

**INFRINGEMENT OF RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW. CASE STUDY  
IN LIRA DISTRICT**

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**UGANDA CHRISTIAN  
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## **AUTHOR'S DECLARATION**

I ARYAM FRANCIS do hereby declare that this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programs and that it has not been submitted for any other academic award. Other works cited or referred to are accordingly acknowledged.

Signature ..... Dated at this.....day of.....2024.

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## **APPROVAL**

I do hereby affirm that this research report has been under my supervision and submitted with my approval for the partial fulfillment of an award of a Degree of Bachelor of Laws at Uganda Christian University.

SIGNED: ..... DATE.....

MRS. EMMA SSALI (Supervisor)

## DEDICATION

This research paper is dedicated to the Almighty God who renewed my strength each day as I woke up to make ground breaking research. I dedicate this work to **Mr. Dick Alengo** and the lovely **Family** for their care, love, financial support, moral support and spiritual support. I am so grateful because they got me to where I am. May the Almighty GOD bless them with more years and see their grand sons and daughters.

I am also grateful to my parents **Okello Moses** and **Christine Atuu** for their parental advice and guidance to me. Not forgetting my brothers, sisters, nieces and nephews thanks for standing with me during the hard times. May the One above bless you all.

And lastly to my friends who have been there for me, May GOD bless you too.

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## **LIST OF ABBREVIATIONS**

**ANPPCAN:** African Network for Prevention and Protection against Child Abuse and Neglect

**ACERWC:** African Committee of Experts on the Rights of the Child

**ACRWC:** African Charter on the Rights and Welfare of the Child

**CRC:** Convention on the Rights of the Child

**CPS:** Central Police Station

**DFID:** Department for International Development

**FCC:** Family and Children Court

**FBI:** Federal Bureau of Investigations

**LCs:** Local Councils

**NGO:** Non-Government Organization

**ICCPR:** International Covenant on Civil and Political Rights

**NHRC:** National Human Rights Commission

**UNICEF:** United Nations Children's Emergency Fund

**UNCRC:** United Nations Committee on the Rights of the Child

## **ABSTRACT**

This Study was about the infringements of rights of children in conflict with the law in Uganda. This study sought to examine the effectiveness of the existing laws and institutional framework relating to rights of children and challenges faced by these institutions in Uganda. Through doctrinal research methodology, the study specifically examines the existing laws of children in conflict with the law in Uganda and applicability in civil sector in Uganda. The research focuses on the circumstances which give rise to children in conflict with the law in Uganda and legalities taken into account while resolving the custody, care and control of children as supported by the law. It also discusses the problems experienced in dealing with law in regards to the study. It provides possible interventions to streamline cases of custody of children. The proposed research took the form of a new research but on an existing research subject. In order to satisfy the objectives of the dissertation a qualitative research was held. The research findings of the study reveal a number of factors capable of stalling the proper regulation of children in conflict with the law in Uganda, in the view of this findings, the study recommends proper implications of existing laws, improvements in monitoring and assessments of juvenile delinquency in Uganda among other things.

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# CHAPTER ONE

## INTRODUCTION.

### 1.1. Background of the study.

The term *children in conflict with the law* refer to anyone above 18 years who comes in contact with the justice system as a result of being a suspect or accused of committing an offence<sup>1</sup>. In the juvenile system the children are provided for a special way in which their cases are ought to be tried. It is known as diversion which means the turning away from the formal criminal justice process<sup>2</sup>. In simple terms, juvenile justice connotes legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders<sup>3</sup>.

**Juvenile delinquency** refers to children who act against the law. Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are multitudes of different theories on the causes of crime, most if not all of which can be applied to the causes of youth crime.

**The Blacks' law dictionary defines juvenile delinquency** to refer to the children who act against the law. A juvenile delinquent is an individual who repeatedly commits a crime but is not prosecuted by laws as an adult due to their minor age.

Juvenile delinquency can be traced way back from the beginning and as way old as a man, according to the Holy Bible<sup>4</sup>, delinquency begun with sons of Adam when Cain attacked and killed his brother-Abel, from which God cursed Cain for such a delinquent act. In the middle ages, delinquency increased among middle class families who spent most of their time at work and this escalated with the industrial revolution in the 18th Century that had started in Great Britain by 1770s. Prior to the 1800s<sup>5</sup> if a juvenile committed a crime, they were punished the same way in which an adult would be punished. The ideology of treating juveniles the same as

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<sup>1</sup> Section 2(13) of the Juvenile justice (care and protection of children) Act 2015.

<sup>2</sup> Article 40 of the Convention of the Rights of the Child Article.

<sup>3</sup> UN Committee on the Rights of the Child (UNCRC) *General comment 24 on children's rights in the child justice system CRC/C/GC/24*

<sup>4</sup> Genesis 4:8b.

<sup>5</sup> <https://lstudy.com/academy/topic/nature-extent-of-delinquency.html>

adults all stemmed from the English Common law. Under the English common law juveniles were forced into working and were often trained into agricultural or domestic work. Furthermore, juveniles were apprenticed into adulthood.

The 1800s was the beginning of the **Child Saving Movement**. With this movement, the child savers focus was to create programs that focused on reforming juveniles. To accomplish this, the New York House of Refuge was instituted in 1825. This institution was to take juveniles considered at a risk on the streets and reform them into setting that was conducive to them which was usually like a family setting. The House of Refuge opened its doors caring for less than 10 youths and within a decade of its operation they have over 1600 youths in which they were working with.

In 1899, the first juvenile court was established in Illinois. The development of the juvenile court was to allow for it to have jurisdiction over any child under the age of 16 who was guilty of violating the law providing care to those children who were being neglected and to ensure the separation of juvenile and child offenders. The establishment of the Juvenile Court Act<sup>6</sup> was a lot different than punishment handed down to adult offenders. The concept behind the juvenile justice system was to allow youths to admit to their guilt and focus on rehabilitating the juveniles through punishment but rather by identifying what the needs of the youths was and finding a solution to their problem.

The issue of juvenile delinquency in Africa began attracting the attention of researches in the early 1960s<sup>7</sup>. In a pioneering work compared delinquents and non-delinquents in Zambia and found that the real differences between two groups appeared to be concentrated in family relations and emotional instability. Clifford noted that the spread of urban culture appeared to be a far more important influence toward crime in Zambia than any local cultural or tribal influences. He concluded that crime and delinquent causation developing countries can be explained by urban pressures on the family rather than by cultural differences.

In Uganda, in the pre-colonial era, juveniles who committed crimes were punished by elders as a norm and children belonged to the community. However, prior to the colonial times there were

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<sup>6</sup> Juvenile Court Act of 1899.

<sup>7</sup> Godfrey.O.Odongo.*The history of juvenile justice systems in Africa*. 2017.

no specific provisions for juvenile crimes and rehabilitation. .It was only from the mid-1980s that the assumption was challenged and the importance of community based care for children stressed whether in health in community (Based Health Care Communities) or disability in Community -Based Rehabilitation or in the Probation and Social Welfare's (DPSW)<sup>8</sup>. It is worth noting the following statements: - *All efforts to keep family intact shall be undertaken as the needs of children are best met in the family environment. A child shall only be removed from a family environment if is harmful to the child's welfare and interest and also juvenile offenders shall as much as possible be taken care of within the community.* The government of Uganda thereafter ratified the United Nations Convention on the Rights of the Child in 1990 which led to enactments of child laws in Uganda such as the **Children Act cap 59** in 1997.

Juvenile delinquency is increasingly becoming rampant not only in Uganda but across the entire globe<sup>9</sup>. Over the years, there have been socioeconomic changes on account of globalization that has contributed to the rise in juvenile delinquency<sup>10</sup>. Uganda is home to one of the world's youngest populations, with about 56.7% of its population below 18 years of age. Children constitute the single biggest demographic group surviving under poverty in Uganda. To seek survival, many children often find themselves in conflict with the law. Some are, for instance, pushed into theft due to necessity.

Organizations such as the **UNICEF** have the aim of protecting the children from violation abuse and any form of exploitation. Globally it has been recognize the **UNICEF** is a member of the inter agency panel of the juvenile justice with the main aim of promoting the juvenile system over the world. Numerous scholars on the rights of children have observed that children, because of their physical and mental immaturity are especially vulnerable in any given society hence the need for special protection measures.

Having said this, children in conflict with the law are especially vulnerable within the group as a result of their exposure to state machinery and strangers who wield substantial power and influence over them. The international community has recognized the dangers that these children are exposed to and has set up various norms and legal standards to ensure protection and

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<sup>8</sup> Policy Guidelines for the Vulnerable and Disadvantaged Children in Ugandan [January 1991].

<sup>9</sup>A L Pillay 'Criminal capacity in children accused of murder: Challenges in the forensic mental health assessment' in (2006) 17 *Child & adolescent mental health*

<sup>10</sup> UN 'Juvenile delinquency' World Youth Report, 2003 at 189, 206.

promotion of their rights. These standards began to emerge<sup>11</sup> before the adoption of the CRC and have continued to be adopted after the CRC. The norms and legal standards referred to above cover all aspects of the rights that must be particularly protected for children in conflict with the law. The problem does not therefore lie with the adequacy or lack thereof of the legal standards per se, but with their implementation.

Through providing and engaging in various activities to enable that the juvenile justice are promoted. In the state of panama they were able to provide the journalists with the data that concerned the children in conflict with the law in order tom stop the violations that were taken place. Likewise in Uganda the laws have been able to put in place and ought to be followed. However it is seen that the laws that are place are not being followed by the parties concerned. It has been found out that in many prisons and institutions that children are detained with adults and thus the diversion procedure is not followed and the rights have been violated as there are more than one million children worldwide that are detained by the law enforcement officials<sup>12</sup> however much the law provides of the way in which it should be carried out.

