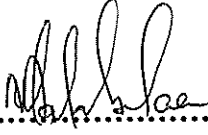
**A REPORT SUBMITTED TO THE FACULTY OF LAW IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE AWARD OF A BACHELORS OF LAWS  
OF KAMPALA INTERNATIONAL UNIVERSITY**

**MARCH 2012**

## DECLARATION

I Nakibuuka Mariam declare that, this report “Promoting and Protecting Human Rights of Street Children in Juvenile Justice Systems: The Law and Practice in Uganda”, is entirely my own effort and has never been submitted to any academic institution.

**Student's Name:** Nakibuuka Mariam


**Signature:**  .....

**Date:** 1st/Aug/2012 .....

## APPROVAL

This report "Promoting and Protecting Human Rights of Street Children in Juvenile Justice Systems: The Law and Practice in Uganda" has been under my supervision.

**Supervisor:** Mr. Chima

**Signature:** .....

**Date:**.....

## **DEDICATION**

I dedicate this piece of work to my parents, my father Mr. Akim Ray Mukasa and my mother Mrs. Florence Mugabwa for their great contribution in my academic career.

## **ACKNOWLEDGEMENT**

Firstly am greatly indebted to my supervisor, Mr. Chima who has tirelessly perused through this to guide and correct me. I appreciate your effort. I cannot fail to acknowledge my lecturers under the Faculty of Law for the knowledge that they imparted in me, without which I would not have accomplished this study.

I am also indebted to my fellow students under the law faculty for their great support and encouragement; it was great studying with you all.

I cannot forget to acknowledge my parents, Mr. and Mrs. Akim Ray Mukasa for their great contribution in my academic life. And to the entire family, am grateful for your tremendous support and encouragement.

Special thanks to the staff of Law Development Center, Kampala International University Libraries, employees of organizations protecting against the abuse of rights of children such as ANNPCAN, Child Care International, and also the Police Desk (children Unit) for the material contribution.

May God Bless you all.

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### **INTERNATIONAL**

- The United Nations Convention on the Rights of the Child (1989)
- The African Charter on the Rights and Welfare of the Child (1999)
- The ILO Convention 138 and 182 on the Worst Forms of Child Labor (1999)

### **DOMESTIC**

- The Constitution of the Republic of Uganda (1995)
- The Children Act (2003) Cap 59
- The Children Statute (1996)
- The Penal Code Act 1950
- The National Council for Children Act, 1996
- The Local Government Act (1997)
- The Orphans and Vulnerable Children Policy (2004)
- The Witchcraft Act 1957
- The Child Labor Policy (2006)
- The Birth and Registration Act (1973)
- The Trafficking in Persons Act (2008)
- The Employment Act 1997



## LIST OF ACRONYMS

ACRWC:	African Charter on the Rights and Welfare of a Child
AIDS:	Acquired Immune Deficiency Syndrome
ARVs	Anti-Retroviral Drugs
CEYCA:	Center for Youth and Children Affairs
HIV:	Human Immune Virus
IDP:	Internally Displaced Persons
SLDCs:	Social Legal Defence Centres
UNICEF:	United Nations Children Education Fund

## **ABSTRACT**

This study “Promoting and Protecting Human Rights of Street Children in Juvenile Justice Systems: The Law and Practice in Uganda” was carried out with different organizations and agencies in Kampala with specific aims to identify the circumstances which give rise to the arrest of street children and the legalities taken into account to protect the rights of children as supported by the juvenile justice system; to investigate the challenges of human rights violations experienced by street children through the juvenile justice system and to suggest possible interventions to curb cases of human rights violations experienced by street children under the juvenile justice system in Uganda. To comprehend this, the study reviewed literature from various scholars on the specific aims as well as different laws from different countries that govern juveniles while brought to justice.

The study findings indicated that, street children are arrested because they are found committing crimes, others stubbornly refuse to consent to have committed a particular crime and yet others are held in circumstances of prostitution. The law has tried to bring them to justice but they are unnecessary delays in trial, the facilities at the remand homes are also not adequate, moreover the judiciary is also not well facilitated.

The study concluded that, street children have rights just like any other human beings which need to be observed. And with recommendations taken into account, policy reviews will help to put juveniles to fair justice.

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.0 Introduction

The topic under study is “Promoting and Protecting Human Rights of Street Children in Juvenile Justice Systems,” The Law and Practice in Uganda. The study is carried out in Uganda among various advocates for children’s rights. This chapter covers the introduction, definitions used in the study, background of the study, statement of the problem, purpose of the study, objectives, research questions, hypothesis, scope, significance of the study, methodology, literature review and synopsis of the chapters.

### 1.1 Background of Street Children

Street children are people of 18 years and below who spend most of their time on the street and for whom the street is the major socializing agent.<sup>1</sup> Street children are a mobile population of children,<sup>2</sup> homeless and residing primarily on the streets of a city<sup>3</sup> for a variety of reasons like, broken families, poverty, wars, peer influence and HIV/AIDS consequences that deprive them of family among other reasons.<sup>4</sup>

Street children are a worldwide phenomena found in a large majority of the world’s cities. Street children are prevalent in densely populated urban hubs of developing or economically unstable

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<sup>1</sup> J. C. Munene and Janet Nambi (1996), Understanding and Helping Street Children in Uganda, Community Development Journal, Oxford Journals, Volume 31, Issue 4, p.32.

<sup>2</sup> Panter-Brick, C. (2002) Street Children, Human Rights, and Public Health: A Critique and Future Directions, Annual Review Anthropology 2002 vol. 31:147–171

<sup>3</sup> Droz, Y. (2006) Street Children And The Work Ethic: New policy for an old moral, Nairobi (Kenya) Childhood Vol 13(3): 349–363.

<sup>4</sup> Munene and Nambi (1996) Op cit p. 6

countries such as India, Pakistan, China, Africa, and Russia, among others<sup>5</sup> with Russia having an estimated 1 million street children,<sup>6</sup> Pakistan is anywhere between 1.2 million and India with an estimated at 18 million street children.<sup>7</sup>

By 1989, an estimated 100 million children were reported to be living and growing up on urban streets around the world,<sup>8</sup> with the number projected to be continuing apace with the growing global population and urbanization. However, fourteen years later the same international agency (UNICEF) maintained the same estimate of 100 million street children, despite their increasing numbers.<sup>9</sup> More recently still, the exact number of street children remains impossible to quantify, yet reports continue to reflect that numbers are increasing on a daily basis.<sup>10</sup>

With a 100 million figure remaining surprisingly static for more than 20 years, while the global population has grown over the same period by more than 30% from 5.2 billion in 1989 to 6.8 billion in 2009 and urbanization continuing apace with over half the world's population now living in cities,<sup>11</sup> it then becomes clear and precise that these claims are at odds. The contradicting figures leave a lot to be desired on how, why and when the street children are either **on** or **off** the streets or where they actually disappear to.

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<sup>5</sup> Drane (2010) quoting Casa Alianza's Statistics Quoted in 2000 on CSO Advocating for Street Children Rights.

<sup>6</sup> Ibid, p. 23.

<sup>7</sup> Ibid p.25.

<sup>8</sup> Droz (2006) quoting UNICEF (2005) State of the World's Children 2006: Excluded and Invisible. New York: UNICEF

<sup>9</sup> Campos et al (2005) Campos R., Raffaelli, M., Ude, W., Greco, M., Ruff, A., Rolf, J., Antunes, C.M., Halsey, N. And D. Greco, Social networks and daily activities of street youth in Belo Horizonte, Brazil. Child Development, 65, pp. 319-30

<sup>10</sup> Drane (2010) Op, cit p.10.

<sup>11</sup> Droz, Y. (2006) Street Children And The Work Ethic: New policy for an old moral, Nairobi (Kenya) Childhood Vol 13(3): 349-363

Street children around the world who are allegedly, accused or convicted of having committed a criminal offence oppose the State at its strongest when they come into direct contact with State officials like police officers, prosecutors, guards, judges.<sup>12</sup> State officials in several countries have abused their positions of power while solving issues of children under the juvenile system. Offensive children have been exposed to different forms of violence with impunity and yet without proper inspections and complaint mechanisms in place. For this, juveniles are deprived of their liberty and are abused<sup>13</sup> and many of the abuses have occurred with impunity and a lack of tools with which the child can defend his/her rights. The perpetrators of violence take advantage of the child's high vulnerability and yet suffer no consequences for it,<sup>14</sup> yet children in conflict with the law are highly vulnerable and should entirely depend upon adults for defence and protection of their rights.<sup>15</sup>

Moreover the States do not invest in decent facilities under the juvenile institutions, thus leaves many of the juvenile cases untried for lengthy periods.<sup>16</sup> Just like the Defence for Children International Report of 2000 was apt to recognize that justice is the unwanted child of state responsibilities.<sup>17</sup> This is because street children while under detention are placed out of sight and forgotten by the systems which ought to fend for them.

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<sup>12</sup> Save The Children UK (2003) A Last Resort: The growing concern about children in residential care: Save the Children's position on residential care

<sup>13</sup> Campos et al (2005) Campos R., Raffaelli, M., Ude, W., Greco, M., Ruff, A., Rolf, J., Antunes, C.M., Halsey, N. And D. Greco, Social networks and daily activities of street youth in Belo Horizonte, Brazil. *Child Development*, 65, pp. 319-30

<sup>14</sup> Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003

<sup>15</sup> Evans, R. (2004). Tanzanian childhoods: Street children's narratives of home. *Journal of Contemporary African Studies* 22 (1): 69 /92.

<sup>16</sup> Ibid.

<sup>17</sup> Defence for Children International (2000), *Juvenile Justice is the Unwanted Child of State Responsibilities*, International Network of Juvenile Justice, Geneva (2000), p. 10.

In Uganda, a study on the street children in 1999 estimated 5,000 children on the streets of Kampala.<sup>18</sup> Approximately 35,000 children, known as night commuters, traveled from conflict areas or IDPs camps each night to urban centers to avoid abduction.<sup>19</sup> Many of the displaced girls became involved in prostitution. Other children beg, scavenge and hawk while others steal to survive. Street children have personal histories, they also have futures as youth and adults, as parents and workers, migrants, criminals, street vendor lives (and deaths) about which very little is known.<sup>20</sup>

The number of street children in Uganda is reported to be on the increase because of the commercial opportunities available especially in the urban centers.<sup>21</sup> Parallel to the escalating numbers, criminality is also increasing, moreover the juvenile justice system remains insufficient in addressing the rights of children. The juveniles are exposed to hostility, harassment, including rapes, unlawful arrests and imprisonment, and the pervasive deprivation they face, all of which call for a concerted and urgent action.<sup>22</sup>

Law enforcers and implementers on the other hand are finding difficulties in handling juvenile issues because they cannot determine the right category of children to detain. Most of the children do not have birth certificates and are not registered. This contributes to the complexities in addressing juvenile issues. Despite the complexities, characteristics of street life continue to be of interest to researchers today, noticeably in contexts where street children are a relatively

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<sup>18</sup> Ibid p. 16.

