



# A Critical Examination of the Law against Child Sacrifice in Uganda

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## ABSTRACT

This article examines the law against child sacrifice in Uganda. The article revealed that while there are legal frameworks against the act of child sacrifice in place, however there are gaps explored by persons engaging in the act to avoid prosecution of the crimes committed. One of the gaps in the law is that the act of child sacrifice itself does not have a punishment on its own as most times the courts use the punishment of murder to the persons engaged in the act of child sacrifice. It is on this note that the article recommends the need for further enforcement and amendment of laws currently in place. More so, the government should amend the 1957 Witchcraft Act to make a clear distinction between traditional healers and illegitimate posers, as well as create a mandatory database of trained and qualified traditional healers in order to further distinguish them from traditional healers or traffickers. Furthermore, the Ministry of Gender, Labor and Social Development (MoGLSD) should additionally expand awareness campaigns to inform the public about the practice of human sacrifice and trafficking and the preventative measure which can be taken against it. Finally, there is need for further emphasis on differentiating between child sacrifice and activities associated with organ trade and child trafficking both in public and government sectors to facilitate the most appropriate proceedings for each specific case, as well as increased statistical clarification.

**Keywords:** Child protection, Child sacrifice, Human rights, Legal frameworks, Witchcraft

## INTRODUCTION

Child sacrifice is a problem that has affected the Ugandan Society for long but did not receive much attention from the relevant authorities until recently [1]. The practice is a challenge in the Ugandan society and is also a serious human rights issue affecting children. There are various human rights issues involved in human sacrifice and these include the right to life, the right to security of a person, physical integrity, and personal liberty, freedom from torture or cruel, inhuman or degrading treatment. It also involves abduction and torture of children [2]. These rights are enshrined in various international instruments to which Uganda is a party. The practice is also an injurious criminal offence punishable under the law.

Child sacrifice in Uganda came to the lime light a few years ago after the Police established that many children were reported missing, and many were later found dead and with their body organs, that tissues and private parts missing [3]. Due to resurgence of beliefs in African traditional religion and culture, the practice of witchcraft has regained credence and has fueled the gruesome acts of child sacrifice [4].

Despite a strong allegiance to western modernization and civilization by the Ugandan Government, being a former colony of the United Kingdom as well as promulgation of the 1995 Constitution that provides for Human Rights for all including the Child, the enactment of a number of laws to safeguard the Children's Rights including the Children Act as Amended, the Penal Code Act Cap 20, the Fundamental Human Rights Enforcement Act as well as establishment of a number of agencies including the Uganda Human Rights Commission, the Family and Child Protection Unit of the Police and the various committees on children Rights, there has persisted acts of child sacrifice in present day Uganda with many alleging the same to a belief in witchcraft and; cumulating wealth, this has left many children prey of the said barbaric act, the research examines the continued existence of the barbaric act despite the various legislative, administrative and policy measures to curb the same. This article onerously examines the law against child sacrifice in Uganda

### Causes of child sacrifice Poverty

A high level of poverty within the societies of Uganda where most of the individuals live below the poverty line

has greatly encouraged them to engage in child sacrifice. The heating and deep burning poverty levels has forced even the parents of these children to witchdoctors in search for wealth who in return ask for child body parts such as the private parts and others so as to appease the gods hence the raise of the practice in the communities [5]. Because of the inching poverty levels, most parents have failed to provide, protect and safeguard the lives of their children who are attracted by small gifts from the offenders who later sacrifice them. There is a presumption that child body-parts are more powerful and stronger to appease the gods, thus the increased numbers in child sacrifice cases in the country.

### **Cultural and Societal Practices**

Several cultures and societies in Uganda presume that child sacrifice is a form of appeasing the gods and therefore getting blessings if one complies with the practice[6]. The presumption that children body parts are purer than the old persons has led to the increase in numbers of the children sacrificed as to the beliefs in the society. This has led to the great hunt of children to be shed in the practice by the people who believe in this ideology as the children are also easily lured and lied to and later sacrificed.