The adoption of the **United Nations Convention on the Rights of the Child (CRC)**<sup>13</sup> in 1989 ushered in a new epoch regarding children's rights<sup>14</sup>. This was followed by the adoption of a children rights specific instrument for Africa, the **African Charter on the Rights and Welfare of the Child (ACRWC)** in 1990.

These instruments ensured that children were no longer objects of the law, turning them into subjects of human rights<sup>15</sup>. Children ceased being viewed as property belonging to their parents and helpless items of charity. However, the passing of the Children Act and its recent 2016 amendment has not shielded juvenile offenders from various injustices in the justice system. The juvenile justice system is still riddled with several challenges that impede juvenile offenders from accessing justice. The fact that Uganda does not have a specialized legislation concerning

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<sup>11</sup> Declaration of the Rights of the Child, UN Doc G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19

<sup>12</sup> Uganda Human Rights Commission (UHRC) 'Human rights report 2020' at 30 <https://www.state.gov/wp>.

<sup>13</sup> Convention on the Rights of the Child GA Res 44/25, Annex 44 UN GAOR Supp (No 49) at 167, UN Doc A/44/49 (1989), entered into force 2 September 1990.

<sup>14</sup> African Child Policy Forum *'Realising rights for children: Harmonisation of laws on children Eastern and Southern Asia* (2007)

<sup>15</sup> G.O Odongo *'The domestication of international law standards on the rights of the child with specific reference to juvenile justice in the African context'* 18 October 2005

juvenile justice exacerbates the situation. A need, therefore, arises to scrutinize Uganda's legal framework on juvenile justice to ascertain whether it is up to the standards as set forth by the ACRWC and the CRC.

**Therefore**, this study seeks to interrogate Uganda's legal and institutional framework for protecting children's rights to assess whether it is up to international standards and ascertain the extent to which it safeguards the rights of child offenders.

## **1.2. Statement of the Problem.**

There have been various changes noticed with the development in Uganda and such changes have been witnessed in the education system, Juvenile offenders are entitled to certain rights that guarantee their access to justice. These include inter alia the right to legal representation and separation from adult offenders. The principle of best interests must guide the juvenile justice system. The ratification of the CRC and the ACRWC in 1990 and 1994, respectively, led Uganda to review all child-related laws<sup>16</sup>. Uganda enacted the Children statute to effectuate the provisions of the aforementioned international instruments. **Sections 88-108 of the Children Act CAP.59** elaborately set out juvenile offenders' rights and procedural guarantees to protect them when they interface with the justice system. It was an achievement and giant stride forward in harmonizing National laws with International treaties which Uganda signed and ratified.

However, these rights have been inadequacy enforced and there is need to be looked or done in order to protect children in conflict with the law<sup>17</sup>. The Children Act is not fully implemented. Secondly, while the CRC and the ACRWC emphasize that the best interests principle shall be the principal concern in all matters affecting children, what is done in practice is different. It is a common practice for children not to be informed of their rights after an arrest. The practice of holding children together with adult suspects by police in the same cells is very prevalent. This is accompanied by illegal detention of children beyond the constitutionally allowed time of 48

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<sup>16</sup> DM Chirwa 'Children's rights, domestic alternative care frameworks and judicial responses to restrictions on inter country adoption: A case study of Malawi and Uganda, (2016) 16 African Human Rights Law Journal at 119.

<sup>17</sup> Report of the African Policy forum policy of 2010.

hours before arraignment<sup>18</sup>. Rights of these juvenile offenders are continuously violated basing on different reports which show that such offenders are detained with the adults, and in most cases, they are detained without knowledge of their parents. All these mean that juvenile offenders in Uganda remain in a precarious situation, and the violation of their rights continues unabated. Therefore, a need arises to examine Uganda's legal and institutional juvenile justice framework to assess the extent to which it complies with the international juvenile justice standards, the existent gaps, and the possible solutions.

### **1.3. Objectives.**

#### **Primary objective.**

1. The research basically aims at finding out if the existing juvenile systems are working in ensuring rights and justice of juveniles in Uganda.

#### **Specific Objectives:**

1. To analyze the socio-economic profile of children in conflict with law.
2. To find out the causes of infringement of rights of Children in conflict with the law.
3. To describe factors behind the infringements of rights of children in conflict with law.
4. To find out rehabilitation mechanism and its effectiveness in juvenile justice institutions

### **1.4. Research questions:**

1. What are the causes of infringement of rights of children in conflict with the law in Uganda?
2. To what extent are the rights of juvenile offenders recognized under Uganda's juvenile justice system?
3. To what extent does Uganda's child justice system comply with international standards on child justice under the CRC, ACRWC, and other instruments?
4. What recommendations are necessary to close gaps, if any, in Uganda's juvenile justice system and promote the rights of Children in conflict with the law?

### **1.5. Justification of the study.**

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<sup>18</sup> Defense for children International's report in 2007, treed in Juvenile Justice System across 15 countries.

Uganda is a country undergoing major constitutional, legal, policy and institutional reforms in all major aspects of public life of Children but it still lack of adequate knowledge and information on and around the juvenile justice systems could prove a major and costly log jam to real and meaningful reforms in regards to rights of children in conflict with the law. This study seeks to offer empirically derived knowledge about the juvenile system in **Lira district** and possibly provide a basis for informed reforms if they are found necessary. The knowledge generated from the study shall aid advocacy and lobby mechanisms and stakeholders in ensuring that children in conflict with the law are effectively rehabilitated and reformed in line with international standards.

### **1.6. Relevance of the study.**

This research is the latest systematic and in depth study of 'children in conflict with law in the areas involved. It contributes the emerging literature on child offenders by taking a closer look into the following aspects.

1. The profile and experience of children in conflict with law through the eyes of children.
2. The institutions and process of the juvenile justice system on the one hand, and the juvenile justice process in actual practice by stages on the other.
3. Findings on the factors behind the juvenile crime serve as basis for the different intervention program to tackle the issue.
4. Rehabilitation and reintegration of children in conflict with law.
5. The baseline data generated by this research could be used as a bench mark by the concerned institutions.

### **1.7. Scope of the study.**

The paper considered a general overview of the children's rights in conflict with the law and the laws accruing thereto in Uganda. It further focused on the loopholes therein that need to be straightened. The study will be carried out in Lira District Uganda and it focuses on how the rights of children are in conflict with the Law are infringed.

## **2.8. Limitation.**

The research does not delve into the theories and causes of juvenile delinquency, rather emphasis will be on understanding the Ugandan legal framework on children in conflict with the law and whether it underpins the child rights concept as enunciated in the international legal framework on children in conflict with the law and the underlying principles. The study does not focus on the broad spectrum of laws on the juvenile justice system but rather on specific legal framework on children in conflict with the law.

## **1.9. Research Methodology.**

### **1.9.1 Research design.**

The study used a quantitative and qualitative research design for the purpose of making valid conclusions. Quantitative design which was classified in two broad categories, that is; experimental and general survey design examine juvenile delinquency analysis in relation to the law as independent variable whereas qualitative design involved the use of questions to obtain views from the respondents.

### **1.9.2. Area and population of the study.**

The study was conducted in Lira District. The specific attention was made on probation officers and children in conflict with the laws in detention homes or remand homes.

### **1.9.3. Data collection Instruments.**

**Interviews.** This involved face to face interaction between the researcher and the participant through discussion. The interviews were in two ways, namely: Structured interviews, in which the responses by the participants were brief and specific. Unstructured interviews, where the responses were long, elaborated and not specific, the interviews were conducted in group, individual.

**Questionnaires.** This was the discussion in written form whereby the responses of the participants were put on paper provided by the researcher, the questionnaires were also in two forms, namely:

- ✓ **Open-ended questionnaires** in which the responses by the participants were free according to their understanding.
- ✓ **The close-ended questionnaires** in which responses were provided by the researcher and the participants one of them accordingly, for example strongly agree, agree or strongly

disagree. The researcher left out questionnaires to mainly the literate group. These had guiding questionnaires which the researcher gave to individual respondents to fill. The researcher gave some two days to respondents to study and fill the questionnaires. He requested the respondents to ask for clarification where they didn't understand.

## **2.0. Literature Review.**

### **2.1. Introduction.**

This literature review explores the literature on international law and the rights of juvenile offenders. In addition, it explores the juvenile justice system in Uganda after the adoption of the CRC and ACRWC. Frequently, the children are held under deplorable and inhumane conditions. Physical abuse is common and children suffer trauma resulting from torture and interrogation. Although extensive studies have been done on the rights of children internationally, there is a dearth of literature on the juvenile justice systems in Uganda.

### **2.2 Reviews.**

Van Bueren gives an elaborate exposition on the growth of juvenile justice in international law<sup>19</sup>. First, she examined the guiding principles for the rights of children regarding the administration of child justice, such as the right to a speedy trial, diversion, and rehabilitation as laid down under the CRC and other instruments. She explains further that the primary intention behind these principles is to guarantee that the juvenile justice system reflects the doctrine of the child's best interests. She also highlights rights that juvenile offenders enjoy while at trial and gives valuable lessons for the management of child justice in domestic jurisdictions.

