



A CRITICAL ANALYSIS ON THE ADEQUACY OF
UGANDAN LAW ON PROTECTION OF STREET
CHILDREN: A COMPARISON WITH ISLAMIC AND
MALAYSIAN LAWS

BY

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for the degree of Masters of Comparative Laws

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ABSTRACT

This dissertation is an examination of the adequacy of Ugandan law in protecting street children. The research is done in a way of comparison with Islamic and Malaysian Law to clearly bring out the strengths and weaknesses of the Ugandan law. The study is divided into three parts. The researcher first analyses the Islamic law based on rules in the Quran and the *Sunnah* of the Prophet, practices of the Prophet's Companions and various opinions of the Muslim jurists. The study also includes an examination on protection of street children under various statutes and cases in Malaysia and Uganda respectively. The study proves that street children are among the most vulnerable groups of people in society. Street children are a result of social, economic, political, environmental and legal factors. They are faced with child labour, lack of food, shelter, clothing and medical care. It is evident that the street children phenomenon should be a concern to all stakeholders such as parents, judiciary, law makers, administrators and society at large not only for humanitarian reasons but because the children are the backbone of any community development and should be protected at all costs. The study also reveals that the Ugandan law on street children is in many statutes leading to difficulties in reference. It is also apparent that Islamic law has provided detailed guidelines relating to street children. Ugandan law is in line with some principles in Islamic and Malaysian law like prioritising the welfare of children and parental responsibility towards the children. The research proves that there is general lack of implementation of the available laws in Uganda. Finally the study proves that Ugandan law can still be improved for better protection of the street children. It is expected that the research will contribute to the knowledge on street children through comparing the three systems.

ملخص البحث

سعى هذا البحث إلى دراسة مدى ملاءمة القانون الأوغندي في حماية أطفال الشوارع. وقد تم البحث في سبيل المقارنة مع الشريعة الإسلامية والقانون الماليزية لتحقيق بوضوح تبرز نقاط القوة والضعف في القانون الأوغندي. وتنقسم الدراسة إلى ثلاثة أجزاء. أولاً، يحلل الباحثة القانون الإسلامي إستناداً إلى القواعد الواردة في القرآن الكريم والسنة النبوية، الممارسات من صحابة رسول الله والآراء المختلفة للفقهاء. وتشمل الدراسة أيضاً، دراسة عن حماية أطفال الشوارع تحت مختلف القوانين والقضايا في الماليزيا وأوغندا على التوالي. تثبت الدراسة أن أطفال الشوارع هم من بين أضعف الفئات في المجتمع. أطفال الشوارع هم نتيجة العوامل القانونية والاجتماعية والإقتصادية والسياسية والبيئية. أنهم يواجهون عمالة أطفال، ونقص الغذاء والمأوى والملبس والرعاية الطبية. ومن الواضح أن ظاهرة أطفال الشوارع ينبغي أن يكون مصدر قلق لجميع أصحاب المصلحة مثل: الآباء والأمهات، والقضاء، وصناع القانون والإداريين والمجتمع ككل، ليس فقط لأسباب إنسانية وإنما لأن الأطفال هم العمود الفقري لأي تنمية المجتمع ويجب المحافظة على جميع التكاليف. وتكشف الدراسة أيضاً أن القانون الأوغندي على أطفال الشوارع في العديد من القوانين التي تؤدي إلى صعوبات في المرجعية. ومن الواضح أيضاً أن الشريعة الإسلامية قدمت مبادئ توجيهية مفصلة تتعلق بأطفال الشوارع. يتمشى القانون الأوغندي مع بعض المبادئ في الشريعة الإسلامية والقانون الماليزية مثل إعطاء الأولوية لرعاية الأطفال ومسئولية الوالدين تجاه الأطفال. تثبت الدراسة أن هناك نقص في تنفيذ القوانين المتاحة في أوغندا. وأخيراً تثبت الدراسة أن القانون الأوغندي لا يزال من الممكن تحسين حماية أفضل لأطفال الشوارع. ومن المتوقع أن البحث سوف تسهم في المعرفة عن أطفال الشوارع من خلال المقارنة بين الأنظمة الثلاثة.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality, as a dissertation for the degree of Master of Comparative Law.

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Supervisor

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently been submitted as a whole for any other degrees at IIUM or other institutions.

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**ACRITICAL ANALYSIS ON THE ADEQUACY OF UGANDAN LAW ON
STREET CHILDREN: A COMPARISON WITH ISLAMIC AND
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To

My loving husband, Omwami Nkambo Mujibh, for his selfless support throughout my studies.

