

AN ANALYTICAL OVERVIEW OF UGANDA’S PROPOSED CHILDREN (AMENDMENT) BILL, 2015

Introduction

In February 2015, two substantially similar Bills—both seeking to amend the Children’s Act, Chapter 59 of the Laws of Uganda, were presented to the public by the 9th Parliament of the Republic of Uganda. The first, ‘The Children (Amendment) (No 2) Bill, 2015’ was tabled on the floor of parliament by a private member of Parliament; Hon. Bernard Atiku representing Ayivu County. The second was ‘The Children (Amendment) Bill, No. 3 of 2015’ — an initiative of the Ministry of Gender and Social Development (MoGLSD).

The two bills were gazetted on the same day, but Hon. Atiku’s Bill came first on the floor of Parliament. However, the Government has since withdrawn its version of the bill following criticisms that it was lacking in substance and amid allegations that the Government had forged a certificate of financial implication to thwart Hon. Bernard Atiku’s efforts.¹ This paper focuses on the private members bill, The Children (Amendment) (No 2) Bill, 2015, but where necessary some reference shall be made to government withdrawn bill, The Children (Amendment) Bill, No. 3 of 2015.

The main objective of the bill is to amend the Children’s Act Cap 59, to enhance protection of children; to provide for guardianship of children; to strengthen the conditions for inter-country adoption; to prohibit corporal punishment; and to provide for related matters.

Background to the Children’s Act, Cap 59

In 1990 Uganda signed the Convention on the rights of the Child (CRC). By this signature the country committed to protect and promote basic human rights of children as set out in the CRC. To reinforce this commitment, Uganda further domesticated the CRC, by enacting the Children’s Act, Cap 59 of 2000.

However, over the past ten years, the country has experienced a barrage of violations of children’s rights that are not specifically catered for by the Children’s Act, and by extension the CRC. Some of these violations include corporal punishment both in the homes and at school, child sacrifice, child labour and punishment of child neglect among others. These gaps in the law, have informed need to amend the law to ensure adequate protection measures for all children irrespective of whether they are at home, school, street or in any other foster environment. Therefore, the proposed amendments are a welcome move at a time when the lack of child protection and guidance is a major threat to the full development of Uganda’s children.

This paper briefly looks at the gaps in the law as it is today; highlighting the areas the amendments propose to address. The paper also offers some recommendations on how the best

¹ Uganda: Government Withdraws Children's Bill, The Observer, accessed at <http://allafrica.com/stories/201506240739.html>.

interests of the child should at all processes be the major determinant of adoption, guardianship and welfare principles of the law.

1. Adoption

Part VII of the Children's Act, Cap 59 provides for adoption of a child in Uganda. It defines who may adopt a child, gives the legal necessities of how, when, where and at what point an adopted child ought to be told of his identity as a matter of right and in this case, it is presented as a legal necessity.

Over the past 5 years, there have emerged numerous reports of law firms,² child adoption agencies and babies' homes conniving with local authorities to falsify documents or deceitfully work with poor households to have them give up their children for adoption in exchange for money.

In a bid to curb these practices, the Bill introduces a new aspect of providing for procedures to rescind an adoption order (clause 46A) that may have been awarded by courts of law if the adoption order was obtained against the best interests of the child or was obtained through fraud or misrepresentation. The bill however falls short of giving procedure of how this can be done and where it may be done.

It should be noted that the version of the bill as withdrawn by government had offered some practical solutions in this regard. Under its proposed Clause 51A, the government bill defined who can revoke an adoption order, it details the procedure of how, to whom, when and even offers options of who takes custody of the child once the adoption order has been revoked. The committee handling the amendment proposals ought to take note of these practical proposals so as to ensure that the proposed amendments and the eventual Act is water tight leaving no room for manipulation.

It is also worth noting that adoption involves both mental and psychological faculties of a human being. This is both for the parent giving away a child and the child that is being exposed to a new environment. Children have a right to family, security, and permanence. The current Bill does not make mention of how the question of siblings can or would be dealt with. The law as proposed should reconcile situations of siblings being placed together or separately into adoptive families and how courts would act in making decisions in the best interest of the child. The bill and or subsequent guidelines ought to be provided for as a matter of law to secure the well being of children.

2. Guardianship

² Taken & Never Returned: When adoption profits the middleman, NTV Uganda Investigation Series, April, 19, 2013.