Juvenile justice<sup>20</sup> before the onset of delinquency reflects a desire to provide social Justice for children and young persons with a view to promoting and safeguarding their well-being. To this end, a system of social justice for children and young person's will protect their rights, including those who under five. The European regional preparatory meeting noted that 'Experience with the treatment model over the past several decades, when modern evaluative scientific criminology had begun to assess impacts, had not been encouraging, on the whole. Participants expressed somewhat divergent opinions regarding the success or inappropriateness of the treatment model, especially with respect to institutional treatment. But it was noted that problems of delinquency had proved more persistent, and the solutions less successful, than had been predicted. Report of the European Regional Preparatory Meeting on the Prevention of Crime and

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<sup>19</sup> Bueren (8)169 – 215.

<sup>20</sup> Thomas, D. *How Does the Juvenile Justice System Measure Up? Technical, assistance to the Juvenile Court Bulletin*, May. National Center for Juvenile Justice, (May, 2006) Vol 25(4), Pg 486-503.

the Treatment of Offenders stated that; Little, if any, sympathy was expressed for the current controversy in some developed countries centering on the issue of whether the social and rehabilitation approach had or had not endangered the procedural and civil rights of youngsters actually or potentially in conflict with social standards and laws. Africa had a different concern, a concern which sought to achieve social Justice for all and internalized value systems for each young person. Broadly based communal approaches were called for to achieve this far-reaching aim.

According to a study of geographical distribution of juvenile delinquency in a city of Chicago<sup>21</sup>, the children living around the central business district, a place with distinct features loosened the instinct of traditional rules especially in young people which were classified as a criminal and young people growing up in the communities could model themselves after the highly visible adults who made their living illegally hence juvenile delinquency. In the survey, it was clearly identified and concluded that group delinquency which characterizes much of our ordinary crimes is deeply rooted in our modern community which seems to agree with delinquency through conduct and speech and adults with whom city juveniles come into contact. That the competing values of modern life confuse the growing young people and encourage him to seek a life of excitement in which they can gain a satisfied status of people of their kind.

According to Hirschi and Travis<sup>22</sup>, they are of the view that in punishing juveniles, the rate of punishment of juveniles should be low compared to the rate of punishments on adults because juveniles have less culpability and there is need for tolerance in administration of punishment to the juveniles. He therefore urges for establishment of special courts for juveniles, special detention Centers, special rules of procedure and laws if their interests and welfare is to be catered for and for effective rehabilitation of the juveniles into important citizens. In Uganda, juveniles have different laws governing them and the different courts from the adults.

Sandra S. G<sup>23</sup> points out 3 premises underlying the basic notion that young people who commit crime should be treated differently than adults as it was the juvenile criminal justice system that was conceived 40 years ago. They include that; *that the objective of the system should be*

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<sup>21</sup> Brecken Ridge and Abbot.

<sup>22</sup> Children and the Courts 1979.

<sup>23</sup> An introduction to Essays on Juvenile Justice 1994.

*principally rehabilitation with punishment, a secondary goal, that consistence with the principal aim, and the response of the system should be highly individualized and should focus on designing 'disposition' or sentence tailored to the needs of the teenager offender* or rather than one linked directly to the seriousness of the crime and that the juvenile court judge should retain a high degree of discretion in order to design the proper sentence and that the system should be largely to protect offenders from lifelong stigma associated with an adolescent error in judgments.

The researcher's opinion is that, these assumptions may not lead to proper effectiveness of the law because for a juvenile justice system to breed purposeful results crime rate must be controlled first through thoughtful measures as this entails children and youth. Child Rights and Juvenile Justice an article from<sup>24</sup>, it noted that effective child protection fundamental to avoid child exploitation and it can be ensured with adequate interventions at different levels. Child Rights and Juvenile Justice an article from<sup>25</sup> it noted that effective child protection fundamental to avoid child exploitation and it can be ensured with adequate interventions at different levels. The main issue discussed in this article is that Child rights governance as a strategic area related to justice for children. That if government has the capacity to deliver child rights it must be able to support it by offering technical assistance within juvenile justice law reforms and advocating for the establishment of national independent institutions. **To sum it up, those child protection systems can be strengthened through law reforms on child rights, child friendly procedures and services, awareness raising and adequate training.** I agree with the writer because the main basic statutory instrument regarding children which under<sup>26</sup> provides that the best interest of the Child is key consideration in issues affecting the children. If this is observed, their rights will be protected hence purposeful observation of child law.

One of the leading works on juvenile justice in Uganda is by Lilian TibatemwaEkirikubinza<sup>27</sup> she evaluates the extent to which Uganda's juvenile justice system upholds child rights. She discusses the perceptions of society towards the juvenile justice system. She argues that societal perception is essential because the enjoyment of rights partly depends on what society perceives

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<sup>24</sup> Best practices and lesson learned from save the children Italy National and Internal programs.

<sup>25</sup> Crime and Delinquency in Kenya 195.

<sup>26</sup> Art ice 3 of the CRC.

<sup>27</sup> LT Ekirikubinza 'Juvenile justice and the law in Uganda: Towards Restorative Justice' in L Lindholt & S SchaumburgMuller Human Rights in Development Law Year Book (2003).

as acceptable values and norms. The stakeholders' perceptions are very impactful on the level to which rights contained under particular legislation are realized. Ekirikubinza's study places much reliance on restorative justice. This study will be all-encompassing, assessing the extent to which Uganda's legal and institutional framework complies with international standards regarding juvenile justice. In addition, her work was decades ago before the recent amendment of the Children Act in 2016.

Julia Sloth-Nielsen gives a general overview of the child justice system in Africa<sup>28</sup>. She highlights legal reforms that have been undertaken across the continent, pointing out their strengths and gaps. She observes that the focus of the child justice system is now the protection of children. She also points out that several African countries have legal frameworks espousing reforms that guarantee child friendly justice systems. She recommends a need for reform of institutions involved in child justice.

Mats Melin examined the impact of the CRC on the position of children in society<sup>29</sup>. He stresses that the juvenile justice system should establish avenues to see that the views of children are respected and heard. He also advocates for avoidance of subjecting juvenile offenders to legal proceedings in courts, arguing that it may cause trauma to children. However, his work was general, with no specific attention to Uganda, which this study aims to achieve.

Marianne. M<sup>30</sup>, notes Uganda's ratification in 1990 of the main International Convention which is the Convention on the Rights of the Child enshrining key principles in The Children's Act cap 59 which includes a comprehensive outline of the rights of such children. The Uganda juvenile justice system entails arrest where a child is arrested and the police have the discretion to caution and release the child or dispose of the case without recourse to formal court .Bail and remand, the Children's Act 2016 sets out that remand in custody should not exceed 6 months in the case of an offence punishable by death and should not exceed 3 in the case of any other offence.

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<sup>28</sup> M Melin 'A quarter of century with the UN Convention on the Rights of the Child' in S Mahmoudi et al Child friendly justice. *A quarter of a century of the UN Convention on the Rights of the Child* (2015) at 233.

<sup>29</sup> J Sloth-Nielsen 'What's in a name? Child friendly justice in Africa' in S Mahmoudi et al *Child friendly justice. A quarter of a century of the UN Convention on the Rights of the Child* (2015) at 27.

<sup>30</sup> Juvenile Detention in Uganda 2010.

However, majority of children are not remanded beyond the time limits. A minority mostly charged with capital offences are being remanded for a longer period .The courts are also the major part of this system and they entail three levels, local councils, which are meant to play a central role in the administration of juvenile justice legislation, Children and Family courts established by the Children's Act which have jurisdiction to hear and determine most criminal charges against a child except capital ones .Children charged with capital offences are sent to the High Court provided with lawyers and legal aid.

In support with the writers' overview on the laws governing juvenile delinquency, children tried in some courts as adults and given no priority, there is a backlog of children waiting for their cases to be heard thus delay in administering justice and purposes of the law to be fulfilled.

Dunkel F<sup>31</sup> focuses on tendencies in youth legislation and on the sentencing practice of prosecutors and judges in youth courts. The recent developments in the system provide contrary approach and they intensify youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation. The author advocates for restorative justice, that one development that appears to be common to Central, Eastern and Western European countries is the application of elements of restorative justice policies to young offenders. Victim offender-reconciliation, mediation or sanctions that require reparation or apology to the victim have played a particular role in all legislative reforms of the last 15 years. In some countries, legislation provides for elements of restorative justice to be used as an independent sanction by youth courts. In England and Wales, for example this done by means of reparation or restitution orders and in Germany by means of the victim offender-reconciliation as an educational directive. He looks at the legislation of juvenile law from a different perspective and the researcher agrees with the writers' content about other measures of ensuring justice as discussed above and in this way the law can be reformed hence securing a recognized mode of dealing with juvenile crime.

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<sup>31</sup> Frieder Dunkel *.Juvenile Justice Systems in Europe -Reform developments between justice ,welfare and 'new punitiveness'*.

### **2.3 The existing gaps.**

Despite significant advancements in the legal and institutional frameworks towards the recognition and protection of juvenile rights and justice at international, regional and domestic level, juveniles are still facing multiple obstacles compared to those encountered by adults, and that need specific attention if we are properly to protect children's rights. There is inadequate enforcement and adherence to the existing legislation in respect to the wellbeing of children and the poor structured diversionary methods in existence. Regardless of the existing laws governing children, their implementation by different organs and institutions which are powerful tools towards observing juvenile rights and ensuring juvenile justice cannot be underestimated.

While we greatly appreciate the efforts and contribution made by the Ugandan government, UNHCR and the different organizations in ensuring and upholding children's rights, we cannot use these successes to turn a deaf ear to the different obstacles still faced by refugee and host juveniles while seeking to access justice and enjoy their human rights. As per the 2019 Uganda crime report, police received 10,596 child-related offences involving children as targets or victims of the crime that is child abuse, torture, desertion and neglect and 13,682 defilement cases. On the side of children in conflict with the law, in accordance with Justice, Law and Order Sector report<sup>32</sup>, 1,844 (1195 males, 649 females) children in conflict with the law were handled.