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International instruments

Declaration of the Rights of the Child, 1959.

The African Charter on the rights and welfare of the African Child, 1990.

The Universal Declaration of Human Rights (UDHR), 1948.

United Nation Convention on The Rights of The Child 1989.

LIST OF ABBREVIATIONS

A.U	African Union
AA	Adoption Act 1952
ACPF	African Child Policy Forum
ACRWAC	African Charter on the Rights and Welfare of the African Child.
Anor	Another
ANPPCAN and Neglect	African Network for the Prevention and Protection against Child Abuse
Art.	Article
Cap	Chapter
CLJ	Current Law Journal
CPA	Child Protection Act 1991
CRC	Convention on the Rights of the Child 1989
Ed.	Edition
etc	et cetra (and so forth)
F.M.S.	Federated Malay States
f.n.	foot note
FOCA	Friends of Children Association
GIA	Guardianship of Infants Act 1961
IFLA	Islamic Family Law (Federal Territories) Act 1983
IUM	International Islamic University Malaysia
IKIM	Institute Kefahaman Islam Malaysia
JCA	Juvenile Courts Act 1947
KCC	Kampala City Council
LC	Local Government Council
LRA	Law Reform (Marriage & Divorce) Act 1976
MWFCD	Ministry of Women, Family and Community Development

MLJ	Malayan Law Journal
NGO	Non-Governmental Organization
No.	Number
Or	Others
Para	Paragraph
PEAP	Poverty Eradication Action Plan
PSWO	Probation and Social Welfare Office
r.	rule
RAA	Registration of Adoptions Act 1952
RYDA	Rubaga Youth Development Association
s.	section
SCNN	Street Children NGO Network
ss.	sections
U.N	United Nations
UDHR	Universal Declaration of Human Rights
UNCC	Uganda National Council for Children
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFP	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNPAC	Uganda National Programme of Action for Children
UPE	Universal Primary Education
Vol.	Volume
WFP	World Food Programme
WGPA	Women & Girls Protection Act 1973

TRANSLITERATION TABLE

ء	'	خ	kh	ش	Sh	غ	Gh	ن	N
ب	B	د	D	ص	ṣ	فا	F	هـ	H
ت	T	ذ	dh	ظ	ḍ	ق	Q	و	W
ث	Th	ر	r	ط	ṭ	ك	K	ي	Y
ج	J	ز	z	ظ	ẓ	ل	L		
ح	h	س	s	ع	ʿ	م	M		

Short Vowels	
َ	a
ِ	i
ُ	u

Long Vowels	
ا + َ	ā
ي + ِ	ī
و + ُ	ū

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE STUDY

Society attaches great value to children because they are a blessing and a gift from God. Thus, society must care, guide and protect its children to ensure a good childhood which is important for good child development. However, the presence of children in old dirty torn clothes, moving from street to street, begging from passers-by and sleeping on the street pavements is common in many cities around the world despite considerable interest in protection of children. These children run away from harassment, poverty, wars among others, only to face tougher life of the streets where they are prone to disease, exploitation, drug abuse and death, which brings to reality the old saying, ‘from the frying pan into the fire.’

The street children phenomenon is serious enough to attract worldwide concern yet little success has been attained in having meaningful changes for the plight of these children. The United Nations estimates the number of street children worldwide to be one hundred million, forty percent of these children are homeless and the other sixty percent work on the streets to support themselves or their families.¹ Africa, where Uganda is located has not been spared by the above disturbing occurrence with over thirty two million children living and working on the streets. They are unable to attend school and are considered to live in difficult circumstances.²

¹ Consortium for Street Children, *Street Children Statistics*, Consortium for Street Children Publication, January, 2009, <www.streetchildren.org.uk> viewed on 1st April, 2010.

² The African Child Policy Forum (ACPF), *The African Report on Child Wellbeing: How Child-Friendly are African Governments?* Addis Ababa, Ethiopia: ACPF Publication, 2008, at 13, <www.africanchild.info/index.php?file=Chapter_1.pdf> viewed on 1st April, 2010.

Children constitute a fifth of the population of thirty million people in Uganda.³ Sadly, the street children phenomenon has affected thousands of children in Uganda and the number has increased to sixteen new street children coming onto Kampala streets every day.⁴ These skyrocketing numbers of street children have become uncontrollable for Kampala City Council (herein after referred to as KCC) that KCC has resorted to arresting and dumping these children in rehabilitation homes, remand homes and police cells which are overcrowded, under staffed and under funded.⁵

The enactment of the Children Act⁶ was meant to provide a comprehensive and effective law for the protection of all children.⁷ It was the aim of the Children Act to provide for the welfare of children and especially in respect to the plight of children in abusive and exploitative situations like street children. Some degree of solution to the street children problem was expected. However, not only does the Children Act as it is lack special emphasis on street children, but also, it has not been a solution to the street children problem because the numbers of street children escalate every day. In addition, other provisions dealing with street children are scattered in numerous legislations like the Penal Code Act,⁸ Constitution,⁹ and Employment Act¹⁰ which makes reference to the problem harder.