<sup>19</sup> US Department of State Bureau of Democracy, Human Rights and Labour Report, March 2006. [www.state.gov/g/drl/rls/hrrpt/2005/61598.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61598.htm).

<sup>20</sup> Lucchini, R. (1997) *Deviance and Street Children in Latin America: the Limits of a Functionalist Approach* Fribourg, Switzerland: University of Fribourg Press

<sup>21</sup> Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003

<sup>22</sup> Ibid

new, or a newly visible concern. On particular, instances, the policies directed at street children are more overtly concerned with public security, where the issue is considered a concern for home security, moreover short lived.<sup>23</sup> The government of Uganda for instance seemed to have found a solution for street children during CHOGM, but it was hitherto short-lived. It is upon this background and setting that the researcher undertook to examine the rights of street children by providing a rapid assessment of the juvenile justice systems that protect the human rights of children in Uganda.

### **Background of the Law of Juveniles**

A Child<sup>24</sup> is defined as a human being below the age of 18 years, according to the African Charter on the Rights and Welfare of a Child (ACRWC). The Charter recognizes the unique and privileged place of the child around the African society by acknowledging the fact that African children need protection and special care. Among its aims, is that of safeguarding the child against detention.<sup>25</sup>

Worldwide research on policies in relation to street children is thin considering that they have been a research topic for over 30 years. In 1994 the Council of Europe was the first institutional body to propose a categorization of the policy approaches evident in state practices towards street children.<sup>26</sup> Three policy approaches were recognized which involved repression-oriented; protection-oriented and human rights-based approach.<sup>27</sup> For Latin America a correctional model,

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<sup>23</sup> UNICEF (2010)

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

<sup>25</sup> UNICEF (2002) State of the World's Children 2003: Child Participation New York: UNICEF

<sup>26</sup> Human Rights Watch (2001) Easy Targets: Violence against Children Worldwide

<sup>27</sup> CoE (1994).

rehabilitative, outreach strategies, and preventive approaches were adopted.<sup>28</sup> By 2003, policy approaches had not made significant advances, as reactive, protective and rights-based models dominated the policy landscape around the world with each policy approach based on different conceptualizations, assumptions or social constructions of street children.<sup>29</sup>

In countries like Kenya, the highly political nature of policy making towards street children, has led to policy makers to adopt the language of children's rights, including abandoning the term street children to appeal to the international community while at the same time legitimizing control over the urban marginal population and adopting a public security, or repressive agenda towards children on the street.<sup>30</sup>

In Uganda the country has been reported to perform well internationally in terms of its approach to children in conflict with the law. The country has ratified the main international treaties, enshrining their key principles in the law of juveniles<sup>31</sup> which includes a comprehensive outline of the rights of juveniles. In 2008 the African Child Policy Forum ranked Uganda 12<sup>th</sup> in respect to legal protection of children, stating that the country had performed well in areas relating to juvenile justice. In 2010, the African Committee of Experts on the Rights and Welfare of the Child congratulated Uganda for efforts made under the framework of taking charge of children in

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<sup>28</sup> Rizzini, I. (2002) *The Child-Saving Movement in Brazil: Ideology in the Late Nineteenth and Early Twentieth Centuries in Minor Omissions: Children in Latin American History and Society* ed. T. Hecht University of Wisconsin Press: Wisconsin;

<sup>29</sup> Thomas de Benitez (2003)

<sup>30</sup> Droz, Y. (2006) *Street Children And The Work Ethic: New policy for an old moral*, Nairobi (Kenya) *Childhood* Vol 13(3): 349–363

<sup>31</sup> The Children Act (2003) Part X Section (88) and (89).



conflict with the law especially in terms of setting up family and juvenile courts and the establishment of remand homes and a National Rehabilitation Centre.<sup>32</sup>

### **Juvenile Justice Homes in Uganda**

Detained children in Uganda are placed in one of the four remand homes while awaiting trial or in the national rehabilitation centre if they have received orders or sentences.<sup>33</sup> There are currently four operating remand homes serving their local districts that is to say, Fort Portal Remand Home, Gulu Remand Home, Naguru Remand Home and Mbale Remand Home. In addition to the above is the Kampiringisa National Rehabilitation Centre which serves children from the whole of Uganda.

All of the homes and the centre contain young males and females in conflict with the law from the ages of 12 to 18. In addition, and contrary to its original mandate, the national rehabilitation centre also contains children found roaming the streets of Kampala who have not been charged with or sentenced with an offence including the under 12.<sup>34</sup>

Children in conflict with the law in Uganda are principally the responsibility of the Ministry of Gender, Labor and Social Development. The Uganda Police Force and the Judiciary of the Republic of Uganda also play an important role.<sup>35</sup>

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<sup>32</sup> The African Child Policy Forum (2010), *The African Report on Child Wellbeing: Country Briefs Uganda*, Article 25 p.5.

<sup>33</sup> Campos et al (2005) Campos R., Raffaelli, M., Ude, W., Greco, M., Ruff, A., Rolf, J., Antunes, C.M., Halsey, N. And D. Greco, *Social networks and daily activities of street youth in Belo Horizonte, Brazil*. *Child Development*, 65, pp. 319-30

<sup>34</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

<sup>35</sup> Ibid

## 1.2 Statement of the Problem

It is imperative to note that the detention of juveniles has long been identified as a problem in many countries around the world. Children, particularly those on the streets have been arrested and their rights abused while under the juvenile justice institutions. They have been denied access to food, safe living environment, right to education among other rights. To regulate the abuse of children worldwide, Conventions have been ratified such as the International and National treaties such as the African Convention on the Rights of a Child and UN Convention on the Rights of Children<sup>36</sup> which emphasizes the minimum age of detention and maximum punishment to be administered to the child. Similarly, Organizations such as the Defence for Children International have also been established to pursue the juvenile systems on the recognition of the rights of children who conflict with the law.

In Uganda, national laws notably the Constitution<sup>37</sup> the Children Act<sup>38</sup> the Penal Code Act<sup>39</sup> among other laws have been put in place to address juvenile concerns. Street children have often been considered as delinquents under the juvenile justice systems and have been exposed to all sorts of punishments upon their arrest, irrespective of the obligations imposed by the law, to release the under 12 immediately.<sup>40</sup> The children have been detained in adult centers, exposing them to various abuses. Saneul and Lynne (2010) say that various reasons such as prostitution, stealing, roaming and lawlessness and a failure to consent to having committed a crime, have been attributed to the increasing arrest and detention of juveniles in Uganda.

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<sup>36</sup> African Convention on the Rights of a Child

<sup>37</sup> The Constitution of the Republic of Uganda 1995

<sup>38</sup> The Children Act 2003 Cap 59

<sup>39</sup> The Penal Code Act Cap 120

<sup>40</sup> Justice Law and Order Sector Uganda (2005) Sector wide approach in justice law and order: the Ugandan experience By Evelyn B. Edroma, Senior Technical advisor, JLOS

Street children are most of the times in conflict with the law because they witness ineffective parental behavior, have not received a natural and loving environment, poverty, peer influence and because they have not receive adequate parental controls. Unfortunately, the children themselves do not have the opportunity to protest against these acts that are detrimental to the realization of their rights.<sup>41</sup> The study therefore sought to examine the extent at which human rights of street children are abused in the face of the existing juvenile justice system in Uganda as a way forward to providing possible avenues for review of the law of juveniles.

### **1.3 Objectives of the Study**

#### **1.3.1 General Objective of the Study**

The study examines the treatment of street children by state officials while under detention to find out the loopholes that lead to abuse of their rights, despite the existing supportive juvenile justice systems in Uganda.

#### **1.3.2 Specific Objectives**

- i. To identify circumstances which give rise to the arrest of street children and the legalities taken into account to protect the rights of children as supported by the juvenile justice system in Uganda.
- ii. To investigate the challenges of human rights violations experienced by street children through the juvenile justice system in Uganda.

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<sup>41</sup> Luccini (1999), Theory, Method and Triangulation in the Study of Street Children." *Childhood* 3(2): 134

- iii. To suggest possible interventions to curb cases of human rights violations experienced by street children under the juvenile justice system in Uganda.

#### **1.4 Research Questions**

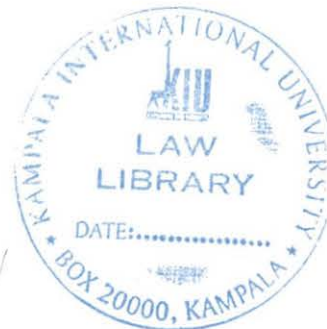
- i) What are the circumstances which give rise to the arrest of street children in Uganda?
- ii) What are the legalities taken into account to protect the rights of children under the juvenile justice system in Uganda?
- iii) What are the challenges of human rights violations experienced by street children through the juvenile justice system in Uganda?
- iv) What the possible ways to solve issues of street children under the juvenile justice system in Uganda?

#### **1.5 Hypothesis of the Study**

It is hypothesized that;

- i) There are circumstances giving rise to the arrest of street children.
- ii) The legalities taken into account to protect against the rights of children under the juvenile justice system are not supportive enough.
- iii) Street children experience challenges of human rights violation through the juvenile system.
- iv) There are solutions that can be adopted to solve the human rights concerns of street children under the juvenile justice system.

#### **1.6 Scope of the Study**



The study is carried out in Uganda, and it is restricted to examining the law that protects against abuse of the rights of street children while brought to juvenile justice. It attempts to identify the circumstances which give rise to the arrest of street children, through an establishment of issues taken into account in resolving juvenile cases in order to establish the ways under which the law of juveniles can be revised, not leaving out solutions to curb juvenile delinquency to rectify the position of street children and that of the state agencies.

### **1.7 Significance of the Study**

The study is expected to be of a significant contribution to protecting the rights of street children when the identified gaps in the juvenile laws are covered by drawing more effective laws that can be put in practice. It is also expected to be of significance, because it will help in closing existing gaps under study and thus unlawful arrests will be stopped when solutions to protecting the rights of street children are made available. The study is expected to help policy makers of children laws to adequately make legislation to reduce or eliminate the phenomenon abuse of the rights of juveniles. Above all the study is expected to contribute to realization of children's rights by eradicating street life.

### **1.8 Methodology**

The study employs a descriptive research design in which both the qualitative and quantitative aspects will be observed. In order to achieve the objectives of this study, the researcher administers interviews as her research instruments and both structured and non-structured interviews are relied upon to gather information on topical issues while collecting primary data.

Through quantitative design the researcher relies on primary sources through application of interviews, administered to a sample of 30 respondents who are purposively selected. The method will be purposely relied upon due to its ability to provide a range of data during interactions from which answers can instantly be provided without respondents having to think twice about giving their opinions although method is disadvantageous because it may generalize deductions.

