



Diana Kyobutungi

KYBDIA001

LLM – International Law

Addressing Child Poverty: Is Ugandan Law and Policy Fit for Purpose?

Supervisor: Professor Richard Calland

Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the LLM International Law in approved courses and minor dissertation. The other part of the requirement for this qualification was the completion of a program of courses.

I hereby declare that I have read and understood the regulations governing the submission of LLM International Law dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

University of Cape Town, Faculty of Law

Department of Public Law

Cape Town, 2014

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the UCT referencing style for citation and referencing. Each contribution to, and quotation in, this dissertation from the work(s) of other people has been attributed, and has been cited and referenced.
3. This dissertation is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

Diana Kyobutungi

Date:

DEDICATION

I would like to dedicate this thesis to my beautiful and loving family; to Jackie, Carol, Brian, Davis, Guudu, Brenda, Kemi, Caleb, Laban and Lester, and my three parents, my late mother Joseline Tumuheirwe and Charles and Rosette Kaganzi. I will never truly grow up and out of this family and our experiences motivate, challenge and inspire me all the time. I thank God for you.

ACKNOWLEDGEMENTS

I wish to express my sincere gratitude to my supervisor Professor Richard Calland for his prompt and clear guidance that clarified my focus and greatly motivated me in finalising this thesis. My deep appreciation also goes to the Head of Department - Public Law, Professor Elrena van der Spuy for her kind assistance throughout this process.

I also thank my valued lecturers, Professor Graham Bradfield, Ms. Karen Lehman and Professor DM Chirwa for their insightful lectures on various aspects of international law which cemented my goal to write this thesis. Lastly, many thanks to my friends and colleagues for their support.

Table of Contents

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
ABBREVIATIONS	viii
CHAPTER ONE.....	1
INTRODUCTION	1
1.0 Background to the Problem	1
1.1 Research Objectives.....	5
1.2 Significance of the Study	5
1.3 Research Methodology	6
1.4 Structure of the Thesis	6
CHAPTER TWO.....	7
THE INTERNATIONAL AND REGIONAL NORMATIVE FRAMEWORK FOR PROTECTION OF THE CHILD FROM POVERTY.....	7
2.0 Introduction.....	7
2.1 Fundamental Child Rights Principles	8
2.1.1 Equality and Non-discrimination	8
2.1.2 Right to Life, Survival & Development.....	9
2.1.3 Participation	10
2.1.4 Best Interests.....	11
2.2 Protection of the Seven Basic Child Needs	12
2.2.1 Nutrition, Water, Sanitation, Shelter, Health & Education as SERs.....	12
2.2.2 The Child’s Right to Information.....	18
2.3 Normative Framework for the Additional Relevant Factors	20
2.3.1 Wealth and Social Protection of the Child.....	20
2.3.2 A Child-Centric Culture.....	21
2.4 Conclusion	22
CHAPTER THREE.....	23
CRITIQUE OF UGANDA’S CONSTITUTIONAL AND CHILD RIGHTS FRAMEWORK FOR CHILD POVERTY.....	23
3.0 Introduction.....	23

3.1	The Constitution of the Republic of Uganda of 1995	23
3.1.1	Recognition and Guarantee of the Fundamental Principles	24
3.1.2	Protection of the Child’s Seven Basic Needs.....	25
3.1.3	Provisions on the Additional Factors	29
3.1.4	Enforcement of Constitutional Rights.....	33
3.2	The Children’s Act of Uganda, Cap 59.....	35
3.3	Conclusion	42
CHAPTER FOUR		43
POLICY & OTHER MEASURES ADDRESSING CHILD POVERTY IN UGANDA		43
4.0	Introduction.....	43
4.1	General Plans, Policies & Programs	43
4.1.1	Poverty Eradication Action Plan 1997 & National Development Plan 2010.....	43
4.1.2	National Equal Opportunities Policy 2006	45
4.1.3	National Population Policy for Social Transformation & Sustainable Development	45
4.1.4	Uganda National Program of Action for Children 1992	46
4.2	Specific Policies on the Seven Indicators	46
4.2.1	Uganda Nutrition Action Plan 2011-2016	46
4.2.2	National Water Policy 1999	47
4.2.3	National Land Policy 2013	49
4.2.4	Uganda National Expanded Program on Immunisation.....	50
4.2.5	Second National Health Policy, 2010	51
4.2.6	Third Health Sector Strategic & Investment Plan 2010-2015.....	53
4.2.7	Reproductive, Maternal, Neo-Natal & Child Health Strategic Plan 2013	53
4.2.8	Policy Guidelines & Service Standards for Sexual & Reproductive Health & Rights Edition 3 of 2006	54
4.2.9	National HIV and AIDS Policy 2011.....	55
4.2.10	National Orphans and Other Vulnerable Children Policy 2004.....	55
4.2.11	Draft Mental Health Policy & Mental Health Bill	55
4.2.12	UPE Policy 1997 & USE Initiative under UPPEP policy 2007.....	57
4.2.13	Revised Education Sector Strategic Plan 2007-2015.....	58
4.2.14	Special Needs & Inclusive Education Policy 2011	58
4.2.15	Education (Pre-Primary, Primary & Post-Primary) Act No 13 of 2008	58

4.2.16 Telecommunications Policy 2012	60
4.3 Policies and Measures for the Wealth and Social Protection of the Child.....	60
4.3.1 The Social Development Sector Strategic Investment Plan or SDIP-II 2011-16.....	60
4.3.2 Draft Social Protection Policy.....	61
4.3.3 Direct Income Support (DIS) initiatives	61
4.3.4 Other Measures	63
4.4 Government Policy on Culture	66
4.3.5 Uganda National Culture Policy, 2006	66
4.5 Conclusion	68
CHAPTER FIVE.....	69
CONCLUSION AND RECOMMENDATIONS.....	69
BIBLIOGRAPHY.....	75
APPENDIX A	A
Table 1: Indicative Levels for the Seven Child Poverty Deprivations.....	A

ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Charter on Human and People's Rights
AHSPR	Annual Health Sector Performance Report
ANPPCAN	African Network for the Prevention & Protection against Child Abuse & Neglect
ARVs	Anti-Retroviral(s)
CEDAW	Convention on Elimination of Discrimination against Women
CERD	Convention on Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECD	Early Childhood Development
EOC	Equal Opportunities Commission
FCC	Family and Children's Court
FY	Financial Year
GAOR	General Assembly Ordinary Resolution
GC	General Comment
GDP	Gross Domestic Product
GNI	Gross National Income
GoU	Government of Uganda
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
LC(s)	Local (government) Council (s)
MDG	Millennium Development Goals
MoES	Ministry of Education and Sports
MoGLSD	Ministry of Gender Labour and Social Development
MoFPED	Ministry of Finance, Planning and Economic Development
MoIA	Ministry of Internal Affairs
MoICT	Ministry of Information, Communication and Technology
MoH	Ministry of Health
NCC	National Council for Children
NDP	National Development Plan
NGO	Non-governmental Organisation
NUSAF	Northern Uganda Social Action Fund
ODI	Overseas Development Institute
OPM	Office of the Prime Minister
OVC	Orphans & other Vulnerable Children
PAF	Poverty Action Fund
PEAP	Poverty Eradication Action Plan
PEP	Partnership for Economic Policy
PEPFAR	President's Emergency Plan for Aids Relief
PHC	Primary Health Care
PPP	Public Private Partnership
PRSP	Poverty Reduction Strategy Papers
PBSWO	Probation & Social Welfare Officer
RMNCH	Reproductive Maternal, Neo-Natal and Child Health

SA	South Africa
SAGE	Social Assistance Grants for Empowerment
SDSSIP	Social Development Sector Strategic Investment Plan
SERs	Social Economic Rights
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights
UDHS	Uganda Demographic and Health Survey
UGX	Uganda Shillings
UK	United Kingdom
ULRC	Uganda Law Reform Commission
UN	United Nations
UNAP	Uganda Nutrition Action Plan
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific & Cultural Organisation
UNEPI	Uganda National Expanded Program for Immunisation
UNFPA	United Nations Framework for Population Action
UNHS	Uganda National Household Survey
UNICEF	United Nations International Children's Emergency Fund
UNMHCP	Uganda National Minimum Health Care Package
UPPET	Universal Post Primary Education & Training
US	United States
UYDEL	Uganda Youth Development Link
VFSG	Vulnerable Family Support Grant
VHTs	Village Health Teams
WB	World Bank
WDI	World Development Indicators
WHO	World Health Organisation

CHAPTER ONE

INTRODUCTION

1.0 Background to the Problem

In June 2014, a comprehensive situational analysis on child poverty and deprivation in Uganda, based on the 7 deprivation indicators under the Bristol approach and considering other factors like childhood security for girls, child sacrifice and child trafficking, was released.¹ It found that over half of Uganda's children, about 55%, live in multidimensional child poverty with deprivation in at least 2 important areas while 24% live in extreme poverty.² A look at Uganda's MDG progress reveals that most of the slowest being implemented also relate to child poverty, specifically achievement of Universal Primary Education (Goal 2) improvement of maternal health (Goal 5) and combatting malaria and HIV/AIDS (Goal 6) among others.³ The specific concern for Uganda is that even with generally positive growth;⁴ the high income poverty⁵ and inequalities⁶ in the country especially in rural areas,⁷ the current⁸ population trends⁹ showing that 57% (approx. 19 million) of the total population is under the age of 18 and on average 51% of the population is under 15,¹⁰ there is definitely going to be close to 30 million children in Uganda in ten years' time; therefore what legal and administrative mechanisms have been put in place to ensure these children shall not live or grow up in a situation of poverty? Already child poverty is

¹ Daily Monitor, "3.5 million children living in abject poverty – report" June 11, 2014.

² PEP et al (June 2014) 'Situation Analysis of Child Poverty and Deprivation in Uganda' Executive Summary, x.

³ MoFPED (September 2013) 'MDG Progress Report for Uganda 2013' Executive Summary iii-iv.

⁴ World Bank (2013) 'World Development Indicators' 24. Uganda's GDP growth rate of 6.7 is higher than the sub-Saharan Africa average of 4.7

⁵ UBOS (2010) 'Uganda National Household Survey (UNHS) 2009/10: Socio Economic Module' 9 & 93. It shows that an average household size is made up of 5 people who share an average monthly household income of UGX 303,700 (approx. US\$ 115) for their food, health, housing and survival needs.

⁶ Uganda scores 44.3 on the Gini index compared to Niger at 34.0 or Sweden at 23.0. Adapted from <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html> [Accessed on 23 June 2014].

⁷ UNHS (n5) xii.

⁸ UBOS (2012) 'Uganda Demographic and Health Survey (UDHS) 2011' 57. That with the total fertility rate (TFR) of 6.2 children born per woman during her lifetime, the current population of 34.5 million people will triple to 113.9 million by 2050.

⁹ UBOS (2007) (1) 'Projections of demographic trends in Uganda 2007-2017' 3. It shows an average population growth rate of 3.2% (or 1.2 million people) per year.

¹⁰ UNHS (n5) 6.

evidenced by many published reports and findings on widespread child rights violations and exploitations in the country including:¹¹ forced and early child marriages, defilement and child sexual abuse, child trafficking, child sacrifice, child mistreatment and abuse, extreme forms of child labour with children working as housemaids, waiter in bars, beggars on the streets. There is also a growing body of research¹²¹³¹⁴ evidencing the scale of the problem of child poverty in Uganda. As a signatory to various human and child rights conventions, Uganda is bound by the Vienna Declaration to fulfil its solemn commitments in international law¹⁵ including those on child rights. The main question is therefore, given these international obligations and its current status, is Ugandan law and policy fit for addressing child poverty? Does it have clear legal provisions and mechanisms that are sufficient, unequivocal and clear enough for both society and children to understand and effectively utilise to curb child poverty?

Child poverty was defined in UNICEF's SOWC 2005.¹⁶ It stated that: *Children living in poverty experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them unable to enjoy their rights, achieve their full potential or participate as full and equal members of society.*¹⁷ Child poverty, as opposed to income poverty, is multidimensional because the lack of basic needs for the child's survival and development is caused by inter-related physical and non-physical factors affecting his freedom, equality, status and dignity, development opportunities and capability to do what he wants.¹⁸ It has been proved that material wealth (usually measured by consumption or income poverty or

¹¹ Uganda Police (2013) 'Annual Crime and Traffic/Road Safety Report' 26-30, MoIA (2013) Annual Report on the Trend of Trafficking in Persons in Uganda, US Department of Labour (2012) 'Findings on the Worst Forms of Child Labour-Uganda,' UNFPA (2012) 'Marrying too Young-End Child Marriage,' UYDEL (2011) 'Commercial Sexual Exploitation of Children in Uganda' & ANPPCAN-Uganda (2011) 'A Situational Analysis of Child Abuse and Neglect in Uganda.'

¹² Gideon, Rutaremwa "Child Poverty in Africa: An analysis of UNHS 2009/2010 survey." (2013) 3 *American Journal of Sociological Research* 36-45.

¹³ Paola, Perezniето et al (2011) 'Situation Analysis of Children and Poverty in Uganda: Voices of Children' ODI: London.

¹⁴ Sophie, Witter (2002) 'The Silent Majority: Child Poverty in Uganda' Save the Children UK: London.

¹⁵ Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993) para 1.

¹⁶ UNICEF (2005) *The State of the World's Children 2005: Childhood under Threat* UNICEF: New York 17-18.

¹⁷ *ibid.* 18. The definition was adopted by UN GA Res. 61/146 on the Rights of the Child (23 January 2007), A/RES/61/146 and operationalised by UNICEF's Global Study on Child Poverty and Disparities launched in 2007.

¹⁸ UNDP (2000) *Human Development Report 2000*, Oxford University Press: Oxford 20. Quoting distinguished Economist Amartya Sen's capability approach to poverty. Also see Sen (1981) & Sen (2005).

the number of people living below the international poverty line, currently set at US\$1.25 a day¹⁹) does not necessarily mean wellbeing of people and there is no compelling relationship therefore between a higher GDP or GNI per capita and reduced child poverty levels.²⁰

Child poverty is prominently evidenced and measured by seven indicators as explained in the Bristol/LSE Study.²¹ These are: 1) malnutrition, 2) safe water, 3) sanitation facilities, 4) shelter, 5) health, 6) education and 7) information.²² Deprivation in any of these seven basic needs may range from no deprivation to a continuum of deprivation beginning with mild, moderate, severe to extreme deprivation.²³ The conditions of living that indicate these levels of child poverty for each indicator are illustrated in Table 2.1 of the Study,²⁴ reproduced as Table 1 in Appendix A of this thesis. If a child faces severe deprivation in one indicator, he is considered to be living in relative poverty, if he faces two or more severe deprivations, he would be living in absolute poverty.²⁵ The child's access to these essential needs and his social protection²⁶ must be considered in sustainably identifying, addressing and eliminating child poverty.

Also, for a holistic approach to child poverty other conditions *e.g.* protection of girl child and women's rights²⁷ or how child-centric cultures are²⁸ must be considered. Emerging issues like the proposed June 2014 adoption of a '*Cinderella*' law in the UK aimed at criminalising the

¹⁹ World Bank (2008) 'World Development Indicators Supplement' The World Bank: Washington D.C. 2.

²⁰ Peter, Adamson (2012) 'Measuring Child Poverty: New League Tables of Child Poverty in the World's Rich Countries' *Innocenti Report Card 10*, UNICEF Innocenti Research Centre: Florence 25-26. It stated that it was not the amount of resources countries spent on children but rather how resources were spent that mattered. Iceland, Sweden and Norway all spent less of their GDP on tax breaks, cash transfers and services for children and families than the UK yet they showed less deprivation and less child poverty. US a country with one of the highest GDPs in the world, had almost the highest incidence of child poverty and inequality positioning it at 34 out of 35 developed countries.

²¹ David Gordon et al (2003) 'Child Poverty in the Developing World' The Policy Press: Bristol 7-8.

²² *ibid.*

²³ *ibid.* Figure 2.1 at 7 quoting David, Gordon (2002) 'The international measurement of poverty and anti-poverty policies' in P. Townsend and D. Gordon (eds) *World Poverty: New policies to defeat an old enemy*. The Policy Press: Bristol 53-80.

²⁴ *ibid.* Table 2.1 at 8.

²⁵ *ibid.* 8.

²⁶ UNICEF (n16) 6.

²⁷ Gordon (n21) 8 & 30. He shows how girl child discrimination limits their access to education even where resources or income is available. The protection of mothers *e.g.* by reducing maternal mortality, according them property ownership rights enhances child welfare and survival.

²⁸ UNICEF (n16) 6. It shows the need for attitudes and customs that preserve the child's dignity and protect him from abuse.

usually undermined emotional type of child neglect,²⁹ should also be considered since child poverty encompasses all the spiritual, emotional and physical factors that affect the child's ability to develop, thrive or survive, to enjoy his rights and to participate in society.

To address child poverty therefore, States must concentrate their poverty alleviation efforts to a directed and strategic concern with child wellbeing. As stated by UNICEF, poverty reduction itself must begin with children.³⁰ Poverty affects children harshly causing lifelong damage to their minds and bodies.³¹ A study by the Brookings Institution found that in spite of the great strides in poverty eradication taken by least developed countries since 2005, there remained challenges in eradicating poverty among children, with poor children most likely to remain poor into adulthood.³² Any child who lives in in poverty faces hardship different from that an adult faces and that is why efforts must be child centred not assuming that what a child's family faces (as evidenced by national household poverty statistics) is exactly what an individual child living in that family faces.³³ He may also face double effects from his parent(s)'s own poverty, if his parent(s) is poor and his manifest weaker mental and physical capacities make him more susceptible. The effects may be such that any sort of redress later on even in the form of education or material support may be of no use to his condition and to his future as an adult, eventually maintaining a cycle. And as stressed by Professor Lee at the 2008 African Child Policy Forum on child poverty, States must be aware that multi-dimensional poverty does not mean that its different departments should work separately on different pieces of poverty (*i.e.* have a 'silo' mentality), rather it means that they must work together to ensure that all the pieces fit together and fit together well.³⁴ This cannot be done without a child rights based approach that is cognisant of all child rights and principles.

²⁹ Action for children (2012) 'Keeping Children Safe: The Case for Reforming the Law on Child Neglect' 14-15

³⁰ UNICEF (2000) *Poverty Reduction Begins with Children* UNICEF: New York 1-2.

³¹ *ibid.* 6.

³² Laurence Chandy & Geoffrey Gertz (2011) *Poverty in Numbers: The Changing State of Global Poverty from 2005 to 2015*. The Brookings Institution: Washington, D.C. *quoted in* UNICEF (2011) 'Child Poverty Insights: The Changing state of Global Poverty' 2.

³³ David Gordon et al (2003) 'FINAL DRAFT: The Distribution of Child poverty in the Developing World, Report to UNICEF.' Centre of International Policy Research, University of Bristol 3.

³⁴ ACPF (2008) 'Third International Policy Conference on the African Child: Child poverty in Africa 12-13 May 2008' UN Conference Centre-Addis Ababa 15-16.

It is *jus cogens* that childhood requires ‘special assistance’³⁵ and specific attention must be paid to the wellbeing of women and children in order to eradicate poverty and have sustainable development.³⁶ Human rights implementation and protection fosters greatly poverty alleviation as ‘denial of human rights is both a cause and a consequence of poverty’.³⁷ Child rights are particularly ‘indivisible,’³⁸ ‘highly interrelated and interdependent,’³⁹ a violation of one could mean a violation of another. If a child’s right to good quality education is not guaranteed, that child may be exposed to early marriages, HIV/AIDS, drug abuse, forced labour and exploitation, trafficking *etc.*, growing up as a victim of poverty and perpetuating a vicious cycle. Thus effectively addressing child poverty requires the utilisation of a child rights based approach that considers all the rights of the child as internationally and regionally guaranteed as set minimum standards under the normative framework that States must implement.

1.1 Research Objectives

- First, to assess the normative framework for protection of the child from poverty as set by international and regional human and child rights instruments and accordingly, evaluate the scope and ability of Ugandan law and policy to protect the child from poverty.
- Secondly, to primarily analyse whether Ugandan law and policy adequately addresses child poverty in line with the recommendations and minimum standards set by the normative framework; and on this basis, if it is ‘fit for purpose’.

1.2 Significance of the Study

To contribute a legal perspective on how to address child poverty and secondly, to create awareness of the diverse and changing manifestations of child poverty and generate strategic discussions for enhancement of child wellbeing.

³⁵ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) Art 25.

³⁶ UN G.A. res ‘The Future We Want: Post 2015 Global Development Agenda.’ A/Res/66/288 (July 2012) paras 105, 146 & 238.

³⁷ Christine Chinkin (2002) *The United Nations Decade for the Elimination of Poverty: What Role for International Law?* *Current Legal Problems 2001*, Oxford University Press: Oxford, pp552-557 *quoted in* Gordon’s Report to UNICEF (n33) 8.

³⁸ UNICEF (n30) 4.

³⁹ ACPF (n34) 16.

1.3 Research Methodology

The primary sources for this research are international conventions and treaties and domestic legislation and case law in Uganda. The secondary sources include policy documents, journals, books, reports, official data, online and scholarly articles.

1.4 Structure of the Thesis

This paper shall be comprised of 5 chapters which shall be organised as follows:

Chapter One is the introductory chapter. It shall explain the meaning of child poverty, state the seven child poverty indicators and explain why it is important for Uganda to address child poverty. It will state the objectives and relevance of the study and the research methodology.

Chapter Two will describe the minimum standards and recommendations for protection of the child from poverty, as set in international and regional legal provisions. Specifically it will describe the framework for protection of the seven basic needs of the child and for two additional relevant factors; wealth and social protection of the child and culture.

Chapter Three will analyse and critique how well first, the Ugandan Constitution of 1995 and secondly, the main child law, the Children's Act, Cap 59 enforce the minimum normative framework on child poverty. It will also assess enforceability of the constitutional protections.

Chapter Four shall evaluate the Uganda government's policy and other administrative mechanisms in place that address child poverty.

Chapter Five is the conclusion. It will summarise the findings of the research on how well Ugandan law and policy protect the child from poverty and deprivation. It will also look at the debilitating factors and provide possible solutions and recommendations.

CHAPTER TWO

THE INTERNATIONAL AND REGIONAL NORMATIVE FRAMEWORK FOR PROTECTION OF THE CHILD FROM POVERTY

2.0 Introduction

This chapter describes the normative legal framework on child poverty as established in international and regional law. Internationally, there are two categories of law on the rights of the child; the general body of human rights instruments which apply to the child as a human being, *i.e.* the 1924⁴⁰ and 1959⁴¹ declarations on the Rights of the Child, the UN Charter,⁴² the UDHR⁴³ and the 1966 international bill of rights, the ICESCR⁴⁴ and ICCPR⁴⁵ and, the specific body of instruments among which is the UN Convention on the Rights of the Child (CRC)⁴⁶ and its two protocols and CEDAW.⁴⁷ The main law is the CRC. It was the first international convention to provide for both types of rights together⁴⁸ implying that both hold equally value to the child. It also recognised autonomous rights of the child including the evolving capacities of the child and respect for his views.⁴⁹ Regionally, African member states of the AU, are governed by its main

⁴⁰ Geneva Declaration of the Rights of the Child of 1924, adopted Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

⁴¹ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

⁴² Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945.

⁴³ UDHR (n35).

⁴⁴ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

⁴⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

⁴⁶ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990.