³ The State of Uganda, *Population Report 2007: The Role of Culture, Gender and Human Rights in Social Transformation and Sustainable Development* (Kampala, Uganda: UNFP Publication, 2008).

⁴ Nabisere Asia Rizzo (Deputy Speaker of Kampala Central Division), "Number of Street Children on Kampala Streets is increasing at a Fast Rate." *Ultimate Media* 10th January, 2009, final edition, via Ultimate Media, <www.ultimatemediaconsult.com>. Kampala is the capital city of Uganda and KCC is the local government institution which administers the city.

⁵ David Tash Lumu, "Government under Fire over Homeless Children," *The Observer Newspaper*, Wednesday, 24th February, 2010, final edition, via The Observer, <www.observernews.co.ug>

⁶ Children Act cap 59 (Laws of Uganda).

⁷ Preamble of the Children Act

⁸ Cap 120 (Laws of Uganda).

⁹ Constitution of Republic of Uganda, 1995.

¹⁰ Employment Act No.6, 2006.

Therefore, the problem of street children is disheartening in a developing country like Uganda where legislation is rather insignificant to mount a considerable impact on a challenging issue like children on streets, yet even follow up on the law; the only plausible solution is lacking. The above insufficiency coupled with lack of social and economic infrastructure, leaves the survival of both the scanty legislation and the solution to the problem in jeopardy and the community thereto, in complete disarray which opens up to children on the streets to reign.

This shows that there is a lacuna in the legal regime and consequently, the street children phenomenon should be re-evaluated, the laws protecting street children reviewed, the circumstances causing children to be on streets checked in a stringent manner and a more holistic and practical approach adapted. Hence, this timely study which examines the adequacy of the legal protections of street children in Uganda and makes recommendations to address the street children problem.

1.1 STATEMENT OF THE PROBLEM

The study investigates the adequacy of the Ugandan law in protecting street children. This is because, despite the enactment of the Children Act, the number of street children is increasing.

1.2 OBJECTIVES OF THE STUDY

This study is undertaken to examine the sufficiency of Ugandan law in protecting street children. The study seeks to achieve the following specific objectives:

1. To examine why children live and work on the streets.
2. To examine the legal protections offered to street children in Uganda.

3. To examine the Islamic and Malaysian laws in protection of street children.
4. To highlight the similarities and differences among Ugandan, Malaysian and Islamic laws in protection of street children.
5. To propose some suggestions for legal reform and other mechanisms outside the law that can help to protect street children better and reduce their numbers.

1.3 HYPOTHESIS

The research is based on the hypothesis that the Ugandan Law is inadequate in protecting street children. To improve the Ugandan law, Uganda can learn from Islamic and Malaysian Laws and experience in handling street children. Other mechanisms outside the law can help in dealing with street children.

1.4 SIGNIFICANCE OF THE STUDY

The study calls for better protection of street children and advocates for effective laws to be made for child welfare to curb the increasing problem of street children. The study proposes other significant mechanisms in dealing with the problem of street children, since, as evidence can justify, the existing law has not succeeded in stamping out the problem.

The study calls for borrowing a leaf from the Malaysian experience in dealing with street children because the approaches to the challenge have been something of a success story.

An appreciation of the Islamic law in dealing with street children is brought to the fore because unlike the conventional law that has to be revised from time to time, Islamic law has stood the test of time and effectively transcends time and place.

The study seeks to improve the Ugandan law and contribute to knowledge relating to street children.

1.5 LITERATURE REVIEW

The phenomenon of street children is not new. It can be traced from the early writers of the mid nineteenth century like Charles Dickens who narrated about an ugly, wretched and ragged Arab boy.¹¹ In 1871, Horatio and Alger in their book wrote about a homeless girl who lived by her wits on the streets of New York.¹² Jacob Riis narrated the plight of street children when he described how these children lived in New York.¹³ However, these were English and not Arab children in the streets but the association of street children with Arabs was based on the nomadic life of Arabs and the desire of Europeans to always distance themselves away from social problems. Although the authors portrayed the real social problems at the time especially neglected and abandoned street children, the books were only fiction writings and not academics works.