Qualitative research is relied upon in data collection because it is much more subjective. The method allows for researchers to introduce their own bias to help in forming a complete picture. Its advantage is that in situations where it is unclear what exactly is being looked for in a study, the researcher can determine which data is important and what is not. In qualitative research the focus of the study is more apparent as time progresses than quantitative research, which generally knows exactly what it is looking for before the research begins. However, the method also has its disadvantages of presenting data which is much less concrete than pure numbers as data but instead, may yield stories, or pictures, or descriptions of feelings and emotions. The interpretations given by research subjects are given weight in qualitative research, so there is no seeking to limit their bias. At the same time, researcher tends to become more emotionally attached to qualitative research, and so their own bias may also play heavily into the results.

The researcher also relies on use of secondary data, which viewed from various journals, textbooks, statutes, newspapers, internet and other written or relative material for qualification and interpretation of results. These are reviewed from the Law Development Center, Kampala International University Libraries, employees of organizations protecting against the abuse of

rights of children such as ANNPCAN, Child Care International, and also the Police Desk (children Unit) and Naguru Remand Center. However, the tools selected are intended to minimize biases in the findings of the study, so ideally they aided the collection of data.

## **1.9 Literature Review**

The study reviews literature from various scholars on circumstances that give rise to the arrest of street children and the legalities taken into account to protect the rights of juveniles. It also covers the human rights violations experienced by street children while under the justice system as well as the possible interventions to curb cases of human rights violations experienced by street children under the juvenile justice system.

### **Factors Leading Children to Staying on the Streets**

Street children are recognized as young people who experience a combination of multiple deprivations and street-connectedness. This combination requires a specific focus on street children within wider policy agendas and interventions, to restore access to their legal human rights.<sup>42</sup>

**Family breakdown;** In Latin America in the 1970s to 1990s research held that family breakdown was one of the major factors responsible for children taking to the streets.<sup>43</sup> This view reflects the fact that children are less likely to come from a home headed by fathers because the

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<sup>42</sup> Young, L. and H. Barrett (2001) 'Ethics and Participation: Reflections on Research with Street Children', *Ethics, Place and Environment* 4.2: 130-1

<sup>43</sup> Scanlon (1998)

father is either unemployed, less cooperative, and less mutually caring, yet with higher levels of violence.<sup>44</sup> Moreover the connectedness to extended family structures and social networks within their communities is too minimal as compared to third world nations.<sup>45</sup>

**Structural violence;** structural violence has also been recognized as an underlying immediate reason for children leaving for the streets. The kind of societal hostility that naturalizes issues like poverty, sickness, hunger, and premature death, erasing their social and political origins so that they are taken for granted and no one is held accountable except the poor themselves.<sup>46</sup> However, more recently, in the paradigm shift towards recognition of children's agency and rights, studies have found that children make tactical, if not strategic decisions to be on the street, whether to reduce harm or improve socioeconomic options for their families or themselves.<sup>47</sup> Such situations causing street-connectedness render the factors complex and multifaceted.

Poverty, dysfunctional families, substance abuse and the death of family members have been demonstrated to be risk factors for children becoming delinquent. Insecurity due to an unstable social environment increases vulnerability, and young people with poorly developed social skills are less able to protect themselves against the negative influences of a peer group.

**Death of parents;** In Uganda, it is reported that about one in four Ugandan households have two or more orphans. The responsibility of raising these children is not easy and even providing them with basic necessities does not come that cheap. With the development of anti-retroviral drugs (ARVs) people living with HIV have managed to stay healthy longer, but not everyone can

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<sup>44</sup> Luccini (1999), Theory, Method and Triangulation in the Study of Street Children." *Childhood* 3(2): 167-170.

<sup>45</sup> Evans (2005) Evans, R. (2005) Social Networks, Migration, and Care in Tanzania, *Journal of Children and Poverty*, 11: 2, 111 — 129

<sup>46</sup> Scheper and Hughes, (2004).

<sup>47</sup> O'Kane, (2003)



afford the life-prolonging drugs. According to some estimates, less than half of the 300,000 Ugandans in need of ARVs have regular access to them. Without a source of income, children are particularly vulnerable. Many of these children have turned up in the streets of Kampala, to try and eke out a living by begging, doing menial jobs or stealing. The lucky few have been taken in by charities and foster families yet others have been ferried to camp sites of children.<sup>48</sup>

Juvenile crime and delinquency are serious problems all over the world. Their intensity and gravity depend mostly on the social, economic and cultural conditions in each country. There is evidence, however, of an apparent world-wide increase in juvenile criminality combined with economic recession, especially in marginal sectors of urban centres. In many cases, youth offenders are street children who have been exposed to violence in their immediate social environment, either as observers or as victims. Their basic education, when they have it, is poor; their primary socialization from the family is too often inadequate; and their socio-economic environment is shaped by poverty and destitution.

Countries with economies in transition have witnessed a dramatic rise in delinquency rates. Since 1995, juvenile crime levels in many of these countries have increased by more than 30 per cent. Juvenile delinquency is often highly correlated with alcohol and drug abuse. In Africa, delinquency tends to be attributed primarily to hunger, poverty, malnutrition and unemployment.<sup>49</sup>

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<sup>48</sup> Ferguson, Kristine M. (2006) Responding to children's street work with alternative income-generation strategies. *International Social Work* 49(6): 705-717

<sup>49</sup> Luccini (1999), Theory, Method and Triangulation in the Study of Street Children." *Childhood* 3(2): p.198.

Destitution, poor living conditions, inadequate education, malnutrition, illiteracy, unemployment and lack of leisure-time activities are factors that marginalize young people, which make some of them vulnerable to exploitation as well as to involvement in criminal and other deviant behaviour.

### **Causes of the arrest of street children**

**Engaging in criminal behavior;** World over, children like any other human being are bound to commit mistakes if not well guided and nurtured. Repeated mistakes may become habits that may consequently result into offensive behavior, as the child grows. Children offenders have most of the times taken to the streets and classified as street children.<sup>50</sup> While on the streets, they smoke marijuana, sniff petrol, steal, and drink alcohol, yet others become prostitutes.<sup>51</sup>

In general, youth delinquency begins with petty offences such as robbery or violent behaviour, which can be easily traced by and corrected through institutions and community and family environments. Juvenile delinquency covers a range of different violations of legal and social norms, ranging from minor offences to severe crimes committed by minors. Quite often youth take advantage of illegal opportunities and get involved in crime, substance abuse and violent acts against others, especially their peers. Statistically young people constitute the most criminally active segment of the population, although eventually most young people will desist from criminal and deviant activity.<sup>52</sup>

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<sup>50</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc. p.4.

<sup>51</sup> Ibid

<sup>52</sup> Young, L. and H. Barrett (2001) 'Ethics and Participation: Reflections on Research with Street Children', *Ethics, Place and Environment* 4.2: 130-1

**Failure to confess to have committed a crime;** According to Byrne<sup>53</sup>, failure to confess to have committed a crime is a significant factor in the detention of children. Torture of children in order to obtain a confession, to get information or to punish children suspected of having committed a crime has been reported in many regions in the world as widespread and severe. This happens both at the police level and during detention.

**Roaming and lawlessness;** street children have also been suspiciously arrested when found roaming the streets. As children, they are expected to be living under the care of an adult. In Uganda, children at Kampiringisa are being held simply because they have been deemed unruly by their parents and yet there is no welfare provision for children leaving under detention who do not have families to look after them.<sup>54</sup>

**Prostitution;** prostitution is another cause for the arrest of street children, for example in Kenya, the influx of refugees following the election violence fuelled sex trade among under age girls in the district.<sup>55</sup> The situation is not different among Ugandan girls in Busia. Ugandan girls aged between 11-18 years are a big attraction to many, they have been reported to charge as shillings 500 for sex per hour. The looming sex trade coupled with the influx of street children has prompted the Government and Busia district leaders to seek solutions to avert what they described as a looming crisis. There are at least 400 street children in the municipality alone.

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<sup>53</sup> Byrne, I., *The Human Rights of Street and Working Children: A Practical Manual for Advocates*, Intermediate Technology Publications / Consortium for Street Children, London, 1998

<sup>54</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc. p.4.

<sup>55</sup> Jaramogi Patrick, Uganda: Busia Leaders Team Up to Address Sex Trade, Street Children, The New Vision, New Vision Publishing and Corporation Company, Kampala Uganda, 23 January 2008.

Most of these street children are Karimojongs who come to engage in petty business and smuggling along the border.<sup>56</sup>

### **Legal measures considered to arrest street children**

**Legal age;** A child in Uganda is considered a person under age 18 and the age of criminal responsibility is 12 years old,<sup>57</sup> an age in line with the recommendation of the UN general comment No. 10.<sup>58</sup>

But, nevertheless, children aged between 12 and 18 who are registered and have birth certificates in Uganda are less than 4%, meaning that determination of a person's age is subjective or imaginary. As such, all of the remand homes and the national rehabilitation centre house children outside the boundaries of childhood. This means that in some cases there are children held in detention both under the age of criminal responsibility and over the age of childhood.<sup>59</sup>

**Conditions for arrest;** In Uganda, when a child is arrested, the police have the discretion to caution and release the child or dispose of the case without recourse to formal court.<sup>60</sup> However, this rarely happens because police do not always inform the child's parent or guardian when they are arrested. Also, in some cases parents or guardians are scared to accompany their children to police stations in case they themselves are arrested. As a consequence, children appear in court unaccompanied and the magistrate is forced to deny them bail and remand them.<sup>61</sup>

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<sup>56</sup> The African Child Policy Forum (2008) *The African Report on Child Wellbeing: Country Briefs Uganda*

<sup>57</sup> Government of Uganda (1996) *The Children Act Cap 59*

<sup>58</sup> Foundation for Human Rights Initiative (2009). *Juvenile Justice in Uganda*, Geneva Report.

<sup>59</sup> The African Child Policy Forum (2008) *The African Report on Child Wellbeing: Country Briefs Uganda*

<sup>60</sup> Human Rights Watch (2010) —Off the Backs of the Children Forced Begging and Other Abuses against street children in Uganda New York: HRW

<sup>61</sup> Ibid

**Bail and remand;** remand in custody should not exceed six months in the case of an offence punishable by death if they were an adult and should not exceed three months in the case of any other offence.<sup>62</sup> However, the majority of children are not remanded beyond the time limits and minority, mostly charged with capital offences, are being remanded for a longer period.<sup>63</sup>

**Children should not be detained with adults;** Juvenile detention centres in Uganda ensure that, children in conflict with the law are principally the responsibility of the Ministry of Gender, Labor and Social Development. However, the Uganda Police Force and the Judiciary of the Republic of Uganda are also important partners. Detained children are placed in one of the four remand homes in Fort Portal, Gulu, Naguru, or Mbale. In addition, the Kampiringisa National Rehabilitation Centre detains sentenced children from the whole of Uganda.<sup>64</sup>

Much as a child protection framework has been established, it still requires effort to ensure that it is fully resourced and coordinated.

