

# Appraising the Law of the Rights of Street Children in Uganda

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## ABSTRACT

The article discusses the rights of street children in Uganda, highlighting the ongoing violation of these rights and the increasing number of children moving to the streets. It calls for a systematic review of international instruments and national judicial processes to protect street children. It also calls for monitoring and supervision of detention centers by human rights activities and government authorities on a monthly or weekly basis. This will enable reports on living conditions, capacity, hygiene, and meals provided to children. By doing so, the challenge of mistreatment of street children by state officials while under detention can be addressed.

**Keywords:** Child Protection, Children's Rights, Detention Centres, Guardians, Street Children.

## INTRODUCTION

Street children are a mobile population of homeless children who primarily reside on the streets of a city for a variety of reasons, such as broken families, poverty, wars, peer influence, and HIV/AIDS consequences that deprive them of family, among other reasons[1]. By 1989, an estimated 100 million children were reported to be living and growing up on urban streets around the world, with the number projected to be consistent with the growing global population and urbanization[2]. With a 100 million figure remaining surprisingly static for more than 20 years, the global population has grown over the same period by more than 30%, from 5.2 billion in 1989 to 6.8 billion in 2009, 2009. Urbanisation is continuing rapidly with over half the world's population living in cities, it then becomes clear and precise that these claims are different [3]. The contradicting figures leave a lot to be desired on how, why, and when the street children are either on or off the streets or where they disappear. Street children around the world who are allegedly accused or convicted of having committed criminal offenses oppose the state when they come into direct contact with state officials like police officers, prosecutors, guards, and judges[4]. State officials in several countries have abused their positions of power while solving issues involving children, including street children under the juvenile system. Offensive children have been exposed to different forms of violence with impunity, yet without proper inspections and complaint mechanisms in place. For

this, juveniles are deprived of their liberty and are abused, and many of the abuses have occurred with impunity and a lack of tools with which the child can defend his or her rights. The perpetrators of violence take advantage of the child's high vulnerability and yet suffer no consequences for it, yet children in conflict with the law are highly vulnerable and should entirely depend upon adults for defence and protection of their rights[5]. Moreover, the states do not invest in decent facilities under the juvenile institutions, thus leaving many of the juvenile cases untried for lengthy periods. Just like the defence for Children International Report of 2000, it was noted that justice is the unwanted child of state responsibilities[6]. This is because street children, while under detention, are placed out of sight and forgotten by the systems that ought to fend for them. In Uganda, a study on street children in 1999 estimated 5,000 children on the streets of Kampala. Approximately 35,000 children, known as night commuters, traveled from conflict areas or IDP camps each night to urban centres to avoid abduction[7]. Many of the displaced girls became involved in prostitution, other children beg, scavenge, and hawk, while others steal to survive[8]. The number of street children in Uganda is reported to be on the increase because of the commercial opportunities available, especially in the urban centres, the majority of which join the street between 5 and 10 years (44%), 42% joined when they were aged 11–15 years, and 6% when

they were aged 16–18[9]. Law enforcers and implementers, on the other hand, are finding difficulties in handling juvenile issues because they cannot determine the right category of children to detain. Most of the children do not have birth certificates and are not registered. This contributes to the complexity of addressing juvenile issues[10]. It is imperative to note that in Uganda, national laws

notably the constitution, the Children Act, and the Penal Code Act, among other laws have been put in place to address juvenile concerns. Unfortunately, these laws have not protected the acts that are detrimental to the realization of the rights of school children. The study therefore appraises the rights of school children in Uganda.

### **The Legal Framework of Human Rights of Children**

The efficacy of the human rights law in securing justice for street children under the

juvenile justice system of Uganda is examined below;

#### **International Legislation**

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

The UN convention on the rights of the child (1989)[11] provides for the protection and support for the rights of children below 18 years, street children inclusive. It is a legally binding international instrument to incorporate the full range of human rights, ranging from civil, cultural, economic, political, and social rights. Uganda is one of the 194 countries worldwide that are a signatory to the UN Convention. By ratifying this document, the government of Uganda has the responsibility to take all available measures to ensure children's rights are protected, respected, and fulfilled. Moreover, all actions, decisions, and policies are expected to be done in light of the best interests of the child[12].

