

THE ROLE OF THE HUMAN RIGHTS REGIME IN THE FIGHT AGAINST CHILD SACRIFICE; A CRITICAL EXAMINATION

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“The child was held over the altar, a sharp gash across the neck, a stifled cry, and warm drops fell into the chalice. The corpse was handed to la Voisin, who flung it callously into an oven fashioned for that purpose which glowed white in its fierceness².”

Abstract

This paper seeks to expose the loop holes in the legal system that is being relied upon in the fight against child sacrifice, and then present the role that the human rights regime can play to effectively deal with this problem. The paper is premised on the view that today, child sacrifice is being considered as ordinary murder yet it falls in the category of the most heinous acts against humanity and in fact against the vulnerable children. That child sacrifice transcends the domain of ordinary murder and enters into the realm of human rights law. It is at this stage that the human rights discourse comes in to plug the holes in the criminal law and also buttress it in this struggle against an evil that threatens to drown our country. Therefore the paper will first explain the concept of child sacrifice, trace the reasons why it is flourishing today and then expose the current mechanisms used to fight child sacrifice. Then it will present child sacrifice as a human rights issue and thus make an argument for handling it as a human rights violation. It will then make conclusions and recommendations.

Introduction

The evil of child sacrifice is once again rearing its ugly head and this time round it threatens to be come the norm³. The issue is how to combat this cancer. The fight as it stands today seems to be based on the criminal law⁴ and divine intervention⁵. Few human rights organizations have

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² Robby Muhumuza, Child Sacrifice is On the Rise in Uganda, The Monitor, Uganda, Aug. 14, 2006 Opinion www.monitor.co.ug

³ Hardly a day passes without a report of child sacrifice in the press. And remember many of these cases remain unreported.

⁴ The offence of murder is what is mostly pointed out.

come up to address this using a human rights approach. It has thus become a matter that squarely lies in the criminal realm, yet the criminal law has its own loopholes⁶.

Therefore, it is about time the matter was looked at through human rights glasses and dealt with in a manner that satisfies the victim's relatives and the general public⁷. The answer seems to lie in the adoption of a human rights approach to child sacrifice.

What is child sacrifice?

Child sacrifice is a subset of human sacrifice. Human sacrifice is the killing of a human being for ritualistic purposes⁸. Religion or spiritualism is usually at the centre of child sacrifice.⁹ The vulnerable children are killed and their blood, or any other body tissue mainly the genitals, and the tongue are cut out¹⁰.

The history of child sacrifice goes back to a very long time in history. The Bible paints a very gloom picture of what was happening in Israel/Canaan in the old days. In fact God is reported to have ordered the sacrifice of Abraham's son Isaac to Him¹¹, and Isaac was only saved by divine intervention¹². Religions the world over have always had some kind of sacrifice, the most common being animal sacrifice. However, some of them descend into the realm of human sacrifice.

⁵ Religious leaders have time and again prayed over it seeking divine intervention into this cancer.

⁶ As we shall see later

⁷ Adopting a retributive/restorative perspective of punishment. In each of us, there is a yearning for revenge. Most people consider justice as being done when the person who perpetrated the injustice also gets to suffer in a way that appeases the injured. The retributive view of punishment is in fact the real basis of punishment despite the rhetoric to the contrary otherwise we would just leave the criminals to go away untouched. For justice to be done, the victim or atleast their family must be compensated. This is the basis of civil litigation and the concept of damages.

⁸ Some have argued however that the term 'sacrifice' is a misnomer. One cannot describe the willful and criminal act of killing someone for monetary gain or otherwise as being a sacrifice. One cannot sacrifice what is not his. And since no one owns anyone else, no one can sacrifice any one else. This is not the Roman Empire age where the Neros and Caligulas used to sacrifice 'their' people without any guilt. For example see Emmanuel D. Kavuma; Michelle becomes 'Mikyele' as radios murder English; The weekly observer, March 12-18 2009. He says that "...those still imagining that murdering children is child sacrifice make me wonder how a butcher who slaughters pigs and cows (including his own) for sale 'to become rich' can "sacrifice" those animals!.."