**Conditions of detention in Uganda cover aspects of staffing.**<sup>65</sup> However, the youth detention system is understaffing in Uganda. This is evident in Kampiringisa National Rehabilitation Centre which was found to have registered ghost staff of 18 out of the 22 vacant position. The warden of Mbale Remand Home was also found absent during the site visit. In terms of training, although the wardens of the remand homes receive child protection training, this is rarely

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<sup>62</sup> The Children Act 1996 Cap

<sup>63</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

<sup>64</sup> Human Rights Watch (2010a) *My So-Called Emancipation From Foster Care to Homelessness for Uganda Youth* New York: HRW

<sup>65</sup> Human Rights Watch (2010a) *My So-Called Emancipation From Foster Care to Homelessness for Uganda Youth* New York: HRW

disseminated to the guardians and social workers who therefore remain without specialized training to work with this group of children.<sup>66</sup>

**No corporal punishments;** On issues pertaining discipline of detained children in Uganda, corporal punishment is prohibited in the youth detention system. However, in the majority of remand homes in Uganda there is no recourse to physical discipline and children who misbehave are verbally reprimanded. But in rehabilitation centers of Mbale Remand Home and Kampiringisa National Rehabilitation Centre, corporal punishment in the form of caning is reported to be routinely used for disciplinary reasons.<sup>67</sup> Kampiringisa alone is reported to have an isolated cell used for punishment.<sup>68</sup> These practices are contrary to international guidelines and the Ugandan Children Act.

### **Challenges of Human rights violations experienced by street children under the juvenile justice system**

According to Hazizaj and Barkley,<sup>69</sup> torture at police level is in most cases considered to be an underreported and under recognized form of violence against children. One of the causes for torture is impunity of the actors. Torture has a profound impact on the long-term physical and psychological well-being of the child. Children are especially vulnerable for the effects of torture because they find themselves in a critical stage of their development. Therefore, the

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<sup>66</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

<sup>67</sup> Ibid

<sup>68</sup> Human Rights Watch (2010) —Off the Backs of the Children Forced Begging and Other Abuses against street children in Ugandal New York: HRW

<sup>69</sup> Hazizaj, A. and Barkley, S.T., *Awaiting Trial: A Report on the Situation of Children in Albanian Police Stations and Pre-Trial Detention Centres*, Children's Human Rights Centre of Albania (CRCA), May 2000

consequences of torture are felt long after the children are released. Their future life chances and choices, social relationships as well as their education can be seriously disrupted.<sup>70</sup>

There are also research gaps in the area of policies and street children including low exploration levels of research-to-policy processes and the take-up of evidence in decision-making. This leaves many concerns unaddressed, once decision are left unmatched with conclusions drawn from research. This makes it less possible for identification of indicators of street-connectedness and vulnerability, thus makes it hard for actors to contribute to policy-making effectively.<sup>71</sup>

Impunity of the abusers of children rights is yet another challenge to the juvenile justice system. Children are exposed to torture which may include isolation, beating, corporal punishment, intimidation and threats to the family, attacks by dogs, burning, electric shocks, being made to sit or stand for prolonged periods in excruciatingly painful positions, deprivation of food, sleep and access to the toilet, being exposed to extreme temperatures.<sup>72</sup> Other forms of violence amount to cruel, inhuman or degrading treatment, such as abuse and brutality against juveniles across nations and in most cases, police and prison staff are the perpetrators of these violent acts, like punching, shouting, kicking, beating with sticks or other weapons, bullying, maltreatment. This form of violence is widespread and severe. Cruel, inhuman or degrading treatment police can be considered underreported and under recognized with perpetrators not prosecuted and acting in impunity.<sup>73</sup>

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<sup>70</sup> Evans, V. C. (2009) *Toward Balanced Child Labor: Away from the Polarizations of Slavery and Slothfulness in Latin America* Generations Humanitarian

<sup>71</sup> Wolraich and Worley (2007)

<sup>72</sup> Barker, G., Knaul, F., Cassaniga, N. and Schrader, A., *Urban Girls: Empowerment in Especially Difficult Circumstances*, Intermediate Technology Publications / Consortium for Street Children, London, 2000

<sup>73</sup> Hazizaj, A. and Barkley, S.T (2000) op cit p.23.

In addition, juveniles are deprived of their liberty, they are poorly housed. When juveniles law are deprived of their liberty they often stay in places unsuitable for them, such as police stations, overcrowded cells or centres with poor material conditions and hygiene. An unsuitable condition for children deprived of their liberty is widespread although still underreported and under recognized. Yet at times extremely poor conditions for children even constitute inhumane treatment.<sup>74</sup> According to DCI report of 2005, it is noted that in Kenya the juvenile remand home at Kabete is designed to accommodate 80 persons, but houses 360 children, yet with no running water and without programmes for the children. In Romania 300 minors are held in the Gaesti re-education centre where boys and girls are held separately with approximately 8 to 28 minors sharing a cell, with toilets outside the dormitory, thus minors must be accompanied by a guard to get there. However, the detainees are allowed to take a bath only once per week. The situation is Pakistan is also alarming at the Borstal Institution Bahawalpur in southeaster Punjab. It houses more than 450 children, housed in dormitories. Twenty-five to 50 children stay in 6 dormitory-style barracks with a size of 20 by 40 feet on average. There is a toilet in each dormitory, but without central heating or air conditioning. This makes the hygiene standards to be generally very poor.<sup>75</sup> The water supply itself does not work efficiently, there is a lack of hot water, soap, toilet paper and cleaning products as these products have to be purchased by the detainees and on top of this minors are often rarely allowed to take a birth.<sup>76</sup>

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<sup>74</sup> Human Rights Watch, *Charged With Being Children: Egyptian Police Abuse of Children in Need of Protection*, February 2003

<sup>75</sup> DIC, *Defence for Children in Conflict with the Law to Combat State Violence*, International Network on Juvenile Justice, Geneva, 2005 p.3

<sup>76</sup> *Ibid* p.4



Not separating children from adults while in detention highly increases the risk of sexual violence towards children. The lack of separation of adults and children can be seen as a widespread phenomenon increasing the risk of sexual violence and occurs in all regions of the world. States fail to protect children against this form of violence.<sup>77</sup> Sexual abuse and rape of children under the juvenile justice system have been reported by Center for Youth and Children Affairs (CEYCA) across regions, to be taking place with lack of documented data. Children are not only sexually abused by police or prison staff, but also by their fellow detainees. Lack of action against perpetrators has been reported worldwide.<sup>78</sup>

Not using deprivation of liberty as a measure of last resort for children constitutes violence against them. Children are sentenced to detention while alternatives can still be afforded or offered. There is also a tendency to rely on over-reliance on pre-trial detention and indefinite deprivation of liberty without a trial. Most children deprived of their liberty find themselves in pre-trial detention for periods as long as six months, one year or even several years. This situation forms a serious violation of the international standard on the use of deprivation of liberty as a measure of last resort, and for the shortest possible period of time as obliged by the law.<sup>79</sup> . It is one of the causes of overcrowding in prisons which opens the road to arbitrary detention. Most children are released as soon as they have had a trial, while statistics suggest that only 10% of all juveniles commit serious offences. Long pre-trial detention hampers the development of the child as this puts the child in a situation of lawlessness where rights and legal

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<sup>77</sup> Hazizaj, A. and Barkley, S.T (2000) op cit p 46.

<sup>78</sup> Centre for Youth and Children Affairs (CEYCA), A Survey Study Report on the Juvenile Offenders in Malawi Prisons and Approved reform Centres, Malawi, January 2004.

<sup>79</sup> Convention on the Rights of the Child, Article 37(b)

safeguards are not taken into account. This also exposes the child to increased risk of becoming the victim of abuse both physical, psychological or sexual and among others torture.<sup>80</sup>

### **Remedies to human rights violations of children under the juvenile justice system**

There are various avenues that can be exploited, to incorporate better instruments in the law to promote the realization of the rights of juveniles, particularly the street children. To prevent and address violence against children in conflict with the law, it is necessary to arm them with tools so that they can safeguard their rights. One of these tools is to ensure that each child receives proper and free legal assistance. Since this is not provided for in many countries, DCI sections have taken up this task already since the 1980s. Research has proven that, children who are in need of legal assistance often manifest other needs as well, such as family therapy and social services. Thus DCI undertakes to offer interdisciplinary services to these children and their families, in Social Legal Defence Centres (SLDCs).<sup>81</sup>

Attempts ought to be directed to mobilizing national and international response to uphold the human rights of street children within juvenile justice systems by examining the situation in specific countries, identifying and highlighting key problems in order to work towards child-friendly solutions.<sup>82</sup> This can be furthered by improving cooperation and communication

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<sup>80</sup> Human Development Initiatives and Consortium for Street Children, *Street Children and Juvenile Justice in Lagos State*, February 2004

<sup>81</sup> DIC, *Defence for Children in Conflict with the Law to Combat State Violence*, International Network on Juvenile Justice, Geneva, 2005 p.1

<sup>82</sup> Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003

between NGOs, street children as well as government authorities such as the police and judicial systems.<sup>83</sup>

Wider research to document evidence against the increasing abuse of the rights of juveniles is done to collate information on street children within juvenile justice systems to act as a source of information and a basis of subsequent lobbying towards the prevention of juvenile delinquency.<sup>84</sup>

By implementing in practice the standards of juveniles at all stages in the justice system right from the initial contact with the child to the pre, during and post-trial periods, in addition the establishment of independent monitoring systems to ensure continued compliance with legislation by all levels of the police, judiciary and social services is paramount to protecting the rights of juveniles.<sup>85</sup>

More so, the actors also have to play a part in collaborative effort to identify projects that work towards improving the conditions of street children within the juvenile justice systems. This can be done to enhance the capacity of local partner organizations to facilitate participation of street children to create an avenue for the children to voice their concerns about their basic needs and rights.<sup>86</sup>

Awareness raising on the specific problems faced by street children in the context of law and order concerns at relevant national and international levels can improve on the position of

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<sup>83</sup> Alexandrescu, G., Romania – Working Street Children in Bucharest: A Rapid Assessment, ILO/IPEC: Geneva, 2002.

<sup>84</sup> Ibid

<sup>85</sup> Defence for Children International (2009) *Juvenile Justice Newsletter No. 13*

<sup>86</sup> Ibid

children while detained, if it is done with an aim of diverting street children into alternatives available to detention.<sup>87</sup> A wide range of alternative sentences are needed particularly those which emphasize the values of restorative justice and seek to meet the needs of young people which are leading them into crime. Intensive programmes should be developed for more persistent and serious young offenders. Fostering and residential placements in educational and treatment facilities should be available where necessary.