Article 40 of the convention on the rights of the child (CRC)[11] states that state parties shall seek to establish "whatever appropriate and desirable measures for dealing with such children under the age of 18 years without resorting to judicial proceedings" providing that human rights and legal safeguards are fully respected. Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

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

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

The convention spells out the basic human rights that all children regardless of their sex, race, religion, cultural or socio-economical background, language, ability, everywhere have the right to life, survival, and development; participation fully in family, cultural, and social life; registration, name, nationality and care; preservation of identity; live with their parents; family identification; governmental help when families cannot provide for appropriate living standards[11].

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

Uganda is among the 53 African countries that signed the 1999 African Charter on the Rights and welfare of the Child[13]. The charter[14] obliges the country to protect children against the various forms of social, economic, cultural, and political abuse and exploitation. State parties are obliged to undertake the necessary steps and adopt such legislative and other measures to give effect to the provisions of this charter. It spells out basic human rights that all children have including; life, survival, and development; name, registration, and nationality; freedom of expression, association, peaceful assembly, thought, conscience, and religion; privacy; education; leisure, recreation, and cultural activities; health services; and special

judicial treatment in a manner consistent with the child's sense of dignity and worth in addition to parental care[15].

Thus the charter oversees the protection of children from all forms of economic exploitation and against work that is hazardous, interferes with the child's education, or compromises his or her health or physical, social, mental, spiritual, and moral development; the child abuse and torture, inhuman or degrading treatment, and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse; harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child; recruitment in armed conflict; all forms of sexual exploitation and abuse; drug abuse and the use for production and

trafficking of drugs; sale, trafficking, abduction and

### **The ILO Convention 138 And 182 On the Worst Forms of Child Labor (1999)**

Uganda, being a signatory to the ILO Convention 138 and 182 on the worst forms of child labor (1999), is obliged by the convention to take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour which include; all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances; the procuring or offering of a child for illicit

### **Domestic Legislation and Policy Framework Governing Children's Rights The Constitution of the Republic of Uganda (1995)**

The constitution of Uganda comprehensively provides a framework for the protection of all children in Uganda. It defines fundamental child rights, obliges parents to care for and bring up their children, and accords special protection to orphans and other vulnerable children[19]. Article 34 of the Constitution of Uganda[19] provides for the rights of children. It is specifically stipulated that laws must be

### **The Children Act 2016**

The Children Act as amended in 2016 consolidates the law relating to children. It specifically provides for the care, protection, and maintenance of children. the act provides that the family and children court shall not make a supervision order or a care order unless it considers that doing so would be beneficial to the child[20]. The Uganda police force among other stakeholders is mandated under the Children Act to defend, protect, and enforce the rights of the child and is also given powers to provide effective diversion measures for juvenile[20]. Act under section 5 provides for a duty to maintain a child, whereby the person in charge of the child, that is parent, guardian, or a person having the custody of a child is charged with a duty to maintain that child by enabling the child to; access education, be immunized, have an adequate diet, be clothed, have shelter and have medical attention, thus any person who holds the custody of any child and does not undertake to recognize the above rights on behalf of the child commits an offense[20].

### **The Penal Code Act Cap 120**

The penal code also makes liable the following offences against children, kidnapping and abduction of children under fourteen years;

### **The Local Government Act Cap 243**

The local government act makes district councils responsible for the welfare of children. For this, it foresees an executive committee for each district,

the use for all forms of begging[16].

activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children[17]. The ILO Convention 138 on the minimum age for employment admission, 1973[18] obliges the state to pursue a national policy to ensure that there is an effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest mental and physical development of children.

enacted in children's best interest and must be protected from social or economic exploitation or any condition harmful to their health or physical, mental, spiritual moral, or social development. It is the duty of any citizen and the state to protect children from any form of maltreatment and ensure the registration of birth for each child.