⁹ However it should be noted that what is going on today may go beyond religion and mysticism into outright murder for economic survival. Some people have linked this merciless exercise to the on going trade in body parts world wide. These people may be pretending to be doing it on a spiritual-religious basis yet the true intention is to sale body parts.

¹⁰ These particular body parts seem to have a lot of significance to the ritualistic murderers for all the stories show such parts being cut out. May be in line with the body part trade point of view, they are the most profitable.

¹¹ Genesis

¹² Though ironically the order to sacrifice him was also divine!

In Europe child sacrifice was very common during the dark ages, and the description of a child sacrifice scene above is picked from 15th Century France during the reign of King Louis XIV. In the King's Favourite¹³, the author describes how the practices were a very common occurrence in England during the reign of James I.

In Africa, and especially East Africa, child sacrifice is also so closely tied with religion- ancestral worship that most people do not tell the difference between traditional religion and child sacrifice. They regard it as one and the same thing¹⁴. Therefore, child sacrifice can be explained in religious terms.

Child sacrifice in Uganda

It is very rare to find someone in Uganda today who has not heard of child sacrifice. Some of the stories find their way out in the limelight, the most publicized being that of Shamim, a 5 year old girl who became an icon for the fight against child sacrifice. Her story is worth telling;

*"On April 4, 1999, Jalia Katusiime, a hair dresser from Njeru town, Mukono district left her five-year-old daughter Shammim Muhammed with a neighbour, Francis Muwanga, to go and attend to a customer. When she returned, both Shammim and Muwanga were missing. There followed a search for her. Her decomposing body was found on Namiya hill. Two of her fingers had been chopped off, her neck cut off and her tongue plucked out. Her private parts were also missing. Police arrested Muwanga as the chief suspect. Later, he and his wife confessed that they had been advised by a witchdoctor, Yunus Samanya, that if they sacrificed a child to the spirits, they would become rich. Muwanga, his wife and the witch doctor were sentenced to death on July 29, 1999 and are in prison."*¹⁵

¹³ An account of the occurrences at the court of King James I of England.

¹⁴ This is of course a wrong perspective but you cannot blame those who hold it for most people engaged directly in these acts claim to be traditional healers.

¹⁵ Story adapted from Robby Muhumuza, Child Sacrifice is On the Rise in Uganda, The Monitor, Uganda Aug. 14, 2006 Opinion.

Many heinous stories of sacrifice followed the Shamim story in a progression¹⁶. The most prominent and most recent of these being the case Kampala tycoon, Kato Kajubi who allegedly ordered the sacrifice of 12 year old Joseph Kasiryе. He is alleged to have conspired with witch doctors to sacrifice the boy. He was supposed to pay the two a sum of money for their 'services'. All the three of them are on remand awaiting committal to the high Court on charges of murder.

There are various key features that characterize child sacrifice in Uganda and these are;

Child sacrifice in Uganda is strongly connected to witchcraft¹⁷. In all stories of child sacrifice, there is a witch doctor involved. Child sacrifice has always been linked to religion¹⁸. The persons leading and perpetrating the practice are the so called traditional healers or those who are more appropriately referred to as witch doctors¹⁹. These persons send 'patients' who flock to them for sacrifices usually, 'a goat with two legs' which the 'patient' correctly interprets as a child.

These 'patients' blinded by the promise of quick wealth and also blinded by the 'powers' that these quack doctors exude hatch plans of taking a person for sacrifice. Children, and especially familiar children are targeted for they are the easier targets. They are taken to the shrines and cut in an act of sacrifice to whichever god it may be.

Voices have been heard stating that this cannot be sacrifice, that this is murder outright. Whatever it is, the premise of this paper is that this is an outright violation of the fundamental rights of the person and particularly the rights of children, and something needs to be done as soon as possible.