⁴⁷ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

⁴⁸ Civil and Political Rights or CPRs are those under the ICCPR *e.g.* the rights to freedom of expression or to vote. They are traditionally called first generation rights because they automatically attach to the individual and do not need the State to proactively do anything to realise them. While Social Economic Rights or SERs are those rights commonly found under the ICESCR. They are traditionally called second generation rights because they impose a positive duty on the State to assist citizens in achieving them *e.g.* the rights to housing and education. At <https://www.ihrfg.org/human-rights-funding/faqs-about-human-rights> [Accessed on 23 June 2014].

⁴⁹ Arts 5 & 12 CRC.

treaty on human rights *i.e.* the Banjul Charter or ACHPR,⁵⁰ its protocol on Women's Rights,⁵¹ and the specific child treaty, the African Charter on the Rights and Welfare of the Child.⁵² The ACRWC like the CRC provides for both types of rights together. Note that in comparison with the CRC, which mainly requires periodic reporting by State parties to its Committee on issues like implementation and application of the general principles,⁵³ the regional (African) framework is justiciable at the African Commission on Human and People's Rights⁵⁴ or at the African Court on Human and People's Rights⁵⁵ or the African Committee of Experts on the Rights of the Child for the ACRWC (ACERWC).⁵⁶ Thus for child rights, there is no differentiation or weighing of rights as traditionally done, rather laws must encompass the 4 groups of child rights *i.e.* Participation, Prevention, Provision and Protection⁵⁷⁵⁸ which are all essential and complementary. All implementation of these rights by States must adhere to the four fundamental principles of child rights enshrined in both the CRC and ACRWC.⁵⁹ These are:

2.1 Fundamental Child Rights Principles

2.1.1 Equality and Non-discrimination

It is an inalienable human right that all human beings are born free, equal and with dignity.⁶⁰ Human rights law prohibits any sort of discrimination⁶¹⁶² of any human being including a child,

⁵⁰ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

⁵¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in 1 Afr. Hum. Rts. L.J.* 40, *entered into force* Nov. 25, 2005.

⁵² African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

⁵³ Arts 43-45 CRC.

⁵⁴ Art 45 & 50 ACHPR. The Commission is mandated to hear communications for any human rights complaints or violations in the African treaties as long as local remedies were exhausted. See Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on October 6, 1995.

⁵⁵ Art 56 ACHPR. The Court is mandated to hear cases on violation of human rights. See Protocol to the ACHPR on the Establishment of an African Court on Human and People's Rights, June 9, 1998.

⁵⁶ Arts 43-45 ACRWC.

⁵⁷ Fact sheet No. 10 (Rev. 1), The Rights of the Child, Vienna Declaration and Programme of Action *adopted by* the by the World conference on Human Rights, Vienna, 25 June 1993, (A/CONF. 127/24 (Part 1), chap. 111).

⁵⁸ Geraldine van Bueren (1995) *The international law on the rights of the child* Dordrecht: Martinus Nijhoff Publishers 15.

⁵⁹ Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N. Doc. CRC/GC/2003/5 (2003), para 12.

⁶⁰ Arts 1-2 UDHR.

⁶¹ Art 10 (3) ICESCR specifically prohibits discrimination of children based on parentage or "other conditions" which implies other excluded grounds are encompassed. The Article is self-executing. CESCR GC No.3 para 5.

whether based on race, colour, sex, language, religion, national or social origin, property or birth.⁶³ While both international and regional child rights law require that States accord the rights of the child to each and every child without discrimination of the child or based on his parents' race, beliefs and opinions, property, disability;⁶⁴ ethnic or linguistic basis;⁶⁵ or grounds of fortune be it material or not.⁶⁶ Specific conventions⁶⁷ prohibit girl child discrimination *i.e.* distinction, restriction or exclusion against the girl child whether in marriage, access to education, housing, inheritance and property ownership. And the CERD prohibits discrimination of any person based on race, origin or ethnicity.⁶⁸ Even though the CERD was initially meant for apartheid SA, it is still relevant to situations where governments practice discrimination on the basis of regionalism or ethnicity.⁶⁹ Therefore in provision of the child's basic needs and access to services and social protection, the state must prioritise each and every child in the same way and with the similar urgency without any direct or indirect discrimination.⁷⁰ Any difference in treatment must not be based on any of the prohibited grounds and it must not be justifiable by the State as fair discrimination (or affirmative action).⁷¹

2.1.2 Right to Life, Survival & Development

Both the CRC⁷² and the ACRWC⁷³ require member States to ensure to the maximum extent possible, the life, survival and development of the child. This is a guarantee of the autonomy of the child's separate right as an individual human to the inherent right to life.⁷⁴ Note that this principle cannot be enforced without guarantee of the child's right to an adequate standard of

⁶² Note that as of May 2013, the ICESCR by virtue of Optional Protocol to the ICESCR, G.A. res. 63/117 (2008) established a complaints and inquiry mechanism which States can ratify in order to use the procedure.

⁶³ Art 24 (1) ICCPR.

⁶⁴ Art 2 CRC.

⁶⁵ Art 30 CRC.

⁶⁶ Art 3 ACRWC.

⁶⁷ Arts 1-3 Maputo Protocol, Art 3 CEDAW & CESC GC Nos. 16 & 18.

⁶⁸ Art 1 CEDAW.

⁶⁹ Danwood M. Chirwa 'The merits and demerits of the African Charter' in (2002) 10:2 *International Journal of Children's Rights* 157-177 at 159.

⁷⁰ CRC/GC/2003/5 para 12.

⁷¹ ACRWC (2011) *Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on Behalf of children of Nubian descent in Kenya) against the government of Kenya*. Decision no 002/com/002/2009, para 56.

⁷² Arts 6 (1) & (2) CRC.

⁷³ Arts 5 (1) & (2) ACRWC.

⁷⁴ Art 6 (1) ICCPR.

living that must consider his physical, mental, social, spiritual, moral and social development.⁷⁵ As seen in the definition of child poverty, enforcement of this right guarantees protection of the child's basic needs for his development all around. It thus advocates for systems that prioritise the child, whether in health, social protection, sanitation and safe water or habitable housing⁷⁶ to ensure that the child's right to life is impaired or affected in any way, there must be clear reasons why and the State must ensure children do not needlessly and meaninglessly die under its watch. Even though the primary responsibility is on parents to cater for the child's life and survival needs, States are obliged to assist them with material assistance and support specifically for nutrition, clothing and housing.⁷⁷

2.1.3 Participation

This is one of the fundamental rights and principle of child rights at the heart of the successful implementation of the child rights approach to child poverty. It is rested on two limbs *i.e.* recognition of the evolving capacities of the child and respect for the child's view.⁷⁸ It guarantees identity and autonomy of the child⁷⁹ necessary for the child to enjoy his rights equally and thrive. Participation means the child should be given space to do things on their own and get informed about situations affecting them. It is facilitated by both the State and parents and caregivers who must accord him opportunities to participate and express himself whether through play, debate, reading, involvement in society. A decision maker must give the child a right to participate as long as the child is found capable of forming or communicating his views⁸⁰ and must actively take the child's input into account after considering his age, maturity and mental development. The concept of evolving capacities requires this. His cognitive abilities and social maturity should also be taken into account before making any decision affecting him. And due weight must be given to his opinion according to the ascertained age and maturity only after having clearly and actively listened to the child's views.⁸¹ Piaget⁸² asserted that from 7 to 11 years a

⁷⁵ Art 27 (1) CRC.

⁷⁶ Art 14 (1) ACRWC.

⁷⁷ Arts 27 (2) & (3) CRC.

⁷⁸ Arts 4 (2) & 7 ACRWC, Arts 5 & 12 (2) CRC & CRC/C/GC/12, paras 9 -10.

⁷⁹ John Eekelaar 'The emergence of children's rights' (1986) 6 *Oxford Journal of Legal Studies* 161-182 at 166. In recognition of child autonomy, he implores parents to have the emotional maturity to see their child as a separate person from them.

⁸⁰ *ibid.* paras 27.

⁸¹ CRC/C/GC/12, paras 10, 30 & 40-45.

child is able to use deductive reasoning and understand abstract ideas, increasingly thinking on his own by the age of 12 years upwards. Participation does not refer to tokenism⁸³ e.g. displaying children dancing at functions or as decorations. It is a mandatory procedural obligation applicable in all matters affecting the child be it formal proceedings *i.e.* judicial whether civil, criminal or administrative matters and informal matters and therefore is wide reaching obligation ensuring child poverty elimination if fully implemented.⁸⁴ If the child's views is seemingly wrong or in conflict with his best interests, then one must still consider the views of the child and then establish what would be in his best interests.⁸⁵ It is a strict obligation.⁸⁶

2.1.4 Best Interests

The traditional⁸⁷ concept of the welfare (connoting mostly provision and protection or dependent rights) of the child was expanded to cater for the recognition of the autonomy of the child. Art 3 (1) of the CRC specifically provides that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”. This means there must be careful consideration and weighing of all other factors by the authorities. It is better than Art 4 of the ACRWC which only considers the child's best interests without considering other factors that may be relevant like the age of the child, the nature of the action and different rights of the child. The child's interests change as per his development stage or particular circumstances but the same basic needs for them to thrive, survive, grown and enjoy their rights equally like anyone else do not change and parents must consider these in looking after the child's best interests.⁸⁸ The assessment must not be tied to any specific cultural norm, language or background.⁸⁹ It is a value loaded concept requiring the State to guarantee the child's social protection, alternative care, family care and treatment that must all be in his best interests

⁸² Jean Piaget (1896 -1980)'s Stages of Cognitive Theory of Development (Cognitive Constructivism). See <http://www.learningandteaching.info/learning/piaget.htm> [Accessed on 23 June 2014].

⁸³ CRC/C/GC/12, paras 3 & 132-134 (e)-(h).

⁸⁴ *ibid.* para 29, 31 & 84.

⁸⁵ *ibid.* paras 70 & 74.

⁸⁶ *ibid.* para 19.

⁸⁷ As seen in the 10 provisions of the 1924 and Arts 2 & 8 of the 1959 Declarations on the rights of the child.

⁸⁸ Art 18 (1) CRC & Art 20 (1) (a) ACRWC.

⁸⁹ CRC/C/GC/12 para 12. One must not judge best interests according to their own culture.

and laws and measures guaranteeing this principle must be enacted.⁹⁰ And they must also prioritise the child.⁹¹

2.2 Protection of the Seven Basic Child Needs

2.2.1 Nutrition, Water, Sanitation, Shelter, Health & Education as SERs

Six of the seven Bristol deprivation indicators – apart from information - are traditionally classed as Socio Economic Rights or SERs in the grouping of human rights.⁹² The rights of the child to health⁹³ and education⁹⁴ are independently guaranteed in the specific child rights instruments. Both impose direct obligations on the State to take appropriate measures for full implementation of the right to health which includes diminishing infant mortality, combating malnutrition, providing safe water and sanitation, reducing maternal mortality⁹⁵ and ensuring equal access to basic primary education. Whereas the rights of the child to nutrition, water, sanitation and shelter are not independently guaranteed, a holistic interpretation means that they necessarily fall under the above right of the child to health but also under the principle of the child's right to life, survival and development discussed above. And as shown, both parents have common primary responsibility but the State must provide them with material support and assistance. It does not only stop at enacting legislation. The ICESCR broadens this duty to giving the widest possible protection and assistance to the family.⁹⁶ While the ACRWC guarantees that where families do not have the care of dependent children, State parties may be held directly responsible for four of the seven basic needs of the child *i.e.* nutrition, health, education, clothing and housing.⁹⁷ Health necessarily includes safe water and provision of sanitation facilities. Also the ACPHR which is justiciable, was criticised for only paying lip service⁹⁸ to the SERs of the child as it only recognises those rights already stipulated in international law but does not mention them specifically.⁹⁹ However as seen in the SERAC case, the African Commission using a holistic

⁹⁰ Arts 3 (2)-(3) & 18 (2) CRC.

⁹¹ CRC/GC/2003/5 para 37.

⁹² See note 48 above.

⁹³ Arts 23-25 CRC & Arts 13-14 ACRWC.

⁹⁴ Arts 28-29 CRC & Art 11 ACRWC.

⁹⁵ Art 24 CRC restated in Art 14 ACRWC.

⁹⁶ Art 12 (1) ICESCR.

⁹⁷ Art 20 (2) (a) ACRWC.

⁹⁸ DM Chirwa 'Combating Child poverty: The role of economic, social and cultural rights' in Julia Sloth-Nielsen (ed) (2008) *Children's rights in Africa: A legal perspective* Aldershot: Ashgate 91-108 at 96.

⁹⁹ Art 18 (3) ACHPR.

child rights approach included the right to housing and food under the right to family protection and the highest attainable standard of physical and mental health under the ACHPR.¹⁰⁰

Even though parents have primary responsibility for providing SERs to the child – which may be because parents are assumed to have physical or direct custody of the child - the State must still be held responsible for providing those SERs to the child under the principle of the child's right to life, survival and development and its partner right to an adequate standard of living. Parents and guardians including alternative caregivers therefore retain the first duty obligation for the basic needs,¹⁰¹ but if they fail, the State must come in as the child's *de facto* guardian. DM Chirwa cautions here that this does not mean that children's SERs are of in subordinate or secondary significance¹⁰² to the State and only implemented or enjoyable through the agency of parents as initially held in the South African constitutional court in *Grootboom*.¹⁰³ It was later clarified by the same court in *Ministry of Health & others vs. Treatment Action Campaign (TAC) & others*¹⁰⁴ that SERs obligation of the State extend directly to it where the child's parents are poor.

In order to tackle child poverty, it is noted that most of the deprivation conditions illustrated in Table 1 in appendix A of this thesis, allude to the fact that there must be nearby health facilities for the child, medicines for treatment and immunisation, health insurance, systems and infrastructures for cleaning, storing and transporting water, ensuring food security, quality, equitable and free primary education among others. Therefore it appears that most of them are heavily reliant on the other side of the normative framework, not on the parent's primary responsibility side but the State's ultimate *de facto* guardianship role. Parents cannot on their own build schools, roads, ICT services, organised housing and have equitable access to finance for housing materials and property to house their children and families nor would they be able to create food security early warning systems or deal with weather and climate challenges on their

¹⁰⁰ *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, Communication 155/96, para 60.

¹⁰¹ Art 18 & 27 CRC, Art 20 (1) (b) ACRWC.

¹⁰² DM Chirwa (n98 above) 104.

¹⁰³ *Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC). It held that the State could not be held directly responsible for SERs of children under Art 28(1) as opposed to Art 26 of the SA Constitution, 1996 except for where the child was separated from his parents or lacked parental care *i.e.* was orphaned or abandoned.

¹⁰⁴ (No 1) (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002).

own. They must be educated and empowered on these and mostly, the State must proactively carry out those activities so that ultimately parents are able to cater and provide for the relevant needs of the child and ensure he is not deprived.

Therefore what must a resource incapacitated State do to facilitate provision of the child's basic need and prevent his deprivation? The normative framework under Art 4 of the CRC has been interpreted to mean that States must implement the minimum core obligations for the SERs immediately and not put them off until they feel they have enough resources for example by providing lower cost alternatives and secondly, it must implement with or without resources, appropriate laws and administrative systems that implement all child rights and observe the four fundamental child rights principles *e.g.* ensuring there is no discrimination in provision of SERs.¹⁰⁵ This is by ensuring that its budget processes for SERs are transparent, child participatory, universal and accessible¹⁰⁶ and it considers the best interests of the child in its plans, programs or legislative reforms, especially those that may potentially reduce any qualitative or quantitative aspects of any of the child's basic needs or SERs. In the case of the latter, the State should first provide alternatives before putting such retrogressive plans or laws into actions.¹⁰⁷ This is in line with the margin of appreciation test where a State assesses what is reasonable in effecting the SERs guided by the fundamental principles of child rights and the particular circumstances *e.g.* an emergency. Further, Art 4 of the CRC has "horizontal effects"¹⁰⁸ meaning that there is a corresponding obligation on State Parties to adopt domestic measures¹⁰⁹ concerning the acts or omissions of non-State actor and private parties *e.g.* laws ensuring private water companies maintain safe, affordable and reliable water supply to people.¹¹⁰

¹⁰⁵ CRC Committee, Day of General Discussion on "Resources for the Rights of the Child - Responsibility of States" 46th Session, 17 September – 5 October 2007 paras 16 & 47.

¹⁰⁶ *ibid.* para 11.

¹⁰⁷ *ibid.* paras 47-48.

¹⁰⁸ Sharon Detrick (ed) (1999) *A commentary on the United Nations Convention on the Rights of the Child* The Hague: Martinus Nijhoff Publishers 31. That this refers to the effects that human rights have on relationships between private parties, as opposed to the effects they have on relations between the individual and the State.

¹⁰⁹ Art 1 (1) ACRWC mentions the State's necessary steps include legislative or other measures.

¹¹⁰ DM Chirwa 'Privatisation of water in Southern Africa: A human rights perspective water' (2004) 4:2 *Afr. Hum. Rts. L.J* 218-241 at 231-232.

Note that there are other normative legal standards that must be assessed in implementing each of the indicators. For a holistic implementation of the right to food¹¹¹ for example, States must consider the adequacy, availability, quality, safety, acceptability and accessibility.¹¹² They must adopt efficient food technologies, produce nutrition pyramids, research and promote sustainable agriculture farming methods and food security. Mothers, parents and caregivers must be given adequate information on nutritious feeding, healthy diet, and clean and efficient labour and fuel saving food preparation methods.¹¹³ While the right to adequate housing and shelter entails:¹¹⁴ that the State¹¹⁵ guarantees legal rights to security of tenure (*e.g.* to own property himself or in association with others)¹¹⁶ and affordability, availability of materials and infrastructures for shelter, its habitability and location.¹¹⁷ The State must facilitate the housing needs of all children and families with children. Water and sanitation rights necessitate ‘a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene’¹¹⁸ to ensure sanitation while for water, the child must have sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.¹¹⁹ The aim of the State should not be to shut down deficient water supplies but to focus on source water protection, water treatment, response to potential contamination and waterborne illnesses.¹²⁰ It must follow conditions for quality and safety of drinking water systems and source up to the deferred point of households- *i.e.* until household plumbing or storage tanks systems.¹²¹ And the State must ensure that it provides everyone with the minimum essential amount recommended by WHO as 50 litres per person per day with 100 litres being the optimal required for full health and in order to prevent disease.¹²²

¹¹¹ A guaranteed human right under Art 25 (1) UDHR & Art 11 (1-2) ICESCR.

¹¹² CESCR/GC/12, paras 6-13.

¹¹³ For example by use of the WHO (2003) Guidelines on Complementary Feeding: Report of the global consultation.

¹¹⁴ Art 11 ICESCR.

¹¹⁵ CESCR/GC/4, para 8.

¹¹⁶ Art 17 UDHR.

¹¹⁷ *ibid.* para 8 & A/HRC/Res 15/8 (2010).

¹¹⁸ Catarina de Albuquerque, Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation (A/HRC/12/24 of 1 July 2009) para 63, 20 Available at http://www.ohchr.org/Documents/Press/IE_2009_report.pdf [Accessed on 23 June 2014].

¹¹⁹ CESCR/GC/15, para 12 (a).

¹²⁰ WHO, The conceptual framework for implementation of the drinking water guidelines.

¹²¹ WHO, Guidelines for drinking water quality 31-32.

¹²² CESCR/GC/15, para 98 and WHO Geneva (2003) ‘Domestic Water Quantity, Service Level and Health’ Executive summary, Table S1.

The right to health as already seen is part of the principle on the child's right to life and survival. It entails access to medical care, provision of adequate medical facilities, primary health care and training of staff, nutritious food and clean and safe drinking water.¹²³ Crucially any barriers to the child's right to access health whether financial, institutional or cultural must be identified and eliminated.¹²⁴

For mental health, the normative framework stresses the necessity of using interventions through health and educational care and family and community involvement in protection of children with mental health problems instead of overly relying on institutionalization (*e.g.* diversionary methods for mentally impaired or affected delinquents)¹²⁵ or medication to treat mental health.¹²⁶ Art 19 of the CRC requires that the State implements all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment and exploitation by anyone. Mental neglect is often ignored by States needing to keep away from intimacy of family relations and autonomy of parents' power over their children. Mental health includes protection from mental abuse or neglect, protection from psychotropic substances and drugs and access to proper mental health care and treatments. Psychological or emotional neglect includes lack of emotional support and love, chronic inattention to the child (by either parent), parents who are constantly unavailable and exposure to domestic and intimate family violence.¹²⁷

Further, the right to health necessitates that protection against all forms of violence extend to homeless or parentless children like street children, who by virtue of being under 18 lack capacity to be on their own. The State as *de facto* guardian must ultimately be responsible for them.¹²⁸ Thus an errant parent who mentally neglects his child must lose his autonomous right

¹²³ CRC/C/GC/15/2013, paras 25-28 & 43-50.

¹²⁴ *ibid.* para 29.

¹²⁵ CRC/C/GC/10/2007, para 22 & 27.

¹²⁶ *ibid.* para 38-39.

¹²⁷ CRC/C/GC/13/2011, para 19.

¹²⁸ CRC/C/GC/13/2011, para 31 & 33.

over the child.¹²⁹ The State can separate him from his family in his best interests and without ‘unlawful or arbitrary’¹³⁰ interference.¹³¹ This is subject to judicial review.¹³² Also severely punishing parents with strict penalties or imprisonment for any abuse or neglect of their child without according them any counselling or efforts to reconcile the two sides may interfere with the child’s mental and normal development.¹³³ He must be allowed to maintain contact with his parent(s)¹³⁴ if feasible as he has a right to identity, to know and be cared for by his parents and to family.¹³⁵ State parties must ensure that they provide the financial and technical means necessary to mobilise resources in the local community to facilitate the development of Primary Health Care.¹³⁶ Other obligations include to diminish infant and child mortality¹³⁷ and provide medical assistance to children with an emphasis on PHC¹³⁸ which includes access to essential medicines and immunisation, health care for expectant (pre-natal) and nursing (post-natal) mothers,¹³⁹ preventive health care¹⁴⁰ guidance for parents, and family planning education and services.¹⁴¹ For adolescents especially young girls, access to full information on their health including reproductive health services and HIV/AIDS must be made available to them while fully respecting their rights to informed consent for treatment, participation and respect for their view.¹⁴² Adolescent mental health must be a major concern of States to ensure they have prompt proper attention and facilities for rehabilitation and treatment to address any psychosocial stress

¹²⁹ Barbara B. Woodhouse ‘Hatching the Egg: From property to personhood: A child-centred perspective on parent’s rights’ (1998) 2 *Georgetown Journal on Poverty Law and Policy* 313 -319 at315. She asserts that the CRC reflects a child centred perspective on the rights of parents viewing the relationship as one of trust, rather than ownership.

¹³⁰ Van Bueren (n58) 79. Meaning that interference must be on the basis of law which must itself conform to law and be reasonable in the particular circumstances.

¹³¹ Art 10 ACRWC & Art 16 CRC.

¹³² Art 9 (1) CRC.

¹³³ Woodhouse (n129) 315-316. She recalls that in 15 year old Anne Frank’s unlawful internment, starvation in the German holocaust, the greatest deprivation and loss of all she suffered was the forcible separation from her parents.

¹³⁴ Art 19 (3) ACRWC & Art 9 (3), CRC. Art 7 guarantees the right of the child to know and be cared for by his parent as far as possible.

¹³⁵ Arts 7 (1)-8 CRC & Art 6 ACRWC.

¹³⁶ Art 14 (2) (j) ACRWC.

¹³⁷ Art 24 (2) (a), CRC and Art 14 (2) (a) ACRWC. Art 12 (2) (a) of the ICESCR specifically requires States to take steps to ensure that it fully realises the reduction of the still-birth rate and infant mortality rate.