The figure indicated in both reports is a substantial number in respect to the vulnerability of juveniles, particularly as it reflects only reported cases, not those that go unattended to.

### **2.4 Conclusion.**

Review of literature shows that social and personal factors are very crucial in mainstreaming the children in conflict with the law. Likewise the administrative mechanisms works as a deciding factor in rehabilitation. Theoretical insights throws light in to the fact that more than any biological factor social and psychological factors are predominant in creating the deviant behaviors as a child tries to imitate and inculcate what his/her environment shows them.

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<sup>32</sup> Law and Order Sector report of 2018/2019.

### **3.0 Chapter synopsis/Organizational layout.**

Chapter one: Introduction.

Chapter two: Legal and institutional framework of Children in conflict with the law in Uganda.

Chapter three: Data Analysis and Presentation.

Chapter four: Summary of Key Findings, Recommendations and Conclusion.

## CHAPTER TWO:

### LEGAL FRAMEWORK OF CHILDREN IN CONFLICT WITH THE LAW IN UGANDA.

#### 2.1 INTRODUCTION

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

#### 2.2. DOMESTIC LAWS.

##### 2.2.1 The Constitution<sup>33</sup>.

The constitution, which ranks highest in the hierarchy of laws in Uganda by virtue Article 2, is a novel enactment providing for the rights of juvenile. The constitution imposes a duty on parliament to enact laws in the best interest of children<sup>34</sup>. Under the national objectives and directive principles of state policy, the state has responsibility to guarantee and respect institutions which are in charge of promoting human rights<sup>35</sup>; which includes **the rights of children, and providing adequate resources**. The state is mandated to **ensure fair representation of marginalized groups of which children are part**.

In this paper a juvenile is understood to mean a child offender, and a child is a person below the age of eighteen years. The constitution provides four fundamental human rights under chapter four. It provides for special rights of children under **article 34**, the constitution further provides that a child offender who is kept in a lawful custody or detention shall be kept separately from

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<sup>33</sup> The Constitution of the Republic of Uganda 1995 as amended.

<sup>34</sup> Article 34(1) of the Constitution of Republic of Uganda 1995 as amended.

<sup>35</sup> Objective 10 or the national objectives and directive principles of state policies under the 1995 Constitution

adults<sup>36</sup>. The purpose of this requirement is basically to protect the child offender from being exposed to adult hardcore criminals.

It must be noted, however, that the constitution does not overrule imprisoning or detaining such a child. This would be a loophole as it is covered by the provision of Article 23 (2), which provides that a person arrested, restricted or detained shall be in a place authorized by the law. S. 112 of the children statute and rule 18 of the family and children court rules, 1998 provide for detail of execution of judgments or court orders in respect of children offenders. This provision will be examined in details in this paper.

### **2.2.2 Children Act<sup>37</sup>**

The children act was an act to reform and consolidate all laws relating to children, to provide for local authority to support children. It establishes a family and children court to make provisions for children charge with offences and for other connected purposes<sup>38</sup>.

**Section 2** of the children act defines a child as a person below the age of 18 years.

**Section 3** provides for the welfare principle, which shall be the guiding principles in making decisions regarding to children.

The children act establishes the family and children court, which shall be in every district and an other lower government unit designated by the chief justice not below grade two. This court has power to hear and determine all criminal charges against children. The children act provides the minimum age of criminal responsibility as 12 years. This means that children below the age of 12 years are not criminally liable for offences committed<sup>39</sup>.

The Act has also empowered the Police in **Section 89(2)** to dispose of cases at their destination without recourse to court hearing. This is an appropriate provision for the juvenile offenders since they need not be detained for even minor infringements. Most of them are so vulnerable to criminal behaviors in a way that they can easily be manipulated to committing such crimes. It's

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<sup>36</sup> Article 34(6) Constitution Of Uganda.

<sup>37</sup> Cap 59 laws of Uganda.

<sup>38</sup> Section 13 of the Children Act.

<sup>39</sup> Section 88 of the Children Act.

also a good provision in that, some of these juveniles commit crimes due to some unbearable circumstances like lack of what to eat, abuse and neglect from their parents or guardians.

It's also provided in **Section 89(6)** of children Act that "where a child is arrested with or without a warrant and cannot be immediately taken before a court, the police officer to whom the child is brought shall inquire into the case and, unless the charge is a serious one, or it is necessary in the child's interest to remove him or her from associating with any person, or the officer has reasons to believe that the release of the child will defeat the ends of justice, shall release the child on bond on his or her own recognizance or on a recognizance entered into by his or her parent or other responsible person".

By legalizing release of a child by police on bond, it creates a source of reconciliation and a room for reformation to the child. He/ she would realize a sign that he's not deserted by the society, but would be admired if he reforms. This is therefore one of the provisions that enforces the rehabilitation of the juvenile offenders. Provisions are also to the effect that, "No child shall be detained with an adult person ... A female child shall, while in custody, be under the care of a "woman officer."

The Children Act on the other hand provides for some reliefs in respect of a child against whom the offence is proved. This is provided for in section 92(4), where the role of the Resistance Committee courts is stipulated, as far as trial of a child offender is concerned. The above section provides that a village Resistance Committee court may, notwithstanding any penalty prescribed by the Penal Code in respect of the offences stated in sub section (2) of the above section, make an order, Li• some reliefs in respect of a child against whom the offence is proved. The reliefs include; reconciliations, compensation; restitution; apology; or caution. **Subsection (5)** of the above section states that;

In addition, to the reliefs under **subsection (4) of this Section**, the court may make a guidance order under which the child shall be required to submit himself to the guidance, supervision, advice and assistance of a person designated by the court. The above provisions are all aimed at seeing that the child offender is not neglected, but assisted to reform and become a law abiding citizen. The Act also provides in **Section 94(4)**, that detention of a child shall be a matter of last resort and shall only be made after careful

consideration and after all other reasonable alternatives have been tried and whether the gravity of the offence warrants the order. This order also, have to be made after the court is satisfied that a suitable place is readily available as provided in **Section 94(5)** of the Act.

The provision in **section 96(1)** for the National Rehabilitation Centre is also a good provision in the Act that looks forward to the rehabilitation of the juvenile offenders. This is also provided for in the family and Children Courts Rules. It is however, supposed to be as a last resort.

Rule 30 stipulates that; "Where the case of a child appearing before a court is not completed within three months after plea has been taken, the case shall be dismissed and the child is not liable to any further proceedings for the same offence". These are provisions which support the concept of "Justice delayed, justice denied", in the trial of a juvenile offenders. It's also provided in **section 94(a)** that; **"NO child shall be subject to corporal punishment"**. This provision confirms the decision of the Supreme Court in the case of **SALVA TORI ABOOKI v A.G**, where their Lordships unanimously agreed that corporal punishment is unconstitutional in that it's a degrading and inhumane treatment.

The rehabilitation of offenders cannot be effective and will never have any impact if the laws are inconsistent with it. In Uganda at least for this matter, the juveniles are seen as one of the most vulnerable' and marginalized groups of people in the country. They are now fortunate that, even the Constitution of the Republic of Uganda, which is the supreme law of the land, recognizes their plight in **Article 4(4) of the Constitution** for instance provides that, *"Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is hazardous or interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development."*

### **2.2.3. The family and children court<sup>40</sup>.**

This court is established as a novel aspect aimed at the observance and enforcement of juvenile's legal rights. The court is expected to be established in every District and many other lower governments units designated by the chief justice. The court has to be presided over by a

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<sup>40</sup>Section 13(i) the Children Act Cap 59.

magistrate not below Grade 11<sup>41</sup>. This court has powers to determine criminal charges against children<sup>42</sup>. It also has jurisdiction to hear and determine all criminal charges against children except offences which attract a death penalty and any offence for which a child is jointly charged with a person over eighteen years of age<sup>43</sup>. Where the charges against the child have been admitted or proved against him/her, the court has a discretion, may either discharge for not more than twelve months; binding the child over to be of good behavior for a maximum period of twelve months, compensation, restitution or fine taking into consideration the means of the child so far as they are known to the court. The Court however, cannot make an order of detention in default of a fine<sup>44</sup>.

The court can also make a probation order in accordance with the **Act<sup>45</sup> (Cap 109)** for not more than twelve months. This order is supposed to be made with such conditions as may be recommended and Social Welfare Officer. The probation order however cannot require a child to reside in a remand home.

In case the court decides to impose a punishment of detention on a child, it must abide by the requirement of the statute. A child under sixteen years can only be put under detention for a maximum period of three months<sup>46</sup>. A child above the age of Sixteen years can only be put under detention for a maximum period of twelve months if the offence with which the child is charged attracts a death penalty, a child can only be detained for a maximum period of twelve years.

The statute defines **detention** as placement in a Centre designated for that purpose by the Minister in circumstances and with such conditions as may be recommended to the court by the Probation and Welfare Officer

In case the child has been remanded in custody prior to an order of detention being made in respect of him/her, the period spent on remand is expected to be taken into account when making the order of detention. Detention is only to be recommended as a last resort and when court is

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<sup>41</sup> Section 13 (2)

<sup>42</sup> Section 14(1) (a)

<sup>43</sup> S.104

<sup>44</sup> S.94(a)-(g)

<sup>45</sup> Probation act (cap 109)

<sup>46</sup> S.94(1)(g)

satisfied that a suitable place is readily available where the child is to be detained. The rationale for this requirement is to avoid a child being detained in an adult prison.