This should be in addition to special child courts/tribunals with less formal proceedings established for dealing with under 18's. Such courts should be held in camera and the presence of the parent/guardian is important. Judges should receive special training and concern themselves with the application of sanctions and measures as well as just sentencing. More still, sentencing should be based on a careful assessment of the needs of the young person as well as the circumstances of the offence. Legal representation should be encouraged and where a child is facing the possibility of a custodial sentence the state should automatically provide immediate legal support and aid.<sup>88</sup>

Custodial sentences ought to be used as a last resort and for the shortest time, and used only in exceptional cases. Small open facilities with minimal security measures should be developed for children serving such sentences. Education and rehabilitation should be the main priorities. Decisions about the placement of young offenders in establishments should balance the need to maintain family contacts with the need for specialist regimes.

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<sup>87</sup> Singh, W., Alternatives to Custody in the Caribbean: The Handling of Children who Come into Conflict with the Law, paper presented at the Innocenti Global Seminar on Children Involved with the System of Juvenile Justice, Florence, 12-22 October 1997

<sup>88</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

A minimum age for placement in prison establishments should be set and should be no lower than 15 years.<sup>89</sup>

Detention facilities need to be inspected and separated for different sexes while under detention. Besides, they children need not be mixed with adults. This should be in addition to maintaining constructive regimes with education, sporting and cultural activities for children to continue leading lives of children. This should be accompanied by an adequate numbers of staff trained and vetted to rehabilitate these children of which Non-governmental Organisations should be encouraged to play a full part in the life of the institution, with supportive anti-bullying policies and systems for mediating disputes between detainees.<sup>90</sup>

### **1.10 Synopsis of the Chapters**

Chapter one covers the background to the study, statement of the problem, objectives of the study, scope of the study, significance, methodology and literature review as well as hypothesis and chapterization.

Chapter two will cover the law governing rights of children under the juvenile justice system, the issues taken into account while holding juveniles in detention, the juvenile law and circumstances that can be revised, advantages and disadvantages of the law of juveniles, and applicability of the law governing juveniles.

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<sup>89</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

<sup>90</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

Chapter three covers an overview on the available legislation on rights of children in the juvenile system in attempting to protect the children as offenders and providing remedies to the parties offended by the juveniles.

Chapter four covers the research findings about the rights of the juveniles in the justice system and how the people interviewed have interpreted the juvenile justice, whereas chapter five draws conclusions and recommendations of the study findings.

## CHAPTER TWO

### CHILDREN'S RIGHTS AND THE JUVENILE JUSTICE SYSTEM IN UGANDA

#### 2.1 The Law of Human Rights of Children

This chapter covers an overview of the available legislation, instruments and policies on rights of children under the juvenile justice system in Uganda to measure the effectiveness of the law in securing justice for street children. The chapter thus examines the applicability of the law of human rights of children.

#### 2.2 Efficacy of the Law of Human Rights of Children

Children's rights are a worldwide phenomenon which is recognized as central in the shaping and future wellbeing of children as citizens of tomorrow. The principle derives its legal enforcement right from international edicts as reflected upon the circumstances surrounding the child and their likely outcomes.

A **child** is a person below the age of eighteen years.<sup>91</sup> The African Charter on the other hand defines a child as a human being below the age of 18 years.<sup>92</sup>

The efficacy of the human rights law in securing justice for street children under the juvenile justice system of Uganda is examined below;

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<sup>91</sup> The Children Act (2003) Cap 59 Section 2.

<sup>92</sup> The African Charter on the Rights and Welfare of a Child (1999).

## 2.2.1 International Legislation

### 2.2.1.1 The United Nations Convention on the Rights of the Child (1989)

The UN Convention on the Rights of the Child (1989) provides for the protection and support for the rights of children below 18 years, street children inclusive. It is a legally binding international instrument to incorporate the full range of human rights, ranging from civil, cultural, economic, political and social rights.

Uganda is one of the 194 countries worldwide that are a signatory to the UN Convention. By ratifying this document, the government of Uganda has the responsibility to take all available measures to make sure children's rights are protected, respected and fulfilled. Moreover, all actions, decisions and policies are expected to be done in the light of the best interests of the child.<sup>93</sup>

**Article 40** of the CRC states that State parties shall seek the establishment of "whatever appropriate and desirable measures for dealing with such children under the age of 18 years without resorting to judicial proceedings" providing that human rights and legal safeguards are fully respected.

Every child alleged as or accused of having infringed the penal law has at least the following guarantees:<sup>94</sup>

- (i) to be presumed innocent until proven guilty according to law;

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<sup>93</sup> Timothy Opobo (2008) Protecting the Children and Securing the Future: Child Rights and Protection- The Legal Framework, ANPPCAN Uganda Chapter p. 6

<sup>94</sup> Part II, Section 4 Guiding Principle 4



- (ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
- (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance...

The Convention spells out the basic human rights that all children regardless of their sex, race, religion, cultural or socio-economical background, language, ability, everywhere have the right to: life, survival and development; participation fully in family, cultural and social life; registration, name, nationality and care; preservation of identity; live with their parents; family reunification; governmental help when families cannot provide for appropriate living standards; And above all legal help and fair justice system in the context of this study where children need to be protected from detention and punishment in a cruel and harmful way including separation from families, sharing cells with adults, sentence to death or life imprisonment and war and armed conflicts including recruitment for armed conflicts.

However, children in Uganda have been detained in adult centers, yet their abusers have remained free of trial.

#### **2.2.1.2 The African Charter on the Rights and Welfare of the Child (1999)**

Uganda is among the 53 African countries that signed the 1999 African Charter on the Rights and Welfare of the Child. The Charter obliges the country to protect children against the various forms of social, economic, cultural and political abuse and exploitation. State parties are obliged to undertake the necessary steps and adopt such legislative and other measures to give effect to the provisions of this charter. It spells out basic human rights that all children have to include; life, survival and development; Name, registration and nationality; Freedom of expression, association, peaceful assembly, thought, conscience and religion; Privacy; Education; Leisure, recreation and cultural activities; Health and health services; and Special judicial treatment in a manner consistent with the child's sense of dignity and worth in addition to parental care;

Thus the Charter oversees the protection of children from all forms of economical 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; child abuse and torture, inhuman or degrading treatment, and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse; harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child; recruitment in armed conflict; all forms of sexual exploitation and abuse; drug abuse and the use for production and trafficking of drugs; sale, trafficking, abduction and the use for all forms of begging.

### **2.2.1.3 The ILO Convention 138 and 182 on the Worst Forms of Child Labor (1999)**

Uganda, being a signatory, is obliged by the convention to take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour which

include; all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

The ILO Convention 138 on Minimum Age for Employment Admission, 1973: obliges the state to pursue a national policy to ensure that there is an effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest mental and physical development of children.

## **2.2.2 Domestic Legislation**

### **2.2.2.1 The Constitution of the Republic of Uganda (1995)**

The Constitution of Uganda comprehensively provides a framework for the protection of all children in Uganda. It defines fundamental child rights, obliges parents to care for and bring up their children, and accords special protection to orphans and other vulnerable children.

**Article 34** of the constitution of Uganda provides for the rights of children. It is specifically stipulated that laws must be enacted in children's best interest and must be protected from social or economic exploitation or any condition harmful to their health or physical, mental, spiritual

moral or social development. It is the duty of any citizen and the state to protect children from any form of maltreatment<sup>95</sup> and ensure the registration of birth for each child.<sup>96</sup>

Pertaining to the context of this study, children have a right to be kept separately from adult offenders during lawful custody or detention.<sup>97</sup> Have a right to medical treatment, education, care by parents and a right to grow up together with their families.

For such a purpose the Constitution undertakes to protect children from social economic exploitation, work that is likely to be hazardous or interferes with their education or to be harmful to their health or physical, mental, spiritual, moral or social development and any form of abuse, harassment or ill-treatment.

#### **2.2.2.2 The Children Act (2003) Cap 59**

The children Act was, enacted to reform and consolidate the law relating to children. It specifically provides for the care, protection and maintenance of children. The Uganda Police Force among other stakeholders is mandated under the Children Act to defend, protect and enforce the rights of the child and is also given powers to provide for effective diversion measures of juveniles.

The Act under Section 5 provides for a duty to maintain a child, whereby the person in charge of the child, that is parent, guardian or a person having the custody of a child is charged with a duty

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<sup>95</sup> The Constitution of the Republic of Uganda

<sup>96</sup> The Constitution of the Republic of Uganda (1995), Cap 3 Article 18

<sup>97</sup> The Constitution of the Republic of Uganda (1995)

to maintain that child by enabling the child to;<sup>98</sup> access education, be immunized, have an adequate diet, be clothed, have shelter and have medical attention. Thus any person who holds the custody of any child, and does not undertake to recognize the above rights on behalf of the child commits an offence.

Under the same Act<sup>99</sup> the person having the custody of the child is tasked with a duty to protect the child from discrimination, violence, abuse and neglect. This implies that any person in charge of a child, has a duty to ensure that the child does not suffer from any injustices of discrimination, violence, abuse and neglect, or else it becomes an offence.

Under of the same Act,<sup>100</sup> the law affords protection on behalf of children from harmful employment, where no child is expected to be employed or engaged in any activity that may be harmful to his or her health, education, or mental, physical or moral development. The Act<sup>101</sup> also obliges parents to take a responsibility over their children.

The same law under **Section 4** imposes on the state to ensure that it is the right of the child to stay with parents or guardians. Yet it mandates competent authority to determine in accordance<sup>102</sup> with the laws and procedures applicable that it is in the best interests of the child to separate him or her from his parents, and that the best substitute care available shall be provided for the child.

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<sup>98</sup> The Children Act (2003) Section 5 Sub Section (1) Paragraphs (a) (b) (c) (d) (e) and (f).

<sup>99</sup> Ibid Section 5 (2)

<sup>100</sup> Ibid Section 9

<sup>101</sup> Ibid Section 6

<sup>102</sup> Ibid Section (4) (2)

Children in this way have suffered at hands of their foster parents and guardians who have exposed them to harmful employment contrary to the provision of Section 8 of this same Act, thus children end up on the streets and become juvenile offenders.<sup>103</sup>

The Act further obliges members of the community to report infringement on the child's rights by parent, guardian or any person having custody of the child.<sup>104</sup> Quite often in Uganda some community members have instead lent a hand in abusing the rights of children, while others have simply looked on when children continue to be abused, consequently children end up on the streets where they also become offenders of others.

#### **2.2.2.3 The Children Statute (1996)**

The Children's Statute makes the protection of children legally enforceable.<sup>105</sup> It foresees the establishment of a Secretary of Children's Affairs within the Local Council Structure<sup>106</sup>, as well as children and family courts at district level to ensure the welfare of children in the judicial system.