¹³⁸ Art 24 (2) b CRC & Art 14 (2) b ACRWC.

¹³⁹ Art 24 (2) d CRC & Art 14 (2) e ACRWC.

¹⁴⁰ For example vaccination programs against the 6 preventable diseases. Also Art 12 (2) c of the ICESCR emphasises the prevention, treatment and control of epidemic diseases.

¹⁴¹ Art 24 (2) f CRC & Art 14 (2) f ACRWC.

¹⁴² CRC/GC/2003/4, para 26 & 31.

as early as possible.¹⁴³ AU member states pledged in the 2001 Abuja Declaration to contribute 15% of their annual budgets to health improvement programs by 2015.

For the right to education¹⁴⁴, the principles of accessibility, availability, acceptability *i.e.* form and content of curriculum, and adaptability must be considered by States in implementing the general human right of everyone¹⁴⁵ to education.¹⁴⁶ The State is encouraged to legislate a minimum age and a fixed term for compulsory schooling linked to the minimum age for formal employment¹⁴⁷ to address high dropout rates. It must consider the value of pre-school education¹⁴⁸ to enable the child to develop confidence knowledge from an early age.¹⁴⁹ It entails both positive and negative obligations *e.g.* legislating against harmful traditions or cultures that may affect the girl child's access and right to education and also building infrastructures or providing quality education.¹⁵⁰ This is what constitutes true free education.¹⁵¹ It is crucial to child poverty because it is a 'multiplier right'¹⁵² that enhances the child's capacities and capabilities to enjoy other rights. The child's right to education requires private actors like the media to promote balanced lifestyles and information.¹⁵³ In 2000, countries declared in the Dakar Framework for Action on EFA to commit 6-9% of their GDPs to education.

2.2.2 The Child's Right to Information

Art 17 of the CRC guarantees the child's right of access to information through mass media to enable his social and cultural development and in furtherance of his mental, physical and social development. This is in addition to his freedom of expression.¹⁵⁴ The ACRWC does not directly

¹⁴³ *ibid.* para 29.

¹⁴⁴ Art 29 (1) CRC.

¹⁴⁵ Art 26 UDHR & Art 13 (2) ICESCR.

¹⁴⁶ CESCR/GC/13, para 6.

¹⁴⁷ Racheal Hodgkin & Peter Newell (ed) *Implementation handbook for the CRC* (UNICEF, 2007) 18-21 at 9.

¹⁴⁸ Van Bueren (n58) 234. She criticised the treaties for making no reference to pre-school education. UNESCO published guiding recommendations on Understanding Pre-School Education (21 Nov 1978) and the International Charter of Pre-School Education.

¹⁴⁹ CRC/C/GC/7/Rev.1 para 5.

¹⁵⁰ Van Bueren (n58) 237. She identifies 3 main problems facing education today *i.e.* stagnation in enrolment, increasing dropout rates and a decline in the quality of education.

¹⁵¹ Katarina Tomasevski (2006) 'The State of the Right of Education Worldwide, Free or Free' xxii.

¹⁵² Julia Sloth-Nielsen & Benyam Mezmur (2007) 'Free education is a right for me: A report on free and compulsory primary education' 47.

¹⁵³ CRC/C/GC/15, para 84.

¹⁵⁴ Art 13 (1) CRC.

guarantee the child's right to information apart from his right to expression which includes his freedom to receive and impart information.¹⁵⁵ This exposes children in African countries to information deprivation in an era of ICT awareness necessary for development knowledge. Although information is the only seeming CPRs stipulated in the Bristol indicators, it is not entirely implementable without implementing other CPR rights like freedom of conscience, privacy of the child or the right to leisure and play also enshrined in the CRC.¹⁵⁶ It is important because it fully grants autonomy to the child as a capable human being. Unless the child is able to think on his own, access and consider information, he will not be able to make a free and informed decision, albeit a correct decision. Lansdown¹⁵⁷ states that the participation rights of the child under Art 12 of the CRC includes 4 levels of involvement of the child in a decision making process: a) to be informed, b) to express an informed view, c) to have that view taken into account and d) to be the main or joint decision maker. The child's right to information therefore assures his right to participate or freely express his views. Information is also an SER right as it forms part of informal education, one of the aims of education.¹⁵⁸ It is different from traditional views of informal education in Africa related mainly to story-telling around a fireplace, conversations with elders, proverbs or plays; in that it involves according the child confidence and space to continuously avail himself the opportunity to learn and gain knowledge on his own. The World Declaration on Education for All¹⁵⁹ recognised that 'everyone has the right to satisfaction of their basic learning needs.' This means education extends to all those whose basic learning needs are not met or satisfied (like children deprived of information) not just those who have not completed formal basic education.¹⁶⁰ The State must in fulfilling this take 'deliberate, concrete and targeted steps' to implement this right.¹⁶¹ Thus States must focus on assisting parents to provide facilities for information at home *e.g.* through affordable

¹⁵⁵ Art 7 ACRWC.

¹⁵⁶ Art 31 CRC & CRC/C/GC/17/2013, para 32. It shows that in order to read books, listen to radio, music or television, every child (including disabled, street children and orphans) must be duly accorded opportunity to play and enjoy leisure time without stress or other limiting factor.

¹⁵⁷ Gerrison Lansdown (2005) *The evolving capacities of the child*, Innocenti Insight; UNICEF Innocenti Research Centre para 1.3 at 6.

¹⁵⁸ Art 29 (1) (a) CRC requires that education must develop the child's personality, talent, mental and physical abilities to their fullest potential.

¹⁵⁹ Goal 3 of EFA Declaration and Framework for Action, 1990 on improving of the quality of education. At http://www.unesco.org/education/information/nfsunesco/pdf/JOMTIE_E.PDF [Accessed on 23 June 2014].

¹⁶⁰ CESCR/GC/13, para 23.

¹⁶¹ *ibid.* para 43.

electricity, licensing of child specific TV and Radio programs or channels. There must be no discrimination of the child and languages of children in different areas should be considered accordingly.¹⁶² It extends an obligation on the media as it refers to all frontiers of communication. The media must educate the child on his rights ensuring that it broadcasts material with social and cultural values.¹⁶³ It must avoid negative reporting which infringes on the child's rights to privacy whether on the child directly or his family.¹⁶⁴

2.3 Normative Framework for the Additional Relevant Factors

2.3.1 Wealth and Social Protection of the Child

In order to protect the child's right of access to social services like health and education, Art 26 of the CRC requires that States provide adequate social protection to children including the right of the child and his caretaker to benefit from social security and social assistance. A reading of this with the principle of the child's right to survival and State's obligation in Art 27 to provide material support for an adequate standard of living suggest that all children may have a direct claim against States even when they are under parental care.¹⁶⁵ The CESC Committee stipulates that family and child benefits in the form of cash grants or social assistance must be provided to assist the child's food, clothing, housing, water and sanitation needs.¹⁶⁶ It was stated that one cannot feed the child while the parents are hungry, so assistance must be granted to them both.¹⁶⁷ Children must be empowered and supported to allow them access to social services easily.¹⁶⁸ The State must ensure social protection measures and strategies do not promote any formal or substantive discrimination.¹⁶⁹ This includes discrimination based on residence or social circumstances *e.g.* homelessness.¹⁷⁰ A specific percentage should be formally allocated for children in national budgets.¹⁷¹ Laws must protect and provide for OVCs, the child's rights to

¹⁶² CRC/GC/2001/1, para 4, 20 & 24.

¹⁶³ *ibid.* para 21.

¹⁶⁴ Detrick (n108 above) 289.

¹⁶⁵ DM Chirwa (n98 above) 94.

¹⁶⁶ CESC/GC/19/2008, para 18.

¹⁶⁷ DM Chirwa (2009) 'Child poverty and children's rights of access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis.' Community Law Centre: University of the Western Cape, 22.

¹⁶⁸ CRC/C (n1104) para 27.

¹⁶⁹ CESC/GC/20/2009, para 38 & 40.

¹⁷⁰ *ibid.* para 34.

¹⁷¹ CRC/C (n104) para 22-23.

property, to live in a family home, to inheritance especially for the girl child,¹⁷² to health insurance and to his custody and maintenance after a family separation. States are required to contribute 0.7% of their GNP¹⁷³ to meet international targets for international development assistance¹⁷⁴ and those States that receive this donor aid should specifically allot and set aside a part for children.¹⁷⁵ International bodies are required to enhance capacity of recipient government to implement child rights based budgeting and ensure that their aid is effectively controlled.¹⁷⁶ Aid conditions that negate or cause harmful impact on the rights of children are discouraged.¹⁷⁷ Children must participate in the budget at all levels.¹⁷⁸

2.3.2 A Child-Centric Culture

States must eliminate (and not just discourage as implied in Art 1 (3), ACRWC) all harmful customs, social and cultural practices that are prejudicial to the health or life of the child or affect his welfare, dignity and normal growth and development.¹⁷⁹ Thus in exercise of their parental rights and cultural rights, parents must ensure they consider their effect on all child rights and principles. Some African traditions still only view the child as a dependant with no voice, only having a duty to respect and obey orders. Those who do so argue that this is why Art 31 (a) of the ACRWC was included in the African version of the child bill of rights to ensure the African tradition of respect for elders and parents at all times was upheld.¹⁸⁰ This would be fine if parents always looked out for their children's best interests in their actions, but sometimes parents do not and they harm the child either internationally or inadvertently. Earlier in the UK similar views prevailed where the view of adults as right and children as wrong (believing that until one reached adulthood, they lacked any moral status to say anything) led to a prevalence of child

¹⁷² Hodgkin (n147 above) 14. That the minimum ages for marriage in relation to capacity to inherit and carry out property transactions must be the same for both boys and girls.

¹⁷³ *ibid.* para 52.

¹⁷⁴ *ibid.* para 52 (a).

¹⁷⁵ *ibid.* para 52 (c).

¹⁷⁶ *ibid.* para 52 (e).

¹⁷⁷ *ibid.* para 52 (f).

¹⁷⁸ *ibid.* para 36.

¹⁷⁹ Art 21 (1) (a) ACRWC. It is a better wider prohibition than Art 24 (3) of the CRC.

¹⁸⁰ Rwezaura, B 'Competing "images" of childhood in the social and legal systems of contemporary sub-Saharan Africa' (1998) 12 *International Journal of Law, Policy and the Family* p.260. He explains that due to market forces, the African culture of obedience and respect for elders has been transformed into silencing the child while he is continually subjected to abuse.

abuse in residential care homes for years.¹⁸¹ However the ACRWC is the same document that requires in its Art 1(1) that all child rights be guaranteed by African States. And as argued by Alston P the use of the words, “appropriate” in Art 5 of the CRC while providing for the right of parents to direct and guide their child, shows that there are boundaries to those rights and responsibilities that must be balanced with the child’s rights and his abilities to exercise those rights on his own.¹⁸² Remembering that child development is not only physical (in rigid biological and brain-cognitive development stages as Piaget puts it) but gradual and influenced by social-environmental factors such as guidance and interaction by parents and teachers whose careful influences on cultural values should be imparted on the child.¹⁸³ One aim of education is to teach cultural and moral values¹⁸⁴ with an emphasis on values. Culture itself must be subjected to constant scrutiny as it is dynamic.¹⁸⁵ International human rights law respects the cultural diversity of people, their unique traditions right to enjoy a cultural life.¹⁸⁶ But it is the State’s obligation to ensure it limits negative cultural values in society.¹⁸⁷ Thus culture must be geared towards developing a respect for one’s own cultural identity, language and cultural values.¹⁸⁸ Art 2 (1) of the UNESCO Universal Declaration on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 emphasises that cultural diversity and expression must not be used to infringe international human rights and freedoms or to limit their scope.

2.4 Conclusion

Thus, it is clearly seen that implementation of a holistic child rights framework that prioritises the child is the most sustainable way for identifying and eliminating child poverty. States must at minimum provide for and implement the child rights principles and the normative standards for protection of the SERs and CPRs of the child, so that judicial and administrative decision makers together with parents and caregivers can adequately protect the child from poverty.

¹⁸¹ Adamson (n20 above) 10.

¹⁸² Phillip Alston ‘The Legal Framework for the Convention on the Rights of the Child’ (1992) 91:2 *United Nations Bulletin of Human Rights: The Rights of the Child*, Geneva.

¹⁸³ Vygotsky (1896 - 1934)’s Social Development (Social Constructivism) See <http://www.learningandteaching.info/learning/constructivism.htm#Vygotsky> [Accessed on 23 June 2014].

¹⁸⁴ CESCR/GC/21, para 26.

¹⁸⁵ *ibid.* paras 11 & 16 (d).

¹⁸⁶ Art 27 UDHR, Arts 13 & 15 ICESCR & Art 22 ACHPR.

¹⁸⁷ *ibid.* para 19.

¹⁸⁸ Art 21 ACRWC & Art 29 CRC.

CHAPTER THREE

CRITIQUE OF UGANDA'S CONSTITUTIONAL AND CHILD RIGHTS FRAMEWORK FOR CHILD POVERTY

3.0 Introduction

Uganda ratified the CRC on 17 August 1990 and the ACRWC on 17 August 1994.¹⁸⁹ It acceded to both the ICCPR and its protocol¹⁹⁰ and the ICESCR¹⁹¹ but not its protocol. It is a member of several other international and regional treaties on human rights. This chapter therefore analyses to what extent Uganda's Constitution¹⁹² and the current main child law, the Children's Act, Cap 59,¹⁹³ recognise and enforce the child rights principles and minimum standards contained in international and regional laws, so as to provide an effective system for addressing child poverty.

3.1 The Constitution of the Republic of Uganda of 1995

The Constitution of the Republic of Uganda of 1995, as amended in 2005, contains the general bill of rights¹⁹⁴ for the human rights of all people in Uganda. This includes children. It is the supreme law of the county, binding on all people and authorities throughout Uganda.¹⁹⁵ It recognises that an individual's fundamental human rights and freedoms are inherent and not granted by the State and therefore they must be respected, upheld and promoted by all government organs and agencies.¹⁹⁶ It clearly points out that Chapter 4 which contains the bill of rights is not the exclusive source of human rights in Uganda and non-inclusion in the

¹⁸⁹ All ratification information available at University of Minnesota, Human Rights Library-Uganda ratification at <http://www1.umn.edu/humanrts/research/ratification-uganda.html> (Accessed on 23 June 2014).

¹⁹⁰ *ibid.* 21 June 1995 and 14 November 1995 respectively.

¹⁹¹ *ibid.* 21 January 1987.

¹⁹² Constitution of 1995 has two amendments; Constitution (Amendment) Act 2005 (or CA 2005) and Constitution (Amendment) (No. 2) 2005 (or CA (2) 2005). Available at <http://www.parliament.go.ug/new/index.php/documents-and-reports/the-constitution> [Accessed on 23 June 2014].

¹⁹³ Children's Act and legislation of Uganda available at <http://www.ulii.org/ug/legislation>.

¹⁹⁴ Chapter 4, Constitution.

¹⁹⁵ Art 2 (1).

¹⁹⁶ Art 20 (1) and (2).

constitutional bill of rights does not prevent other human rights not specifically mentioned from being applicable.¹⁹⁷

3.1.1 Recognition and Guarantee of the Fundamental Principles

The Constitution reaffirms the principles of international law for the equality of all persons and freedom from discrimination.¹⁹⁸ It reaffirms that equality shall be in all spheres of life including political, economic, social and cultural life.¹⁹⁹ This is an unequivocal protection and it is commendable that the Constitution further expressly prohibits discrimination based on tribe, social or economic standing, political opinion,²⁰⁰ considering the many different tribes, politically aligned areas and a big variance in economic standing in different households in Uganda today which influence child poverty. It also calls for measures to ensure balanced development of both rural and urban areas of Uganda, taking special measures in least developed areas.²⁰¹ The country acceded to the CERD covenant²⁰² and is also bound by prohibition of ethnic (or tribal or clan) discrimination.

Secondly, the Constitution generally protects the right to life of every person²⁰³ which would include the child, but it frames this in a prohibitive way *i.e.* prohibiting the death²⁰⁴ penalty or termination of the life of an unborn child.²⁰⁵ It does not provide a positive direct guarantee of the right to life. This is the main critique as it may not be wide enough²⁰⁶ to encompass all aspects of child survival *e.g.* rights to quality standard of living, health, food, water all necessary in implementing a holistic child rights approach to child poverty. However it directs that citizens have a duty to protect children and vulnerable persons against any form of abuse, harassment or ill-treatment²⁰⁷ therefore indirectly protecting the child's right to survival.

¹⁹⁷ Art 45.

¹⁹⁸ Art 21.

¹⁹⁹ Art 21 (1).

²⁰⁰ Art 21 (3).

²⁰¹ National Objectives and Directive Principles for State Policy, Objectives XII (ii and iii), Constitution.

²⁰² 21 November 1980.

²⁰³ Art 22 (1).

²⁰⁴ Art 21 (1).

²⁰⁵ Art 21 (2).

²⁰⁶ See for example Art 11 of the SA Constitution, 1996 which states, "Everyone has the right to life."

²⁰⁷ Art 17 (1) (c)

Thirdly, it generally guarantees everyone's right and freedom of speech and expression.²⁰⁸ It also requires that the State involve people in the formulation and implementation of development plans and programs which affect them.²⁰⁹ This implies that children must be included in development of laws, policies and plans which affect them. It guarantees the rights of minorities to participate in decision-making processes, requiring consideration of their views and interests in making of national plans.²¹⁰ There are minority groups of children like refugees and minority tribes like the Batwa and children from northern regions of Uganda who are often left isolated.

Fourthly, there is no direct guarantee in the Constitution²¹¹ of the principle of the best interests of the child applicable in all actions affecting the child in international law. However it qualifies the child's right to know and be cared for by his parents or caregivers as subject to laws enacted in the child's best interests.²¹² This is only one use of the normative principle balancing parental and State autonomy. It protects the right to family²¹³ - recognised as the natural and basic unit of society²¹⁴ - and reaffirms the right of the child to family and parental care and upbringing²¹⁵ by categorically stating that the child may not be separated from his family or persons entitled to bring him up against their will, except in accordance with the law.²¹⁶ It is implied that such a law's purpose must consider and be in line with the best interests of the child.

3.1.2 Protection of the Child's Seven Basic Needs

There is no direct protection of the SER rights of the child to nutrition, water, sanitation, shelter and health in the Constitution. Instead there is indirect protection conferred in Art 34 which provides that, "no child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs."²¹⁷ This provision may

²⁰⁸ Art 29 (1) (a).

²⁰⁹ Objective X.

²¹⁰ Art 36.

²¹¹ As compared to Art 53(2), Kenyan Constitution Rev 2010 or Art 28 (2), SA Constitution, 1996 which both directly provide that a child's best interest are of paramount importance in every matter concerning the child.

²¹² Art 34 (1).

²¹³ Art 31.

²¹⁴ Objective XIX.

²¹⁵ Art 31 (4).

²¹⁶ Art 31 (5).

²¹⁷ Art 34 (3).

seem applicable to only situations similar to the *Gillick* case²¹⁸ or where a Seventh Day Adventist child's parents might refuse blood transfusion or medical treatment for their sick child based on their religion. However, Art 34 potentially offers greater protection to the child including all his SERs and CPRs, specifically where it is interpreted as more than just a prohibition against discrimination and as entailing much more than the duty to respect this right.²¹⁹ The use of the words, 'no child shall be deprived' and the words, 'or other beliefs' support a wider application and meaning of this article. And 'any person' implies a far reaching obligation on everyone (including the State and public bodies) to accord the child his health and education rights and any other social or economic benefits like information or social protection.

The Constitution does spell out SERs objectives of the State in national policy and it does so in a general way applying them to all Ugandans, thus including children. That is, "the State shall endeavour to provide social justice and economic development for all Ugandans by ensuring that they enjoy rights, opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security, and pension and retirement benefits".²²⁰

And it recognises the normative provision for State assistance to parents who are the primary caregivers of children by requiring that the State should promote energy policies that will ensure people's basic needs are met.²²¹ This may be a vital policy tool for example where fuel and cooking gas impact the transportation and preparation of food. Many Ugandans use environmentally unsafe firewood or charcoal which produces heavy fumes which endanger the health of children.

The objectives also require that the State: take practical measures to ensure provision of basic medical services to the population²²² and promote a good water management system at all

²¹⁸ *Gillick v West Norfolk & Wisbech Area Health Authority & Department of Health & Social Security* (1985) It was held that a child under 16 could not access medical treatment that required any touching of his body without parental consent.

²¹⁹ DM Chirwa (n98 above) 103.

²²⁰ Objective XIV.

²²¹ Principle XXVII (ii).

²²² Objective XX.

levels²²³; take appropriate steps to encourage people to (a) grow and store adequate food, (b) establish national food reserves and (c) encourage and promote proper nutrition through mass education and other appropriate means.²²⁴ It guarantees everyone's right to a clean and healthy environment²²⁵ that is managed and preserved in a way that promotes sustainable development.²²⁶

It protects the right of the child to mental health and normal development by imposing a wider duty on every citizen to protect children from abuse, harassment or ill-treatment.²²⁷ It introduces the notion of responsible parenthood²²⁸ implying that parents cannot do whatever they wish with their children in line with the normative obligations. It prohibits any work or social and economic exploitation of a child under 16 years or work that may be harmful to his health or his physical, mental, spiritual, moral or social development.²²⁹ It provides two general and direct prohibitions against torture, cruelty or inhuman degrading treatment or punishment against any person²³⁰ or enforcing slavery, servitude or forced labour against any person.²³¹ Both these prohibitions are non-derogable human rights.²³²

The Constitution generally guarantees everyone's right to education.²³³ It specifically guarantees the child's right to basic education making it a dual responsibility of the State and parents.²³⁴ This is commendable and in line with the normative framework on access and availability of education for every child as it acknowledges the principle that although parents are primary caregivers of a child's education, the State is obliged to assist them in implementing it. The Constitution offers more direct additional protection of this right by prohibiting

²²³ Objective XXI.

²²⁴ Objective XXII.

²²⁵ Art 39.

²²⁶ Art 245.

²²⁷ Art 17 (1) (c).

²²⁸ Objective XXIX (b), (c) and (d).

²²⁹ Art 34 (4) - (5).

²³⁰ Art 24.

²³¹ Art 25 (1)-(3).

²³² Art 44 (a) and (b).

²³³ Art 30.

²³⁴ Art 34 (2).

deprivation of education for any child based on any religious or other beliefs.²³⁵ It falls short of explicitly mentioning that this includes cultural beliefs and customs that interfere with the child's right to education. Secondly, it explicitly prohibits engaging the child in any work or employment that may interfere with their education.²³⁶ The main critique is that it limits this provision to only children under 16 years old.²³⁷ This encourages school absenteeism and high school dropouts in favour of farm work, housework, marriage or other forms of child exploitation common in children aged 16 – 18 years *i.e.* just before senior high school or advanced level required to get into University. Although the Constitution does not guarantee the quality of education within its provisions, it directs government policy on education. The State must promote free and compulsory basic education,²³⁸ take measures that afford every citizen equal opportunity to attain the highest educational standard possible.²³⁹

Apart from protecting the right to access information that is in the hands of the State²⁴⁰, there is no direct guarantee of the right to information²⁴¹ as stipulated in the child poverty indicators. However one may rely on Art 19 which guarantees generally the right of freedom of expression and participation of everyone, a necessary ingredient for enforcing the child's right to information. And since the right to information is a part of the right to informal education, the provisions of the Constitution requiring the State to 'afford opportunity to attain the highest education standard possible.'²⁴² The word 'opportunity' implies that the child must have access to all relevant education and words, 'highest standards possible' imply that other sources of knowledge *e.g.* informal education gained through exercise of his right to information at home is included and not just formal education in school. Moreover parents cannot prohibit the child from accessing media sources of information at home as it could be tantamount to depriving them of education based on their beliefs if proved.²⁴³ The State is required to promote public awareness of the Constitution by distributing it widely in various Ugandan languages and

²³⁵ Art 34 (3).