¹⁶ **Milly Nsonyiwa, aged 1** One-year-old Milly Nsonyiwa of Mukono district disappeared from her mother, Esther Nakachwa on January 22, 1999. A month later, Milly's remains were found in a shrine belonging to Kizito, a traditional healer in the same district. Her body had been cut into pieces - symbolic of sacrifice to the gods. Then 40-year old James Kareju Mugisha of Kagando, Nyabushozi, Mbarara district was arrested on October 9, 1998, attempting to sell his 12-year-old son Reuben Mugabe to Strabag Construction Company for Shs3m for ritual sacrifice. The New Vision reported 15 cases of child sacrifice in 1999 alone. Then recently a man slaughtered his two twins. It is said that he wanted to sell them for money. Also a Kampala tycoon was accused of having mercilessly thrown a doll clutching 6 year old girl into a building foundation. Then comes the Kajubi story.

¹⁷ This should not be confused with the the legitimate practicing of traditional African religion

¹⁸ See for example PG Mosca, Child sacrifice in Canaanite and Israelite religion: a study in Molk and mlk (Diss. Harvard, 1975)

¹⁹ That It is important to note that all witchdoctors are traditional healers but NOT all traditional healers or herbalists are witchdoctors and many of them do not sacrifice children.

Another key feature of child sacrifice in Uganda is superstition. Most people in Uganda believe that a building cannot stand without something being sacrificed. What is usually sacrificed is chicken. However the tendency seems to be that the bigger the building then the heavier the sacrifice and thus humans have also been sacrificed. Similarly children are sacrificed during road construction. Stories abound of how people in certain villages observe curfew times when roads are being constructed through such villages. The fear is that the road constructors usually sacrifice humans by crushing them with their heavy equipment during the construction purportedly to appease spirits. These superstitious views hold sway in very many persons including the educated. The newspapers recently quoted the chief engineer on the collapsed NSSF tower in Kampala as saying that the tower collapsed because the owners refused to sacrifice as required!²⁰

The other feature of child sacrifices in Uganda is the obvious involvement of parents or guardians of these children. In one case it is the parent selling a child for money, in others it is the parent or guardian who cuts up his own children. This shows that human rights violations against children are committed by those who are supposed to love and protect them.

The other obvious feature is that the reasons for the murders mainly base on poverty and economic related benefits. Most of the persons who take children for sacrifice either want money in exchange for children or want blessings from the gods to whom they sacrifice in order to get rich. Whether they get these or not is not our concern here. This particular feature can be explained by the worsening economic conditions today. People go to all lengths to gat money and to get rich quick. Thus child sacrifice should not be looked at through narrow lenses.

Whatever may be its causes, the stage that child sacrifice in Uganda has come to now demands extra attention, otherwise no child is safe anymore from the marauding criminals and fortune seekers.

The current efforts taken to fight against human sacrifice

Because of the outcry of the people, the government and other stakeholders have come up with various solutions to the problem. The police has instituted a committee to fight child sacrifice.

²⁰ This statement coming from an educated engineer paintst a gloom picture of the extent to which the superstition is held.

The courts as usual wait for the cases to be brought before them. The Directorate of Public Prosecutions has taken up the issue and is using the existing criminal law and the witchcraft Act to prosecute offenders. The religious leaders on the other hand have taken intercession as the best approach. They just pray about it. On the other hand, the leaders of the organized body of traditional healers are embarked on a campaign to isolate the rogues. Human rights organizations seem to be silent about it.

What is wrong with the current efforts?

Despite this however, child sacrifice seems to be on the increase. The police seems to delay in their carrying out of investigations as ever. The DPP is also delayed because of this. For the religious leaders who are praying to God, perhaps they should pray harder. The traditional healers continue to deny knowing those involved, and parliament is silent about it. The human rights organizations meanwhile ignore the issue.

The increment in cases of child sacrifice, shows that may be we are applying the wrong formula to the disease. We shall only analyse one of these approaches- the criminal law.