### **Unemployment**

The high levels of many people especially the youth being jobless has increased the vice in the communities as the youths engage in the practice to get quick money. The youths with itching problems are easily swayed and engage in the practice since they are in need of quick money which they see people engaged in the practice have after child sacrifice acts [7]. The unemployment rates in Uganda is pivotal towards the practice of child sacrifice increasing as people would want to do anything to make ends meets such as to have their desired lives. The people can no longer sustain the burning rewards of poverty caused by the high rates of unemployment in Uganda thus engage in the practice to heal the situation as this increases the number of cases of child sacrifice.

### **Information gaps and ignorance**

The information gap to show persons the dangers of child sacrifice to the society has led to the high numbers of the vice to increase. The people engaged in the practice see it as a means of appeasing the gods but don't look at the violation of the rights of the children who are being sacrificed [8]. This information has not been brought to the common person who engages in the act as most are not in the know about the rights of the children being sacrificed. However, in law, ignorance of the law doesn't release you from punishment if you commit the offence as prescribed in the law. Thus, the information gap in the public concerning the wrongs in the practice and ignorance has led the vice to persist in the societies.

### **Fraudulent Religious Beliefs**

The fraudulent branches of some Pentecostal churches play a role in the increase of child sacrifice in Uganda. These congregations have power, money, radio stations and television channels and thousands of followers [1]. The preachers use persuasion, threats and blackmail to extort money from people while children are killed to heal someone else from AIDS or cancer. Little has been done to bring the perpetrators to justice as these are well connected to persons in the offices that have to enforce against the act of child sacrifice such as the police and courts of law.

### **Profitable Organ Trafficking**

The profitable organ trafficking due to the ritual murder is another issue which has caused the numbers of child sacrifice cases to increase in Uganda [9]. The sale of human organs which is very profitable prompts the people in the vice to increase the rate at which the vice spreads as they want to tap on the wealth that comes with organ sale from the ritual murders thus persist the act of child sacrifice in Uganda.

### **The impacts of child sacrifice**

There are several impacts of the child sacrifice in Uganda, which include:

#### **Physical**

Death is the worst, ultimate and most apparent, physical consequence of child sacrifice. Survivors often have a variety of scars across their body where they have been cut to draw blood. Some of the acts done during child sacrifice rituals like castration and genital mutilation have various physical consequences. Initially, castration leads to problems with urinating. In the long term castration affects the hormone level in the child leading to retarded development both physically and sexually [10]. The physical effects of child sacrifice become more apparent in children who have survived child sacrifice through adolescence and puberty as a child's normal development will be retarded.

#### **Psychological**

The practice of child sacrifice means that children who survive this ritual can often remember exactly what happened to them and who the perpetrators were, leading to a large degree of emotional distress, nightmares and flashbacks. The retelling of the events leads children to become highly upset. This psychological distress means that the survivors of child sacrifice find it difficult to trust family members or the society around them for fear of a reoccurrence of the event [11]. The lack of criminal conviction of witchdoctors and perpetrators adds to the

psychological distress as victims can still encounter their attackers in their normal life. The psychological effects of castration at an early age can lead to what is perceived as an abnormality, social exclusion of the castrated person can follow and this leads to depression. People who have been castrated find it difficult to develop normal relationships. They are unable to have sexual relations to produce children and this can further deepen the depression. Psychological implications exist for the families of the victims killed in the practice of child sacrifice, as the parents have nightmares and visions of their dead children. Grief and mourning are long term consequences that are ever present in the loss of a child.

#### **Financial**

The cost of medical treatment for the injuries suffered is often very high as they are not always simple and straightforward and can be long term. The financial pressures for children and families are intense as they struggle to pay the necessary medical bills for treatment. In case of castration, there are initial treatment costs as well as the long term costs of hormone treatment [12]. The families of the victims are unable to pay the high costs of hiring a lawyer to prosecute a suspected perpetrator accused of abducting or murdering their child in a ritual killing. The costs escalate and the slow progress of most cases through the courts with the inevitable backlogs leave the families unable to meet such costs. Consequently, cases are dropped, while some cases they never started as families do not have money to pay the lawyers or to fund the ongoing costs of the case.