The Act requires further that a child or a person under whose custody he/she is to be together with the order under which he/she is committed. The order is sufficient authority for the detention Centre to receive the child and detain him/her. Corporal punishment is outlawed in respect of a child who has either admitted the charges or against them.

### **2.2.3.1 Procedure and sitting of the family and children court**

The statute requires that where possible the family and children court sit in a different building from one normally used by other courts. The rationale for this is not given in the statute. However, considering the procedure lay down in the statute, it might, indeed, necessitate such arrangements so put in place. It is anticipated that the court should sit as often possible and that the proceeding should be held in camera. If the family and children court is to sit in the same building and perhaps the same chambers or courtroom as the ordinary courts, it is likely that those statutory requirements cannot be met, The ordinary courts sitting arrangements would have to be interrupted from time to time and probably, these may not be an ideal environment for holding the trials in camera.

The requirement that the court be held in a different environment from that ordinary in trying other cases, Uganda does not have especially skilled magistrates to handle juvenile cases solely to the exclusion of other cases. This being the case, it appears that the provision of the statute in that regard may not be expected to be achieved even in the near future. This by itself makes the whole legal regime governing the protection of juvenile a sham.

Further considering that a child may not be able to withstand the rigors of examination and cross examination during trials, the statute requires that those proceedings in the court be as informal as possible and by inquiry rather than by exposing the child to adversarial procedures. In the regard the statute recognizes the need for the protection of the legal rights of juvenile delinquent and considering their age, they deserve a fair trial by undergoing simpler procedures throughout the trial. Such procedures are intended for confidence building in the child who would tell the court the true version of his /her case or defend himself effectively.

In all trials conducted in Family and Children Courts, the statute requires that parents or guardians of the child be present. At least if one of the two is not present, probation and social welfare officer should be present. The purpose of this, according to our interpretation is to give child psychological satisfaction and security against the adverse court atmosphere during the trial, and that those responsible for his/her upbringing are still caring.

The child's legal rights under the statute are guaranteed by requiring that in all proceedings before the court, the child shall have a right to representation. The statute is salient as to whether the legal representation shall be provided by the state. But considering the fact that most children who commit criminal offences come from very poor environment, it is not expected that such children would afford expensive legal services.

The purpose of permitting the presence of only a few persons in court is mainly to ensure that the child does not feel intimidated at all stages during the trial. In all cases, the family and children court must make an order in respect of child is beneficial to him/her.

#### **2.2.4. Duty of police officers**

The police shall under justifiable circumstances caution and release a child where the child is arrested<sup>47</sup>. The police are empowered to dispense the cases of their discretion without recourse to formal court hearings in accordance with criterion laid down by the inspector general of police. The Child's parents or guardians and the secretary of children affairs of the local government council for the area in which the child resides shall be informed about the arrest by police.

The police shall ensure that the parent or guardian of the child are present at police at the time the child is interviewed except where it's in the best interest of the child and where the parents cannot be found ,probation and welfare officer shall be informed so that he can attend police interviews.

Where the child cannot be taken to court immediately, the police officer shall inquire into the case and unless the child is charged with a serious offence or it is necessary in the child interest remove the child from association of the other people. Where there is belief that the release

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<sup>47</sup> Section 89 of the Children Act Cap 59.

would defeats' ends of justice, release the child on bond at his or her own recognizance or by parents or an) other responsible person.

### **2.2.5. Bail**

**Section 90** of the Children Act provides for release of a child on bail in case there is serious danger to the child on his own recognizance or with societies where bail is not granted court shall record reasons for refusal and inform the applicant of his or her right to apply for bail in the chief magistrate court of high court.

Where the child is not released on bail, he is supposed to be committed to the remand home. The children act provides<sup>48</sup> for a remand order committing the child to a remand home mentioned in the act. Where there is no remand home within reasonable distance, court shall make a detention order in a place of safe custody as it deems feet. The act provides that remand in custody shall not exceed six month in case an offence is punishable death or these months in case of any other offence. No child shall be subject to corporal punishment<sup>49</sup>.

### **2.2.6 Probation and social welfare officers.**

The probation and social welfare officer is required to make a written social background report to be taken into account by court after a charge has been admitted or provided before making an order<sup>50</sup>. The report shall include social and family background circumstances in which the child is living and conditions in which crimes were committed.

The court shall ensure that all the contents of the report are made known to the child and a copy of a report provided for the child or his representatives. The probation and social welfare officer shall discuss the period of aftercare with the child but it will not exceed 12 months after release from detention.

### **2.2.7. National rehabilitation center for children.**

A national rehabilitation Centre for children shall be established by a minister and such other centers that he or she may deem necessary which shall be in each place for detention and

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<sup>48</sup> Section 91 of the Children Act

<sup>49</sup> Section 94(9) of the Children Act

<sup>50</sup> Section 98 of the Children Act

rehabilitation for children<sup>51</sup>.Some detention centers have been established which includes Naguru remand home, fort port remand home, and Gulu remand home.

The act provides that a child shall not be detained with adults while in custody and female children in custody shall be under the care of a woman officer. The act further provides for expeditious handling of cases without unnecessary delay<sup>52</sup> where a case is not completed within three months unless the plan has been taken, the case shall be dismissed and the child shall not be liable to any other proceedings for the same offence.

## **2.3. REGIONAL INSTRUMENTS**

### **2.3.1 The African charter on the Rights of the child.**

The charter was notified in 1999 by the organization of African unity and Uganda being a member ratified the Charter with the concern that most African children's situation remains critical due to the unique factors of social economic cultural and traditional development circumstances exploitation hunger and on the account of the Child's mental immaturity. He or she needs special safe guards and care.

The charter argues member states to recognize rights freedoms and duties enshrined in the charter and shall under take necessary steps in accordance with their constitutional provisions to adopt measures as may be necessary to give effect to the provision of the charter. **The charter defines a child as a person below 18 years<sup>53</sup>**.it provides for the right of children like the right to religion, conscience, assembly, and expression and the welfare principal in all matters concerning children.

Although the Charter is aimed at protecting children by virtue of their inherent vulnerability, it recognizes that within this group are even more vulnerable children (such as children in conflict with the law). According to the Charter, the child requires protection in conditions of **dignity, freedom and security**. The States Parties to the Charter have reaffirmed adherence to the principles elucidated in other international treaties such as the African Charter for Human and Peoples Rights, general United Nations human rights instruments and the CRC in particular. The

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<sup>51</sup> Section 96 of the Children Act

<sup>52</sup> Section 99 of the Children Act.

<sup>53</sup> Article 2 of the African Charter on the Rights of Children

Committee of Experts on the Rights and Welfare of the Child was established in 2001 to monitor implementation of the Charter.

States parties to the Charter are obliged to recognize the rights contained therein and to undertake the necessary steps to adopt measures that give effect to the provisions of the charter in accordance with their Constitutional processes.<sup>54</sup>

**Under Article 17 it provides** for the administration of juvenile justice for the purpose of reformation and re-integration of a child into society. The charter provides that member states should ensure that every child accused is accorded legal assistance and representation.

## **2.4. INTERNATIONAL INSTRUMENTS**

### **2.4.1 The International Covenant on Civil and Political Rights.**

**The International Covenant on Civil and Political Rights<sup>55</sup> (ICCPR)** does not have detailed provisions relating to the administration of a child justice system. Article 10 of the Covenant deals with the treatment of persons deprived of their liberty and provides that children in conflict with the law should be detained separately from adults and must be brought to trial in the shortest possible time.

It further provides that they must be accorded treatment that is appropriate for their age and legal status. **Article 10 (3)** does not define the term juvenile and the Committee has attempted to shed some light on this by providing that while states parties must indicate the limits for juvenile age, *Article 6 (5) of the Covenant suggests that all persons below eighteen years must be treated as juveniles.*<sup>56</sup> The Human Rights Committee has stated **that Article 10** applies to anyone deprived of liberty under the laws and authority of the state. States are therefore obliged to ensure that the **principle of humane treatment of detained persons is observed in all their institutions of detention.**

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<sup>54</sup> Article 1 of the Charter.

<sup>55</sup> U.N. Doc. A/6316 (1966).

<sup>56</sup> General Comment Number 21 (1992) paragraph 13. Article 6(5) of the *Covenant relates to the prohibition of the imposition of the sentence of death on persons below the age of eighteen years.*

Apart from stressing the social aims of a criminal justice system, the article places a positive obligation on states in respect of all persons deprived of their liberty<sup>57</sup>. The Human Rights Committee has acknowledged the fact that persons deprived of their liberty are very vulnerable and are often the victims of abuse by persons acting in official capacity. **Judge Moller submits that** “*bad prison conditions such as overcrowded, infested cells, lack of light, ventilation or bedding, lack of hygienic or sanitation facilities, insufficient or poor quality food, lack of medical care, unduly harsh prison regime and lack of recreation lead to a finding of a violation of Article 10.*”

#### **2.4.2 The UN Convention on the Rights of A child (CRC).**

Uganda being signatory to the UN convention it is bound by the UN convention on the rights of a child it provides for the protection and support for rights of children below 18 years.

**Article 40 states** that state that *parties shall seek the establishment of appropriate and desired measures for dealing with children under 18years without resorting to judicial proceedings provided that human rights are legal safeguards are respected.* It provides for the welfare principle as the guiding principle in matters concerning children.