#### **2.2.2.4 The Penal Code Act 1950**

The Penal Code<sup>107</sup> also makes liable the following offences against children; kidnapping and abduction of children under fourteen years; indecent assaults; defilement of girls; procurement of girls; stealing a child under the age of fourteen years; and infanticide; Thus according to the

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<sup>103</sup> Ibid Section 8

<sup>104</sup> The Children Act (1996) Section 11 (1)

<sup>105</sup> Ibid

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<sup>107</sup> The Penal Code Act (1950)

code, neglect of children of tender years and desertion of children under fourteen years are defined as misdemeanors.

However, the law does not provide for specific penalty measures against the failure to protect the children.

#### **2.2.2.5 The National Council for Children Act, 1996**

The National Council for Children Act foresees the establishment of a national council for children, to ensure proper coordination, monitoring and evaluation of all policies and programs relating to the survival, protection and development of a child.<sup>108</sup> Through this body, the problems affecting children shall be communicated to the Government, and other decision-making institutions in Uganda. The Council further promotes the implementation of programs; and maintains a database on the situation of children and activities relating to children in Uganda.<sup>109</sup> It also supports the implementation of district plans and the creation of district monitoring plans, as well as continuously analyze the changing needs of children, and promote discussion for emergency issues.<sup>110</sup>

#### **2.2.2.6 The Local Government Act (1997)**

The Local Government Act makes district councils responsible for the welfare of children.<sup>111</sup> For this, it foresees an executive committee for each district, where a selected secretary cares for the health and welfare of children.<sup>112</sup>

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<sup>108</sup> The National Council for Children Act (1996),

<sup>109</sup> Ibid

<sup>110</sup> The National Council for Children Act (1996)

<sup>111</sup> The Local Government Act (1997)

<sup>112</sup> Ibid

Under the Act,<sup>113</sup> District Councils have to ensure services, from which children are able to benefit. These include services for education, health, maternity and child welfare, probation and welfare services, and social rehabilitation. It also obliges the districts to ensure services for street children and orphans.<sup>114</sup> The Act further foresees the establishment of an executive committee at each parish and village administrative unit, including a vice chairperson who shall be secretary for children welfare.<sup>115</sup>

#### **2.2.2.7 The Orphans and Vulnerable Children Policy (2004)**

The Orphans and Vulnerable Children Policy provides a framework for the full development and realization of rights of orphans and other vulnerable children: children who live on the streets, those that toil under exploitative conditions of labour, as well as those that suffer sexual abuse and other forms of discrimination.<sup>116</sup> It also states the situation of orphans and vulnerable children, the national and international framework, guiding principles for the implementation of the policy, and policy priorities the government of Uganda will focus on.<sup>117</sup>

#### **2.2.2.8 The Witchcraft Act 1957**

The witchcraft Act provides for protection of persons against ritual sacrifices. The Act outlaws the direct or indirect threat of a person with death by witchcraft or any supernatural means. This protects children, a group that has been particularly vulnerable to this practice.<sup>118</sup>

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<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Ibid

<sup>116</sup> The Orphans and Vulnerable Children Policy (2004)

<sup>117</sup> Ibid

<sup>118</sup> The Witchcraft Act (1957)



### **2.2.2.9 The Child Labor Policy (2006)**

The Child Labour Policy provides a framework to mobilize all actors to take action to eliminate the practice. It explains the socio economic context of child labour, the nature, extend and magnitude, the causes, consequences and effects.<sup>119</sup> It further outlines governmental response to the problem of child labour, and the institutional framework within the national child labour policy operates.<sup>120</sup>

### **2.2.2.10 The Birth and Registration Act (1973)**

The Births and Registration Act obliges the state to register the birth of each child.<sup>121</sup> Failure to register the birth of children is an offense, to those that hold the custody of children.

### **2.2.2.11 The Trafficking in Persons Act (2008)**

The Trafficking in Persons Act is a comprehensive anti-trafficking law, which prescribes penalties of 15 years to life imprisonment for child traffickers.<sup>122</sup>

### **2.2.2.12 The Employment Act 1997**

The Employment Act forbids contracts with persons under the age of eighteen, and the employment of children under the age of twelve years, except from light work defined by the

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<sup>119</sup> The Child Labor Policy (2006)

<sup>120</sup> Ibid

<sup>121</sup> The Birth and Registration Act (1973)

<sup>122</sup> The Trafficking in Persons Act (2008)

## CHAPTER THREE

### A CRITIQUE OF THE AVAILABLE SUPPORTIVE LEGAL INSTRUMENTS

#### 3.1 Introduction

This chapter describes a critique of the available and supportive instruments both national and international on the human rights of street children under the juvenile justice system, their weaknesses, and circumstances which necessitate revisiting.

#### 3.2 A Critique of the Various Support Instruments

According to the UNCRC and OAU charter “*A child shall have the right to exercise, in addition to all the rights stated in this Schedule and this Statute,*”<sup>127</sup> all the rights set out on the Rights and Welfare of the African child. In addition, the UN Convention on the Rights and Welfare of the Child<sup>128</sup> states “*Every child alleged as of or accused of having infringed the penal law has at least the following guarantees:*” to be presumed innocent until proven guilty according to law; to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance.

Despite all these provisions clearly put by the law, children continue to be beaten, mistreated and harassed while forcing them to confess, acts which they may have or may not have committed.

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<sup>127</sup> UNCRC Part II, Section 4, Guiding Principle 4:

<sup>128</sup> Ibid Article 40, Section 2(b):

The African Charter on the Rights and Welfare of the Child, Article XVII holds that, “State Parties to the present Charter shall in particular: ensure that every child accused of infringing the penal law shall be afforded legal and other appropriate assistance in the preparation and presentation of his defense. This has most of the times not been the case in Uganda as children are detained for a long time and only afforded a probation officers to act as their legal representative<sup>129</sup> and while in Court, proceedings are undertaken, despite the provisions of the law. This depicts a weakness on the part of the judiciary to commence proceedings under an anomaly like this.

The Constitution of the Republic of Uganda<sup>130</sup> holds that “Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.”

But children continue to suffer, much as adults are afforded a state lawyer, children in most cases are not and are instead represented by probation officers.

The law imposes an obligation for children to be given a legal representation by the State.<sup>131</sup> Much as this is the case, children enter court without a qualified legal representative from the State and yet the judiciary proceeds with the case and no appeals are made to rectify this, yet the State struggles to pay for adult legal defence.

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<sup>129</sup> Marianne Moore, *Juvenile Detention in Uganda, Review of Ugandan Remand Homes and the National Rehabilitation Centre* Marianne Moore, African Prisons Project, October 2010

<sup>130</sup> Chapter Four, Section 32 (1):

<sup>131</sup> *Ibid* Article 40, Section 2(b):

This is reflection portrays a condition where there are no financial resources available for children. This is derived from the fact that, contrary to popular opinion, the majority of imprisoned adults needing state-funded aid have been adequately assisted.<sup>132</sup>

It is by the demands of the law that children are protected from poor healthy,<sup>133</sup> harmful employment.<sup>134</sup> However, conditions under the detention centers where courts subject them to are poorly maintained and facilitated with overcrowded rooms with poor ventilation, poor toilet facilities, lack water, food and clothing shortages, poor healthy conditions,<sup>135</sup> contrary to the law<sup>136</sup> and besides this children have been illegally transferred to adult prisons contrary to the provisions of the law<sup>137</sup>

Under the law<sup>138</sup> parents are charged with a duty to stay with their children where child can live with either his or her parents or guardians and where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interests of the child to separate him or her from his or her parents or parent, the best substitute care available shall be provided for the child.

But quite often times, when the conditions at home do not so allow, for the child to continue staying at home, children end up on the streets where instead they are arrested. The weakness of the law in pursuing the conditions to drive children out of home, makes the problems more complex when the children get on the streets. For this reason, the African Child Policy Forum

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<sup>132</sup> Both Ms. Diana Musoke of the Uganda Law Society and Her Worship Lydia Mugambe of the Buganda Road Courts supported this conclusion in a personal interview.

<sup>133</sup> The Constitution of the Republic of Uganda 1995, Article 34 (3)

<sup>134</sup> The Children Act 2003 Part II Section 8

<sup>135</sup> The African Child Policy Forum (2008) The African Report on Child Wellbeing: Country Briefs Uganda

<sup>136</sup> The Constitution of the Republic of Uganda 1995, Article 34 (3)

<sup>137</sup> The Children Act 2003 Part X Section 89 (8); The Constitution Article 34 (6)

<sup>138</sup> Ibid Section 4 (1) (2)

report<sup>139</sup> advocates for better practices where the law should seek to not only address but pursue the circumstances compelling children to join street life.

Much as there are various pieces of legislation to champion the protection of vulnerable children, they have not been fully implemented. This is despite the fact that the Attorney General's office of Uganda is uniquely positioned to redress this imbalance, given its jurisdiction over Children Statute amendments.<sup>140</sup> Additionally, the Uganda Law Society enjoys a well-earned influence over Attorney General decisions the society needs to be supportive that accused children deserve adequate legal representation and should petition on behalf of the children to the Attorney General's office.<sup>141</sup> First, constitutional revisions demand long parliamentary debates which makes it impractical for so many amendments to be forwarded to it at a go as recognized from the above analysis on the laws.

### **3.3 Conclusion**

Concerned activists and advocates face three inescapable conclusions. That children accused of capital and non-capital offences are routinely detained for exorbitant periods of time. Alternatively, suspects might be released without facing allegations in court. Finally, children who do appear for trial are denied adequate representation.

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<sup>139</sup> The African Child Policy Forum (2008) *The African Report on Child Wellbeing: Country Briefs Uganda*

<sup>140</sup> Young, L. (2004) Journeys to the street: the complex migration geographies of Ugandan street children, *Geoforum*, 35:4, pp. 471-488

<sup>141</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc.



## **CHAPTER FOUR**

### **PRESENTATION AND DISCUSSION OF THE RESEARCH FINDINGS**

#### **4.1 Introduction**

In Uganda the law governing human rights of children under the juvenile justice system derives its powers and support from various instruments, policies both national and international. These instruments have been critiqued for failing to protect street children's rights.

Much as advances in national law-making to recognize children's rights have been made, the implementation and enforcement of national legislation to protect street children has been found to suffer from systemic weaknesses. Law enforcement has been identified as partial, as public security and economic development are given precedence in policy-making and resource allocation over street children's rights. Street children are also routinely criminalized, their rights abused systematically and opportunistically by authorities in Uganda.

#### **4.2 Circumstances which give rise to the arrest of street children**

There are various situations that are contributing to the arrest of street children some of which are overlooked and instead aggravate the circumstances for arrest and mistreatment of street children under the juvenile justice systems in Uganda.