#### **Societal Insecurity and Fracture**

Children across the country live in fear of abduction as cases of ritual killings increase. There are no official statistics on the issue of child sacrifice though the African Network for the Prevention Against Child Abuse and Neglect (ANPPCAN) have asserted that about 3000 children disappear from their homes each year [13]. Family members and neighbors of the victims along with members of the local community are sometimes involved in the abduction and ritual killings of children. This has resulted in a breakdown of trust within families and the community as the social fabric is at risk of disintegrating.

#### **The laws against child trafficking**

##### **National Laws**

##### ***The Constitution of the Republic of Uganda, 1995***

It does not define 'minorities', although it provides under Article 36 that: 'minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programs. The Articles immediately preceding it provide for affirmative action (Article 32) of the constitution of Uganda, the rights of women (Article 33) of the Constitution of Uganda, the rights of children (Article 34) of the Constitution of Uganda, and the rights of people with disabilities Article 35) of the Constitution of Uganda, indicating that the framers of the Constitution had a limited view of the term 'Minorities' [14]. However, Article 32 is very progressive. It places a mandatory duty on the state to the affirmative action in favor of groups who have been historically disadvantaged and is discriminated against on the grounds of age, disability, gender and/or any other reason created by history, tradition or custom. This provision, while primarily designed or envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favor of minorities in Uganda. In addition, cultural and religious rights of all Ugandans are protected under Article 37 of the Constitution [14]. The Article gives everyone a right to profess, practice, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. However, it is important to assess how far in practice this provision guarantees individual rights, in particular for ethnic, religious or linguistic minorities [14]. Constitutional and other legal provisions aside, it is clear that Uganda has a long way to go on minority issues. Even on the question of gender equality, where most advances have been made, much remains to be done. Further, in addition to the little knowledge and research about the complex cultural, legal, political and socio-economic problems of minorities, Ugandan institutions and structures are very poorly equipped and financed to deal with such issues. Despite the revival of the Ugandan economy since 1986, minority members (with the exception of Ugandan Asians) suffer greater unemployment and lack of access to political and other rights, due to an entrenched lack of resources such as land, and the prevalence of illiteracy and discrimination.

##### **Witchcraft Act Cap 124**

The Act, enacted in 1957 in the colonialist era, was used as an instrument to suppress 'barbaric practices' of the Africans. It was enacted to make provision for the prevention of witchcraft and punishment of persons practicing witchcraft. Under section 2 (1) of the Witchcraft Act [15], any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life. However, the relevance of the act in today's circumstances and its existence on Uganda's statute books has been questioned especially since there is various legislation. The witchcraft Act does not specifically mention child sacrifice. For instance, the Penal Code Act covering the same offences as those in the Witchcraft Act. However, the Witchcraft Act has been abolished since it is inconsistent with the 1995 constitution. Article 24 of the constitution states that no person shall be subjected to any form of torture or cruel, inhuman or

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degrading treatment or punishment. In witchcraft, children are exposed to torture, degrading treatment and mutilations that make them lose their dignity that contravene Article 24 of the 1995 Constitution and any other law that is inconsistent with the provision of the constitution which is the supreme law shall be to the extent of its inconsistency declared void as per Article 2 of the 1995 Uganda Constitution.

#### **The Penal Code Act (as Amended) Cap 120**

The Penal Code Act [16] contains provisions on crimes that are punishable. Section 243 of the Penal Code is the clearest law under which an individual may be charged for child sacrifice. The section provides for the offence of kidnapping or detaining with intent to murder. Kidnapping or detaining with intent to murder.

- 1) Any person who by force or fraud kidnaps, abducts, takes away or detains, any person against his or her will
  - a) With intent that such person may be murdered or may be so disposed of as to be put in danger of being murdered.
  - b) With knowledge that such person will probably be murdered; or
  - c) With intent to procure a ransom or benefit for the liberation of such person commits an offence and is liable on conviction to suffer death.
- 2) Where a person so kidnapped or detained is thereafter not seen or heard of within a period of six months or more, the accused person shall be presumed to have had the intentions and knowledge stipulated in subsection (1) (a) and (b).