It provides for guarding principles in arrest detention and trial of a child which include:

- ✓ Presumption of Innocence,
- ✓ The child's right to be informed promptly or directly of the charges against him.
- ✓ To hear the matter determined without delay by competent independent and impartial body.

#### **2.4.3 The UN standard minimum rules of administration of juvenile justice.**

The UN standard minimum rules of administration were adopted on November 1985 by the general assembly resolution No. 40/33. Uganda being a member ratified the convention.

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<sup>57</sup> J. T Moller in Bergsmo M (ed.) *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjorn Eide*, Martinus Nijhoff Publishers, Leiden 2003 p. 665.

**Principle one of the convention provides** that *member states shall seek in conformity with their respective general interests to further the well-being of juvenile, develop conditions that will ensure a meaningful life and resolving the cases of juveniles with the view of reducing intervention under the law.*

**Principle two provides** for the application of standard minimum rules on juveniles impartially without discrimination of any kind such as on grounds of race, color, sex or language.

It defines **juvenile offender** as *a young person who is alleged to have committed or has been found to have committed a crime.*

It provides for the establishment of a set of laws and rules specifically applicable to juvenile offenders and institutions and bodies entrusted with the function of administration of juvenile justice.

**Under principle 4,** *the age limit of criminal responsibility shall depend on the legal system. It shall not be fixed low or too high bearing in mind the facts of emotional, mental and intellectual maturity.*

**Under principle 5 the convention** aims at the protection of the *wellbeing of juvenile and advocates for the proportionality principle which is to the effect that the gravity of the offence committed by the advocate should be based on personal circumstances like social status, family background.* It provides for the rights of children<sup>58</sup> as presumption of innocence, right to remain silent the right to counsel, right to presence of guardian, right to cross examination of witnesses and the right to appeal to higher authority which shall be granted at all stages.

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<sup>58</sup> Principle 7 of the UN standard minimum rules for administration of justice

#### **2.4.4. The Rights of the Child in Conflict with the Law under the Beijing Rules.**

**Rule 7 of the Beijing Rules** outlines the basic rights of a child in conflict with the law, similar to the provisions of the article 11 of the UDHR, article 14 (2) of the ICCPR and the CRC.

The right to *privacy of a child in conflict with the law* is also protected under **Rule 8**. In order to grant further protection, the Rules do not preclude the application of the Standard Minimum Rules for the Treatment of Prisoners.<sup>59</sup> **Investigation and prosecution** is also dealt with by the Rules and they require that the contact between the law enforcement agencies and the child be managed in a way that respects the status of the child, promotes the wellbeing of the child and protects him or her from harm.

It should be noted that this can only be achieved, as we shall see later, if there is adequate infrastructure and training for officers that come into initial contact with children. This is the problem that is encountered by most states in the administration of juvenile justice. Training and infrastructure requires financial resources in addition to political will. The requirement to respect the status of the child can be said to move in tandem with the right of the child or indeed any accused person to be brought before a competent tribunal without undue delay.

A child who is detained may be released pending the determination of the matter even before the matter has been brought before a competent tribunal. This is especially important in states that have a problem with congestion in detention facilities in order to protect the child from harm and exposure to adult criminal behavior.

#### **2.5. Conclusion.**

Though the age of criminals responsibility in Uganda is considered the most appropriate, considering the conditions of life in Uganda it is too high looking at the high crime rate in Uganda of which and the age at which children in Uganda commit crimes though there are National, Regional and International laws governing juvenile delinquency in Uganda, the law has always been misapplied by law enforcers leading to injustice to the juveniles.

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<sup>59</sup> 0 UN Doc. A/CONF/611, annex 1, ESC Res. 663C, (XXIV) (1957), UN ESCOR, Supp. No. 1, at 11, UN Doc. E/3048 (1957), amended by ESC Res. 2076, (LXII) (1977), UN ESCOR, Supp. No. 1, at 35, UN Doc. E/5988 (1977)

# CHAPTER THREE.

## DATA ANALYSIS AND PRESENTATION.

### 3.1. INTRODUCTION.

In achieving these findings, the researcher visited the areas where the study was limited to. The researcher left out questionnaires to mainly the literate groups. These had guiding questions which the researcher gave to individual respondents to fill. The researcher gave some two days to respondents to study and fill the questionnaires, interaction with the local and those in offices of the remand homes where the study was limited to. During the field survey various issues were found out and these ranged from; the causes of juvenile delinquency in the visited areas, ways how juvenile offenders are handled, the measures that can be put in place to curb juvenile delinquents in Uganda.

#### 3.1.1. Age of Criminal Culpability of the Child.

The New Rule defines a CICL as someone who is not less than nine years but below 18 years of age at the time of the commission of the crime. On the other hand, those minor who are nine years old or below at the time of the commission of the offence are exempt from criminal liability.<sup>60</sup> This phrase, which followed the wording of the Family Courts Act, marked a significant importance in the delineation of age of criminal responsibility. A Supreme Court ruling<sup>61</sup> has interpreted laws to mean that criminal responsibility excludes children who are nine years of age. Perhaps, this interpretation was hinged on the principle that penal provisions must always be construed in favor of the accused.

In the case of **Miller v Alabama**<sup>62</sup>, the ruling in this case made it unconstitutional to sentence someone who was under the age of 18 at the time of the crime committed to mandatory life without parole. The ruling requires a judge to take into consideration the age of the offender before sentencing him or her to life without parole.

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<sup>60</sup> Rule on Juvenile in Conflict with the Law, Sec. 1, 5.

<sup>61</sup> Almodovar vs. Guevarra (26 January 1989) 169 SCRA 476.

<sup>62</sup> [2012] S.Ct 2455

In Uganda, The children act provides the minimum age of criminal responsibility as 12years, this means that children below the age of 12 years<sup>63</sup> are not criminally liable for offences committed. However. Under **the United Nations standard minimum rules for administration of justice**, the age of criminal responsibilities shall be determined bearing in mind the *emotional, mental and intellectual maturity*. It must not be too low or too high as to defeat the aim of reformation of the child. Considering the increasing rate of cases on juvenile delinquency and crime rate in general, 12 years of age is too high to be the age of criminal responsibility.

More so, the law is not clear as to when the age of the child is to be ascertained during trial. Some courts consider the age of the child at the time of commission of the crime while others consider the age of the child at the time of sentence. In the case of **Uganda v Abdallah Saban**<sup>64</sup>, court the view that evidence was required to ascertain the age of the child at the time commission of a crime so as to ascertain whether the child has a capacity to commit a crime.

However, in the case of **Katabere v Uganda**<sup>65</sup> the age of the child was considered at the time of sentencing not the time of committing of the crime.

In Kenya, a person under the age of eight years is not criminally responsible for any acts or omission while a person under the age of twelve years is not criminally responsible for acts or omissions, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.<sup>66</sup> The CRC does not explicitly set the age of criminal responsibility; the obligation is left to State Parties to establish the minimum age of criminal responsibility. The ACRWC provides the same obligation to States. Rule 4 of the Beijing Rules recommends that any minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.<sup>67</sup> However, the Kenyan current age of criminal responsibility has been criticized as being too low. The Committee on the Rights of the Child upon observation of the

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<sup>63</sup> Section 88 of the Children Act Cap 59.

<sup>64</sup> ( 1974) HCB P280.

<sup>65</sup> CA/23/2001.

<sup>66</sup> Clement O, *The Juvenile Justice In Kenya: Growth, System And Structures*, RESOURCE MATERIAL SERIES No. 101, 14.

<sup>67</sup> General Principles, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")' 1.

Initial Report by Kenya under the CRC concluded in its concluding observations that the minimum age of eight years is too low.

Additionally, In General Comment No. 10, the CRC Committee recommends that States increase the existing low minimum age of criminal culpability to an internationally acceptable level.<sup>68</sup> The Committee strongly encourages States to increase the minimum age of criminal responsibility to for instance fourteen or sixteen years of age.

**These however are not implemented** fully where some children are apprehended with adult offenders since they associated with them in committing an offense which violates the provision of the law in regards to the age of criminal responsibilities of children.

### **3.1.2. Arrest.**

**Article 37 (b) of the UN CRC** states that *“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period.”*

**The children act provides** for caution and release of a child in justifiable circumstances.<sup>69</sup> The police is also empowered to dispose of the cases involving children at their discretion but they should ensure that the parents and guardians of the child are present at the police at the time the child is interviewed and where the parent cannot be found a probation and welfare officer shall be informed and the child shall notified about the charge and his right to legal representation. However, the police does not follow these procedures which is violence of rights of children.

In the case of **Re Gault**<sup>70</sup>, a child was arrested in absence of parents, was not represented and notified about the charge. It was held that a juvenile has a right of notice of charge, legal representation and protection against discrimination.

Police in exercising its discretion uses excessive force to bring juvenile offenders to justice. The juveniles are harshly drugged during arrest, they are not told the reasons for arrest in most cases

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<sup>68</sup> James F, *Implementing The Children’s Rights Agenda In Kenya : Taking Stock Of The Progress, Hurdles And Prospects*, 2012.

<sup>69</sup> Section 81 (1)

<sup>70</sup> 387 US I 1964

are severely whipped or sometimes wounded which is against the welfare principle of the child provide under the law, nationally, regionally and internationally.

### **3.1.3. Detention.**

Both the Children Act and the Constitution of Uganda stipulate that **children should be kept separately from adults during detention, and children are not to be detained for more than 24-hours.** If they are not taken to court in that timeframe<sup>71</sup>. In its response to Human Rights Watch, the Uganda Police Force said that children's cases follow the "guidelines in place as outlined in the Children's Act. The statute defines detention<sup>72</sup> as placement in a center designated for that purpose by the Minister in circumstances and with such conditions as may be recommended to the court by the Probation and Welfare Officer.