The criminal law and child sacrifices- the loop holes

The government seems to favour the approach of using the criminal law to curb down child sacrifices. The criminal offence of murder is one that is normally preferred against the suspects. Kajubi is currently being charged with the same. Muwanga of the Shamim case together with his wife were convicted of murder. Kajubi's accomplices are also being charged for murder. Yet despite all this, child sacrifices are on the increase.

Therefore, it is obvious to everyone that the current efforts are not yielding much. The criminal law seems to be failing in its bid to combat child sacrifice. Why?

The criminal law emphasizes conviction and incarceration. Conviction and incarceration do not replace the dead person and neither do they compensate one for the loss of a loved one. It does not improve one's economic status and in some cases it promotes vengeance on the family of the victim. All in all when looked at through the lenses of the victim or their family, the criminal law does very little to satisfy them. These are the traditional flaws of the present criminal justice system that emphasises imprisonment to any other punishment.

The other problem is that people have little trust in the criminal justice system which is plagued by corruption. The judiciary and the police have consistently been pointed as some of the most corrupt institutions in the country, and this is official. Public trust in these institutions is thus dwindling at alarming rates²¹. Therefore whenever a person is handed to the police, most people lose hope. They just know that before long the suspect will be free. Still few people understand and appreciate legal niceties like bail and police bond. This is especially for cases involving killing. The public feeling is that capital offenders should not be handled with kid gloves. Now with the death penalty being discretionary²² this is bound to increase twofold.

The other problem lies with the law itself. Perhaps, a special crime should be created to cover child sacrifices. First of all, these cases are treated as murder and handled under section 188 and 189 of the penal code Act. The truth is, child sacrifices are a little more than 'murder' and therefore the little bush man inside every one of us is baying for blood. We feel that merely convicting them of ordinary murder would not be the best remedy.

There is another law that is supposed to deal with persons who practice witchcraft. This is the Witchcraft Act. The act does not define witchcraft but excludes bona fide spirit worship or the bona fide manufacture, supply or sale of native medicines²³. Section 2(1) states that Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means shall be guilty of an offence and on conviction shall be liable to imprisonment for life. The section only criminalises threats but not the actual killing. So, it does not create an offence for child murderers.

Section 2(3) also criminalises the practicing of witchcraft while section 2(4) criminalises procurement of persons to practice witchcraft. Possession of witchcraft implements is also an offence²⁴.

The Act thus does not define witchcraft and thus it is not clear on what it criminalises. But as already seen, the practice is done under 'witchcraft' but not genuine worship.

²¹ This explains the ever increasing rates of mob justice in the country. People prefer killing the suspects to taking them to police and through the court system.

²² This was recently declared by the Supreme Court in the case of Attorney general v. Susan Kigula, supreme court constitutional appeal, No. 3 of 2006.

²³ Section 1

²⁴ Section 4

Because of the difficulties in definition, the Act is rarely applied in the fight against child sacrifice. Also it does not actually cover child sacrifice for there is no offence against the ritual killing of children. On the whole it is an outdated law and thus ineffective.

So, that leaves the DPP with no option but to go for murder charges.

That being as it is, the criminal law also has a problem for it does not offer a remedy to the individual victim or relative of the victim. Compensation provisions are applied in very rare circumstances, so the loss lies where it falls- on the victim and his or her relatives without a chance of compensation when the perpetrators have been convicted.

What next? - making a case for the human rights approach

Since the rest seem to fail, it is high time the human rights trump card is pulled out to buttress the criminal law and the prayers.

Child sacrifice as a human rights issue

The international, regional and domestic human rights discourse all regard killing as a human rights issue. The most revered right and the mother of all rights is the right to life. Life is very much sanctified. Child sacrifice is therefore a direct violation of this fundamental right, and also a violation of a host of other rights especially freedom from torture, inhuman and degrading treatment or punishment, and children's right as a special category of rights. Below we show how the different levels of human rights law handle the issue of child sacrifice.