²³⁶ Art 34 (4).

²³⁷ Art 34 (5).

²³⁸ Objective XVIII (i).

²³⁹ Objective XVIII (ii).

²⁴⁰ Art 41.

²⁴¹ See Art 16 (1) (b) SA Constitution.

²⁴² Objective XVIII (ii).

²⁴³ Art 34 (3).

regularly transmitting and publishing programs through the media.²⁴⁴ This means that the duty extends to the media to have child centric programs and child watershed (viewing) times. And in case a child uses a computer at home or a telephone in exercise of his right to information, his communications and use are protected as part of his privacy.²⁴⁵

3.1.3 Provisions on the Additional Factors

There is no direct or specific provision to provide social protection to the child but there is a general guarantee of everyone's right to own property either individually or in association with others²⁴⁶ in line with international law. Compulsory deprivation of the interest of any person in their right over property of any description (which could be by way of an equitable law) is therefore expressly prohibited by the Constitution.²⁴⁷ It is only allowed in the interests of defence, public safety, public order, public morality or public health or under a fair law guaranteeing fair and adequate compensation and redress through the law.²⁴⁸ This means practices like dispossessing illegitimate children, women or girl children from their family property or inheritance due to discriminatory customs or any other reasons is not allowed under the Constitution. The Parliament is required to enact fair and expeditious laws for the administration of estates of deceased persons ensuring a decentralized process that is accessible and provides protection to all beneficiaries.²⁴⁹ Further, the State is required to facilitate rapid and equitable development by encouraging private initiative and self-reliance. For children especially older children (15-18 years), this would necessitate availing them with opportunities to develop and be self-reliant.²⁵⁰ There is no provision for the legislating of a percentage for children as recommended by the CRC Committee. It however requires accountability by the government and holds every Permanent Secretary or Accounting officer accountable for any funds in his ministry or department.²⁵¹ And Parliament is mandated to monitor all expenditure of public funds although it is not clear how ordinary citizens and children are involved to ensure transparency.²⁵²

²⁴⁴ Art 4 (a) and (b).

²⁴⁵ Art 27 (2).

²⁴⁶ Art 26 (1).

²⁴⁷ Art 26 (2).

²⁴⁸ Art 26 (2) (a) and (b).

²⁴⁹ Art 247.

²⁵⁰ Objective IX.

²⁵¹ Art 164 (1).

²⁵² Art 164 (3).

Moreover it protects public officers from victimisation for having performed duties under the Constitution faithfully thus leaving no clear route to balance and take action against those who do not.²⁵³ It directs government to take measures to expose, combat and eradicate corruption and abuse or misuse of power by politicians or public officers.²⁵⁴ Note that social protection of vulnerable groups of children like immigrants and refugee children, are protected under Art 11 which provides for the right of any child, below five years of age whose parent are not known to be presumed and registered as a citizen of Uganda by birth.²⁵⁵ However Art 12 (1) (a) (ii) waters down these identity rights by exempting children of refugees from acquiring this citizenship by registration. This affects the identity rights and protections given to child refugees living in Uganda and effectively may render them stateless and impact service delivery and rights enforcement to them.²⁵⁶ However child rights still apply to them irrespective and without discrimination as long as they are on a nation's geographical territory.

Also the Constitution requires that the State ensure affirmative action to redress imbalances for marginalised groups who are marginalised whether on the basis of gender, age, disability or any other reason due to history, tradition or custom²⁵⁷ by use of the EOC.²⁵⁸ It commendably guarantees the rights and special protections of OVCs²⁵⁹ and expressly guarantees the rights of disabled persons to respect and human dignity.²⁶⁰ Both the State and society are required to take appropriate measures to ensure the disabled realise their full mental and physical potential.²⁶¹ This means that the mentally disabled are protected. Note that the States must make policy to protect the aged so as to ensure reasonable provision for their welfare and maintenance.²⁶² It guarantees protection to the pension of public officers to ensure that they are prompt and easily

²⁵³ Art 173.

²⁵⁴ Objective XXVI (iii).

²⁵⁵ Art 12. Note that art 15 which previously prohibited citizens by registration to remain citizens of another country was amended in 2005 to allow dual citizenship.

²⁵⁶ A legal problem has arisen whereby Rwandese refugee families and their children who were born in Uganda may be rendered stateless upon invocation of the cessation clause. See UNHCR (2011) 'Submission on the Status of Refugees in Uganda' 3

²⁵⁷ Art 32 (1).

²⁵⁸ Art 32 (2).

²⁵⁹ Art 34 (7).

²⁶⁰ Art 35 & Objective XVI.

²⁶¹ Art 35 (1).

²⁶² Objective VII.

accessible.²⁶³ This is important as increasingly in some districts in Uganda, it is the aged looking after young children due to parental death or intermittent weakness from malaria and HIV/AIDs.

To achieve the social protection of children, the Constitution recognises the importance of enhancing women's status as the mothers as primary child bearers and caregivers requiring that women be accorded full and equal dignity with men,²⁶⁴ to provide facilities and opportunities necessary to enhance their welfare and realise their full potential and advancements.²⁶⁵ They must be equally treated with men including in access to opportunities in political, economic and social activities.²⁶⁶ The State is required to protect women's rights in consideration of their unique status and maternal functions in society.²⁶⁷ This necessarily includes sexual and reproductive rights of young girls and young mothers protected in international law. Specifically it guarantees the rights of widows together with widowers to inherit the property of their deceased spouses and it fundamentally enjoins (the word used is Parliament 'shall') the Parliament to make appropriate laws for their specific protection.²⁶⁸ Both children and women's right to property is guaranteed as already seen by prohibiting cultures that dispossess them of their interests.²⁶⁹ However the Constitution still does not provide for registration of title for informal land tenure systems like customary tenure (the largest system of land ownership in Uganda) whose customs for ownership and transmission of property are known to be discriminatory against women and girl children.²⁷⁰ The Land Policy 2013 as shall be seen attempts to correct this. It however directs that due to the significant role women play in society,²⁷¹ they are entitled economic rights to working conditions that ensure that they work under satisfactory, safe and healthy conditions²⁷² with equal payment for equal work without discrimination.²⁷³ It protects the rights of women as primary caregivers and bearers of children

²⁶³ Art 250 (3).

²⁶⁴ Art 33 (1).

²⁶⁵ Art 33 (2).

²⁶⁶ Art 33 (4).

²⁶⁷ Art 33 (3).

²⁶⁸ Art 31 (2).

²⁶⁹ Art 26.

²⁷⁰ Art 237 (3).

²⁷¹ Objective XV.

²⁷² Art 40.

²⁷³ Art 40 (1) b.

by providing for employer protection of female workers during and after birth for mothers.²⁷⁴ Uganda acceded to the CEDAW²⁷⁵ and is therefore bound by its provisions.

While for provision for a child centric culture, the Constitution categorically declares its supremacy²⁷⁶ over any custom that is inconsistent with its provisions. It prevails over such inconsistent customs²⁷⁷ which shall be void to the extent of the inconsistency. Also, while it recognises the right of everyone to belong to, enjoy, practice, profess or promote their culture, tradition or religion *etc.* a full reading of the Constitution implies that this must be in community with others²⁷⁸ and in line with Constitutional duty of responsible parenthood and harmonious living of citizens.²⁷⁹ Secondly, it directs that cultures and customs must have values consistent with the fundamental human rights, freedoms and human dignity of all people.²⁸⁰ Thus the State must promote and preserve only those cultural values and practices which enhance the rights, dignity and well-being of Ugandans.²⁸¹ Further, other constitutional provisions indirectly condition the right to culture *e.g.* if it is a belief that deprives the child of medical treatment, education or any social or economic benefit;²⁸² a culture, custom or tradition against the dignity, welfare or interest of women or undermining their status;²⁸³ a practice of the freedom of religion in a manner that is inconsistent with Constitution;²⁸⁴ a custom or tradition that is given as a reason for dispossessing anyone of property or their interest in it;²⁸⁵ a culture, tradition or religion that subjects a person to torture, cruel, inhuman or degrading treatment (like neglect, abuse, FGM) or punishment (like excessive corporal punishment);²⁸⁶ or a culture, tradition or religion that is discriminatory on the basis of a person's tribe, creed, ethnic origin, religion, social or economic standing, or disabilities.²⁸⁷ Take note that the constitutionally restored

²⁷⁴ Arts 40 (1a) and 40 (4).

²⁷⁵ 22 July 1985.

²⁷⁶ Art 2 (1).

²⁷⁷ Art 2 (2).

²⁷⁸ Art 37.

²⁷⁹ Objective XXIX (b), (c) and (d).

²⁸⁰ Objective XXIV.

²⁸¹ Objective XXIV (a).

²⁸² Art 34 (3).

²⁸³ Art 33 (6).

²⁸⁴ Art 29 (1) (c).

²⁸⁵ Art 26 (2) (a).

²⁸⁶ Art 24.

²⁸⁷ Art 21 (2) and (3).

traditional and cultural leaders and institutions are liable to be sued.²⁸⁸ It would seem therefore that where cultures or traditions that infringe human rights abide from or are promoted by such institutions, those institutions and leaders can be sued in courts of law.

3.1.4 Enforcement of Constitutional Rights

It is notable that the Constitution limits the enjoyments of human rights in Chapter 4 where that enjoyment prejudices the fundamental or other human rights of another or in the public interest.²⁸⁹ Public interest must not limit the human rights and freedoms guaranteed in the Constitution beyond what is demonstrably justifiable in a free and democratic society and what is provided for in the Constitution.²⁹⁰ The Constitution is enforceable directly through the Constitutional Court of Uganda where it constitutes a reference or involving interpretation of a constitutional question including a law, custom or Act of parliament alleged to be inconsistent with the Constitution.²⁹¹ Human rights guaranteed therein are enforceable by civil suit in the court hierarchy starting with the High Court²⁹² where one may bring any claim to allege a violation or infringement of any of the constitutional rights and freedoms²⁹³ and may seek compensation from the court.²⁹⁴ A next of kin, a friend, an NGO or any other person or organisation have *locus standi* to sue on behalf of another person or group whose human rights are being violated or against their violation.²⁹⁵ One may sue the government for constitutional breach by serving the Attorney General.²⁹⁶ The Constitutional Court whose decision is appealable to the Supreme Court is proactive in the interpretation of international human rights instruments to protect human rights, especially for marginalised women and girls in Uganda.²⁹⁷²⁹⁸ Other institutions like the Parliament and the Human Rights Commission are

²⁸⁸ Art 246 (3) (a).

²⁸⁹ Art 43 (1).

²⁹⁰ Art 43 (2) (c).

²⁹¹ Arts 137 (1), (3) and (5).

²⁹² Art 139 (1). Also see Arts 14 and 33, Judicature Act, Cap 13.

²⁹³ Art 50.

²⁹⁴ Art 50(1).

²⁹⁵ Art 50(2).

²⁹⁶ Art 250 (2). See New Vision, "Govt sued over nodding disease" May 29, 2012.

²⁹⁷ See *Law and Advocacy for women in Uganda V Attorney General* Constitutional Petition No. 8 of 2007 banning the custom of FGM. *Uganda Association of Women Lawyers & others V The Attorney General* Const. Petition No.2 of 2003 declaring sections of the Divorce Act unconstitutional and *Law and Advocacy for Women in Uganda V Attorney General* Constitutional Petitions No 13 of 2005 and 05 of 2006 declaring discriminatory sections of the Succession Act unconstitutional.

mandated to protect human rights. However it is not clear how the Parliament, although it has a Human Rights Committee (and a Human Rights Checklist²⁹⁹) ensure unequivocal and constant participation of children in child rights issues at that level. The Human Rights Commission established as an independent and autonomous body mandated to take complaints, make recommendations to government, promote awareness and monitor human rights compliance by the government,³⁰⁰ was once criticised for not being fully independent and paying more attention to CPRs than SERs.³⁰¹ The Constitution³⁰² provides for decentralisation³⁰³ through LCs in provision of social services to the people. However LCs were once criticised as being corrupt, discriminatory and guilty of violations of both the CPRs and SERs of the people.³⁰⁴ Citizens are rarely involved in the protection of human rights leaving all the work to NGOs and civil society who are limited in knowledge of the people and may be unable to reach all areas effectively. A citizen may demand a referendum from the Electoral Commission on any issue as long as it does not affect the fundamental human rights and freedoms in Chapter 4.³⁰⁵ The Law Reform Commission is constitutionally mandated to assist Parliament by regularly publishing reports.³⁰⁶ Other duties lie with the police³⁰⁷ required to preserve law and order and the National Planning Authority required to develop policies for the government (in line with the Constitutional directives),³⁰⁸ a duty it shares with the Cabinet.³⁰⁹ And the AG³¹⁰ who advises government on

²⁹⁸ A more recent petition on maternal mortality was rejected by the court only because it was brought under the wrong provision of the law *i.e.* as an original civil suit against the government in the Constitutional Court which only handles interpretation questions in its original jurisdiction and other matters by way of its appellate jurisdiction. See *CEHURD & 3 Others vs. Attorney General*, Constitutional Petition No 16 of 2011 at <http://www.ulii.org/ug/judgment/constitutional-court/2012/4> [Accessed on 23 June 2014].

²⁹⁹ See http://www.parliament.go.ug/new/images/stories/hr_checklist_13.pdf

³⁰⁰ Arts 51, 52 (1) (a), 53 (2) (b) – (c) & 54.

³⁰¹ James Matshekga 'Toothless Bulldogs? The Human Rights Commissions of Uganda and South Africa: A comparative study of their independence' (2002) 2 *Afr. Hum. Rts. L.J.* 68-91 at 74

³⁰² Objective II (iii) & Art 176 (2) (b).

³⁰³ Ensures that each district is a unit run and governed by its own local government. According to first schedule to the Constitution amended in CA (2) (2005), there are 75 districts in Uganda.

³⁰⁴ Joseph Oloka-Onyango (2007) 'Decentralisation without Human Rights? Local Governance and Access to Justice in Post-Movement Uganda' Working paper No. 12/2007, HURIPEC 1-49 at 26-28.

³⁰⁵ Arts 255 (1) & (4) (a), CA 2005.

³⁰⁶ Art 248 (2).

³⁰⁷ Arts 212 (a) & (b)

³⁰⁸ Art 125.

³⁰⁹ Art 111 (2).

³¹⁰ Arts 119 (4) (a) & (b).

laws or conventions and the parliamentary committees established by the CA 2005³¹¹ may be lobbied for child rights advocacy.³¹²

3.2 The Children's Act of Uganda, Cap 59

The Children's Act of 1997 (CA), the object of a draft Children's Amendment Bill since November 2011 (the Bill), does not offer many greater protections to the child as the Constitution tries to in line with international law. It essentially only outlines the child's right to leisure and play as the only direct right granted to the child in the Act. It tries to include the other rights by essentially stating that all rights contained in the CRC and the ACRWC are applicable with appropriate modifications to suit the circumstances in Uganda³¹³ but this is extremely inadequate and an indirect denial of the child's acknowledged rights and status in international law. Secondly, it does not unequivocally provide protection of the fundamental principles of child rights *i.e.* equality and non-discrimination, best interests and respect for the views of the child, the child's right to survival and to highest attainable standard of health, all necessary for a holistic approach to addressing child poverty. This is a major weakening factor of the Act previously lauded as one of the original specialised child rights legislation in Africa³¹⁴ to address child poverty. Further the fact that the governing principles according to the Act are set out in a Schedule³¹⁵ is problematic because the authoritativeness of the provisions in the schedule is impliedly weaker than if they were placed as independent provisions within the text of the Act.

The main principle as stipulated in the Schedule is that the child's welfare shall be the primary consideration of the State, court or other authority or person when making any decision that affects either the upbringing of the child or when dealing with the child's property.³¹⁶ Although it is commendable that welfare of the child is recognised as the paramount consideration, it is below the international standard which requires consideration of the best interests of the child after having accorded him participation rights. This sort of defeats the

³¹¹ Art 90.

³¹² Also Uganda parliamentary forum for children established in the 7th parliament 2001-2006 <http://www.parliament.go.ug/new/index.php/members-of-parliament/parliamentary-fora/uganda-parliamentary-forum-for-children-upfc>

³¹³ Para 4 (c) First Schedule.

³¹⁴ Julia Sloth-Nielsen et al (2009) 'Child friendly laws in Africa' African Child Policy Forum.

³¹⁵ Section 3 & First Schedule.

³¹⁶ Para 3 (a), First Schedule.

purpose of the Act in so far as enhancing child rights recognition and protection. Clause 5 of the Bill proposes to replace altogether section 3 of the Act with a new provision. However there is actually no change in the content of the provisions in the First Schedule to the Act and is a mere transfer of the whole schedule as an insertion in the Act. It still recognises child welfare (usually misunderstood to extend only to SERs) as the paramount consideration instead of all the four fundamental child rights principles. And the guiding principles for determining welfare as contained in paragraph 3 of the Schedule may confuse ordinary persons on how they are supposed to be assessed especially since they do not explicitly refer to the important mandatory principle for participation of the child at all times or respect for the best interests principle. It only alludes that regard should be had to the child's ascertained feelings and wishes, emotional and physical needs among others.

The Bill introduces the principles for recognition of the right to non-discrimination and respect for the views of the child, but conditions and subjects their observance to provisions under the Act.³¹⁷ This is still below the international standard and is not unequivocal protection of the fundamental principles of child rights.

Just like in the Constitution, there is no clear stipulation of the principle of best interests of the child required to be considered in all actions affecting the child whether by parents, the State and non-State actors. Instead section 4 (2) mentions it as a requirement only where a competent authority is considering separation of the child from his parents.

The Act falls short of the international framework for non-discrimination of the child. Section 5 (2) states that 'any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.' Moreover, section 5 (2) directs to the effect that only those children under the custody of someone, have a right to be protected from discrimination, violence, abuse and neglect by the person having custody of them. This is below the established normative framework guaranteeing equality of all children including refugee and street children.

³¹⁷ Clause 4, proposed Art 5A (a) and (b).

The CA provides for some SERs of the child being: education and guidance³¹⁸, immunisation³¹⁹, adequate diet³²⁰, clothing³²¹, shelter³²², and medical attention.³²³ But these are only recognised and protected as under the duty of a parent, guardian or any other person having custody of a child (*e.g.* in care of wardens or remand homes³²⁴) to maintain the child. The phrasing of the rights of the child in such a manner causes three problems. First, it ignores the normative framework for a first call for children in providing SERs effectively promoting a view of the child as a second hand recipient of human rights. This goes against the autonomous principle and basic human rights instruments like the UDHR, ICESCR and ICCPR which guarantee without discrimination the SERs and CPRs of each and every human being regardless of age or capacity. Secondly, it appears to take away all responsibility from the State in respect of all the child's SERs only imposing the primary duty on parents to look after the child. International law requires that States must assist parents in that duty and not just in relation to the incapacitated parents or care for homeless or parentless children, but also by providing jobs, facilities, infrastructure and social support structures and economic protection to facilitate child rights and family duties. Thirdly, because the CA does not separately and clearly provide for all the SERs directly for all children in Uganda, it runs the risk of ignoring the needs of children without parental care or custody *e.g.* parentless or homeless children like child headed households, orphans, street children, refugee children, IDPs among others. This leaves such groups of vulnerable children out in the cold and open to physical neglect, mental and physical abuse and all forms of exploitation since they would engage in any sort of work to survive and care for themselves. Even though the Act provides that parental responsibility may be passed on to relatives, wardens of approved homes or foster parents where both a child's natural parents are deceased³²⁵ this does not cover neglect by an absentee, neglectful or incapacitated (not deceased) parent, nor does it fully clarify that the sustenance rights of the child in section 5 (1) are the primary responsibility of any alternative caregiver.

³¹⁸ Section 5 (1) a.

³¹⁹ Section 5 (1) b.

³²⁰ Section 5 (1) c.

³²¹ Section 5 (1) d.

³²² Section 5 (1) e.

³²³ Section 5 (1) f.

³²⁴ Section 59.

³²⁵ Section 6 (2).

The Act only expressly recognises child's right to participation in sports, cultural and artistic activities.³²⁶ This is very restrictive of the crucial and wide fundamental right of the child to participate specifically required in all actions as guaranteed in international law be it budget processes or law reform.

There is an attempt to extend the rights of the child in the CA to all children including homeless children or child-headed households through the stipulation that where it appears to a police officer or a PBSWO, that a child in their area is open to suffer potential or actual significant harm, that officer may remove the child and take him into 48 hour maximum protection in a place of safety, once he has notified the secretary for children's affairs at the LC level.³²⁷ This is still insufficient and below minimum standards as it dilutes such children's rights by leaving it open to the person who placed the child under emergency protection to decide whether it is necessary to get care for the child.³²⁸

Apart from the guarantee of the child's right to education and guidance while under parental maintenance or custody, there is no provision in the CA on the child's right to information, expression, conscience or any other traditional CPR rights. The Bill proposes to recognise the child's right to information, but does so inadequately subjecting it to the provisions of the Act and not clarifying what the right contains.³²⁹

It protects the right of child to mental health care by imposing a dual duty on parents and the State to assist children with disabilities.³³⁰ This includes mental disabilities. It requires an early assessment of the type of disability that the child has from an early stage and in line with international law requires the rehabilitation and education of such children. The Bill proposes to extend this to children of special needs making it an offence to abuse or exploit them.³³¹

³²⁶ Clause 4 (a), First Schedule.

³²⁷ Section 37 (1-2). CA.

³²⁸ Section 37 (4), CA.

³²⁹ Clause 4, proposed Section 5A (c).

³³⁰ Section 9, CA.

³³¹ Clause 9, Section 9.

The CA outlaws social or customary practices that are harmful to the child's health.³³² Section 8 of the Act specifically prohibits the employment or engagement of children in any activity that may be harmful to their health, education, mental, physical or moral development. This implies mostly activities and yet issues like parental mental neglect may include no engagement or specific activity in ignoring or mistreating the child. Commendably the Bill proposes to resolve this by making exploitation wider and including emotional and mental neglect in its definition of child neglect.³³³ The CA may indirectly protect the child who is at home from mental neglect and abuse by his parent(s) or custodian by allowing the removal of the child from them in the child's best interests and into substitute care *e.g.* by a care order by the FCC to place him in the care of a warden an approved home or foster parents.³³⁴ Any authorised person or a PBSWO may apply for this care order.³³⁵ Notwithstanding Section 157 of the Penal Code Act, Cap 120 of 1950 (PC) of Uganda criminalises parental neglect of the child but only in so far as they refuse or neglect to provide a child of tender years³³⁶ with food, clothing or bedding. This falls short as it ignores all other children and also emotional neglect or cruelty included in Art 25 of the CRC. It only mentions that the parent commits a misdemeanour (which means according to section 24 of the PC, one faces imprisonment of up to 2 years) but does not provide clear stipulations on how punishment is to be carried out to ensure the child's right to family relations are fully considered. However section 49 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 commendably recommends that where an offender is a primary caregiver, the court should consider a non-custodial sentence, the best interests of the child, child individuality and personality and whether the child would be adequately cared for among others. The law however does not stress that counselling of both the parent and the child and other affected family members must be done first as a matter of priority to guard the sanctity of the family and child's right to grow up in a normal, smooth and happy family environment.

