

**AN ANALYSIS OF THE ROLE OF THE JUDICIARY IN
PROTECTION AND PROMOTION OF RIGHTS
OF INDIGENT PRISONERS
IN UGANDA.**

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1173-01032-12234

**A Dissertation
Presented to the School of Law
Kampala International University
Kampala, Uganda**

**In Partial Fulfillment of the Requirements for the
Diploma in Law**

MAY, 2019

DECLARATION

"This Dissertation is my original work and has not been presented for a Diploma or any other academic award in any University or Institution of Learning".

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Name and Signature of Candidate



28th / AUGUST / 2019

Date

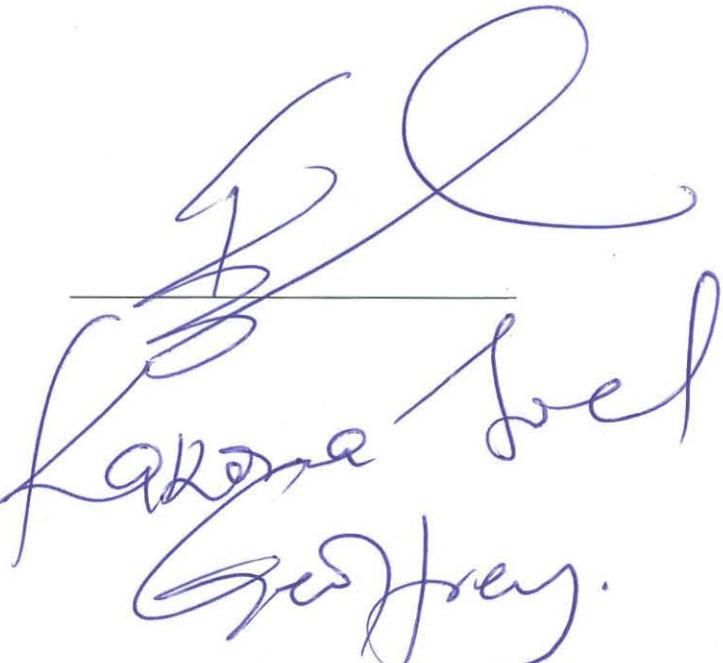
DECLARATION B

"I confirm that the work reported in this Dissertation was carried out by the candidate under my supervision".

Name and Signature of Supervisor

28/08/2019

Date


Karen Bel
Geddes.

DEDICATION

This research is dedicated to God because he made all things possible.

I also dedicate it to my Father for the impartial support he gives me in every area of my life.

I dedicate it to all my friends and my family members for their moral support and for believing in me.

ACKNOWLEDGEMENT

In the name of "**GOD**" the best beneficent and merciful who gave me strength and knowledge to complete this dissertation. This is a part of my course "Diploma in Law". This has proved to be a great experience.

I would like to express my gratitude to my supervisor **Kakona Joel Geoffrey**, who gave me this opportunity to fulfill this dissertation. He gave me moral support and guidance in different matters regarding the Topic. He has been very kind, I thank him for his overall support.

Then I would like to thank my parents and friends who have helped me with their valuable suggestions and guidance has been helpful.

I am also thankful to everyone who supported me to complete my dissertation effectively and moreover on time. They gave me helpful comments which helped me a lot in preparing this dissertation.

Last but not least I would like to thank my late grandmother **Nalongo Nambi Robinah** for the encouragement given to me that has led me this far.

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LIST OF LEGAL INSTRUMENTS

DOMESTIC

- Advocates Act laws of Uganda.
- Advocates (Pro bono Services to Indigent Persons) Regulations.
- The Advocates (Legal Aid Services to Indigent Persons).
- The constitution of Uganda 1995 (as amended).
- The Magistrates Courts Act(cap 16).
- The Poor Persons Defense Act (cap 20).
- The Trial On Indictment Act(cap 23).