A considerable number of cases have been instituted in courts of law against individuals accused of child sacrifice including the famous case of Uganda v Kato Kajubi Godfrey [17]. However, there is no specific provision in the Penal Code Act dealing with someone found in possession of human body parts. Hence this makes it hard to prosecute such a person and to secure a suitable conviction. Other charges that can be preferred against that practicing child sacrifice include kidnapping, abduction.

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

The Local Government Act [18] is the enabling legislation for the decentralization of government administrative structures to allow for the representation and accessible authority in close proximity. This decentralization has led to the creation of the District Probation and Social Welfare Office and having services closer to the children and their families. Some of the key focus areas for them include monitoring and lobbying for the security of children and ensuring that children stay in environmental conditions that minimize threats to their protection. Local authorities are charged with the duty of protecting the rights and well-being of children in their area of jurisdiction. The system of governance under the Act presents an opportunity for communities at all levels to participate in decision making. However, there are good practices at national level as compared with the experiences at the district or other lower local governments. The Act under section 25 (4) provides that the Chairperson of a lower local government council is required to assign one of the secretaries to be responsible for the health and children welfare [18]. Many of the Local Councils at village level have not received any training on the CRC or the Children Act nor have they heard of these legal instruments yet they are the immediate contacts in respect of children in need of care and protection. Additionally local councilors do not have the capacity to screen and assess traditional healers in their area of jurisdiction due to lack of awareness or training.

#### **The Children Act, Cap.59**

Under Section 5 (2) A parent/ guardian has the duty to protect the child from discrimination, violence, abuse or neglect. Additionally, section 7 of the Act provides that it is unlawful to subject a child to social or customary practices that are harmful to their wellbeing [19]. Part III of the Act provides for Support for Children by Local authorities. Under section 10, it is the duty of the Local Government council right from village to district level to safeguard children. In section 10 (1) (b) a member of the Local Council known as the Secretary for Children's Affairs is to be responsible for the welfare of children [19]. According to a report by the Ministry of Gender, Labour and Social Development [20] on the 'Implementation of the African Charter on the Rights and Welfare of the Child in Uganda', these Secretaries and LCs were trained on children issues by the Ministry of Gender, Labour and Social Development, UNICEF among others. However, since political leaders are changed from time to time, this requires continuous training which is not financially viable. Section II 9 of the Children act say the Secretary for Children's Affairs, chosen from the members of the Council is responsible for all matters concerning children. However, the above is still far from being regularly and satisfactorily implemented. Protection and welfare officers who are the core personnel for implementing the children act are severely underfunded.

#### **Police ACT CAP 303**

The Police Act [21] gives a police officer power to institute criminal proceedings before a magistrate, apply for summons, warrants, search warrants or to undertake any other legal process as may be necessary against a person charged with an offence.

#### **Universal Declaration of Human Rights (UDHR)**

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It provides for the right to life, liberty security and personal integrity. It further prohibits torture and cruel, inhuman or degrading punishment or treatment. In 1948 the Universal Declaration of Human Rights was adopted by the United Nations. This declaration of 30 articles is committed to protecting and promoting the human rights of every individual [22]. That includes children, who are entitled to enjoy all the rights guaranteed by the various international human rights treaties which have since evolved from the original Declaration. Although children are covered by these international treaties, the international community recognized the specific need for the protection and promotion of children's rights in 1989, with the Convention on the Rights of the Child (CRC) [23]. The CRC applies to all children below the age of 18, and contains 54 articles covering almost all aspects of the life of a child. These articles are grouped in the following three categories:

**Provision:** these are the rights to the resources, the skills and services; the "inputs" that are necessary to ensure children's survival, and the development of their full potential;

**Protection:** these are the rights to protection from acts of exploitation or abuse, in the main by adults or institutions that threaten their dignity, their survival and their development;

**Participation:** these are the rights that provide children with the means by which they can engage in those processes of change that will bring about the realization of their rights, and prepare them for an active part in society and change.