Much as economic policies have been accounted for as a crucial for child wellbeing by Schmidt (2003), on the surface, economic policies seem far removed from children's everyday lives.

Nevertheless economic studies have rarely focused on children, and less still on children in poverty.<sup>142</sup>

According to Young this low level of coverage in research is also a concern that a specific focus on street children at economic policy level may detract attention from deep-rooted, systemic problems affecting much larger numbers of children.<sup>143</sup> Nevertheless, research in richer countries confirms that income inequalities produce a range of costs in terms of children's development, relationships, social mobility, experiences of violence and intergenerational transmission of poverty.<sup>144</sup>

This is similarly postulated in Young and Barrett report that street children have multiple deprivations leading to street-connectedness.<sup>145</sup> This lack of focus on street children is not a surprising one, given the lack of consensus on definition of children,<sup>146</sup> and the difficulties posed in collecting economic data about a group of children whose position is ambiguous and often unknown with respect to the household the base unit of most economic research.<sup>147</sup>

In relation to the above economic issue, street children have been arrested for involving in sex trade and stealing.<sup>148</sup> This supported by Sanuel and Lynne that while on the streets, they smoke

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<sup>142</sup> Schmidt, 2003.

<sup>143</sup> Young, L. (2003) The place of street children in Kampala, Uganda: Marginalisation, Resistance and Acceptance in the urban environment, *Environment and Planning D: Society and Space*, 2:15, pp. 607-628

<sup>144</sup> Wilkinson & Pickett, 2010

<sup>145</sup> Young, L. and H. Barrett (2001) 'Ethics and Participation: Reflections on Research with Street Children', *Ethics, Place and Environment* 4.2: 130-1

<sup>146</sup> Young, L. (2004) Journeys to the street: the complex migration geographies of Ugandan street children, *Geoforum*, 35:4, p 321.

<sup>147</sup> Luccini (1999), Theory, Method and Triangulation in the Study of Street Children." *Childhood* 3(2) p. 59.

<sup>148</sup> Jaramogi Patrick, Uganda: Busia Leaders Team Up to Address Sex Trade, Street Children, The New Vision, New Vision Publishing and Corporation Company, Kampala Uganda, 23 January 2008.



marijuana, sniff petrol, steal, and drink alcohol, yet others become prostitutes.<sup>149</sup> According to Jaramogi, the influx of Kenyan refugees following the election violence fuelled sex trade among under age girls in Busia and that the Ugandan girls of 11-18 years are the main attraction to many and yet these charge as low as 500 shillings per hour and this has indeed been considered as a looming practice as the number of street children in Busia town alone amounted to 400 in the year 2008 as reported by Jaramogi.

In respect to the above, it can therefore be submitted that the need for survival has contributed to juvenile delinquency among street children, but just like any other human being the children need to survive. Moreover the law provides that they have to be taken care of by an adult,<sup>150</sup> but in absence of the adults what then remains the way forward, if the law cannot continue to prevail and be supportive in providing justice to the survival of these children.

Thus while the law takes its course it should ensure that investigations are made into the circumstances that compel children to be in a given situation under which they are accused, unlike in a South African case of *S v M*<sup>151</sup> where Didcott J, as he then was, did nothing at all to investigate the boy's background and personality and neither did he seek the advice of a probation officer, nor consult the parents of the boy. By not consulting what sort of child is being accused, no better solution can be arrived at, because the sort of punishment or rehabilitation that this may yield, may not be different from what was previously used, or one that proved ineffective on a particular child.

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<sup>149</sup> Ibid

<sup>150</sup> The Children Act 2003 Section 4 and 5 laws of Uganda.

<sup>151</sup> 1982 (1) SA 240 (N) 245H

Stolen childhood is yet another factor that shapes the behavior of children in the future. This is very clear in the case of orphan-hood as Ferguson and Christine observe.<sup>152</sup> About one in four Ugandan households have two or more orphans as a result of HIV/AIDS which has deprived children of their parents, a situation which Scheper and Hughes view as structural violence<sup>153</sup> However others come to the streets because they are mistreated at home<sup>154</sup> and yet others are simply thrown out of home<sup>155</sup> what Evans recognizes as family breakdown in Latin America.<sup>156</sup> The responsibility of raising these children is not easy and even providing them with basic necessities does not come that cheap. The lucky few have been taken in by charities and foster families.

Without a source of income, children are particularly vulnerable and many have taken to the streets either by begging, doing menial jobs or stealing, pick pocketing and prostitution.<sup>157</sup> This is why Saneul and Lynne point out that children like other human beings, without ample guidance are likely to go the wrong way, thus their engagement in criminal and offensive activities.<sup>158</sup>

It can be submitted that, by virtue of the economic survival needs of street children, they do steal and pick-pocket, much as do the girls in prostitution. But the question lies, in how then will they

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<sup>152</sup> Ferguson, Kristine M. (2006) Responding to children's street work with alternative income-generation strategies. *International Social Work* 49(6): 705–717

<sup>153</sup> Scheper and Hughes, (2004).

<sup>154</sup> Edroma Evelyn, Sector wide approach in justice law and order: the Ugandan experience Senior Technical advisor, JLOS Justice Law and Order Sector Uganda, 2008.

<sup>155</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda* 2009. The Population Council Inc.

<sup>156</sup> Scanlon (1998)

<sup>157</sup> Mashoo Eve Stolen Childhood, *World Street Children News*, The East African Publishers, 25 February 2008.

<sup>158</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda* 2009. The Population Council Inc. p.4.

survive if nobody comes up to their rescue, in absence of their parents, or how then will they survive if home is no longer the best place to be and nobody seems to claim them. Nevertheless various laws among others<sup>159</sup> provide for the protection and rights of children which do not seem to be realized.

In an interview<sup>160</sup> with probation officer it is noted that some of the children detained at the remand home have been arrested for loitering and sleeping on the streets. This is in contention with Saneul and Lynne on how street children are suspiciously arrested for roaming the streets.<sup>161</sup> However, public space is for consumption for all, it can not be a crime when a child walks down the street without interfering with the peace of others.

In the same remand home some children were also noted to be victims of false accusations. The children even while at the detention center still object to have committed any acts. Of the 10 children interviewed, 4 of these claim to have been falsely accused of stealing money. This same circumstances is envisaged by Byrne<sup>162</sup> on how failure to confess to have committed a crime is significant in detention of children.

The law should in other words be left to take its course to administer justice, but as the children they have a right of a fair hearing<sup>163</sup> much as the right to be protected from mistreatment.<sup>164</sup> Just like is the case of the UN Convention on the Rights and Welfare of the Child<sup>165</sup>. Children

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<sup>159</sup> The Constitution of the Republic of Uganda 1995 Article 35 (7): The Children Act 2003:

<sup>160</sup> Naguru Remand Home Interviews March 2012

<sup>161</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc. p.4.

<sup>162</sup> Byrne, L., *The Human Rights of Street and Working Children: A Practical Manual for Advocates*, Intermediate Technology Publications / Consortium for Street Children, London, 1998

<sup>163</sup> The Constitution of the Republic of Uganda 1995 Article 28

<sup>164</sup> The Children Act 2003 Cap 59 Section 40

<sup>165</sup> UNCRC Ibid Article 40, Section 2(b):

however, continue to be mistreated, beaten to make a confession<sup>166</sup> when the law does not demand for any punishment until proven guilty.<sup>167</sup>

#### **4.3 Legalities taken into account to protect the rights of street children according to the juvenile justice system in Uganda**

Age is one major factor,<sup>168</sup> the criminality age is stated by the law and it is followed when children are arrested. This is contention with the Foundation for Human Rights Initiative where the legal age is 18 and the age of criminality age is 12 years.<sup>169</sup>

On the contrary however, it is not easy to determine the age of these children on the streets, because their birth dates are not clear as no records of birth registration have been made.<sup>170</sup>

This is indicative of the fact that some children may be detained or not detained when actually they do not have/or have to be detained. Age in this case can not still suffice, as no proper detection for age is available and instead assumptions are relied upon. Justice in this way becomes unfair to those criminalized while still under age and those that are not criminalized while they are age is due for criminalizing.

According to the Children Act the law provides for bail and remand.<sup>171</sup> Remand is custody is not expected to exceed six months unless if offense is punishable by death and should not exceed three months in the case of any other offence. The situation however remains contrary children according to Sanuel and Lynne have been remanded for longer periods.<sup>172</sup>

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<sup>166</sup> Byrne 1998 Op cit p. 29.

<sup>167</sup> UNCRC Article 40

<sup>168</sup> Interview with Police Officer Child Protection Unit CPS March 4 2012

<sup>169</sup> Government of Uganda (1996) The Children Act Cap 59

<sup>170</sup> The African Child Policy Forum (2008) The African Report on Child Wellbeing: Country Briefs Uganda

<sup>171</sup> The Children Act 2003 Cap 59 Section 90 and 91

<sup>172</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc

Circumstances of arrest also matter<sup>173</sup> according to one probation officer when we suspect the child of committing a particular crime, we do not just arrest them, but we undertake to interrogate and caution them. Just like the Human Rights Watch Report<sup>174</sup> emphasizes that when a child is arrested in Uganda, the police have the discretion to caution and release the child or dispose of the case without recourse to formal court.<sup>175</sup>

However, this has not been the case under particular circumstances. The children have been arrested beyond the normal period that the law advises, just like is clearly seen in the ANPPCAN report by Koyala.<sup>176</sup>

This reflects that much as there is an available legislation to protect the children under juvenile justice systems, they still suffer because the same law has not pursued implementation of rules that govern their perpetrators.

No punishment is expected until when found guilty, because children are just like any other human being who may be accused falsely and where benefit of doubt needs to be provided. According to this the law compels us not give any corporal punishments to children<sup>177</sup> However, in a report by Human Rights Watch<sup>178</sup> it has been established that while still under detention, children are punished in a corporal way for disciplinary reasons for instance in Mbale Remand Home and Kampiringisa National Rehabilitation Centre, where caning is routine.