There is the probability of misuse of section 167 of the PC which calls for the arrest of any person wandering about to cause the indiscriminately arrest and confining of street children as idle and disorderly people or vagabonds instead of referring them to counselling or mental health

³³² Section 7.

³³³ Clause 3, Section 1(b).

³³⁴ Section 27 (1).

³³⁵ *ibid.*

³³⁶ Child under 12 – 14 years according to precedent and various statutes in Uganda.

care and rehabilitation. The CA provides for approved homes for children in lieu of imprisonment, but this is misused by State agencies who hurriedly commit and institutionalise children almost indefinitely in overcrowded centres with no proper care or facilities. The Bill proposes to rectify this by proposing that placement in an approved home should be a last resort, short and temporary, taking into account family reunification considerations.³³⁷ The Bill proposes for a comprehensive new Section 5B to protect all children from all possible forms of violence including child sacrifice, FGM, child marriages and trafficking and requires mandatory reporting on this from lawyers, doctors, teachers and social workers.³³⁸

The CA implements the international recommendation for use of diversion in handling child juveniles to ensure their continued normal mental and physical development by granting the police powers to hear and dispose of their cases without formal hearing.³³⁹

Note that protection of the child from abuse and exploitation is only possible if there are laws clearly protecting childhood and status of all children under 18. The Uganda Citizenship and Immigration Control Act Cap 56 requires that every child is registered at birth so as to ensure clear determination of minimum age while the Births and Deaths Registration Act, Chapter 309 of Uganda provides that a child's birth shall be registered within three months of birth.³⁴⁰

Also even though the Constitution³⁴¹ stipulates that the minimum age of marriage for both men and women in Uganda shall be 18, both the CA and the Bill do not provide for a minimum age of marriage. Moreover the existence of gravely outdated discriminatory marriage laws in Uganda pitying the rural girl likely to get customarily married earlier than 18 years³⁴² against the urban educated girl likely to get married formally and later under church is illegal in international law.³⁴³ What is problematic with the marriage regime is it appears to allow child marriages on consent of a parent. It clearly discriminates against children and children's rights

³³⁷ Section 58 (1), Clause 17, CA Bill.

³³⁸ Clause 13.

³³⁹ Section 90.

³⁴⁰ Section 7.

³⁴¹ Art 31(1).

³⁴² Section 11 (1) and (2), Customary Marriage (Registration) Act Cap 248 (1973).

³⁴³ Section 17, Marriage Act, Cap 251 (1904).

based on sex, marriage type, religion or culture and as evidenced by three other separate Acts³⁴⁴ which regulate marriage for Hindus, Muslims and Africans concluded within each religion/caste/tribe's traditions. This type of discriminatory practice is exactly what international treaties have prohibited. So far all efforts to harmonize the general law on marriage are deadlocked³⁴⁵ for over three decades in Parliament due to strong cultural, customary and patriarchal society in Uganda. Uganda's Penal Code criminalises child abduction for sexual intercourse, indecent assault with or without the consent of a girl under 18³⁴⁶ to protect adolescent's mental and sexual health. But there is no specific legal provision protecting the child's right of access to reproductive health services like condoms³⁴⁷ as recommended.

There is no direct guarantee in the Act of right of the child to social protection including equitable inheritance rights, insurance and grants among others. The Bill contains a recommendation to the government to allocate sufficient resources for the child's SER and CPR rights which is not sufficient.³⁴⁸ Despite the fact that laws that are discriminatory against women and girls were repealed by the Constitutional Court they are still in existence on the Statute books themselves like the Succession Ordinance of 1906 as amended in 1972, Cap 162 (or SA). Section 27 of the SA only recognises male intestacy over female intestacy, provides for 15% inheritance by a widow as opposed to 100 percent inheritance by a widower. While section 44 read with section 2 (n) (i) of the SA indirectly accord preference to male lineage over female lineage for guardianship of a child who loses his parent(s). Recently the ULRC³⁴⁹ released a succession report to parliament recommending comprehensive amendments on this and there is a Succession Amendment Bill 2011 which has not yet been passed. Other issues like extending protection to unmarried partners through the legal recognition of presumption of marriage are not

³⁴⁴ See <https://www.ursb.go.ug> Civil Marriage Registration (accessed on 23 June 2014) and www.ulii.org/ug/legislation/consolidated-act/252 (accessed on 23 June 2014)

³⁴⁵ From the Domestic Relations Bill, 2003 with reform efforts dating back to 1940s to the current draft Bills on marriage and divorce. Compare for example with sections 9, 10 and 16 Tanzania's Law of Marriage Act, 1971 which harmonises all marriage types under one Act.

³⁴⁶ Sections 126, 128 and 129.

³⁴⁷ Sections 130 and 134 of SA's Children's Act, cap 38/2005 for example, guarantees the right of a child aged 12 years and above to access contraception or condoms in confidence and to provide his informed consent to an HIV/AIDS test. Meanwhile sections 12 – 15 of Uganda's new HIV & AIDS Prevention and Control Bill, 2009 passed as an Act in May 2014 goes against international law by dispensing with informed consent for testing and subjects persons to mandatory HIV/AIDS testing in reasonable or necessary circumstances.

³⁴⁸ Clause 27, Section 114.

³⁴⁹ ULRC (July 2013) 'Study Report on the Review of Laws on Succession in Uganda.'

addressed.³⁵⁰ This leaves them susceptible to weaker protections of their family units inevitably harming their children.

In terms of culture, section 7, CA requires that parents must ensure that they do not subject their children to social or customary practises that are harmful to the child's health. But it is not sufficiently clear in stipulating that only those cultural values that do not infringe on child's human rights, autonomous status and dignity are allowed. Emerging issues like child sacrifices require amendment of the outdated Witchcraft Act, 1957 to properly curb the threat to children.³⁵¹ Currently section 5 (c) of the Prevention in Trafficking of Persons Act No 7 of 2009 stipulates that the carrying out of human sacrifice by removal of any body parts or organs of a child under 18 years is aggravated trafficking, a capital offense punishable by death. The Bill proposes to make the breach of Section 7 a criminal offence and expands the definition to include cultural or religious practises that cause harm to the child's wellbeing and development³⁵² which is greater protection than the Act but still falls below the human rights conditionality for culture. Uganda is a UNESCO state party since 1987 but still has not yet ratified the Universal Declaration on Cultural Diversity.

3.3 Conclusion

From this analysis, it is evident that the Constitution of Uganda is cognisant of all the basic human rights that apply to the child. It contains most of the basic principles, but limits giving guarantees of child rights directly so that they cannot be easily implemented against the State. Secondly, while the Children's Act provides a basic child specific law, it falls far short of both the international child rights framework and the Constitution itself which offers greater fundamental protection of rights. The Act is overly concerned with remedies like alternative care, formal and informal child protection without first granting all the principles and rights of the child clearly and unequivocally and in line with the normative framework.

³⁵⁰ Section 160 of the Tanzania LMA, 1971 for example recognises a presumption of marriage where a couple lives together as husband and wife for two years. It applies only for division of property or matrimonial assets *e.g.* in divorce.

³⁵¹ See <http://www.anppcanug.org/csos-want-witchcraft-act-amended/>.

³⁵² Clause 7, Section 7.

CHAPTER FOUR

POLICY & OTHER MEASURES ADDRESSING CHILD POVERTY IN UGANDA

4.0 Introduction

This Chapter evaluates whether and how policy and administrative measures formulated by the government of Uganda assist in addressing child poverty. It analyses the government's published statements of intent enshrined in its policy documents, PSRPs, sector specific investment strategies and action plans for activating policies. Policy directs the public especially the State's institutions, departments and agencies on the fundamental overall guidelines they must follow in their work and also evidence the level of commitment and political will the State has towards dealing with a specific problem. Both economic and social policies are important for tackling inequalities, discrimination and human rights issues. Lastly one may rely on a specific State policy to secure implementation of a specific right from the government.

4.1 General Plans, Policies & Programs

4.1.1 Poverty Eradication Action Plan 1997 & National Development Plan 2010

Uganda has had two main PRSPs; the PEAP (1997-2017) revised in 2000³⁵³ and 2004³⁵⁴ and the NDP (2010-2015)³⁵⁵ which comprehensively revised PEAP. They generally initiated social economic targets and measures concerned with improving the quality of life of the poor,³⁵⁶ launched free Universal Primary Education, a Poverty Action Fund to provide funding for areas pivotal to child poverty eradication like primary education, primary health care, water and sanitation development and agricultural extension.³⁵⁷ However there are no adequate measures for prioritisation of children and specific child poverty measures seen in either the PEAR or more recent NDP's objectives.³⁵⁸ It is concerned with transforming mind-sets, attitudes, cultural

³⁵³ Available at http://siteresources.worldbank.org/INTPRS1/Resources/Country-Papers-and-ISAs/Uganda_IPRSP.pdf [Accessed on 23 June 2014].

³⁵⁴ Available at http://www.unpei.org/sites/default/files/e_library_documents/UG-PEAP2005-2008.pdf [Accessed on 23 June 2014].

³⁵⁵ Available at <http://npa.ug/development-plans/ndp-201011-201415/> [Accessed on 23 June 2014].

³⁵⁶ PEAP 1997 & 2000's four pillars.

³⁵⁷ Uganda Debt Network (2002) 'Monitoring the Poverty Action Fund: Annual Report 2001-2002' 3.

³⁵⁸ Page 5, figure 1.1.

practices and perceptions³⁵⁹ and developing the social sector by focusing on the affordability, availability and accessibility of quality health services, nutrition and food security, sexual and reproductive health rights, safe motherhood and child survival and focusing on the unmet need for family planning.³⁶⁰ It proposes to improve education by focusing on among others pre-primary education preparation, integration of ICT facilities in school curriculum, increased access and equity in secondary education, improved quality of primary education by decongesting classrooms and adopting pre-primary programs and other measures to prepare children for the intellectual requirements of school.³⁶¹

Importantly NDP provides for strengthening of the family as the basic unit for quality human development by introduction of family courses on marriage and parenting, combating domestic violence and guarding indigenous family norms while guarding against bad practices.³⁶² It also advocates for the formulation of a comprehensive social protection policy and measures to provide life skills to adolescents in and out of school, cash for work for vulnerable youth, social security for housing and strengthening institutional rehabilitation services for children.³⁶³

Although it provides for an objective to promote positive cultural values, norms and practises, its interventions are focused only on one side of the human right to culture, *i.e.* the right to enjoy one's culture.³⁶⁴ This is because it mainly centres on provision and development of regional cultural centres, establishment, internationalisation of the national theatre, museums, IP rights *etc.* It is not clear how cultural values that promote human rights are the ones going to be promoted. Still achieving education for all is slow and child hunger is especially high.³⁶⁵ The NDP is supplemented by Sector Investment Plans *e.g.* HSSIP, Sector Strategic Plans *e.g.* SDSSIP and ESIP as part of the wider Vision 2040.³⁶⁶ Among Vision2040's aims is to increase Uganda's GNI per capita (or per capita income) to US\$ 9500 (from the current US\$ 506, increase life expectancy to 85 years (from the current 55 years) and decrease the percentage of

³⁵⁹ Page 47, para 4.2.5-line 145.

³⁶⁰ Pages 199-204, para 7.1.3-line 501.

³⁶¹ Pages 220-223, lines 558-572.

³⁶² Page 283, para 7.8.3-line 665.

³⁶³ *ibid.* line 666 (i)-(ix).

³⁶⁴ *ibid.*, line 665 (i)-(vii).

³⁶⁵ Commonwealth Foundation & the End Poverty 2015 Millennium Campaign (2013) 'A civil society review of progress towards the MDGs in commonwealth countries. National Report: Uganda. Table 1 at 7.

³⁶⁶ Available at <http://npa.ug/wp-content/themes/npatheme/documents/vision2040.pdf>

population living below the poverty line from 24.5 % to 5 % in 2040. It is believed that Vision2040 is premised on the view that the new found oil in Uganda will generate revenues of close to US\$ 200 billion for the country, spurring poverty eradication and economic development. However without a government focus on empowerment, dignity and respect for child and human rights, these goals may not be achievable.

4.1.2 National Equal Opportunities Policy 2006

The EOP 2006³⁶⁷ emphasises a rights based approach for social justice and economic development for all Ugandans especially marginalised groups like children in northern Uganda.³⁶⁸ It advocates for mainstreaming of affirmative action in the priority areas of basic SERs.³⁶⁹ The EOC created by an Act of parliament in 2007³⁷⁰ is the overseer responsible for creating policies, laws and guidelines, monitoring and recommending to parliament and passing on complaints on equal opportunities to relevant authorities.³⁷¹ Its action plan was set up in 2009.

4.1.3 National Population Policy for Social Transformation & Sustainable Development

The NPP 2008 fundamentally recognises the basic human right to reproductive health.³⁷² Its strategies are to promote and strengthen youth friendly and RH (Reproductive Health) services,³⁷³ to advocate for child spacing to ensure the health of mothers and children.³⁷⁴ It promotes male involvement in reproductive health,³⁷⁵ reducing unmet need for family planning by advocating for affordability, availability and accessibility of family planning³⁷⁶ and effective social welfare programs for special interest groups including social security and health insurance.³⁷⁷ Institutionally, the National Population Council,³⁷⁸ the District Planning units at the lower levels are responsible.³⁷⁹ It has an action plan for implementation until 2015.

³⁶⁷ Available at <http://www.eoc.go.ug/sites/eoc/files/downloads/2014/05-may/thenationalequalopportunitiespolicy-printed.pdf>

³⁶⁸ Page 23.

³⁶⁹ Pages 27-28.

³⁷⁰ EOC Act, 2007 & Regulations 2013.

³⁷¹ Page 33.

³⁷² Page 15.

³⁷³ Page 19, para 87 (e).

³⁷⁴ *ibid.* para 87 (h).

³⁷⁵ *ibid.* para 90 (a).

³⁷⁶ Page 21, para 91(a).

³⁷⁷ *ibid.* para 92(d).

4.1.4 Uganda National Program of Action for Children 1992

UNPAC was launched by the GoU in 1992 after the 1990 world summit for children to ensure child survival and protection in Uganda. Although it was criticised³⁸⁰ for promoting a needs based approach instead of a child rights perspective for provision of social services, it is still commendable for providing a child specific program with specific goals for achieving the rights of children. These included; reduction of infant and maternal mortality rates, severe and moderate malnutrition, increased access to primary education and the primary completion cycle, improved access to safe drinking water and environmental sanitation and provide for legal protection of the rights of all children. UNPAC was devolved to district plans of action for children (DPAC) to ensure achievements. It is not clear today how much these plans are being used effectively to assist children access their rights. The National Council for Children (NCC) formed under the NCC Act, 1996 Cap 60 is responsible for implementing the goals of UNPAC³⁸¹ and ensuring its goals are streamlined into policy by government.³⁸² The functions of the NCC can be widened by Statutory Instrument by the responsible minister³⁸³ thus providing an opportunity for widening its mandate to targeted functions for identifying, addressing and eliminating child poverty.

4.2 Specific Policies on the Seven Indicators

These policies shall be assessed by considering the impact they have on child poverty as per the continuum for deprivation levels illustrated in Table 1 attached as appendix A to this thesis.

4.2.1 Uganda Nutrition Action Plan 2011-2016

³⁷⁸ Page 22, para 98.

³⁷⁹ Page 23, para 99.

³⁸⁰ UNICEF & NCC Uganda (2001) 'Assessment of progress and performance of the Uganda National Programme of Action for children 1992-2002.'

³⁸¹ Section 4 (1) (b)-(d).

³⁸² Section 4 (1) a.

³⁸³ Section 4 (j).

UNAP³⁸⁴ is the current strategy on food and nutrition in Uganda. It commendably targets acute malnutrition in infants, adolescent girls and young children³⁸⁵ concentrating on the ‘window of opportunity’ (*i.e.* the 1000 days from conception through pregnancy up to the child’s second birthday).³⁸⁶ It specifically provides broad strategies to curb malnutrition including supporting households and communities throughout the year through their own food production and food purchase; providing care and support to individuals with acute malnutrition and mobilising the community.³⁸⁷ It advocates for strategies to assist parent’s balance their income and workload in line with normative requirements³⁸⁸ and targets social-cultural issues like food taboos, protection of women of child bearing age, agriculture and post-harvest handling and storage of food, social protection and legislative reform.³⁸⁹ Government initiatives like the Mwana Mugimu Nutrition Unit at main public hospital - Mulago provide information to mothers and treat child malnutrition. Complementary policies to ensure nutrition of the child include: Policy Guidelines on Infant and Young Feeding (2012), Mandatory regulations on food fortification, School Feeding regulations, Nutrition Action Plan Maternal Infant and Young child Nutrition, Integrated Management of Acute Malnutrition guidelines 2012.

4.2.2 National Water Policy 1999

Commendably the Water Policy³⁹⁰ tries to implement a multidimensional approach to the basic needs of the child. It is concerned with³⁹¹ the rights to clean water and sanitation, primary health care, education and community support of children by quoting these priority areas as stipulated in UNPAC 1992. It fundamentally restates the UNPAC’s goals of child survival, development and protection through providing the basic minimum social services to people in line with international law. Its directives provide for sustainable provision of clean safe water within easy reach, good hygienic sanitation practices and facilities based on management responsibility and

³⁸⁴ UNAP: Scaling Up Multi-Sectorial Efforts to Establish a Strong Nutrition Foundation for Uganda’s Development. Available at <http://scalingupnutrition.org/sun-countries/uganda/progress-impact/putting-policies-in-place/nutrition-specific-policies-plans>.

³⁸⁵ Page 14, para 4.1.

³⁸⁶ Page 25, para 6.3 (1).

³⁸⁷ Pages 15, para 4.2 (1)-(4).

³⁸⁸ *ibid.*

³⁸⁹ Pages 17-20, para 5.2.

³⁹⁰ Available at <http://www.ruwas.co.ug/reports/National%20Water%20Policy.pdf>

³⁹¹ Page 8, para 4.0.

ownership by users.³⁹² It recommends a distance of not more than 200 meters walking distance from a public water point to built areas in peri-urban areas, while for rural areas, a distance from a public water point between 1500 meters of all households.³⁹³ This means urban areas may be better off in terms of access to water within 200 meters away. Thus it does not effectively prioritise rural areas where 85%³⁹⁴ of Ugandans live and may be discriminatory in that sense. It guarantees 20 -25 litres of water per capita per day in both rural and built or peri-urban areas,³⁹⁵ which may be sufficient only for cooking and personal washing needs for the 5 persons in an average home in Uganda, but is below the optimum required to meet all the child's health needs including sanitation and waste disposal in the home.³⁹⁶

Complementary policies that facilitate access of families and the child to clean, safe and available water supply include: National Land Use Policy 2010, National Environmental Management Policy 1994, Disaster Preparedness and Management Policy, 2011 to ensure action for emergency situations like flooding and landslides common in Eastern Uganda area also in place to complement the water policy. Uganda also adopted WASH,³⁹⁷ a specific water, sanitation and hygiene initiative aimed at improving primary health care impacting children. The Water and Sanitation Sector Sectorial Specific Schedules/Guidelines 2010 requires the government to promote domestic roof harvesting³⁹⁸, rural sanitation and hygiene.³⁹⁹ It allocates conditional grants to the District Water and Sanitation Committees for their roles *e.g.* maintenance of boreholes.⁴⁰⁰

Note Uganda's 2013/14 FY budget reintroduced an 18% Value Added Tax on water for home consumption⁴⁰¹ which may cause mild deprivation of water for households that do not have enough money.

³⁹² Page 1, para 1.2 (d).

³⁹³ Page 16-17, para 5.4.1 (i).

³⁹⁴ Paras 2.1.1 - 2.1.3.

³⁹⁵ Page 16, para 5.4.1 (i).

³⁹⁶ WHO Geneva (2003) 'Domestic Water Quantity, Service Level and Health' Executive summary, Table S1.

³⁹⁷ See <http://www.washuganda.net/> [Accessed on 23 June 2014].

³⁹⁸ Page 10, para 3.5.

³⁹⁹ Pages 9-10, paras 3.3-3.4.

⁴⁰⁰ Page 19, para 4.12.

⁴⁰¹ PWC (August 2013) 'Creating Certainty: Uganda's FY 2013/2014 Post-budget Analysis' 14.

4.2.3 National Land Policy 2013

The relatively new policy formulated in 2013⁴⁰² lays grounds for formulation of a national resettlement policy,⁴⁰³ a national housing policy and a national urban policy⁴⁰⁴ to ensure proper and orderly human settlements.⁴⁰⁵ It advocates for the harmonisation of formal and informal tenure systems and respect for principles of international conventions on human rights⁴⁰⁶ and commendably emphasises equitable access to land, irrespective of gender, age or disability created by history, tradition or custom.⁴⁰⁷ It is concerned with land rights for dwellers in informal settlements and slums by requiring negotiations with registered land owners to facilitate them to regularise and formalise their settlements.⁴⁰⁸ It also requires the government to engage in PPPs to enhance tenure security and stem growth of slums and informal settlements.⁴⁰⁹ In line with a holistic approach, it advocates that settlements must conform to health and safety standards.⁴¹⁰ Government is required to set aside serviced land for housing development for the poor at affordable rates.⁴¹¹ It addresses shelter deprivation evidenced by overcrowding on small pieces of land due to land fragmentation and sub division problems by requiring that the government set a minimum land size to avoid excessive over-subdivision in both rural and urban settlement.⁴¹² It emphasises focus on the needs of peasants who live on less than a dollar a day⁴¹³ but stops short of mentioning vulnerable groups and homeless children. The policy tries to address the problems of homelessness, an indicator of extreme deprivation of shelter by providing for formalisation and legalisation of customary tenure by issue of a Certificate of Ownership of Customary Land under the Registration of Titles Act just like leasehold or freehold interests.⁴¹⁴ It also shows the need to distinguish between family and individual rights from communal rights under customary

⁴⁰² Available at http://landportal.info/sites/default/files/the_uganda_national_land_policy-february_2013.pdf.

⁴⁰³ Page 31, para 98.

⁴⁰⁴ Para 145.

⁴⁰⁵ Page 44, para 6.8 & pp 144-145. The urban policy is also provided for in the NDP.

⁴⁰⁶ Page, para III (1)-(6).

⁴⁰⁷ Page 9, para 2.5-line 5 (i)-(ii).

⁴⁰⁸ Para 4.11.

⁴⁰⁹ Para 71 (i) - (ii).

⁴¹⁰ Para 71 (v).

⁴¹¹ Para 71 (vi).

⁴¹² Page 31, para 4.18-line 94.

⁴¹³ Page 38, para 6.2-line 121.

⁴¹⁴ Page 32, para 5.2,-line 102 (vi) & page 17, para 4.3-line 40-41 (1) (i).

tenure by giving guidance to institutions and the public.⁴¹⁵ This is important to prevent conflicting claims over one piece of land or mistaking family land for communal land causing possible overcrowding and dilapidation of shelter provisions. Even though it vests power and formal administration over customary land to traditional or customary institutions and leaders,⁴¹⁶ it subjects those institutions to formal procedures like record keeping and hierarchical appeal structures to ensure transparency, equity and fairness in the process.⁴¹⁷ The only problem may arise in customary ownership where the policy recommends that indigenous practices should take precedence in customary tenure disputes.⁴¹⁸ It could be problematic in so far as robbing children of their homes if there is no clear awareness and education of all involved on the unconstitutional and discriminatory indigenous practices like wife inheritance and women and girl child disinheritance of property. This is especially important as the policy directs that the decisions of customary or traditional leaders should be fully recognised and given full backing by the judiciary, the state and local government.⁴¹⁹ Notably it also provides a remedy for where children face a shelter deprivation by providing for legal aid to vulnerable and poor groups⁴²⁰ although it is not clear how they are supposed to access it. The policy directs government attention to protection of the human right to adequate housing and “other related human rights.”⁴²¹ Thus it is indirectly cognisant of all indivisible human rights of children *e.g.* to clean accessible water in line with international law. Complementary policies include: National Slum Upgrading Strategy and Action Plan 2008, Land Use Policy 2010 and HSSP III.