Cockburn in his study defined street children as those children who have abandoned their homes, schools and immediate communities before they are sixteen years of age and have drifted into nomadic street life.¹⁴ Cockburn's definition adds to

¹¹ Charles Dickens, *The Street Arab*, Volume 10 (Household Words, Bradbury & Evans, 1855), at 335. Also, see; http://en.wikipedia.org/wiki/Street_children.

¹² Alger and Horatio, *Tattered Tom; or, The Story of a Street Arab* (Loring: Boston Publishers, 1871), at 13. Also, see; http://en.wikipedia.org/wiki/Street_children.

¹³ Jacob A. Riis, *The street Arab, How the Other Half Lives* (Australia: Penguin, 1890), <<http://www.bartleby.com/208/17.html>>, viewed on 14th June, 2010.

¹⁴ Cockburn, *Street Children* as Cited in Le Roux, J., & Smith, C. S. Is the street child phenomenon synonymous with deviant behaviour? *Adolescence*, Vol. 33 (1998), at 132.

the paradox of age and definition of a child and is contrary to the constitutional definition of a child as one below eighteen years of age.¹⁵ The writer did not consider children who have been abandoned by their families and seemed to suggest that these children adapted to street life willingly.

Munene and Nambi in their study defined street children as children below eighteen years seen moving aimlessly in urban areas and town parks, working in markets or streets during school holidays or children working and sleeping on the street and completely separated from their families.¹⁶ This definition was more of a classification of street children. The writers also looked at causes of street children and focused more on socio-economic reasons with special emphasis on poverty and broken homes and ignored other factors causing street children. They pointed out that, though the magnitude of the problem was still controllable, it was noticeably getting worse and very little had been done to curb the problem. Unfortunately, the problem is still uncontrolled, in a bigger magnitude than before and the authors did not point out any legal reforms. The study was done before the enactment of the Constitution of 1995 and the Children Act of 1996 therefore; it did not discuss the protection of street children in these legislations.

In 1996, Kyeyune conducted a research on street children in Uganda.¹⁷ He however concentrated more on the historical development of the street children problem and had little emphasis on the legal protection of street children under the different legislations in Uganda. He also summed up factors causing street children to

¹⁵ Article 31 Constitution of Uganda 1995. Also see Article 1 of the Convention on the Rights of the Child. U.N. General Assembly Document A/RES/44/25 (12th December, 1989) <<http://www.hrweb.org/legal/child.html>> viewed on 30th May, 2010 and the definition of street children discussed in Le Roux, The worldwide phenomenon of street children: Conceptual analysis. *Adolescence*, Vol. 31 (1996), at 965- 971.

¹⁶ Munene & Nambi, *Operational Research on Street Children* (Kampala: UNICEF Publication, 1993).

¹⁷ Kyeyune Steven, *Street Children: Why are They Out?* (Kampala: Foundation Publishers, 1996).

include; poverty, child abuse and diseases like HIV/AIDS which has left many children orphans. Although HIV/AIDS was blamed for the emergence of many street children, the study did not show whether HIV/AIDS orphans constituted the biggest number of street children. Unfortunately, there was not any proposed solution for the eradication of HIV/AIDS which was said to be one of the leading causes of street children in these studies.

Lwanga also conducted a study on street children in Uganda.¹⁸ He referred to street children as “*bayaye*” which means ill mannered, idlers and criminals. According to Lwanga, domestic violence, broken homes, poverty, civil strife, HIV/AIDS and peer pressure are some of the causes of children living on streets. He recommended that the parents who abdicated their duty to cater for the welfare of their children thereby pushing them to the streets, should receive corporal punishments and not imprisonment so that they can still look after their children. Although the spirit behind such recommendation was to avoid children being left without a guardian for the time the parent is in prison, the corporal punishment should not be the way forward for it has other legal challenges. He should have looked at other solutions like having a better functioning child welfare institution taking in children while parents are in prison, payment of fines or community service instead of imprisonment.

Street children have found disfavour among many people. They are called glue sniffers, bed bugs, little criminals and little rebels in different countries.¹⁹ Farrant called them disgusting pickpockets, vagabonds and undesirable elements on streets that are a source of insecurity, doing petty jobs such as carrying bags for rich shoppers

¹⁸ Lwanga H.L.M, “A Critical Appraisal of the Law Governing Children in Uganda: The Case Study of Street Children.” (LLB Unpublished Dissertation, Makerere University, 2000).

¹⁹ World Health Organization, *A One-Way Street? Report on Phase I of the Street Children Project* (W.H.O Publication, 1993), at 1, <http://www.pangaea.org/street_children/world/who3.htm> viewed on 30th May, 2010.