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<sup>173</sup> Interviews at the Child Protection Unit CPS March 4 2012

<sup>174</sup> Human Rights Watch (2010) —Off the Backs of the Children Forced Begging and Other Abuses against street children in Ugandal New York: HRW

<sup>175</sup> Human Rights Watch (2010) —Off the Backs of the Children Forced Begging and Other Abuses against street children in Ugandal New York: HRW

<sup>176</sup> Koyala (2000) The major targets of *child* sexual exploitation in *Uganda* are slum and *street* girls, ANPPCAN

<sup>177</sup> Interviews at the Child Protection Unit CPS March 4 2012

<sup>178</sup> Human Rights Watch (2010) —Off the Backs of the Children Forced Begging and Other Abuses against street children in Ugandal New York: HRW

According to an interview with one of the policemen, it was pointed out that children when arrested are separated from adults and put into separate rooms while still at the police station, even while being transferred to detention centers. On the contrary however, it has been reported that some children are transferred to adult centers, for fear that they may cause more harm being maintained at the child centers.<sup>179</sup>

#### **4.4 Persistence of the Abuse of Human Rights of Street Children in the Presence of a Juvenile Justice System**

According to the study by, Kovala it is held that, much as child-rights dedicated agencies have helped in raising juvenile justice in Kampala,<sup>180</sup> nevertheless, many imprisoned children still face state prosecution without adequate legal assistance from the State. Several distressing facts deserve attention.<sup>181</sup>

This implies that much as agencies have come up to fight for child-rights, the effort is still not substantial as some children have not been legally assisted. Just like Young<sup>182</sup> notices that representation of children by unqualified lawyers eliminates the potential for a fair hearing. This necessitates government to Moore ensure that all children, whether accused of capital of small chargers should be granted a State funded lawyer, unlike under circumstances where probation officers and social workers, have been allowed to represent children accused of small cases.<sup>183</sup>

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<sup>179</sup> Probation Officer, Interview Naguru

<sup>180</sup> Koyala (2000) The major targets of *child* sexual exploitation in *Uganda* are slum and *street* girls, ANPPCAN

<sup>181</sup> Young, L. (2004) Journeys to the street: the complex migration geographies of Ugandan street children, *Geoforum*, 35:4, pp. 471-488

<sup>182</sup> Chris Ocowun, Police Round up Street Children, The New Vision, New Vision Publishing and Corporation Company, Kampala Uganda, July 2008.

<sup>183</sup> Marianne Moore, Juvenile Detention in Uganda, Review of Ugandan Remand Homes and the National Rehabilitation Centre Marianne Moore, African Prisons Project, October 2010

According to Naguru remand home staff, while some children have quite often times been found not guilty and released, they have on particular occasions been rearrested under more serious and often fabricated charges.<sup>184</sup> Fair hearings have also been compromised by understaffed judiciaries. According to Kakama the judiciaries are understaffed rendering it more impossible for fair hearings.<sup>185</sup> According to Moore this is true in such a way that, to every court burdens, only one social worker has been allocated.<sup>186</sup> This is depictive of the fact that children may often face trial without representation.<sup>187</sup> This compromises fair hearings.

Poor or low provisioning of the Probation and Welfare staff hinders effective execution of duties, moreover with a few available magistrates to meet the full establishment of Family and Children's Court.<sup>188</sup> This implies that without good facilitation, the juvenile justice systems will continue operating inefficiently because they see no motivation to pursue the cases of children when they lack facilitation. Yet according to Kavola, statutory representation for children eases the financial burden of overcrowded remand homes whereas private lawyers have also been historically willing to assist children without inflated financial incentives.<sup>189</sup> The State must therefore concede that funding constraints might be legitimately overcome if review on this is undertaken

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<sup>184</sup> PT Kakama, Save the Children - UK Juvenile Justice in Uganda: Past and Present Perspectives." Published for internal use by STC-UK, Kampala, Uganda.

<sup>185</sup> Ibid

<sup>186</sup> Marianne Moore, Juvenile Detention in Uganda, Review of Ugandan Remand Homes and the National Rehabilitation Centre Marianne Moore, African Prisons Project, October 2010

<sup>187</sup> PT Kakama, Save the Children - UK Juvenile Justice in Uganda: Past and Present Perspectives." Published for internal use by STC-UK, Kampala, Uganda.

<sup>188</sup> Edroma Evelyn, Sector wide approach in justice law and order: the Ugandan experience Senior Technical advisor, JLOS Justice Law and Order Sector Uganda, 2008.

<sup>189</sup> Koyala (2000) The major targets of *child* sexual exploitation in *Uganda* are slum and *street* girls, ANPPCAN

To make matters worse, there are unnecessary court delays due understaffing.<sup>190</sup> This is clear in a contention made by one probation officer in an interview. He notes that, even transferring children who are accused of capital cases from the Family and Children's Court to the High Court takes several months. Just like Kovala realizes that arrested children in most cases may have to wait for a week or so to enter their first plea,<sup>191</sup> yet district registrar only distributes case assignments after the first hearing. According to Kovala (2000) from March 99-00, 29% of all capital suspects in Naguru Remand Home failed to receive court committals before the six month deadline, while 71% of these children had been retained illegally in the home, and only 29% released in accordance with the law.

This is indicative of the fact that the unnecessary court delays lead to lagging trial procedures which consequently leaves children imprisoned for a long a time without due legal assistance. Just like Kovala (2000) report envisages that children are held well beyond their legal remand period because of court delays.<sup>192</sup>

#### **4.5 Solutions to Address Human Rights Concerns of Children Under Juvenile Justice Systems**

According to a study by Zaal and Mathias, it is suggested that a juvenile court which operates chiefly as a mechanism to refer juvenile matters to other community based fora such as family group conferences( as applied in Newzealand) or sentencing circles (as applied in Canada) is crucial. This would help to eliminate unnecessary delays and longer arrest periods of children as contrary to the laws of Uganda. Trials would be run in such courts, according to rules set out in

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<sup>190</sup> Ibid

<sup>191</sup> Koyala (2000) The major targets of *child* sexual exploitation in *Uganda* are slum and *street* girls, ANPPCAN

<sup>192</sup> F N Zaal and C R Matthias *Journeys to nowhere: Moving children from juvenile courts to children's courts* in South African Juvenile Justice: Law Practice and Policy



the proposed legislation, but sentencing could be referred to the community, to be decided upon in terms of special rules or guidelines provided by the legislature. This model could be used in combination with any of either group conferences or sentencing circles.

Soliciting of funding from child protection and activists organizations would help to complement the available resources in maintaining child welfare while in their remand homes and while they need legal representatives.<sup>193</sup> In this way the registrar can expand its pool of advocates.<sup>194</sup> In response to the latter, administrators at the Legal Aid Clinic also suggest their own law students might defend accused juveniles as a component of their legal education.<sup>195</sup>

In addition, Uganda is authorized to require six months of civil service from all law university graduates. However, unfortunately, advocacy organizations cannot mobilize funding until the Attorney General approves Children Statute modifications. Much as protection groups will be prepared to locate funds, itemize government spending, and pressure the Ministry of Justice, this can only be possible after permissive legislation is in place. The effects of the registrar's signature, however, will be immediate.<sup>196</sup> If the above blueprint is followed, a call for better representation will not only relieve the burden shouldered by unqualified probation officers, but will also expose law students to the relevancy of social justice.

#### **4.6 Conclusion**

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<sup>193</sup> Young, L. (2003) The place of street children in Kampala, Uganda: marginalisation, resistance and acceptance in the urban environment, *Environment and Planning D: Society and Space*, 2:15, pp. 607-628

<sup>194</sup> Saneul Kalibala and Lynne Elson (2010) *Protecting Hope: Situation Analysis of Vulnerable Children in Uganda 2009*. The Population Council Inc.

<sup>195</sup> Young, L. (2004) Journeys to the street: the complex migration geographies of Ugandan street children, *Geoforum*, 35:4, pp. 471-488

<sup>196</sup> Ms. Robin Namusisi of the Legal Aid Project confirmed in a personal interview

This section explores the findings on circumstances relevant to street children arrests from different perspectives such as poverty and inequality, before turning to the legal treatment of street children under the juvenile justice systems.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

The chapter presents the summary conclusions and recommendations of the study carried on promoting and protecting the human rights of street children in the juvenile justice system in Uganda.

#### 5.2 Conclusion

The study concludes that street children have personal histories. They also have futures as youth and adults, as parents and workers, criminals...about which we know very little.<sup>197</sup> Studies reveal that children's accounts of their lives, coupled with observation of their experiences, provide richly textured life stories, which in turn are valuable for advocacy, policy-making and intervention-design.<sup>198</sup> This raises the need to improve our understanding of street children's careers, how they age and transform into youth and young adults, how opportunities, risks, choices play out in the longer term, how children use their experiences of social interventions in their adult lives, how gang membership is formed, prison and drug use affect their adult lives to know whether they are as destructive and they seem. This will provide a good benchmark in

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<sup>197</sup> The African Child Policy Forum (2008) The African Report on Child Wellbeing: Country Briefs Uganda

<sup>198</sup> Mashoo Eve Stolen Childhood, World Street Children News, The East African Publishers, 25 February 2008,

improving the juvenile justice systems in Uganda to accord these children a right and fair treatment while under the law.

### **5.3 Recommendations**

In respect to the findings and conclusion drawn for this study, there is need to adopt the following;

There should be systematic reviews of use of international instruments and national judicial processes to protect and defend street children.

Exploration of law-making to implementation to enforcement processes as experienced by street children, much as to the exploration of relationships between macroeconomic structures and street children's experiences of governmental protection and supports to restore their rights.

Analysis of government budgets: proportions and sums allocated for street children and the use to which they are put at national and local levels through comparative research on cost-effectiveness of NGO and government interventions in terms of impacts on street children

There is need for an evaluation of impacts of income-generating activities, livelihoods training and microfinance for street children and youth, in addition to developing a coordinated body of academic and development literature on policies, child protection systems, interventions, models of care and organizations relevant to street children, including young people's experiences and views

There is need for monitoring and supervision of detention centers by human rights activists on a monthly or weekly basis. Exploration of the research-policy nexus and the research-intervention design nexus, critical to understanding how knowledge is generated, brokered and used for policy-making and to design interventions is also paramount.

There is need for evaluations and systematic reviews of impacts of policies and interventions experienced by street children, street youth and their families. This includes selective policies, systems and interventions designed to reach larger groups of young people as well as targeted interventions for street children.

There is need for comparative research to identify common and distinguishing features of the experiences of street-connected young people within and across regions. This can help to identify underlying structural and other factors causing children to become connected to the streets, to stay in the streets, to leave the streets etc. Such research can also help to distinguish street children's specific requirements within political and policy agendas for children.

There is need to include a wider range of disciplines than the traditional focus on individual children, their immediate environments and relationships. Knowledge-production about street children is so dispersed it appears too scanty, thus need for collective knowledge to draw appropriate policy. This will help to bring together existing academic research in order to inform new research and to engage with policy-makers, designers of child protection systems and intervention developers.

There is need to build a body of academic and development research aimed at developing knowledge strategically for advocacy, policy-making, child protection systems and interventions.

Additionally investment would be needed for strategic development of a street children knowledge base with the involvement of law-makers, policy-makers and development practitioners, to focus on restoring street children's rights and preventing the conditions which cause their multiple deprivations and street-connectedness.

#### **5.4 General Conclusion**

Street children should not always be viewed and treated as criminals, they are also human beings who have a life to lead. With the above recommendations put into consideration, an improvement can be in policy design to give street children a better future in a fair system of justice.

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