4.2.4 Uganda National Expanded Program on Immunisation

UNEPI targets infant children aged 10 to 23 months and women of child bearing age (between 15-49 years) to ensure they access timely, routine, and supplemental vaccination targeting polio, tetanus and measles. It also provides for surveillance of new and routine infections and emphasises the role of the community to spread awareness about immunisation, dispel fear about vaccination for example those noted from some religious groups and churches in Uganda among

⁴¹⁵ Pages 18 & 40, para 41 (vi)-(vii).

⁴¹⁶ Page 32, para 5.2-line 102 (i).

⁴¹⁷ Page 36, para 5.6-line 116 (iii)-(vi).

⁴¹⁸ *ibid.* para 116 (iv).

⁴¹⁹ Page 18, para 4.3-lines 41(v)-(vi) & 42 (i)-(vi).

⁴²⁰ Page 37, para 5.6-line 116(vii).

⁴²¹ Page 48, para 7.1 lines 157 (vii).

others. There are Child days plus (CDP) set apart for immunisation in the health policy and HSSIP III. In 2013 coverage for immunisation improved to 82%.⁴²² The draft Immunisation Bill, 2013 provides that it shall be compulsory to immunize every child under 5 years of age from the 6 killer diseases,⁴²³ Hepatitis and HPV (human papilloma virus) for any child between 10-12 years.⁴²⁴ It extends this duty to ECD learning centres which should not admit a child unless they were immunized. Even though it guarantees free vaccines to every Ugandan child seeking compulsory immunisation⁴²⁵, the problem remains with poor infrastructure which limits access.

4.2.5 Second National Health Policy, 2010⁴²⁶

NHP II commendably notes the multi-dimensions of poverty by relating the social determinants of health *i.e.* “*levels of income and education, housing conditions, access to sanitation and safe water, cultural beliefs, social behaviour and access to quality health services*”.⁴²⁷ It also states that there is a direct relationship between poverty and prevalence of diseases such as malaria, malnutrition and diarrhoea. It is cognisant of the Constitutional guarantee of the right of access to basic health care services and the highest attainable level of health.⁴²⁸ For this reason, it states that primary health care or PHC shall be the main strategy for delivery of health services in Uganda. PHC includes all the clusters of the Uganda National Minimum Health Care Package or UNMHCP. These are⁴²⁹: (a) Health promotion, environmental health (or sanitation), disease prevention and community health initiatives, including epidemic and disaster preparedness and response, (b) Maternal and Child Health, (c) prevention, management and control of communicable diseases (like Cholera, Malaria, HIV Aids, TB, STDs) and (d) Prevention, management and control of non-communicable diseases like pneumonia, diabetes which all affect child survival. NHP II requires that government pays attention to equitable access to the UNMCHP by ensuring affirmative action for under-served areas and vulnerable population and ensuring a continuum of care.⁴³⁰ It advocates for decentralisation in the health services delivery

⁴²² MoH, Annual Health Sector Performance Report 2012/13 page 9, para 2.2.

⁴²³ Section 3 & 2nd schedule.

⁴²⁴ Section 4 & Section 6.

⁴²⁵ Section 7.

⁴²⁶ http://www.unicef.org/uganda/The_Second_National_Health_Policy.pdf

⁴²⁷ Para 2.2.

⁴²⁸ Para 4.3.

⁴²⁹ Para 6.2.

⁴³⁰ Para 6.2.

system as in line with the Local Government Act of 1997,⁴³¹ Village Health Teams and Health Unit Management Committees (HUMCs).⁴³² It discourages negative cultures and traditional practices and behaviours that impact health in Uganda.⁴³³ It also requires all stakeholders (*e.g.* medical personnel, NGOs, private health bodies *etc.*) to respect “promotive health aspects” of cultures and traditional practices of the people of Uganda but only stipulates that negative ones should be discouraged.⁴³⁴ It is not clear what ‘promotive’ means and what criteria shall be used by medical practitioners to determine which are negative in prioritisation of the best interests of the child. It commendably adopts a pro-poor approach with special focus to the under-served parts of the country and exploration of alternative, sustainable and equitable options for health financing especially targeting vulnerable groups⁴³⁵ like orphans, child headed households or children in need of alternative care as defined in Uganda’s OVC policy.⁴³⁶ It also requires that the government addresses the human resource crisis and redefine the institutional framework for training health workers.⁴³⁷ Also it proposes that record keeping and management of patient data is handled through installation of ICT infrastructure and software⁴³⁸ to improve efficiency in treatment and requires a strengthening of the national referral system for primary, secondary and tertiary care, meaning that focus must go beyond PHC.⁴³⁹ It addresses the issue of ignorance on health conditions early and urgent treatment of children by providing for community based health information systems.⁴⁴⁰ It advocates for a review of health laws and regulations⁴⁴¹ *e.g.* the outdated 1976 Mental Health Act which does not sufficiently protect child mental health needs. Lastly it recognises calls for more evidenced based policy research and intervention formulation targeting women and children⁴⁴² and requires the government to amend legislation to be in line with its international and regional commitments.⁴⁴³

⁴³¹ Para 3.2 & para 4.5.2.

⁴³² Para 6.1.

⁴³³ Para 4.4.4.

⁴³⁴ Para 4.4.4.6.

⁴³⁵ Para 4.5.5.

⁴³⁶ Pages 23 & 36, para 6, National Orphans and Other Vulnerable Children Policy, 2004.

⁴³⁷ Para 5 (iv).

⁴³⁸ Para 6.1.2 (h).

⁴³⁹ Para 6.1.4.

⁴⁴⁰ Para 6.2.2 (e).

⁴⁴¹ Para 6.5.1

⁴⁴² Para 6.4.

⁴⁴³ Para 6.6.4.2

4.2.6 Third Health Sector Strategic & Investment Plan 2010-2015

HSSIP III⁴⁴⁴ targets an increase of the proportion of the population living within 5kms of a health facility from 75% to 90 % by 2015⁴⁴⁵ It advocates for equitable access to clinical services at all levels,⁴⁴⁶ family oriented and community based health care system through use of VHTs,⁴⁴⁷ family preventive health care, community access to child health commodities like mama kits, insecticide treated mosquito nets. It requires that food manufacturers fortify infant foods⁴⁴⁸, that the state focus on preventive care for adolescents, PMTC, Vitamin A supplementation, deworming, malnutrition screening, family planning and educate mothers and families on preventive health care.⁴⁴⁹ It notes that coupled with insufficient funding, the pressure of the growing population in Uganda is a factors driving health spending upwards. However although VHTs were established in 75% of districts in Uganda only 31% have trained staff in all the villages.⁴⁵⁰ Further malaria is still the leading killer of children in Uganda together with pneumonia and iron deficient anaemia.⁴⁵¹ Yet only 42% of households have one (ITN) Insecticide Treated Net as opposed to the better Long-Lasing Insecticide-treated Nets (LLINs). Major challenges are seen in inadequate procurement and delivery to health facilities and inadequate capacity or understaffing for malaria diagnosis, lack of anti-malaria drugs⁴⁵² and emergency of malaria insecticide resistant pyrethroids.⁴⁵³

4.2.7 Reproductive, Maternal, Neo-Natal & Child Health Strategic Plan 2013

The RMNCH aims at preventing 120,000 under five year children and 6100 women from dying by 2017, improving maternal and new-born survival, creation of a reproductive health cover scheme where mothers would receive free health diagnosis, C-sections and post- partum care and new born babies would be entitled to free medical services for up to 30 days after birth. However there are still problems as evidenced by the *CEHURD constitutional petition* of access to emergency obstetric care for pregnant girls or women with complications especially in rural

⁴⁴⁴ http://www.health.go.ug/docs/HSSP_III_2010.pdf

⁴⁴⁵ Para 5.2.2.4.

⁴⁴⁶ Para 5.2.2.1.

⁴⁴⁷ Para 5.2.1.30.

⁴⁴⁸ Page 95.

⁴⁴⁹ Para 5.2.4.

⁴⁵⁰ Para 1.3.1.-1.3.2

⁴⁵¹ Page 103, AHSPR 2012/13.

⁴⁵² Para 2.2.3 (c).

⁴⁵³ Page 116, AHSPR 2012/13.

hospitals and clinics. Public health specialists⁴⁵⁴ have cited this as a problem requiring judicial intervention. Also problems of abuse and corruption⁴⁵⁵ by nurses and midwives taking advantage of poor women in labour or with obstructed labour leads to many deaths of women and infants due to delayed assistance. The statutorily formed Uganda Nurses and Midwives Council must be supported to increasingly monitor and regulate the conduct of nurses and midwives to ensure poor women are not mistreated or discriminated against.

4.2.8 Policy Guidelines & Service Standards for Sexual & Reproductive Health & Rights Edition 3 of 2006

Edition 3 of the guidelines⁴⁵⁶ target adolescent children both male and female between 10-24 years and girls,⁴⁵⁷ street children and refugees for health service delivery⁴⁵⁸ and also youth who according to the National Youth Policy are aged between 15 and 30. It guarantees that all sexually active males and females are eligible for family planning services⁴⁵⁹ and commendably directs that there is no need for any verbal or written consent from parents or guardians or a spouse before a client can access family planning.⁴⁶⁰

Despite this, girls who get pregnant from sexual abuse lack moral support and are afraid to obtain treatment and drop out of school due to stigma and lack of financial assistance.⁴⁶¹ Moreover the sexual abuse criminal regime was criticised for being based on ancient colonial practices which straight away prescribed imprisonment, ignoring African customs which require that the father look after his child.⁴⁶²

⁴⁵⁴ Ben K. Twinomugisha 'Exploring judicial strategies to protect the right to emergency obstetric care in Uganda' (2007) 7 *Afr. Hum. Rts. L.J.* 283-306 at .304.

⁴⁵⁵ See <http://www.theguardian.com/society/sarah-boseley-global-health/2011/may/27/maternal-mortality-uganda> & http://www.nytimes.com/2011/07/30/world/africa/30uganda.html?pagewanted=all&_r=0 & <http://www.irinnews.org/report/93420/uganda-too-many-deaths-in-childbirth>

⁴⁵⁶ <http://www.youth-policy.com/Policies/Uganda%20National%20Policy%20Guidelines%20and%20Service%20Standards%20for%20Reproductive%20Health%20Services.pdf>

⁴⁵⁷ Para 4.3.

⁴⁵⁸ Para 6.4.

⁴⁵⁹ Para 3.5.

⁴⁶⁰ Para 3.6.

⁴⁶¹ Flavia N. Munaaba "Covered yet Exposed" *The Realities of Sexually Abused Children in Uganda.* (2004) 2:2 *E. Afr. J. Hum. Rts. & Democracy* 130-142 at 137-139.

⁴⁶² *ibid.*

4.2.9 National HIV and AIDS Policy 2011

It advocates for HIV Counselling and Testing (HCT) after individual consent, confidentiality and privacy.⁴⁶³ It calls for impact mitigation of HIV/AIDS through psycho-social and economic support to those infected and directly affected by HIV/AIDS thus catering for child headed households common in Rakai, Masaka and fishing communities near Lake Victoria. It commendably directs that children between 12 and 18 years old who seek AID related services such as HCT unaccompanied should not be denied access to services.⁴⁶⁴

4.2.10 National Orphans and Other Vulnerable Children Policy 2004

The OVC Policy commendably advocates for a human rights approach⁴⁶⁵ for dealing with the needs of specified target groups of children including street children, children with disability. Mental impairment is included in the policy's definition of disability in line with international law.⁴⁶⁶ It advocates for reduction of discrimination and stigma among OVC children requiring that they be treated with respect as a principle instead of viewing them as victims.⁴⁶⁷ However it appears that the State leaves it largely up to the community to shoulder the major burden with the family to support OVCs, link them to service providers, facilitate their succession planning and mobilise resources to improve their care and support.⁴⁶⁸

4.2.11 Draft Mental Health Policy & Mental Health Bill

The proposed mental health policy covers mental health, neurological and substance use disorders and is in line with WHO guidelines.⁴⁶⁹ It aims at strengthening community participation and collaboration with traditional and complementary health practitioners and strengthen capacity of mental health workers at all levels.⁴⁷⁰ Currently mental health is generally covered as a component of PHC under the UNMHCP and donors like AfDB assist to fund

⁴⁶³ Para 3.2 (c).

⁴⁶⁴ Para 3.5 (b) iii.

⁴⁶⁵ Page 9.

⁴⁶⁶ Page 30.

⁴⁶⁷ Page 11.

⁴⁶⁸ Pages 9 & 26.

⁴⁶⁹ Joshua Ssebunya et al (2012) Developing a National Mental Health Policy in Uganda: A case study from Uganda Table 1, 4.

⁴⁷⁰ Objectives 3, 4 & 9.

mental health.⁴⁷¹ Children who require counselling and relevant mental health care or treatment include: returnee child soldiers, children affected by the war⁴⁷² or HIV/AIDS or domestic violence, children witnessing or affected by child sacrifice, bullying or school violence, adolescents, children facing separation of families, orphans, street children, refugee children, and children with special needs like autistic children. A 2013 baseline study of two districts in Uganda, Kitgum and Jinja found that over 80% of the children surveyed, both boys and girls had experienced some form of emotional violence.⁴⁷³ The current regime is out of date un-functional and generally not compliant with human rights. The 2006 persons with Disability Act is insufficient and the current Mental Treatment Act, Cap 279 of 1938 as revised in 1964 is absurd and ridiculous classifying and defining in section 1 any person of unsound mind as an idiot or person suffering from mental derangement. It immediately subjects him to a rash process by which a person is declared insane and admitted to a mental hospital in sections 3 and 4 presupposes only one type of mental illness for all and also only one way to deal with it. And the main referral hospital for mental problems, Butabika is subjected to a lot of associated stigma that accompanies those who try to obtain treatment for health problems like depression or trauma there. It is viewed as an asylum for lunatics due to general ignorance on mental health. This interferes with access to mental health treatment.

Other Complementary policies and measures include: Child Survival Strategy (CSS) 2008-2015 which targets a reduction in neonatal mortality from 29 per 1000 live births to less than 20 per 1000 live births in 2014/15; Prevention of Mother to Child HIV Transmission Policy, 2013 which advocates for Option B+ Policy (mandatory ARVs as opposed to the prevalent Voluntary Testing and Counselling (VTC policy) which is internationally recommended by WHO) and automatically puts a mother on ARVs within 14 weeks of her pregnancy once she tests positive

⁴⁷¹ http://www.who.int/mental_health/uganda_who_aims_report.pdf.

⁴⁷² Fiona Klassen et al (2010) 'Multiple Trauma and mental health in former Ugandan child soldiers' (2010) 23:5 *J Trauma Stress* 573-81. Out of a sample of 330 child soldiers in Uganda aged 11 to 17 years, over 78% were exposed to at least 1 incident of domestic violence, all of them had experienced at least 1 war related event and prevalence of post-traumatic stress disorder and major depressive disorder was 33% and 36% respectively. The children also had behavioural and emotional problems measured at 61%.

⁴⁷³ ANNPCAN-U & MUK (June 2013) 'Baseline Survey of Community Child Protection Systems in Uganda' 28.

for HIV; Malaria Policy; and, the Nurses and Midwives Rules SI 274 - 1 which certifies all midwives, sick children's nurses and mental health nurses.⁴⁷⁴

4.2.12 UPE Policy 1997 & USE Initiative under UPPET policy 2007

The UPE policy was a pro-poor government policy that was set up following the recommendations of the Kajubi Education Commission.⁴⁷⁵ Among the objectives of the UPE policy is to make education equitable and remove all inequalities and disparities. It aimed at providing the minimum facilities and resources for education in a way that ensured that they were progressively developed to the optimum required for each child to complete primary schooling. It is a commendable initiative that led to great successes in Uganda with doubling of primary school enrolments for both boys and girls due to UPE since 1997. However despite these and other government initiatives like ABEK or Alternative Basic Education for Karamoja which focuses on mobile schooling for the nomadic people of Karamoja, the problem with free primary education today is the quality of education received and the existence of disparities especially, as revealed in the recent PEP study, in the northern region of Uganda⁴⁷⁶ and an earlier East Africa report on education.⁴⁷⁷ It found that ten of the worst performing districts in English language and basic maths skills in East Africa were all located in Northern Uganda.⁴⁷⁸ Even where the children faithfully attended school, they still formed part of the low performing districts.⁴⁷⁹ Whereas free secondary education or USE was launched under UPPET (Universal Post Primary Education and Training) 2007 to curb the high dropout rate after primary level. With a strategic comprehensive plan for USE set up for 2009 to 2018, the challenge is still insufficient government assistance to majority of the poor families as required by the normative framework and such families may end up exchanging their children particularly girls into early marriages, or trafficking or sending the child into exploitative work as housemaids or on streets.

⁴⁷⁴ Rules 8 – 10.

⁴⁷⁵ GoU (1992) 'White Paper on Implementation of the Recommendations of the Report of the Education Policy Review Commission: Education for National Integration and Development.'

⁴⁷⁶ PEP (n2). Some parliamentarians criticised it for reporting wrong achievement in education despite children not knowing how to spell correctly. See Chimp reports, "Sewungu, Madada clash on child poverty report" June 10, 2014.

⁴⁷⁷ UWEZO (2012) 'Are our children learning: Literacy and Numeracy across East Africa' 14-16.

⁴⁷⁸ *ibid.* 14.

⁴⁷⁹ *ibid.* 16.

4.2.13 Revised Education Sector Strategic Plan 2007-2015

One of six new policy initiatives is that pupils who finish primary seven should be assured of either academic secondary education or BTVET.⁴⁸⁰ Its objectives mostly focus on improving education, the curriculum, equitable access, higher education and others.⁴⁸¹ It does not sufficiently focus on the crucial factors for facilitating education including electricity and infrastructure development of roads, nearby schools, libraries, ICT facilities, ECD for poorer families among others. Due to its *de facto* guardianship role over the child, the State must focus on the family situation in order to enhance the child's right to education as family ability, circumstances and beliefs may determine whether or not a child shall fail at school or drop out.⁴⁸² For example illustrating the multidimensional nature of child poverty, a child who grows up in a home without electricity, books, a TV or radio or newspapers may become severely restricted in enjoying their rights to information, expression and education.⁴⁸³ This means that such a child lacks exposure to either reading or being read to⁴⁸⁴ and may have problems staying in school.

4.2.14 Special Needs & Inclusive Education Policy 2011

It commendably provides for special needs education for children in Uganda with learning difficulties. The problem however is still in implementation where very few qualified schools and teachers exist or have the full capacity to conduct inclusive education for such children. For example the Kampala School for the Physically Handicapped in Mengo or Hill Preparatory School⁴⁸⁵ which is private and thus may not be affordable to all.

4.2.15 Education (Pre-Primary, Primary & Post-Primary) Act No 13 of 2008

It prohibits the charging of fees in UPE or UPPET schools and also the sending away of any pupil or student from school for failure to pay voluntary contributions or those required in

⁴⁸⁰ *ibid.* para 1.2 (c). BTVET stands for Business, Technical, Vocational Education and Training and is provided for in the BTVET Act, 2008.

⁴⁸¹ Pages 24-28, para 2.2.

⁴⁸² Cheryl Wright et al 'School Readiness of low-income children at risk for school failure' (2010) 6:2 *Journal of Children and Poverty* 99-117 at 100.

⁴⁸³ *ibid.*

⁴⁸⁴ This can be done either by his parents or caregivers usually housemaids in Uganda. This raises another consideration on the best kind of early and infant child care at home to promote child development.

⁴⁸⁵ The Observer, "Inclusive education – An ideal too expensive" February 27, 2013.

emergencies.⁴⁸⁶ It does not however do the same for USE which means USE is still not well protected as some schools may charge fees and cause high school dropouts. And as already discussed, the government undermines the importance of ECD by not providing any assistance to parents to send their children to pre-primary institutions and carry out pre-primary learning. ECD is left to private institutions and persons with the government only coming in to regulate and license their standards and teachers.⁴⁸⁷ This means a child from a rural area may be left behind from 'early on in terms of his education development, quality and needs increasing his chances of dropping out later.

Also there is no legal stipulation on the maximum number of people per class in schools (although it defines a minimum number of 10-80 in a school) to ensure quality of education and attentive learning which encourages children to really learn and also attend school.

There is no provision on the compulsory years of schooling as recommended in international law to protect against child exploitation and school drop outs. It requires parents to register children of school going age at school but does not define what mandatory and full school going age is except for pre-primary education which is 6 years.⁴⁸⁸ It only mentions that education shall run for seven years and provides for alternative education for children who drop out of school.⁴⁸⁹ This may be exploited by some to be lax about completion of a child's schooling.

And the ECD policy 2008 amended by the Integrated EDC Policy 2013, still does not completely guarantee ECD (usually from 2 or 3 to 6 or 7 years) especially for poorer families even though there are guiding frameworks for ECD learning developed by the MoES and NCC.

Note that since the Act makes it compulsory to teach religious studies in primary and post primary schools,⁴⁹⁰ this could be expanded to include the teaching of cultural values that are in line with human rights.

⁴⁸⁶ Section 9 (2) & (3).

⁴⁸⁷ Section 10 (2) (a) & (b).

⁴⁸⁸ Sections 5 (2) and 10 (3).

⁴⁸⁹ Section 10 (3) (a) – (c).

⁴⁹⁰ Section 4 (4).

4.2.16 Telecommunications Policy 2012

Under the MoICT, it is the only policy which attempt to provide for the child's right to information.⁴⁹¹ It is meant to harmonise the existing separate regulatory regimes of broadcasting, telecommunications and IT,⁴⁹² and although not sufficiently child centric, it assists families' access information infrastructure by promoting PPPs and mainstreaming gender, the needs of persons with disabilities and other marginalised persons in service delivery.⁴⁹³ It considers marginalised citizens like women, youth and rural communities who live below the poverty line.⁴⁹⁴ It notes that current challenges of access to information due to high (unaffordable cost) and lack of public awareness about ICT's high benefits.⁴⁹⁵ Also there are problems of lack of adequate electricity in the wider parts of the country limiting coverage, lack of a competition law to protect consumer interests, lack of customised IT devices in local languages and low internet usage due to among others the prohibitively high costs for internet access and lack of last mile connectivity to the national data backbone which limit information flow.⁴⁹⁶ It promotes a specific pricing and tariff regime that facilitates affordable services for education and health and (E-rate pricing model).⁴⁹⁷ This would assist children access information on mobile, digital TV, radio or internet services at home. However there is no mention of child viewing times subject to watershed period restrictions much like those in Tanzania.⁴⁹⁸

4.3 Policies and Measures for the Wealth and Social Protection of the Child

4.3.1 The Social Development Sector Strategic Investment Plan or SDIP-II 2011-16⁴⁹⁹

Formulated by the MoGLSD in 2011, it proposes interventions for vulnerable groups like youth (15 and above).⁵⁰⁰ It recognises that children need assistance targeted at developing their mental

⁴⁹¹ Available at http://www.ict.go.ug/index.php?option=com_docman&task=cat_view&gid=48&Itemid=61

⁴⁹² Page 14.