AFRICAN / INTERNATIONAL LEGISLATIONS

- African Charter on Human and Peoples' Rights 1981.
- African Charter on the Rights and Welfare of the Child 1990.
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990.
- Basic Principles for the Treatment of Prisoners 1990.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988.
- Code of Conduct for Law Enforcement Officials 1979.
- Convention Against Torture Cruel Inhuman and Degrading Treatment or Geneva Convention Relative to the Treatment of Prisoners of War 1949
- Punishment 1984.
- International Covenant on Civil and Political Rights 1966.
- International Covenant on Economic, Social and Cultural Rights 1966.
- Convention on the Rights of the Child 1989.
- International Convention on the Protection of the Rights of Migrant Workers 1990.
- Principles of Medical Ethics relevant to the Role of Health Personnel , particularly Physicians in the Protection of Prisoners and Detainees against Torture and Other Cruel , Inhuman and Degrading Treatment or Punishment 1982.

Rules for the Protection of Juveniles Deprived of their Liberty 1990.

Standard Minimum Rules for the Treatment of Prisoners 1955.

Universal Declaration on Human Rights 1948.

ACRONYMS

CAT	Convention Against Torture and Other Cruel , Inhuman and Degrading Treatment or Punishment.
ECOSOC	Economic and Social Council.
ICCPR	International Covenant Civil and Political Rights.
ICESCR	International Covenant on Economic Social and Cultural Rights.
ICRC	International Committee of the Red Cross.
IGO	Intergovernmental Organization.
NHRI	National Human Rights Institution.
NGO	Non-Governmental Organization.
SMR	Standard Minimum Rules for the Treatment of Prisoners.

ABSTRACT

This Dissertation analyzed the role of the judiciary in protection and promotion of rights of indigent prisoners in Uganda; It was guided by the specific objectives which included finding out whether Uganda's legal regime protects the rights of indigent prisoners, depicting the role of the judiciary in the protection of indigent prisoner rights and exploring the legal rights of detained persons under international legal regime. The judiciary is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. In some nations, under doctrines of separation of powers, the judiciary generally does not make law or enforce law, but rather interprets law and applies it to the facts of each case. In other nations, the judiciary can make law, known as Common Law, by setting precedent for other judges to follow, as opposed to Statutory Law made by the legislature. The Judiciary is often tasked with ensuring equal justice under law. The study recommends there to be a deliberate attempt to establish a prison regime in which the living conditions of prisoners are consistent with human rights standards and international best practices, the laws protecting inherent prisoners are their but their implementation is the challenge. The researcher winds up the research with recommendations to ensure that the rights of inherent prisoners are promoted by judiciary.

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background of the study

The rights of prisoners have been protected and promoted both in Uganda and other countries this has been envisaged in the Ugandan constitution 1995 as amended an example of Article 28 and other laws in other jurisdictions. The Judiciary as an arm of the government is often tasked with ensuring equal justice under law. The judiciary is an independent arm of the state or sometimes loosely referred to as the 3rd arm of the state, the other two arms being, the Executive and Parliament. The constitutional mandate of the judiciary is provided under Article 126(1) of the Constitution of 1995,¹ which reads as follows:

The basic function of the judiciary is to provide judicial services in Uganda and in view of its basis function and constitutional mandate; the judiciary has crafted its vision in such a way that it is seen to implement its mandate. The vision is: "To have a strong independent Judiciary that delivers and is seen by the people to deliver justice to all and contribute to economic, social and political transformation of society based on the rule of law.

PRISONER

An prisoner is simply defined as person who is legally detained in any confined place. An indigent person is defined as 1) a person so poor and needy that he/she cannot provide the necessities of life(food, clothing, decent shelter) for himself/herself. 2) One without sufficient income to afford a lawyer for defense in a criminal case.² If the court finds a person is an indigent, the court must appoint a public defender or other attorney to represent him/her.

¹Constitution of the Republic of Uganda, 1995.

² legal-dictionary.<thefreedictionary.com/indigent> assessed on 5th April 2017.