Child sacrifice under the international human rights system

The international bill of rights²⁵ expressly protects the fundamental rights of the person. The UDHR declares in article 1 that all human beings are born in dignity and rights. Article

Child sacrifice under the regional system

²⁵ That is the Universal Declaration of Human rights(UDHR) 1948, the International covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, social and cultural rights (1966)

The African Charter on Peoples and Human Rights also recognises the right to life and the right to freedom from torture inhuman and degrading treatment/punishment. It also recognises children's rights.

Child sacrifice under the domestic regime

The constitution of the Republic of Uganda provides for the fundamental rights of the person under **chapter 4. Article 21** thereof protects the right to life, **article 24** freedom from torture, degrading and inhuman treatment, while **Article 34** recognises the rights of the child specifically.

It is from these provisions that we are going to present child sacrifice as a human rights issue that requires urgent attention from the powers that be.

The right to life is protected under **article 22** of the constitution. **Article 22** provides that *"no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court"*.

This provision which has been the subject of a recent Supreme Court decision²⁶ recognizes the death penalty as the only exception to the general rule. In other words, in no other way can some one INCLUDING A CHILD be deprived of their life. Therefore, any act of sacrifice which involves killing is a violation of the victim's right to life. It is an outright murder under criminal law and unquestionably, all murders are violations of the right to life. In fact it should have been that a conviction for murder would lead to an automatic finding of a human rights violation if the matter is taken before a court of law or a tribunal.

The other question to address is who is responsible since it is private individuals committing the killings.

²⁶ Attorney General v. Susan Kigula and 417 others, Supreme court constitutional petition No.3 of 2006 which declared the death penalty as the only exception to the inviolability of a person's right to life.

The right to freedom from torture, cruel, inhuman and degrading treatment and punishment is protected under **article 24** of the constitution. It is a non derogable right under article 44 of the same constitution. The case of **Kyamanywa v. Attorney General**²⁷ emphasized the non derogable nature of this right.

What is regarded as torture, inhuman and cruel is treatment that debases a person. Some cases of child sacrifice abort but when the child has already been mistreated. This on the authority of **Salvatori Abuki v. Attorney General**²⁸ constitutes inhuman and degrading treatment. In the case of **Fred Tumuranye v. Gerald Bwete & 10 others**²⁹, the Uganda Human Rights Commission stated that rituals, satanic practices etc can be tortorous, cruel and inhuman.

Child sacrifice and children's rights

Children's rights fall under a special category of rights known as the Rights of the Child. This special recognition came as a result of the coming into force of the Covenant on the rights of the Child³⁰. Children are thus accorded special protection under both the international and the domestic human rights discourses.

Article 34 of our constitution duly recognises this fact and thus protects children as a vulnerable group. It interalia provides that children are entitled to be protected from social or economic exploitation.³¹ Child sacrifice can be classified as social and economic exploitation for the perpetrators are taking advantage of the vulnerable nature of children in order to improve their socio-economic standings.

Who is responsible for these violations?

Under international law, the primary obligation of enforcing human rights is imposed on the state. The state has the obligation to protect, respect and promote human rights. Despite this however, the constitution of Uganda holds every one liable for human rights violations. The constitution uses a language that is subject to an interpretation including any other actor apart from the state.

²⁷ Constitutional reference No. 10 of 2000

²⁸ Constitutional reference No.2 of 1998

²⁹ Uganda human rights commission Complaint No. 264 of 1999

³⁰ 1989

³¹ Article 34(4)

In the case of **Fred Tumuramye v. Gerald Bwete and 10 others**³², the Uganda Human rights Commission ruled that *“the provisions of the constitution recognise that torture, cruel and inhuman and degrading treatment can be committed by anybody. The act need not be with official sanction or complicity. Private individuals in their individual capacities can commit acts of torture, and related freedoms”*.