Under the same act, the person having custody of the child is tasked with a duty to protect the child from discrimination, violence, abuse, and neglect. This implies that any person in charge of a child must ensure that the child does not suffer from any injustice of discrimination, violence, abuse, or neglect, or else it becomes an offense[20]. Under the same act, the law affords protection on behalf of children from harmful employment, where no child is expected to be employed or engaged in any activity that may be harmful to his or her health, education, or moral, physical, or moral development. The act also obliges parents to take responsibility for their children. The same law under section 4 imposes on the state to ensure that it is the right of the child to stay with parents or guardians. Yet it mandates competent authority to determine under the laws and procedures applicable that it is in the best interests of the child to separate him or her from his parents, and that the best substitute care available shall be provided for the child[20].

indecent assault; defilement of girls; procurement of girls; stealing a child under the age of fourteen years; and infanticide[21].

where a selected secretary cares for the health and welfare of children. Under the act, district councils have to ensure services, from which children can

benefit. These include services for education, health, maternity and child welfare, probation and welfare services, and social rehabilitation. It also obliges 'the districts to ensure services for street children and orphans. The act further foresees the establishment of an executive committee at each parish and village administrative unit, including a vice chairperson who shall be secretary for children's welfare[22]. The act under sec. 43b provides for the application of guardianship and further provides under sec. 43b(2)(b) that the court

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

The national Orphans and Vulnerable Children policy provides a framework for the full development and realization of the rights of orphans and other vulnerable children. Children who live on the streets, those that toil under exploitative conditions of labour, as well as those that suffer sexual abuse and other forms of

#### **National Child Labour Policy (2006)**

The child labour policy provides a framework to mobilize all actors to take action to eliminate the practice. It explains the socio-economic context of child labour, the nature, extent, and magnitude, and the causes, consequences, and effects. It

#### **The Birth and Death Registration Act Cap 309**

The Births and Registration Act obliges the state to register the birth of each child. Failure to register the birth of children is an offense, to those who hold the custody of children[25]. This helps to curb down the number of street children since they can easily be traced by stakeholders e.g. police. The act also provides that any person who finds a live newborn child lying exposed or any person who is given charge of that child shall

#### **The National Council for Children Act Cap 60**

The National Council for Children Act foresees the establishment of a national council for children, to ensure proper coordination, and monitoring evaluation of all policies and programmes relating to the survival, protection, and development of a child. Through this body, the

### **CONCLUSION AND RECOMMENDATIONS**

The article highlights the challenges faced by street children, who have personal histories and futures as youth, parents, and workers. Despite various laws governing their rights, these children continue to face violations and an increasing number of them are moving to the streets. The article calls for systematic reviews of international instruments and national judicial processes to protect street children. It also calls for monitoring and supervision of detention centers by human rights activities and government authorities on a monthly or weekly

shall before making a guardian satisfy itself that the applicant does not have a criminal record. This will help to control children from being engaged and raised by criminals who in the end torture and teach them criminals' acts. Under sec. 56(1), the act sets a requirement for approval of children's homes whether a governmental organization or non-governmental organization by the minister in consultation with the probation and social welfare office, and anyone who contravenes that requirement commits an offense and is liable[22].

discrimination. It also states the situation of orphans and vulnerable children, the national and international framework, guiding principles for the implementation of the policy, and policy priorities the government of Uganda will focus on[23].

further outlines the governmental response to the problem of child labour, and the institutional framework within the national child labour policy operates[24].

report the same immediately to the nearest police station or hospital, and the officer in charge of the police station, hospital or the chief as the case may be, shall register such particulars concerning the child's birth[25]. Thus, this helps the police and other stakeholders to easily trace the origin of the child which will help the child find the parents and not to grow up on the streets as their homes.

problems affecting children shall be communicated to the government, and other decision-making institutions in Uganda. The council further promotes the implementation of programs; and maintains a database on the situation of children and activities relating to children in Uganda[26].

basis. This will help check the living conditions, hygiene, and meals provided to children, reducing the risk of mistreatment by state officials. Comparative research is needed to identify common features of street children's experiences within and across regions, identifying underlying structural factors causing them to become connected to the streets and stay on the streets. This research education will help distinguish street children's specific requirements within political and policy agencies.

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