### **Convention on Rights of Children**

Uganda is party to the Convention of the Rights of the Child which was ratified by the Government in November 1990. It has relevant provisions addressing the problem of child sacrifice in Uganda. As part of the guiding principles and survival rights in the CRC, Article 6 enjoins state parties to recognize that every child has the inherent right to life. Under article 6 (2) state parties have the responsibility to ensure to the maximum extent possible the survival and development of the child. Article 37 provides that no child shall be subjected to torture or other cruel inhuman or degrading treatment. Various structures have been put in place to implement the CRC [24]. The Department of Children and Youth in the Ministry of Gender, Labour and Social Development is directly responsible for the implementation of the CRC and the protection of Uganda's children. At the lower levels, Local Councils have a secretary for Children's Affairs. Implementation of the Charter especially at lower levels has however faced significant challenges as will be discussed later on.

### **The International Covenant on Civil and Political Rights (ICCPR)**

ICCPR Prohibits a number of practices directly related to trafficking, including slavery, the slave trade, servitude and forced labor. The International Covenant on Civil and Political Rights (ICCPR), and one for economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976 [25]. The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A, and came in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights to the Non-Self-Governing and Trust Territories and individuals, including labor rights and the right to health, the right to education, and the right to an adequate standard of living [26]. As of January 2020, the Covenant has 117 parties. A further four countries, including the United States, have signed but not ratified the Covenant. The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights. The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law. Article 7 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation [22]." This in line with child sacrifices does mean that no person shall be take advantage of in essence of exposure to the act which is more or less torture to the psychological, physical and mental state of a person.

### **Regional laws against child sacrifice**

#### **African Charter for Children**

In 1999 the African Charter on the Rights and Welfare of the Child (ACRWC) [27] entered into force, adopted by the Organization of African Unity (now African Union). The ACRWC builds on the same basic principles as the UN Convention on the Rights of the Child, but pays particular attention to issues of special importance to Africa. Africa is in fact the only continent in the world with a region-specific child rights instrument. Three articles in the ACRWC address violence against children, which is regarded as a key theme. The various forms of violence include physical, emotional, psychological, financial, and cultural. Cultural violence occurs when the child is harmed as a result of practices condoned by their culture, religion or tradition. The ACRWC contains provisions directed at the elimination of harmful traditional practices including female genital mutilation and scarification. The protection of children against harmful social and cultural practices is addressed in Article 21. The



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consequences for children who have been exposed to violence vary according to its nature and severity. Short- and long-term repercussions of violence can have a major impact on the child, and can cause social, emotional and physical problems. The practices of female genital mutilation, honor killings and child sacrifice are categorized as cultural violence[27].

Article 5 (I) stipulates that every child has an inherent right to life which should be protected by law. In addition, state parties have to ensure 'to the maximum extent possible' the survival and protection of the child. State parties also have to take specific measures to protect the children from all forms of torture, inhuman or degrading treatment through administrative, social and educational measures [27]. More specifically countries should take appropriate measures to eliminate harmful social and cultural practices that are prejudicial to the life of the child. IO Article 29 prohibits the sale or trafficking of any person. In accordance with article 16 (2) of the Charter, Uganda has put in place some legal frameworks to protect children from torture and inhuman treatment. Article 24 of the Constitution of the Republic of Uganda for instance provides that no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment. The Children Act section 6 also provides for the protection of children from violence and above.

### CONCLUSION

The legal framework against the act of child sacrifice is in place, however there are gaps explored by persons engaging in the act to avoid prosecution of the crimes committed. One of the gaps in the law is that the act of child sacrifice itself does not have a punishment on its own as most times the courts use the punishment of murder to the persons engaged in the act of child sacrifice. It is on this note that the article recommends the need for further enforcement and amendment of laws currently in place. More so, the government should amend the 1957 Witchcraft Act to make a clear distinction between traditional healers and illegitimate posers, as well as create a mandatory database of trained and qualified traditional healers in order to further distinguish them from traditional healers or traffickers. Furthermore, the Ministry of Gender, Labor and Social Development (MoGLSD) should additionally expand awareness campaigns to inform the public about the practice of human sacrifice and trafficking and the preventative measure which can be taken against it. Finally, there is need for further emphasis on differentiating between child sacrifice and activities associated with organ trade and child trafficking both in public and government sectors to facilitate the most appropriate proceedings for each specific case, as well as increased statistical clarification.

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