The commission has gone ahead to find many a private person responsible for human rights violations. Thus in cases like; **Emojong Silver Friday v. Peter Katongole**³³, the commission found the employer liable for the torture of an employee when he burnt him with melting plastic, tethered him to a stone and threatened to drown him. Also in **Sebunya Amr v. Lt. Kasule Bumpenje**³⁴ the respondent was made to compensate the complainant. Also in **Emmanuel Mpondi v. Chairman Board of Governors, Nganwa High School, Rev. Robert Kankiriho and David Kasigaire**³⁵, the school was made to compensate a child whom they had excessively caned.

Therefore, the perpetrators of child sacrifice should be personally dragged before human rights bodies and tribunals and be held liable.

How can the rights be enforced?

The above discussion shows that child sacrifice is a human rights issue and therefore it ought to be handled as such. Human rights law has put in place mechanisms aimed at remedying human rights violations.

The constitution of Uganda puts in place avenues for seeking remedies in case of human rights violations.

Article 50(1) gives a right to everyone who feels that their rights have been violated the right of action- that is the right to access court and pray for remedies.

Article 50(2) introduces the concept of public interest litigation. Any one who feels that eth rights of another have been violated has locus standi to bring an action before a court fo

³² supra

³³ Complaint No. 1125 of 1999

³⁴ Complaint No. 63 of 1998

³⁵ Uganda Human Rights reporter [2003] 55

competent jurisdiction. The constitutional court has also been held to be such a court where the matter contains an issue of constitutional interpretation³⁶.

The importance of public interest litigation is that it allows spirited individuals and concerned organization to bring an action seeking remedies for persons who may not be as spirited or as exposed. This concept has given the enforcement of human rights a big boost in this country.

The exploitation of this avenue does not prejudice any criminal action that may be taken against such persons.

The other avenue available for the enforcement of human rights is the Human rights commission. Established under **article 51(1)** of the constitution, the commission has the powers of a court³⁷. It has powers to among other things order the payment of compensation and any other legal remedy available³⁸.

Enforcement of Human rights v. criminal prosecution

So far the avenue exploited to bring persons who sacrifice children to book is through the criminal law. The most high profile case is that of tycoon Kajubi who is facing charges of murder in Masaka³⁹. The reaction of people to Kajubi whenever he appears in court shows that they do not trust in the criminal justice system⁴⁰. It takes long, it is bureaucratic and the concepts of bail and acquittals on technicalities do not augur well with the people who believe that this is being too soft on criminals.

Most importantly, the criminal law does not directly compensate the victim in terms of money. This is where an action for enforcement of human rights under the constitution comes in stronger. It gives compensation in monetary terms and at least try to compensate the victims. The perpetrator is made to suffer financially too. This is sometimes too painful for such opportunists who mostly slaughter kids for money.

³⁶ Hajji Ismael Serugo v. KCC

³⁷ Article 53

³⁸ Article 53(2)(b-c)

³⁹ Kajubi is alleged to have hired the services of a traditional healer Umar Kateregga to sacrifice a 12 year old boy, Joseph Kasirye. He promised the healer and his wife 12 million shillings but only paid 350,000. The duo went ahead to abduct the boy, killed him and cut off his genitals which they gave to Kajubi. See Sennabulya Baagalayina, Ritual murder suspects charged, The Newvision November 19th 2008

⁴⁰ The magistrate was forced to handle the proceedings in his court chambers for people had stormed the court baying for Kajubi's blood.

Also most important to note is that the two systems can go side by side, that is the perpetrator can be convicted under the criminal law and at the same time be made to compensate the victim for the loss of a dear one. This is punishment deterrent enough for any would be child murderer.

Conclusion

The much neglected human rights avenue can be effectively used alongside the criminal justice system to protect children from the evil of child sacrifice. Thus the human rights nature of child sacrifice should be highlighted such that people exploit this avenue alongside state criminal action. At the end of the day, the child murder is the loser for human rights would have triumphed.