Detention must be limited to exceptional circumstances and must only be used for the shortest possible period as provided for by the **Beijing Rules**. The child is more affected than an adult accused person in the sense that there are a lot of players involved in the case and it is difficult to monitor and ensure that all these players perform their functions. For instance, there is the need to have guardians or parents present at the proceedings, social welfare also needs to investigate the child's socioeconomic situation and prepare a report for the competent tribunal and the prosecution and the defense have to be ready to proceed with the matter. It is therefore a challenge to get all these individual players who are often over-worked and underpaid to do their job on time as and when they are required to do so. **The Rules** also require that children in pre-trial detention should be separated from those that have been found to be in breach of the penal law. The rules recognize the right to free legal aid and the right to contact with lawyers.

Under the Beijing Rules, the judge or official body (police officer) must consider the issue of release immediately. **Rule 113 of the Beijing Rules** further states that *detention shall be used as a measure of last resort and at the shortest time possible.* Alternative to detention shall be close supervision or placement with the family. *Detained minors must be separated from adult detainees and their rights respected. Care, protection and all necessary individual aid on account of their age, sex and personality shall be provided.* **Article III.17 of the UN Rules** for the Protection of Juveniles Deprived of their Liberty states that detention or imprisonment shall

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<sup>71</sup> Children Act, Section. 89(8); and the Constitution of the Republic of Uganda, 1995, Art. 34(6).

<sup>72</sup> Section 2 of Children Act Cap 59.

be a last resort and only for minimum necessary period and limited to exceptional cases. Detention shall be for the shortest possible time.

**However**, these have not been followed since many young children in conflict with the law have been detained severally with adult offenders due to lack of facilities which are in place to cater for the juvenile offenders in Uganda.

#### **3.1.4. Trial.**

Pre-trial and trial. During the pre-trial conference, whenever possible and practicable, the Family Court shall explore all possibilities of settlement of the case except its criminal aspect. Plea-bargaining shall be resorted to only as a last measure when it will serve the best interest of the child and the demands of restorative justice.

The rights of a child during trial are provided for nationally, domestically and internationally. The Children Act provides for release of a child on bail at his or her own knowledge on the parents and where bail is not granted, courts must give reasons for not doing so<sup>73</sup>. However most children offenders and their parents do not know what bail is and they do not know that the child has a right to bail moreover, some parents cannot afford bail because they are poor.

The rights of *fair hearing, presumption of innocence, right to be informed about charges* and the matter to be determined without delay as provided for under the Children Act and the Beijing rules **are not respected**. Children of tender years are arrested even when they have not committed any crime. They are not taken for trial; they are not even afforded again hearing. The children are not informed about their charges against them in all times; where the children of tender years are taken for trial, the trial take too long which is against expeditious handling of cases. In the case of **Stephen v Parte bottling company limited**, it was held that a criminal trial which drags on for unreasonably too long is an unfair trial and court may drop proceedings on ground of delay.

The child background is of paramount importance if court is to ascertain whether the child understands the difference between what is and wrong and his intellectual or mental maturity. In the case of **F V Padwick**<sup>74</sup>, it was held that in order to ascertain the Childs ability to distinguish

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<sup>73</sup> Section 90.

<sup>74</sup> (1959) Crim .ER 439.

between rights and wrong, court must look into the background of the child not his demeanor in court.

In the case **T vs. United Kingdom**<sup>75</sup>, T and V were 18 years old when they abducted and killed a two year old boy. Aged 11 they were tried in public in an adult court before a judge and jury (some allowances were made for their age) they were convicted of murder and abduction and Sentenced to an indefinite period of detention. The court concluded that the attribution to the applicants of criminal responsibility for their acts did not violate the law. But it was held on appeal that the trial not only contributed to the inhuman but also degrading treatment and the fact that the applicants were tried in the same criminal procedure as adults and sentenced without sufficient account being taken was qualified as inhumane.

It is important to note that during the trial, the parents or guardian of the child has to be present. It is in the best interest of the child or the parent or the guardian to be present. **In Mbewe v The People**<sup>76</sup>, the Supreme Court held that the Juveniles Act stresses the importance which the legislature attaches to the attendance, whenever possible, during all stages of the proceedings in court of a parent or guardian of a child although there is no such provision in the Act for the attendance of a parent or guardian at the police station. The court went on to state that it was desirable in the interests of both the police and the juvenile to have a parent or guardian present at the police station<sup>77</sup> when a statement was being taken from a child.

### **3.2. CAUSES OF JUVENILE DELINQUENCY IN UGANDA**

#### **Child abuse.**

From the questionnaires and interviews where I was able to be answered, child abuse was the front-runner in causing juveniles delinquency in the visited areas. Several juveniles loiter in the communities committing petty crimes which comprise of delinquency. As one of child aged 15 years who used to spend his nights on the streets of Lira volunteered gave information after payment of some money, He said that he comes from Adyel division and he was trued of being punished every night by his alcoholic father, thus ran away from home and found himself at the street of Lira City. On being asked his means of survival he replied, "**AGUU, OWUK WUK**" which literally means he engages in illegal transaction like pick-pocketing and transacting in illegal substances like marijuana.

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<sup>75</sup> (2000) 30 E.H.R.R

<sup>76</sup> (1976) Z.R at p. 317

<sup>77</sup> *ibid.* p. 319 – 320, the court arrived at the same decision in *Dimeni V The People* (1980)

## Poverty

From the research carried out it was found out that, poverty has greatly contributed to delinquency especially on the girl-child. Poverty has been used as an excuse to engage in prostitution as a means of survival. A Street in Lira called Kitgum stage is the place where this business is carried out. After parting with four thousand shillings a group of prostitutes volunteered information. The group consisted of girls below and above 18 years; but all pointed to poverty as the cause of their plight one picked interest in because she looked a juvenile dropped out of school in senior two because the mother couldn't afford school fees. When the father of her child abandoned her, she had no alternative means of survival apart from prostitution which is delinquent behavior. And since our field finding is both based on primary and secondary data it was also discovered in the book of **Tibananya Mwene Mushanga**<sup>78</sup> where it was commonly believed that poverty causes crime.

**The Human Sciences Research Council (2003)** state that the measurement of child poverty needs to go beyond a focus on income available to support a reasonable standard of living and promote positive child development. **Boyden et al**<sup>79</sup> maintain that children are at particular risk of neglect in low -income communities without proper services, with poor nutrition, working parents, weakened ties between members of the extended families, and inadequate childcare facilities. **Quinton**<sup>80</sup> adds that low socio-economic status is a far more potent risk factor for violence than is generally recognized.

## Family factors

These have an influence on offending include; *the level of parental supervision, the way parents discipline a child, parental conflict or separation, criminal parents or sibling, parent abuse or neglect, and the quality of the parent-child relationship. Children brought up by lone parents are more likely to start offending than those who live with two natural parents, whoever once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent, asserts that if a child has low parental supervision they are much more likely to*

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<sup>78</sup> Musa mushanga crime and deviance-an introduction to criminology.

<sup>79</sup> ( 1991:-23)

<sup>80</sup> ( 1998:42)

offend. Many children have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending.

### **Association with adult criminals.**

Association as a cause of juvenile delinquency involves interaction between the juvenile and hard core criminals. This was theorized by **Professor Edwin Sutherland** in his theory of *differential association* where he says that criminal tendencies are learnt through interaction with criminals in his book *Crime and Deviance behavior*. The policy makers raised the problem of many cinema halls dubbed "Bibanda" and garages as a cause of juvenile delinquency in his area. He said that, young boys both school going and non-school going visit these cinema halls and interact with hard-core criminals who smoke marijuana, chew mairungi and sniff petrol. These adult criminals introduce this delinquent behavior to these young innocent children. He proposed that cinema halls which admit children below 18 years should close down.

Lack of education. This was another cause of juvenile delinquency which was pointed out. Lack of education is in twoways that is; as a voluntary act of the children and involuntary act the too poverty. It was found out that in 10 juvenile 4 do not go to school, and true to the saying, "An idle mind is the workshop of the devil" these non-school going children loiter around the mentioned visited slums looking for what to eat.

### **Single parenting**

Evolutionary psychology predicts that children from two-biological-parent families will have an advantage over children from other forms of family. **MacLanahan and Sandefur in Flouri (2005)** are of the opinion that, in general, empirical studies show lower attainments, early union formation, earlier entry into parenthood, more extra-marital fertility, more partnership dissolution and less psychological well-being in children of lone-parent families in comparison to children in two --parent families. **Benedek and Brown ( 1995: 14)** state that children's development of a healthy self-image and the ability to form stable, loving relationships with others as they grow up depend on having continued access to the most important attachment figures in their lives-their mother and father.

### **Step- Parenting.**

A step family is made, not born. According to **Grunsell (1990)**, the words "*stepmother*" and "*stepfather*" came about because the new partner "steps in" to help bring up the children and keep the home going with one of the children's parents. A stepfamily is made when two adults

get together and one or both already have children. Stepfamilies are often created by **divorce or separation**. Sometimes they come about after the **death of one parent**. There may be problems between step children and parents where children feel they miss their other biological parent and when they compare the stepparent with the gone biological parent. In some cases, **conflict may** be the result of stepchildren not being treated the same as the biological children of the stepparents. This may result in the child being **angry and aggressive**. If the affected children cannot take it out on the stepparents, they can go out and engage in deviant antisocial behavior in the community.