⁴⁹³ Page 22, para 2.4.

⁴⁹⁴ Page 16.

⁴⁹⁵ Page 19, para 1.3.6.

⁴⁹⁶ Page 20, para 1.3.6.

⁴⁹⁷ Page 24, para 2.6.

⁴⁹⁸ See <http://www.tcra.go.tz/images/documents/regulations/Content%20Services%20Regulations.pdf>.

⁴⁹⁹ See

<http://www.socialprotection.go.ug/pdf/Policy%20publications/Uganda%20Social%20Development%20Investment%20Plan%202015-16.pdf>

⁵⁰⁰ Page 24, Table 6.

and physical capacities and protecting them from vulnerabilities and is⁵⁰¹crucially concerned with ECD programs that develop and protect younger children below 8 or 12 years.⁵⁰² Commendably it advocates for expansion of library and information services through construction of a national library, public libraries, tele-centres and community centres with user friendly materials. This would assist children to access books or newspapers to read at home.⁵⁰³ It also aims at cultural development through institutional leaders and formulation of a National Family Policy.⁵⁰⁴ Further it provides for social protection for vulnerable groups through food for work schemes, school feeding for orphans, self-help and micro insurance.⁵⁰⁵ It requires allocation of at least 1.6% of the total budget for its implementation.⁵⁰⁶

4.3.2 Draft Social Protection Policy⁵⁰⁷

It proposes a focus on poor children and OVC children under the OVC policy to utilise a human rights approach in service provisions⁵⁰⁸ and expansion of social security in informal and formal sectors including health insurance coverage.⁵⁰⁹ Currently section 24 of the NSSF Act, Uganda provides for Survivor's' benefit to dependants or family relatives of a deceased employee under the scheme. There are recommendations for the enactment of a tiered social security system that apportions benefits to individuals according to need and priority with first tier including considerations of age and maternal medical needs, with education forming part of additional mandatory benefits.⁵¹⁰

4.3.3 Direct Income Support (DIS) initiatives

These were set up by the government to assist the poor and most vulnerable. First is the SAGE (Social Assistance Grants for Empowerment) program set up by the MoGLSD in July 2010.

⁵⁰¹ Para 2.4.1, lines 62-70

⁵⁰² Page 14, para 2.4.1-line 63.

⁵⁰³ Page 32, para 7.2.4-line 147.

⁵⁰⁴ Page 33, para 7.2.5-line 148.

⁵⁰⁵ Page 37, para 7.3.1-line 150.

⁵⁰⁶ Para 7.5.1-line 160.

⁵⁰⁷ See [http://www.mglsd.go.ug/wp-content/uploads/2013/07/policies/Draft%20Social%20Protection%20Policy%20Framework%2015-May-2013%20\(1\).doc](http://www.mglsd.go.ug/wp-content/uploads/2013/07/policies/Draft%20Social%20Protection%20Policy%20Framework%2015-May-2013%20(1).doc).

⁵⁰⁸ Para 2.2.

⁵⁰⁹ Strategy 2.

⁵¹⁰ John Jean Barya (January 2009) 'Interrogating the right to social security and social protection in Uganda.' HURIPeC Working Paper No 23, 21.

With initial support of 39 million pounds from donors like Irish Aid, it implements the Expanding Social Protection (ESP) program of the MoGLSD whose main goal is to reduce chronic poverty and improve life chances for poor people in Uganda.⁵¹¹ It is expected to run for 5 years and provides UGX 23,000 (*approx.*US\$ 9) per month via mobile money provider, MTN directed at people with increased vulnerability to poverty, specifically labour constrained individuals like the elderly under the Senior Citizens Grant.⁵¹² This is helpful for HIV affected orphans in the care of their grandparents. It also targets vulnerable families through the Vulnerable Family support Grant (VFSG) which considers children, orphans and vulnerable children in 14 districts across four sub-regions in Uganda. It assesses the areas with low levels of school enrolment and health as per the 2002 Uganda Population and Housing Census. Studies show it was largely successful in increasing school enrolment in families.⁵¹³ However the grant amount needs to consider inflation levels and commodity prices and must be reviewed regularly. Other programs like PAF support majorly education and health programs with funding from government, savings from the HIPC initiative (valued at 84 million dollars in 2006) & PEPFAR.⁵¹⁴

The Northern Uganda Social Action Fund under the Office of the Prime Minister is instrumental in assisting older children in northern Uganda affected by the war and also those in south-western region facing similar war or refugee situations. NUSAF, initiated in 2006 has an unconditional cash grant program (without any credit constraints) targeting young adults aged 16 to 35 in Northern Uganda. With support from IDA of the WB which injected close to US\$ 100 million⁵¹⁵, cash is granted to groups of young adults organised together with best business proposals, tools and material to run a business. The average grant is approximately 7500 US\$ per group usually composed of 4 people. This is good for reintegrating the returning child soldiers to keep busy and ensure they don't end up in poverty. An April 2013 Study⁵¹⁶ showed

⁵¹¹ See <http://www.mglisd.go.ug/wp-content/uploads/2013/04/Project%20Profiles/THE%20EXPANDING%20SOCIAL%20PROTECTION%20PROGRAMME.pdf>

⁵¹² <http://www.socialprotection.go.ug/Whatsnew.php>

⁵¹³ Fred Sewamala et al (February 2012) 'Evaluation of SAGE' Oxford Policy management.

⁵¹⁴ *ibid.*

⁵¹⁵ <http://www.opm.go.ug/projects/northern-uganda-social-action-fund-ii-nusaf-ii1.html>

⁵¹⁶ Chris Blattman et al (April 2013) 'Study on the Economic and Social Returns to Cash Transfers: Evidence from a Ugandan Aid Program'

that the cash grants greatly assisted the youth and uneducated women in rural areas to invest in vocational training programs or buy raw materials needed to start businesses. It is currently in its second phase aimed at increasing income earning opportunities and access to better social services⁵¹⁷ like school enrolment, safe water access for poor household beneficiaries.⁵¹⁸

The Youth Venture Capital Fund worth US \$ 10 (approx. UGX 25 billion) launched in FY 2012/13 by the MoFPED is to assist youth (aged 15-30) who are 78% of Uganda's population, with financial assistance for entrepreneurship and job creation.⁵¹⁹ This would assist older children and younger families access social services.

4.3.4 Other Measures

The 4.2% unemployment rate with estimates ranging from 60-80% in youth,⁵²⁰ 6.9 TFR rate, high incidences of customary (potentially) polygamous relationships in Uganda means that families and households have large OOP (out of pocket) expenditures. Many parents therefore still mostly rely on loans or remittances from relatives abroad, to help ensure their children complete school by providing for them all the necessities like uniforms, books, medical care and transport. It is mostly women who bear the brunt of providing necessities to keep their children in school. They have to do a lot of work ending up being exploited by money lenders, employers and becoming too exhausted to spend sufficient caring time with their children. This affects the child's schooling and limits the ability of the child to achieve the highest attainable quality of life guaranteed in international law. The Gender Policy 2007-2017 acknowledges this; that women work longer hours at home and in agriculture and face the brunt of most of the housework which they carry out without good domestic technologies⁵²¹ causing negative impact on food security, household incomes and child schooling.⁵²² It seeks to address intra household power relations to help improve the livelihoods of women⁵²³ and proposes two approaches including WID or the

⁵¹⁷ OPM Manual on NUSAF III, page 1, para 1.1 (i)-(v).

⁵¹⁸ *ibid.*

⁵¹⁹ See http://www.finance.go.ug/index.php?option=com_content&view=article&id=112:the-youth-venture-capital-fund&catid=8:in-the-press

⁵²⁰ UNHS (n5) & see <http://www.brookings.edu/blogs/africa-in-focus/posts/2014/08/26-youth-unemployment-uganda-ahaibwe-mbowa>

⁵²¹ Page 8, para 2.5.

⁵²² *ibid.*

⁵²³ Pages 15-16, para 3.4.

Women in Development Approach to improve the conditions of women.⁵²⁴ Further the Land Policy 2013 proposes remedies to the problem of women inequalities in land ownership and inheritance and customary property. It also commendably recognises the dual role of parents and fathers or husbands in particular by requiring that the head of the family be held accountable for his fiduciary duty in trust over family land.⁵²⁵

Social protection of OVCs like street children, orphans and juveniles is crucial, especially those in alternative care institutions, remand and child homes and mushrooming orphanage and institutions like Kampiringisa children's rehabilitation home⁵²⁶ They too deserve access to safe and clean water, sanitation and hygiene including clothing, soap, adequate food, education and information without discrimination and they must not be kept in inhabitable conditions subjecting them to hunger, lack of family environment and parental love indefinitely. The Land Policy 2013 specifically recognised OVC vulnerability⁵²⁷ to landlessness, evictions and land grabbing.⁵²⁸ Thus it commendably advocates for stricter regulation of the land market to mitigate distress land sales by OVCs like children orphaned or affected by HIV/AIDs and child headed households.⁵²⁹

There is a legal aid program for children's rights, an initiative called J4C (Justice for Children) and a child abuse helpline 116 set up recently to assist poorer children who are abused or neglected to obtain help and legal redress.

Also the MoH prepared a compulsory national health insurance scheme, under the deferred NHI Scheme Bill 2007, but this has yet to take off.⁵³⁰ It would be helpful in assisting parents with productivity at work and improving livelihoods to help them achieve good quality of life for children.

⁵²⁴ Para 3.4 (5), page 16 and para 4.0 (ii), page 17.

⁵²⁵ Para 66 (v).

⁵²⁶ The Office of the Prime Minister reports that it carried out rehabilitation of Kampiringisa (which is due) but does not mention what is being done exactly to protect and improve the children's access to SERs and CPRs. See OPM (January 2012) 1 'Government Annual Performance Report 2010/11' at 116, para 4.4.3.

⁵²⁷ Para 4.12.

⁵²⁸ Para 72.

⁵²⁹ Paras 73 & 74 (iii).

⁵³⁰ <http://www.monitor.co.ug/News/National/Shelved-health-insurance-plan-gets-new/-/688334/1920238/-/7wypnrz/-/index.html>

There are still many challenges on social protection of children. There is no exact specified amount that is fixed percentage in the Budget for children as recommended by the CRC Committee. Funding of health generally remains a great challenge to new born survival⁵³¹ and reports indicate that government committed 9.6% of its budget to health (2010/2011), below the 2015 set Abuja target of 15%.⁵³²

There is concern that even though government policies are transparent, the actual allocation and spending of funds isn't *e.g.* in nutrition spending.⁵³³ Reports show that although the government says it is over-spending on health and education in the budget⁵³⁴ and is pro poor, in reality most of the funds go to political UPE units and programs of the ministries and less of it ends up in improving school infrastructure and staff conditions.⁵³⁵ Lack of priority for children is also evidenced by indiscriminate concern and budgeting for issues like cable cars for Uganda (on WB loan of US \$ 100 million) for Kampala CBD.⁵³⁶ Legislators in Uganda generally seem to have basic knowledge on social protection issue but in an out of touch way not knowing how families cope to educate and look after their children.⁵³⁷

Also the Money Lenders Act lacks proper controls and regulations over the larger informal money lending sector which provides assistance to low earning families who struggle to educate and look after their children.⁵³⁸ Government must consider reviewing section 12 of the Act which imposes harsh overall interest rates of 24% while the official commercial bank's latest lending rates is approx. 22%⁵³⁹ and poorer families and rural women may not afford.

⁵³¹ Anthony K. Mbonye et al 'Newborn survival in Uganda: A decade of change and future implications-health policy and planning (2012) 27:3.

⁵³² See

http://www.actionforglobalhealth.eu/fileadmin/AfGH_Intranet/AFGH/Publications/PolicyBriefing1_Final1_LoRes_02.pdf

⁵³³ <http://internationalbudget.org/wp-content/uploads/Budget-Transparency-and-Child-Nutrition-23Apr13.pdf>

⁵³⁴ FY 2014/2015 budget speech.

⁵³⁵ http://www.ids.ac.uk/files/UgandaCh4_5.pdf

⁵³⁶ The New Vision, "Cabinet approves cable cars for Kampala" May 8, 2014.

⁵³⁷ http://www.unicef.org/uganda/Childrens_Issues_in_Parliament.pdf

⁵³⁸ Daily Monitor, "When salary earners compete with loans" February 11, 2014.

⁵³⁹ https://www.bou.or.ug/bou/rates_statistics/statistics/interest_rates.html

4.4 Government Policy on Culture

4.3.5 Uganda National Culture Policy, 2006

It recognises that some of Uganda's deeply rooted cultures and traditions conflict with modern law⁵⁴⁰ and recognises the family as one of the institutions that promotes culture.⁵⁴¹ It calls for community action against cultural practices that infringe human dignity.⁵⁴² It provides a strategy to review culture specific laws⁵⁴³ and advocates for interventions like the development and promotion of a family code of conduct for protecting the family and promoting beliefs, values and traditions that enhance human dignity ensuring action on those that impinge it.⁵⁴⁴ The policy however remains silent on human rights issues like discriminatory customs and practices like bride price, an established cause of early and forced child marriages, domestic violence and customs on land and property inheritance. Also beliefs in superstitions have contributed to escalating levels of child sacrifices in Uganda⁵⁴⁵ instilling fear in children and youth and restricting their freedoms.⁵⁴⁶ The policy defines supernatural beliefs as myths⁵⁴⁷ but does not provide clear guidelines on how they are to be dealt with in law. Such issues may lead to interruptions in the smooth access and availability of the child's needs. There is no long term actionable plan yet for the policy and it was criticised before as being mainly a 'policy on paper'⁵⁴⁸ even though a medium term action plan was instituted in December 2011.

The challenge is that the traditional and widespread patriarchal nature of Ugandan society is highly determinant of many family issues. By not addressing culture in family, having a code on dual parental responsibility as per the Constitution or on the status of the child and human rights

⁵⁴⁰ Page 7, para 2.2.5.

⁵⁴¹ Page 9, para 2.4.2.

⁵⁴² Page 15, para 3.4. Also see Page 16, para 4.3 (3).

⁵⁴³ Page 19, para 6.1.

⁵⁴⁴ Page 25, para 7. 4.1.

⁵⁴⁵ Simon Fellows et al (2013) 'Child sacrifice and mutilation of children in Uganda' 1, 8 & 17-49. He gives gruesome examples from first hand descriptions of the practise by practitioners in Uganda and defines child sacrifice as, '*the harmful practise of removing a child's body parts, blood or tissue while the child is still alive. These body parts or individuals are either worn, buried or consumed by an individual in the belief that they will assist with a number of issues including overcoming illness, gaining wealth, obtaining blessings from ancestors, protection, initiation, assisting with the conception and dictating the gender of a child.*'

⁵⁴⁶ *ibid.* 5. They estimate that over 10,000 children and youths throughout Ugandan districts have heard instances of children being sacrificed in their community.

⁵⁴⁷ Page 36.

⁵⁴⁸ Civil Society Alternative Report on the ESCR – Uganda. (December 2010) 'The Situation of Cultural Rights in Uganda' 2.

in culture, the policy grossly underestimates the impact culture and traditional beliefs have on effecting successful laws especially on family or child rights. It also does not tap into the opportunity accorded by the constitutionally restored traditional kingdoms who can play a major role in influencing their different kingdoms, cultures and clans to ensure they uphold and value the original principles of cultural values and respect human rights.⁵⁴⁹ Having undocumented cultural practices with each possibly having its own cross generational translation greatly undermines cultural values, cultural pluralism and easily causes misinformation and arbitrary interpretation and application of cultural life. There are already recommendations for clear guidelines or a checklist⁵⁵⁰ to clarify and harmonise cultures in Uganda. This would be a better long term strategy which if well researched openly and carefully, would help filter the original cultural norms or values of the diverse 56 ethnic groups or tribes in Uganda.⁵⁵¹

There is also a strategy in the Land Policy 2013 to restore the power of traditional leaders over land matters although it is conditional on their sensitivity to vulnerable groups' issues in exercise of their power.⁵⁵² This must be well monitored because it has potential for cultural arbitrariness. Sensitivity is not enough to ensure crucial and universal human rights principles are not subjugated by traditions known to such leaders.

A child centric culture is not just one which abhors cultural practices like bride price; rather it must be one that consciously promotes, acknowledges and fights for the full recognition of every child as a distinct and separate human being with his own capabilities and needs, constantly evolving with growing potential.⁵⁵³

⁵⁴⁹ For example, *ekisaakate* run by the Queen of Buganda's Nabagereka Development Foundation is an instrumental arena for teaching not only children but also parents and caregivers about cultural values that respect and recognise child autonomy and rights. See http://www.ndfug.org/index-jc.php?jc=Other_Projects and <http://ekisaakaate.org/>.

⁵⁵⁰ Dora Byamukama (May 2009) 'Effectiveness of Legislation Enacted to Address Harmful Cultural Practises against Women in Uganda Including Maltreatment of Widows and FGM' UN Division for the Advancement of Women EGM/GPLHP/2009/EP.10 at 12, para 6 (viii). She calls for a codification of customary law to ensure cultures are not used to exploit people's human rights.

⁵⁵¹ Ken M. Otiso (2006) *Cultures and Customs in Uganda*. Greenwood Press, Westport USA 88-99.

⁵⁵² Page 24, para 66 (iv).

⁵⁵³ Woodhouse (n129 above) 315. She asserts that acknowledging that children have human rights serves to strengthen, rather than to diminish the human rights of their parents.

4.5 Conclusion

There are various policies and plans in Uganda that can be used to deal with child poverty by providing for his basic needs and rights. However there are still some unclear policy statements especially in regards to the prioritisation of the child in social economic programs like shelter and housing, promotion of cultural values, gender equality and poverty eradication in rural areas.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The primary purpose of this thesis was to assess whether Ugandan law and policy adequately addresses child poverty in line with recommendations and minimum standards set by international and regional legal framework, and whether, therefore, and on this basis, it is ‘fit for purpose’.

Chapter One introduced the topic and the serious social problem that law and policy needs to address in Uganda, as elsewhere. It presented one pre-eminent framework for understanding child poverty, which provides seven deprivation factors as a part of its multidimensional approach to the complex problem of child poverty. These factors register on a scale ranging from mild deprivation to the extreme deprivation that is more common in sub-Saharan Africa. It also discussed the urgency of addressing child poverty in Uganda and why a child rights approach is a more sustainable way of addressing the problem.

Chapter Two described the legal framework for child rights and human rights of the child as found in international conventions and regional instruments to form a normative guiding framework for addressing child poverty. It outlined the importance of the four fundamental principles for child rights, namely: equality and non-discrimination; best interests of the child; respect for the child’s views and his participation as per his evolving capacities; and last but not least, the child’s right to highest attainable standard of life, survival and development. It then outlined the crucial obligations of the State in implementing and enforcing six of the seven deprivation indicators which are also traditionally classed as Social Economic Rights and gave an overview of the main components of each of the seven rights - nutrition, water, sanitation, shelter, health and information. Lastly it described the international and regional law on the child’s right to have wealth and be socially protected and on culture.

Chapter Three provided a critique of how well the law in Uganda - the Constitution of 1995 and the main Children’s Act, cap 59 – implement the normative framework described in Chapter

Two so as to protect the child from a situation of growing up or living in poverty. This inquiry reveals that the Constitution mostly provides general protections to vital human rights of the child that are internationally guaranteed especially social economic rights. It also found that the Constitution avoids giving direct guarantees of major rights of the child and imparts protection mainly in the form of policy directives to the government of Uganda. It also finds out that in spite of this, the Constitution manages to offer basic protection of all the seven child poverty deprivations, protection from harmful cultures interfering with his health or education or those in contravention with any provisions of the Constitution and his general rights as a human to social protection and sustainable development.

Art 34 of the Constitution is particularly found to be capable of a wider interpretation that would adequately protect all the rights of the child that are capable of granting him social or economic benefit. A wholesome reading of the Constitution also shows it is cognisant of some of child rights like non-discrimination, autonomy, best interests and his right to family. Lastly, Chapter Three finds out that the Constitution provides for various enforcement and implementation measures for its provisions that are accessible to ordinary citizens and children alike and utilised by the judiciary especially in the Constitutional and Supreme Courts of Uganda, although mainly in respect to women and girl child rights. Also it may be more expensive and unclear for poorer citizens to use the Constitutional process unless they are adequately guided and also are open to use of other mechanisms like the Equal Opportunities Commission and informal community level mechanisms provided for in the Children's Act like reporting a child rights violation to the Secretary for Children's Affairs at LC level, the police or a Probation and Social Welfare Officer. The National Council for Children, which is mainly a formal institution for advocacy, represents an opportunity for children to approach with their grievances and concerns. Hence, the responsible Minister should widen its mandate to include hearing particular concerns by children directly. And government needs to institute codes of practice and teams to monitor the informal and community level measures of implementation to curb their perceived corruptibility with richer parents paying off police or LC officials to protect them if accused of a child rights violation or child neglect.

In addition, Chapter Three analysed the current Children's Act of Uganda along with the proposed Children (Amendment) Bill 2007 as well as other relevant legislation that impacts child poverty, crucial child rights and principles. It found out that although overall it is commendable as a child specific law which means it acknowledges child individuality and autonomy necessitating separate protections from adults, the Act does not offer the child any real tangible protections that directly and clearly guarantee his basic rights, whether SERs or CPRs like information, all guaranteed in the CRC and ACRWC. In this regard, it was found that the Constitution does a better job of guaranteeing protection and rights of the child as a human being. Even other laws were found to be better than the Children's Act in protecting the child. For example the Employment Act which protects him from exploitation; but there are still many other laws in existence that are either not up to date or that discriminate against the child and directly breach or are capable of being used to breach fundamental child rights principles enshrined in both the Constitution and international law.

For example, the various marriage laws breach constitutional minimum age protections of the child from discrimination according to age or gender or economic circumstance, property laws and succession laws. Recent other unequitable laws like on HIV Prevention may also breach the child's rights to sexual and reproductive health care access and treatments. In a nutshell, the Children's Act does not really offer any greater protections than the Constitution which sets out the basic minimums. Moreover, the Act is found not to be in complete alignment with Constitutional protections not to say the established minimum standards or framework in international and regional law. The wording of child rights in the Act follows outdated concepts like "welfare" instead of "best interests". It not comprehensive enough for child rights, for example it only guarantees the child's right to leisure, participation in sports or cultural activities but also does this in a schedule instead of within the main body of text of the law.

In addition, the assessment reveals that the proposed Children's Amendment Bill, 2011 does not offer any viable solutions to this apart from its proposals on child neglect and abuse and child diversionary measures. The Bill is found to still have the same reluctance to accord the child direct and clear unequivocal protection of all his rights and appears focused mainly on protection measures and alternative care. These glaring omissions and inadequacies pose a potential crisis

and are detrimental to the child rights approach. The Children's Act's potential as the main child rights reference for parents, caregivers, enforcement and policing agencies and judicial and political administrators in the country is weakened. A problem that may arise due to this, is that implementation of even the available rights of the child in any other laws may not be effectively done and understood. There may be misinterpretation, opposition to and delayed implementation of internationally acknowledged child rights principles and rights.

Thus the Act and the Bill both are insufficient as they are to accord significant protection against child poverty. It appears that this reluctance by legislators and legal reform initiators in Uganda to fully embrace directly even the basic child rights principles like participation of the child, best interests and the basic dimensions of the four groups of rights is due to the fear that Uganda has no resources to afford giving the child all the protections guaranteed.