The Bill proposes introduction of the concept of guardianship (Clause 11), for children in Uganda by non citizens or citizens not living in Uganda. The Bill states that a guardianship application shall be made to the High Court. It also proposes that the applicant ought to have lived in Uganda for a period of at least one year, has no criminal record, the country of origin recognizes the order and that he or she made no monetary exchanges to get the guardianship order among others (Insertions of Clauses 43A & 43B).

However, the Bill does not sufficiently cover procedural issues and the requisite annual progress report to the probation officer as is the case in many countries. Best practices usually contain this detail to enable clear follow up mechanisms and monitoring of the wellbeing of the child. To this extent the Committee handling the Bill can make use of the withdrawn Government Bill that provided for these practical procedural aspects in its proposed *Clause 7*.

3. Child trafficking

The Children's Act Cap 59 did not explicitly provide for Child trafficking. Today we realize that the rate of trafficking children from rural to urban areas for cheap labour, in mining, stone quarrying, brick making, car washing, scrap metal collection, bars and restaurants' waiters/waitresses, and the domestic service sector, among others is on an increase. Similarly, children are being exploited in prostitution and at times trafficked for sexual purposes outside the country.³

Even though Uganda passed a 2009 Law on Prevention of Trafficking in Persons Act, there have been reports that government has failed to convict forced labour or sex trafficking offenders under this law.⁴

The Bill as it is, seeks to provide against harmful employment of children and protection of children from violence and rights to protective services (Clauses 7,8,9 & 10 respectively). It also mandates the Minister in charge to put in place comprehensive strategies to ensure protective services against sexual violence and trafficking among others. The Bill does not however provide for the offence of trafficking. This ought to be taken on seriously as it is a vice that has to be explicitly curbed by this law. It should be captured as an offence with a capital penalty for deterrence reasons.

4. Corporal punishments

What amounts to corporal punishment is a question that continues to be contentious—both from a human rights perspective and a parental-disciplining perspective. A number of Ugandan parents apply the religious teaching of spare the rod and spoil the child, to enforce discipline in their

³ United States Department of State, 2012 Trafficking in Persons Report - Uganda, 19 June 2012, available at: <http://www.refworld.org/docid/4fe30c88a.html>. [accessed 17 May 2015]

⁴ Bamuturaki Musinguzi, Human trafficking: The modern form of slavery eating up East Africa Available here <http://www.monitor.co.ug/Magazines/PeoplePower/Human-trafficking--The-modern-form-of-slavery-/-/689844/1974562/-/rj8l5s/-/index.html>.

children. In African tradition this means that a parent is free to punish their child in any way to ensure they do not deviate from the known good morals of the society. However, this parental right as advocated for by traditionalists has overtime been practiced inhumanely and with reckless abandon. A clear example has been noted in instances where children are subjected to extreme punishments leading to grievous bodily harm and to some extent permanent disability or death.⁵

Clause 24 of the Bill offers proposals to the effect that corporal punishment is an offence subject to a fine or imprisonment. However, the bill does not define what amounts to ‘corporal punishment.’ If left hanging, the provision may be abused by different parties not working in the best interest of the child. Children may use it to unnecessarily have their parents fined or imprisoned for putting them right. In the 1978 case of *Tyrer v UK*⁶ a 15 year old boy was given three stokes using a birch, court held this to be degrading treatment that violated children’s rights. It further defined Corporal punishment to be any punishment that “involves one human being inflicting physical violence on another human being.”⁷ Further more, in 2000, a complaint was submitted to the African Commission on Human and Peoples’ Rights considering the condemnation of eight students in Sudan to between 25 and 40 lashes for “public order” offences under the 1991 Sudanese Criminal Law, founded in Islamic law. In its decision, the Commission affirmed that “[t]here is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences.”⁸

Parliament is thus cautioned to consider the following guiding principles drawn from a combination of principles in the Convention on the Rights of the Child with understanding of child development to guide the selection and development of constructive discipline practices that can be recommended by law to replace corporal punishments:

- a) Respect the child’s dignity
- b) Develop pro-social behavior, self-discipline, and character
- c) Maximize the child’s active participation
- d) Respect the child’s developmental needs and quality of life
- e) Respect the child’s motivational characteristics and life views
- f) Assure fairness and transformative justice
- g) Promote solidarity

⁵ Ugandan maid Jolly Tumuhirwe jailed for assaulting toddler, BBC News, 15 December, 2014 [accessed 17/05/15 here <http://www.bbc.com/news/world-africa-30476200>.

⁶ *Tyrer v UK* (1978) 2 EHRR 1.