### **Child neglect.**

The US Senate in **Berger et al (1994)** stated that any act of commission or omission by individuals, institutions, or society as a whole, and any conditions resulting from such acts or inaction, which deprive children of equal rights and liberties, and/or interfere with their optimal development, constitute abusive or neglectful acts or conditions

**Karen (1995)** states that if proper bonding between mother and child does not happen during birth and infancy, the child will develop mistrust and a deep-seated rage. The child then become a child without a conscience and can anti - social behavior growing up in them exposes them to dangers that probably with time lead them to activities that incriminate them hence conflicting with the law.

### **Substance abuse**

Substance abuse refers to a man or woman who uncontrollably over-uses a substance such as alcohol or drugs. **Stanhope and Lancaster (2000:735)** define **substance abuse** as "the use of any substance that threatens a person's health or impairs his/her social or economic functioning". Substance abuse has ruined the lives of many, and continues to ruin the lives of many more. Children in the cities are the target for the sale of harmful substances, such as alcohol, drugs and tobacco. Drug dealer, for example, seek out the young and impressionable specifically.

Families and communities are important deterrents of whether or not children will abuse intoxicating substances. **Ziegler kagan and Hall (1996)** classify risk factors for drug use by children into three variables, namely family, individual and community variables. Family variables include family alcohol, other drug behavior and attitude within the family. Community variables are economic and social deprivation, norms fordable to drug use, easy availability of drugs and alcohol, and a low sense of cohesiveness within the community .Individual variable

that are early antisocial behavior, lack of social skills, low self-esteem and sense of self efficacy, and aggressiveness.

### **Urbanization.**

In developing countries, urbanization is a major factor in influencing juvenile delinquency. It is on the rise in the whole world and its trend is linked to the rapid and dramatic, social, political and economic changes that have taken place in Africa. The principal offences committed by juveniles are theft, robbery, smuggling, prostitution, the abuse of narcotic substances and drug trafficking according to the UN-Centre for Social Development and Humanitarian Affairs<sup>81</sup>. As observed many of urban poor live in slums and squatter settlements with overcrowded, unhealthy housing and lack of basic services. It is here that the majority of urban and youth live<sup>82</sup> and it has been a source of the serious street and orphaned children who turn into delinquents.

### **3.3. CONCLUSION.**

In Uganda as discussed earlier, juvenile delinquency is related to most socioeconomic factors of unemployment of both children and parents, breeding into poverty, poor education, lack of awareness of the laws and reluctance of law enforcing authorities. This therefore leads to some crimes committed to go unpunished hence the increase of juvenile delinquency.

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<sup>81</sup> United Nations Centre for Social Development and Humanitarian Affairs(ST/CSDHA/21) 1993

<sup>82</sup> Urban Management Program. 2003:3

## CHAPTER FOUR:

### SUMMARY OF KEY FINDINGS, RECOMMENDATIONS AND CONCLUSION.

#### 4.1. INTRODUCTION.

This Chapter seeks to suggest any reforms, recommendations for our laws that could be legislated by law makers and conclusion of the topic.

#### 4.2. KEY FINDINGS.

##### 4.2.1 The children's age before detention.

The researcher found that lack of proper age for children detained in remand homes because a child in Uganda is considered a person under the age of 18 and the minimum criminal age responsibility is 12 years. As a result, less than 4 percent (4%) of the children aged between 12 and 18 years have birth certificates yet determining a person's age can be a substantive process a research study by **Marianne M<sup>83</sup>**, she recommends that efforts to improve the registration of births should be continued by the Ministry of Gender, Labor and Social Development. A national framework for assessing a child's age should be agreed upon between the Uganda Judiciary and the Uganda Police Service and disseminated to all relevant agencies. This is done to ensure that the remand homes and the national rehabilitation center do not house young people outside of the appropriate age boundaries.

##### 4.2.2. Arrests;

The researcher also found that children are arrested and usually the police have the discretion to caution and release the child the child or dispose of the case without recourse to formal court. Since the children's parents are not aware of the arrests and thus children appear in court unaccompanied thus the magistrates deny them bail. As a recommendation, police officers should receive training on their powers to caution and release or release on bond and the necessity of contacting the child's parents or guardian on arrest. The detention of children in police cells should be monitored by an independent auditor to ensure that it does not exceed the official 48 hours and that the children are separated from adults.

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<sup>83</sup> Marianne Moore *Juvenile Detention in Uganda*. 2010

#### **4.2.3. Bail and remand.**

The Children Act Cap 59 under<sup>84</sup> sets out remand in custody should not exceed 6 months in petty offences and in offences punishable by death shouldn't exceed 3 years. The study further discovered majority of children are not remanded beyond the time limits .The Ministry of Gender, Labor and Social Development should ensure to employ an independent auditor to periodically assess the length of pre-trial detention in accordance with the national commitments of the law governing juvenile delinquency.

#### **4.2.4. The Courts.**

There are three levels of courts that can administer juvenile justice, the local councils, the children and family courts and the High court. Local councils are meant to play a central role in the administration of juvenile justice legislation but have been constrained by their lack of training on the law and on juvenile justice issues and often refer the children on to remand homes.

The researcher found out that **Family and Children courts (FCC)** established by the Children's Act, have the jurisdiction to hear and determine most criminal charges against a child except capital ones. However, there are often delays in court proceedings as well as many children facing trials without representation. Children charged with capital offences are seen in High Court and are provided with lawyers and legal aid.

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<sup>84</sup> Section 91(5) a) of the Children Act Cap 59.

### 4.3. RECOMMENDATIONS

Uganda needs to not only domesticate the international human rights treaties that she is a party to, but also **make the protected rights justiciable as she has undertaken to fully implement all the obligations contained therein.** This is necessary for the full implementation of the rights of the child in conflict with the law. It may be achieved by intensive lobbying on the part of all institutions and organizations involved in the administration of juvenile justice. The domestication of human rights standards will lead to the harmonization of all aspects and issues relating to the child such the definition of the term “child” which as we have seen, has led to a lot of confusion. The minimum age of criminal responsibility should be raised to meet international standards. *The Committee on the Rights of the Child* considers the age of eight years to be too low. This is one of the least onerous of the obligations in that it does not require resources to implement.

There is need for the **training of judges and magistrates** on issues such as **human rights and judicial activism.** The judiciary, which is the protector of human rights, should not allow human rights to be violated on the basis that international human rights standards are not directly applicable under domestic law. Training for all officials involved in the administration of juvenile justice on the importance of non-custodial measures and other international standards must be undertaken and measures sought to reduce the high staff turnover in these institutions and organizations. Resort should also be had to the use of trained personnel to represent children in conflict with the law as opposed to the strict requirement for them to be professionally trained lawyers. The emphasis should not be on the qualifications that the representatives have but on the quality of representation. This is especially important in countries like Zambia where the legal aid system is over-stretched and lacks human and financial resources.

The researcher recommends that **efficiency of the FCC** should be improved through training of the judiciary, employing more social and welfare officers and funding for the legal aid .All children's cases should be heard at the FCC as opposed to the High Court. Among other recommendations, the state should ensure that young people are offered physical and psychological safety and security. Structure that is developmentally appropriate with clear expectations for behavior as well as the increasing opportunities to make decisions to participate in governance and rule making and to take on leadership roles as one matures and gains more expertise. Young people ought to be equipped with emotional support, opportunities for

adolescents to experience supportive adult relationships .Opportunities to learn how to form close, durable human relationships with peers that support and reinforce healthy behavior, to feel the sense of belonging and being valued and also opportunities to develop positive values and norms.

Another facet of promoting the child's sense of wellbeing is that in all cases where children are alleged as, accused of or recognized as having infringed the penal law' they should, according to the Convention on the Rights of the Child, **be treated in a manner consistent with promoting their sense of dignity and worth, and which reinforces their respect for human rights.** Any treatment should take into account the child's age and the desirability of promoting their reintegration and the assumption of a constructive role in society. Article 40 of the CRC does not incorporate the concept of a child's 'rehabilitation'. This is defined as an aim of the administration of juvenile justice by **Article 14(4) Convention on Civil and Political Rights.** The attention of states to the revision of thought which occurred since the adoption of the International Covenant and the risk of the states abusing rehabilitation as an undesirable form of social control should be considered.

#### **4.4. CONCLUSIONS.**

The emphasized few recommendations in regard to juvenile delinquency; A number of reforms need to be put in place to ensure a justice friendly system for both juvenile and child victims, ANPPCAN would like to reinstate its position on detention, children ought not to be held in the some cells with adults as this violates their rights<sup>85</sup>.

Children deserve child friendly proceedings all throughout the prosecution if the judicial officers are to acquire positive results and thus this will add meaning to the laws and their effectiveness towards juvenile delinquency.

The future well-being of the country depends on raising a new generation of skilled, competent and responsible adults. However, a large percentage of youth in this country are at risk of not achieving "productive adulthood " and face such risks as substance, adolescent pregnancy, school failure and involvement with the juvenile crime.

It is noted that there are disparities in pace of making the law and putting in place other mechanism to facilitate the enforcement of this law. This include the government to adequately focus its attention not only at making the law but also at its implementation and enforcement The law relating to the protection of juvenile delinquents has failed to keep place with modem trends in the social, cultural, economic and political development in Uganda, hence it has remained inadequate. The way forward is to implement the children status and observes the relevant provision of the international instruments regarding the protection of juvenile delinquents.

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<sup>85</sup> African Network for the Prevention and Protection against Child abuse and Neglect Uganda, *in a report Media Brief on Juvenile Justice in Uganda*. June 2012.

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