Uganda is bound as a party to the Vienna Declaration and Programme of Action of 1993 to respect, and implement its duties under, conventions it enters into. Secondly, resource capacity or funding has very little to do with ensuring adequate protection of the child and child welfare. Apart from the fact that the four fundamental child rights principles must be implemented irrespective of resources, as referenced in Chapter One countries like the USA, UK, which have enough resources for welfare and child grants, were found in the *Innocenti Report Card 10* to still have relatively higher levels of child poverty mostly due to inequalities and unequitable distribution of those resources. This means it is not only about the resources, but also about how well a country's systems and resources are managed, how equitably resources are distributed and how much attention is paid to marginalised areas and communities. Such an approach cannot exist unless there is a holistic rights-based method of implementing rights, providing social economic services, prioritising, planning and efficiently distributing resources. It has already been seen that Africa's 12 most "child-friendly" governments follow a two-pronged approach; first they institute appropriate laws to protect children and secondly, they ensure adequate budgetary commitments to child related services.⁵⁵⁴

⁵⁵⁴ Jaap E. Doek et al (eds) (2009) *Child Poverty: African and International Perspectives* Intersentia: ACPF 10

Chapter Four evaluated how well the policy, administrative and other measures set up by the Ugandan government sufficiently address child poverty. It finds that unlike the law, Uganda has put in place more detailed and elaborate policies and programs that can help improve the economic and social situation of children as well as their families, parents and mothers helping to prevent and address child poverty. The policy statements mostly offer general protection with a few prioritising child needs equitably and directly especially for OVCs and marginalised children in areas like Northern Uganda, Rakai and Masaka. This is done in various ways in different scattered policy documents and plans for various sectors. This could propagate a silo-mentality referred to in Chapter One and discouraged by Professor Lee in the 2008 African Child Policy Forum as not fit for addressing child poverty. However, if the various ministries and departments in Uganda co-operate, co-ordinate and work together - instead of each concentrating on their sectorial policy only – policy may be useful in curbing child poverty.

Since there exists more leeway for protection of the child from deprivation in policy, the challenge is that the State needs to enact clear laws recognising and enforcing all the crucial child rights principles and groups of rights so as to ensure that policy enforcers in the different departments have similar goals and objectives, with the mission being to protect child rights without discrimination, to serve his best interests and with due regard to his right to participation and to life and survival. Possible limiting factors to policy efficiency are that it is more likely to end up being a politicised or individualised document and is also more subject to funding restrictions as per ministerial directives or the current government's political will. This is why a binding clear and adequate law would be preferable.

In conclusion, the analysis of Ugandan law and policy reveals the following definite challenges: lack of unequivocal and solid guarantee of all groups of child rights in the law including CPRs like his right to information; lack of adequate provision for SERs of parentless, institutionalised or homeless children; lack of a clear law outlining dual responsibilities of parents and the child's autonomous status; lack of direct provisions guaranteeing child participation, best interests and right to life, health and survival; lack of a compliant updated mental health regime for child treatment, counselling and rehabilitation instead of

institutionalisation; lack of social assistance programs specific to children like child headed households instead of just families and the elderly; lack of solid property laws and support to mothers and indigent women; lack of an equal marital law regime greatly undermining some children especially those in the larger and potentially polygamous relationships and families; and, the culture problem highlighted by prevalent views of the child as only a dependent of parents only having duties to society according to gender. Culture remains one of the most significant factors for impacting child poverty eradication mainly because as evidenced by the stalled family law reform efforts in Uganda, it possesses huge potential for effecting positive or negative responses to any law or policy enacted. It also affects the identity and status of childhood in society, how he is perceived treated and usefulness of defined childhood stages.

Accordingly, the State must urgently revise discriminatory and outdated laws, fully enact child rights in the Act and ensure prioritisation of the child and child centric planning in its Beyond 2015 programs in order to adequately address child poverty. Other suggestions include: to educate the public on culture – liaising with the cultural leaders, the status of the child and the necessity for all child rights and principles; set up and efficiently manage cash transfers to poor families;⁵⁵⁵ consider a suitable name change for the mental hospital to raise awareness on mental health; and, enact a child poverty act and a family code that clarifies dual roles of parents, status of the child, objectives of childhood and cultural values. Also Ugandans, once noted to be “politically apathetic,”⁵⁵⁶ need to be active in advocating for and demanding human rights.

Child poverty can only be eradicated if the State takes responsibility for its obligations to assist incapacitated or poor parents and its obligations to the child as his *de facto* guardian and overall caretaker with ultimate responsibility. Children are the future of a country and it would do better to protect their childhood status and prioritise their needs now, instead of ignoring them, so as to enhance their capacities, wellbeing and welfare from early on. This is a way of protecting and guaranteeing the future economic and social wellbeing of its citizens and overall sustainable development of the country.

⁵⁵⁵ Chandy (n32) 2-3.

⁵⁵⁶ Susan Dicklitch & Doreen Lwanga ‘The Politics of Being Non-Political: Human Rights Organizations and the Creation of a Positive Human Rights Culture in Uganda’ (2003) 25 *Human Rights Quarterly* 495.

BIBLIOGRAPHY

PRIMARY SOURCES

Statutes

Uganda

Constitution of Uganda of 1995.

Children's Act of Uganda 1996, Cap 59.

Tanzania

Law of Marriage Act 1971.

Kenya

Kenyan Constitution Revised Edition 2010.

South Africa

Constitution No 108 of 1996.

Children's Act Cap 38 of 2005.

UK

Child Poverty Act, 2010.

Case Law

ACERWC (2011) Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on Behalf of children of Nubian descent in Kenya) against the government of Kenya. 002/com/002/2009 56.

Christian Education South Africa vs. Minister of Education 22 (4) SA 257.

CEHURD & 3 Others vs. Attorney General, Constitutional Petition No 16 of 2011.

Gillick vs. West Norfolk and others (1985).

MEC for Education, KZN and others v Pillay 2008 (1) SA 474 (CC).

Ministry of Health & others vs. Treatment Action Campaign & others (No 1) (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002).

Republic of South Africa v. Grootboom 2001 (1) SA 46 (CC).

Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, Communication 155/96. 60.

Uganda Association of Women Lawyers & others vs. The Attorney General Const. Petition No.2 of 2003.

International and Regional Treaties

African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc.

CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945.

Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N.

GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981. (CEDAW)

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990.

Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

Fact sheet No. 10 (Rev. 1), The Rights of the Child, Vienna Declaration and Programme of Action *adopted by* the by the World conference on Human Rights, Vienna, 25 June 1993, (A/CONF. 127/24 (Part 1), chap. 111).

Geneva Declaration of the Rights of the Child of 1924, adopted Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

- International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.
- International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.
- International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. res. 63/117 (2008)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in 1 Afr. Hum. Rts. L.J.* 40, *entered into force* Nov. 25, 2005. (Maputo Protocol).
- Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).
- Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on Oct 6, 1995.
- Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

SECONDARY SOURCES

Books

- Alston, P 'The Legal Framework for the Convention on the Rights of the Child' (1992) 91:2 *United Nations Bulletin of Human Rights: The Rights of the Child*, Geneva.
- Chirwa, DM (2009) *Child poverty and children's rights of access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis*. Community Law Centre, University of the Western Cape.
- Chinkin, C (2002) *The United Nations Decade for the Elimination of Poverty: What Role for International Law?* Current Legal Problems 2001, Oxford University Press: Oxford,
- Chirwa, DM 'Combating Child poverty: The role of economic, social and cultural rights' in Julia Sloth-Nielsen (ed) (2008) *Children's rights in Africa: A legal perspective* Aldershot: Ashgate.
- Detrick, S (ed) (1999) *A commentary on the United Nations Convention on the Rights of the Child* The Hague: Martinus Nijhoff Publishers.
- Jaap E. Doek et al (eds) (2009) *Child Poverty: African and International Perspectives* Intersentia: ACPF
- Hodgkin, R & Newell, P (ed) (2007) *Implementation handbook for the CRC* UNICEF.
- Lansdown, G (2005) *The evolving capacities of the child*, Innocenti Insight; UNICEF Innocenti Research Centre.
- Otiso, K. M (2006) *Cultures and Customs in Uganda*. Greenwood Press, Westport USA at 88-99.
- Sen, A. (1981) *Poverty and famines: An essay on entitlement and deprivation*, Oxford: Clarendon Press.
- Van Bueren, G (1995) *The international law on the rights of the child* Dordrecht: Martinus Nijhoff Publishers.

Journals

- Chirwa, DM 'Privatisation of water in Southern Africa: A human rights perspective water' (2004) 4:2 *African Human Rights Law Journal* 218-241.
- Chirwa, DM 'The merits and demerits of the African Charter' (2002) 10:2 *International Journal of Children's Rights* 157-177.
- Dicklitch, S & Lwanga, D 'The Politics of Being Non-Political: Human Rights Organizations and the Creation of a Positive Human Rights Culture in Uganda' (2003) 25 *Human Rights Quarterly* 495.
- Eekelaar, J 'The emergence of children's rights' (1986) 6 *Oxford Journal of Legal Studies* 161-182.
- Klassen, F et al (2010) 'Multiple Trauma and mental health in former Ugandan child soldiers' (2010) 23:5 *Journal of Trauma Stress* 573-81.

- Matshekga, T 'Toothless Bulldogs? The Human Rights Commissions of Uganda and South Africa: A comparative study of their independence' (2002) 2 *African Human Rights Law Journal* 68-91.
- Mbonye, A. K et al 'Newborn survival in Uganda: A decade of change and future implications' *Health Policy Plan.* (2012) 27 (suppl_3): iii6-iii28 at www.heapol.oxfordjournals.org.
- Munaaba, F N. "Covered yet Exposed" The Realities of Sexually Abused Children in Uganda. (2004) 2:2 *East African Journal of Human Rights & Democracy* 130-142.
- Namanya, B 'Spousal Assault and the Child and Family Protection Unit (CPFU) of the Uganda Police Force.' (2008) 9:1 *Policy, Practise and Research: An International Journal* 31-41.
- Rutaremwya, G "Child Poverty in Africa: An analysis of UNHS 2009/2010 survey." (2013) 3 *American Journal of Sociological Research* 36-45.
- Rwezaura, B 'Competing "images" of childhood in the social and legal systems of contemporary sub-Saharan Africa' (1998) 12 *International Journal of Law, Policy and the Family* 260
- Sen, A. "Human Rights and Capabilities" (2005) 6:2 *Journal of Human Development* 151.
- Townsend, P. 'Deprivation', (1987) 16:2 *Journal of Social Policy* 125-46.
- Twinomugisha, B. K 'Exploring judicial strategies to protect the right to emergency obstetric care in Uganda' (2007) 7 *African Human Rights Law Journal* 283-306.
- Woodhouse, B. B 'Hatching the Egg: From property to personhood: A child-centred perspective on parent's rights' (1998) 2 *Georgetown Journal on Poverty Law and Policy* 313 -319.
- Wright, C et al 'School Readiness of low-income children at risk for school failure' (2010) 6:2 *Journal of Children and Poverty* 99-117.

Reports, publications & working papers

- Action for children (2012) 'Keeping Children Safe: The Case for Reforming the Law on Child Neglect.'
- Adamson, P (2012) *Innocenti Report Card 10* 'Measuring Child Poverty. New League Tables of Child Poverty in the World's Rich Countries' UNICEF Innocenti Research Centre: Florence.
- African Child Policy Forum (2008) 'Third International Policy Conference on the African Child: Child poverty in Africa 12-13 May 2008' UN Conference Centre-Addis Ababa.
- ANNPCAN-U & MUK (June 2013) 'Baseline Survey of Community Child Protection Systems in Uganda.'
- ANPPCAN-Uganda (2011) 'A Situational Analysis of Child Abuse and Neglect in Uganda.'
- Barya, J. J (January 2009) 'Interrogating the right to social security and social protection in Uganda.' HURIPPEC Working Paper No 23, Makerere University.
- Blattman, C et al (April 2013) 'Study on the Economic and Social Returns to Cash Transfers: Evidence from a Ugandan Aid Program.'
- Byamukama, D (May 2009) 'Effectiveness of Legislation Enacted to Address Harmful Cultural Practices against Women in Uganda Including Maltreatment of Widows and FGM' UN Division for the Advancement of Women.
- Catarina de Albuquerque (2009), 'Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation'.
- CDC Report, 'Obesity and Social-economic Status in Children and Adolescents 2005-2008.'
- Chandy, L & Gertz, G. (2011) 'Child Poverty Insights: The Changing state of Global Poverty' UNICEF.
- Civil Society Alternative Report on the ESCR – Uganda. (December 2010) 'The Situation of Cultural Rights in Uganda'
- Commonwealth Foundation & the End Poverty 2015 Millennium Campaign () 'A civil society review of progress towards the MDGs in commonwealth countries. National Report: Uganda.
- Daily Monitor, "3.5 million children living in abject poverty –report" June 11, 2014.
- Daily Monitor, "When salary earners compete with loans" February 11, 2014.
- Daumerie, B et al (2010) 'Effects of a very young age structure in Uganda: country case study' Population Action International.
- Fellows, S & Humane Africa et al (2013) 'Child sacrifice and mutilation of children in Uganda.'

- Gordon, D., Irving, M. & Nandy, S (University of Bristol) & Townsend, P (University of Cambridge) 'Multidimensional Measures of Child Poverty.'
- Gordon, D., Nandy, S. et al (2003) 'Child Poverty in the Developing World' University of Bristol.
- GoU (1992) 'White Paper on Implementation of the Recommendations of the Report of the Education Policy Review Commission: Education for National Integration and Development.'
- Harper, C & Marcus, R. 'Child Poverty in Sub Saharan Africa' Save the Children Fund (UK).
- Julia SN et al (2009) 'Child friendly laws in Africa' African Child Policy Forum.
- Metzler, J et al (2013) 'Evaluation of Child Friendly Spaces: Uganda field study summary report' World Vision & UNICEF.
- MoH, Annual Health Sector Performance Report (AHSPR) 2012/13.
- MoIA (2013) Annual Report on the Trend of Trafficking in Persons in Uganda.
- MoFPED, (June 2014) Financial Year 2014/2015 budget.
- MoFPED (September 2013) 'MDG Progress Report for Uganda 2013.'
- MOFPED (2000) 'Uganda's PEAP: Summary and Main Objectives.
- MoGLSD, PEP et al (June 2014) 'Situation Analysis of Child Poverty and Deprivation in Uganda'.
- Onyango, O (2007) 'Decentralisation without Human Rights? Local Governance and Access to Justice in Post- Movement Uganda' HURIPPEC Working paper No. 12 of 2007, Makerere University.
- OPM (January 2012) 1 'Government Annual Performance Report 2010/11.'
- Perenieto, P et al (2011) 'Situation Analysis of Children and Poverty in Uganda: Voices of Children' ODI.
- PWC (August 2013) 'Creating Certainty: Uganda's FY 2013/2014 Post-budget Analysis.'
- Reuters, "US cuts aid to Uganda, cancels military exercise over anti-gay law" June 19, 2014.
- Rice University News & Media, "Childhood obesity more likely to affect children in poorer neighbourhoods" Nov 9, 2012.
- Ssebunya, J et al (2012) Developing a National Mental Health Policy in Uganda: A case study from Uganda.
- Sewamala, F et al (February 2012) 'Evaluation of SAGE' Oxford Policy management.
- Sloth-Nielsen, J. & Mezmur, B (2007) 'Free education is a right for me: A report on free and compulsory primary education'
- Telegraph, "Government fails to agree on child poverty redefinition" February 26, 2014.
- The New Vision, "Cabinet approves cable cars for Kampala" May 8, 2014.
- The New Vision, "Govt sued over nodding disease" May 29, 2012.
- The New Vision, 'Mental Health-Over 11.5m Ugandans suffer mental health disorders' April 4, 2010.
- The Observer, "How a nurse infected baby with HIV/AIDS blood" January 13, 2014.
- The Observer, "Inclusive education – An ideal too expensive" February 27, 2013.
- The Observer, "Uganda's GDP figure misleading – Hausmann" December 12, 2012.
- Thomson, A & OPM-GoU (2008) 1 'Independent Evaluation of PEAP 1997-2007.
- Tomasevski, K (2006) 'The State of the Right of Education Worldwide, Fee or Free'
- UBOS (2012) 'Uganda Demographic and Health Survey (UDHS) 2011.'
- UBOS (November 2010) 'Uganda National Household Survey 2009/10: Socio Economic Module.'
- UBOS (2007) 1 'Projections of demographic trends in Uganda 2007-2017.'
- Uganda Debt Network (2002) 'Monitoring the Poverty Action Fund: Annual Report 2001-2002.'
- Uganda Police (2013) 'Annual Crime and Traffic/Road Safety Report'
- UNDP (2000) 'Human Development Report 2000' Oxford University Press, Oxford.
- UNHCR (2011) 'Submission on the Status of Refugees in Uganda'
- ULRC (July 2013) 'Study Report on the Review of Laws on Succession in Uganda.'
- UNDP (2013) HDR. The Rise of the South: Human Progress in a Diverse World (Uganda).
- US Department of Labour (2012) 'Findings on the Worst Forms of Child Labour-Uganda.'
- UYDEL (2011) 'Commercial Sexual Exploitation of Children in Uganda.'
- UN (1995) 'Report of the World Summit for Social Development (19 April 1995)'
- UNICEF (2008) 'Global Study on Child Poverty and Disparities.'

- UNICEF (2005) 'State of the World's Children 2005: Childhood under Threat'
- UNICEF & NCC Uganda (2001) 'Assessment of progress and performance of the Uganda National Program of Action for children 1992-2002.'
- UNICEF (2000) 'Poverty Reduction Begins with Children'
- UWEZO (2012) 'Are our children learning: Literacy and Numeracy across East Africa.'
- WHO (2003) Guidelines on Complementary Feeding: Report of the global consultation.
- WHO The conceptual framework for implementation of the drinking water guidelines.
- WHO Geneva (2003) 'Domestic Water Quantity, Service Level and Health.'
- Witter, S (2002) 'The Silent Majority: Child Poverty in Uganda' Save the Children UK.
- World Bank (2013) 'World Development Indicators.'
- World Bank (2008) 'World Development Indicators Supplement'

UN Resolutions & General Comments

- A/HRC/Res 15/8 Adequate housing as a component of the right to an adequate standard of living (2010).
- A/HRC/Res 15/9 Human Rights and access to safe drinking water and Sanitation (2010).
- CEDAW/C General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).
- CEDAW/C General Recommendation 21 Equality in marriage and family relations (Thirteenth session, 1992), U.N. Doc. A/49/38 at 1 (1994), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003 General Recommendation 21, HRI/GEN/Rev.2.
- CESCR General Comment No. 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003).
- CESCR General Comment No. 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).
- CESCR, General Comment No. 9 The domestic application of the Covenant (Nineteenth session, 1998), U.N. Doc. E/C.12/1998/24 (1998), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 54 (2003).
- CESCR General Comment No. 12, Right to adequate food (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).
- CESCR General Comment No. 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 70 (2003).
- CESCR General Comment No. 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2003), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003).
- CESCR General Comment No. 19, The right to social security (art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008).
- CESCR General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009).
- CESCR General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a)), U.N. Doc. E/C.12/GC/21 (2009).

- CRC General Comment No. 1, The aims of education (twenty-sixth session, 2003), U.N. Doc. CRC/GC/2001/1 (2001), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 282 (2003).
- CRC General Comment No. 3, HIV/AIDS and the right of the child, U.N. Doc. CRC/GC/2003/3 (2003).
- CRC General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003).
- CRC General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N. Doc. CRC/GC/2003/5 (2003).
- CRC General Comment No. 7, Implementing child rights in early childhood (Fortieth session, 2005), U.N. Doc. CRC/C/GC/7/Rev.1 (2006).
- CRC General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) (Forty-second session, 2006), U.N. Doc. CRC/C/GC/8 (2006).
- CRC General Comment No. 9, The rights of children with disabilities (Forty-third session, 2007), U.N. Doc. CRC/C/GC/9 (2007).
- CRC General Comment No.10, Children’s rights in juvenile justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007).
- CRC General Comment No. 11 on Indigenous children and their rights under the Convention, U.N. Doc. CRC/C/GC/11 (2009)
- CRC General Comment No. 12, The right of the child to be heard, U.N. Doc. CRC/C/GC/12 (2009).
- CRC General Comment No. 13 ‘The right of the child to freedom from all forms of violence (Article 19)’ U.N. Doc. CRC/C/GC/13/2011.
- CRC General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), U.N. Doc. CRC/C/GC/15, 17 April 2013.
- CRC General Comment No. 17 The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Article 31), U.N. Doc. CRC/C/GC/17, 18 March 2013.
- CRC Day of General Discussion on “Resources for the Rights of the Child - Responsibility of States” 46th Session, 17 September – 5 October 2007.
- Statement of Commitment of the Administrative Committee on Coordination for action to eradicate poverty, UN ECOSOC E/1998/73 of 22 June 1998.
- UN Gen Ass Res.54/263, Annex 1, 54 UN GAOR Supp. (No 49) at 7, UN Doc A/54/49, Vol III (2000), entered into force 12 February 2002.
- UN Gen Ass Res. 61/146 on the Rights of the Child (23 January 2007)
- UN Gen Ass Res 66/288 ‘The Future We Want: Post 2015 Global Development Agenda.’ (July 2012)
- UN Gen Ass Res 64/292 on human right to safe drinking water and sanitation.

Websites

- <http://www.learningandteaching.info/learning/piaget.htm>
- <http://infed.org/mobi/howard-gardner-multiple-intelligences-and-education/>
- <http://plato.stanford.edu/entries/rights-children/>
- [http://www.learningandteaching.info/learning/constructivism.htm#Vygotsky.](http://www.learningandteaching.info/learning/constructivism.htm#Vygotsky)
- <http://www.simplypsychology.org/Erik-Erikson.html>
- [http://www.choosemyplate.gov/.](http://www.choosemyplate.gov/)
- http://www.ndfug.org/index-jc.php?jc=Other_Projects
- [http://ekisaakaate.org/.](http://ekisaakaate.org/)
- https://www.bou.or.ug/bou/rates_statistics/statistics/interest_rates.html

APPENDIX A

Table 1: Indicative Levels for the Seven Child Poverty Deprivations

DEPRIVATION	Mild	Moderate	Severe	Extreme
Food	Bland diet of poor nutritional value	Going hungry on occasion	Malnutrition	Starvation
Safe Drinking Water	Not having enough water on occasion due to lack of sufficient money	No access to water in dwelling, but communal piped water available within 200m of dwelling or less than 15 minutes' walk away	Long walk to water source (more than 200m or longer than 15 minutes). Unsafe drinking water (<i>e.g.</i> open water)	No access to water
Sanitation Facilities	Having to share facilities with another household	Sanitation facilities outside dwelling	No sanitation facilities in or near dwelling	No access to sanitation facilities
Health	Occasional lack of access to medical care due to insufficient money	Inadequate medical care	No immunisation against diseases. Only limited non – professional medical care available when sick.	No medical care
Shelter	Dwelling in poor repair. More than one person per room	Few facilities in dwelling, lack of heating, structural problems. More than 3 people per room	No facilities in house, non-permanent structure, no privacy, no flooring, just one or two rooms. More than 5 people per room	Roofless – No shelter
Education	Inadequate teaching due to lack of resources	Unable to attend secondary but can attend primary education	Child is 7 or older and has received no primary or secondary education	Prevented from learning due to persecution and prejudice
Information	Cannot afford newspapers or books	No television but can afford a radio	No access to radio, television or books or newspapers	Prevented from gaining access to information by government <i>etc.</i>