⁷ *Ibid.*

⁸ ACHPR, Communication 236/2000, *Curtis Francis Doebber v Sudan*, 33rd Ordinary Session, Niger(2003)

Any principles undertaken must look beyond the traditional understanding of disciplining, so as to come up with a definition that works for the full development of the child and that is within the principles of the best interests of the child.

5. Child Abduction and Ritual Murders

For about two decades, the Ugandan child—especially in the northern part of the country has experienced grievous trials and tribulations. Until August 2006, the Lord's Resistance Army (LRA) abducted children in northern Uganda to serve as soldiers, sex slaves, and porters within his LRA rebel group. While there have been no LRA attacks in Uganda since 2006, Ugandan children previously abducted remain unaccounted for and those that were rescued or managed to return home after years in captivity, continue to face challenges in the growth and adjustment to community life. The law as it is does not provide for care and rehabilitation or address the trauma children face while in abduction or/and after return. There have also been cases of children being sacrificed in ritual murders⁹and yet many culprits have been left to go unpunished.¹⁰

The proposed amendments make provision for protection of children against harmful cultural and customary practices (Clause 7, 8, & 9). The Bill proposes that anyone who contravenes this section commits an offence and is liable to imprisonment for seven years or a fine. Although this provision is commendable, it does not seem sufficiently deterrent as a child exposed to some of these practices like genital mutilation may suffer a lifetime of deformity. A heavier punishment should be considered to deter perpetrators of such heinous crimes against innocent children.

6. Children's Rights Protection

In addition to the already protected rights in the Children's Act, Cap 59, the bill provides for additional rights to privacy, freedom of expression, access to basic needs of life, access to information, registration at birth, legal representation and an offence upon violation of the same (Clause 4) among others. Express provision of these basic necessities is crucial in justifying other rights as human rights are often interdependent in nature. As an example one may not enjoy the right to health if they cannot freely access basic information on their health.

It is also worth noting that Ugandans have noted with great concern, the lack of protection measures of children in school. A clear example is the fires that gutted boarding schools' dormitories leading to deaths of children. Until now there has been failure to hold the responsible

⁹ Tim Whewell, Witch-doctors Reveal Extent of Child Sacrifice in Uganda, BBC News Night, Thursday, 7 January 2010 available at <http://news.bbc.co.uk/2/hi/8441813.stm>.

¹⁰ Kampala accused of ignoring child sacrifice, The East African Newspaper, Saturday, March 7 2015 available at <http://www.theeastafrican.co.ke/news/Kampala-accused-of-ignoring-child-sacrifice/-/2558/2645532/-/8sxn67/-/index.html>. [accessed 17 May 2015]

authorities liable for the poor safety regulations.¹¹ More still, over 700,000 children still lack access to education,¹² and at least over 10,000 children live on the streets of Ugandan towns where they suffer arbitrary arrests and detentions by police. There is lack of access to food, clean water, health services and an increase in child sex abuse, among others.¹³

It's against this background that Parliament is seeking to cover the glaring gaps and implementation challenges within the available children's laws and policies so as to ensure fair trial to child offenders in Uganda, to enhance children's rights and safety, and to regulate adoption and guardianship of Children.

This Bill is credited for being sensitive to human rights of the child and the language used there in. It is however often generic and ambiguous – for instance when referencing “access to basic needs of life” in Clause 4, its hard for a policy maker to interpret what this would certainly mean. The proposals need to be polished to make them more focused for an end user to be able to utilize them to demand service delivery and child protection.

Conclusion and Recommendation

Beyond amending the Children's Act, the government ought to shift from the usual approach of merely legislating children affairs to urgently address the reasons why children are on the streets, being trafficked or suffering abuse within the community. It is pertinent that government prioritizes implementation of its child protection systems and ensures that authorities in child protection institutions at the district level have the means, support, and training to adequately perform their duties.¹⁴

¹¹ Children at risk in Uganda's boarding schools, The Guardian, Accessed 17/05/2015 here <http://www.theguardian.com/society/katineblog/2008/aug/05/childrenarestillatriskin>.

¹² 700,000 Ugandan children out of school, New Vision Friday, June 27 2014 [accessed on 17 May, 2015 here <http://www.monitor.co.ug/News/National/700-000-children-miss-out-on-school---Unesco/-/688334/2362960/-/a1qpp1/-/index.html>].

¹³ “Where do you want us to go?” Abuses against Street Children in Uganda, Human Rights Watch 2014 Report available at http://www.hrw.org/sites/default/files/reports/uganda0714_forinsert_ForUpload.pdf [accessed 17 May 2015]

¹⁴ *Ibid*