The Poor Persons Defense Act of Uganda³ is an Act to make provision for the defense of poor persons committed for trial before the High Court. Section 2 of the Act provides for the provision of legal aid ; Where it appears for any reason that it is desirable, in the interests of justice, that a prisoner should have legal aid in the preparation and conduct of his or her defense at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid—a certifying officer, upon the committal of the prisoner for trial; ora certifying officer at any time after reading the summary of the case submitted at the committal proceedings, may certify that the prisoner ought to have the legal aid, and if an indictment is filed against the prisoner and it is possible to procure an advocate, the prisoner shall be entitled to have an advocate assigned to him or her.

Section 1 of The Poor Persons Defense Act⁴ defines prisoners as a poor person committed for trial at the High court.

The Prisons Act of Uganda, 2006⁵ also lists a number of prisoners' rights and entitlements. Prisoner's rights is the nature and extent of the privileges afforded to individuals kept in custody or confinement against their will because they have been convicted of performing an unlawful act.

Subject to the Constitution and this Act, a prisoner is entitled to the following—

-) a prisoner shall be treated with the respect due to his/her inherent dignity and value as a human being;
-) no prisoner shall be discriminated against on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
-) Freedom of worship, whenever conditions allow;
-) To take part in cultural activities and education aimed at the full development of the human personality;

³The Poor Persons Defense Act of Uganda, 2000. Cap 20 Laws of Uganda.

⁴Chapter 20 ibid.

⁵ Section 57 of the Prisons Act of Uganda, 2006.

-) To undertake meaningful remunerated employment;
- Have access to the health services available in the country without discrimination of their legal situation.

1.2 Statement of the Problem

For centuries inmates and prisoners have lived at the mercy and orders of the armed forces.

Many of these have been characterized by excessive abuse and violation of the human rights of these inmates. The judiciary being a government organ empowered with such powers by law to ensure equality during and before the law has attempted to address these violations and two further bring an end to many. However, these being slatted out in code discussions it has left the contribution of judiciary unnoticed.

It is on this background therefore that a call for an in-depth analysis on the efforts done by the judiciary to fight these violations should be responded to.

1.3 Objective of the study

The objective of the study is to discuss the role of the laws in the protection and promotion of rights of prisoners in Uganda.

1.3.1 Specific objectives

Specifically therefore the study aims

1. To find out how Uganda's legal system protects the rights of prisoners
2. To find out the legal rights of detained persons under international legal system.
3. To suggest or make improvements to the treatment or handling of indigent prisoners' rights.

1.4 Research Questions

This study intends to answer the following questions:

1. Whether Uganda's legal system adequately protects the rights of prisoners?
2. Whether there are legal rights for detained persons under international legal regime?

1.1 Scope of the Study

This study is underpinned by the rights theory. American Courts were reluctant to recognize the existence of prisoner's right in earlier times. This reluctance contributed to the dehumanizing conditions in the prison. This situation was later changed by judicial intervention into the prison conditions. These judicial interventions restricted the abuses of discretionary powers by correctional authorities, and it established a belief that inmates have a place in the society. Even though there are many benefits to the concept of prisoner's rights, there are also several factors which had prevented its growth and expansion. The courts were reluctant in introducing modification to the correctional process as the Judges felt that they were lacking the expertise necessary to run a prison. The study therefore sets to analyze the role of the judiciary in protection and promotion of rights of indigent prisoners in Uganda.

1.6 Literature Review

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate.⁶ As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in any civil suit.

⁶ Government of Uganda, The Justice, Law, and Order Sector Program: Study on Gender and Access to Justice, THE REPUBLIC OF UGANDA MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS, JUSTICE, LAW AND ORDER SECTOR (2002), available at <www.gsdrc.org/docs/open/SSAJ85.pdf> assessed on 8th September 2018

If the rule of law is to mean anything, it has to mean that the prison system is no less answerable to the courts than any other limb of the state, both how it serves and protects the public and for how it treats those in its custody.⁷

It was stated by Lord Wilberforce in *Raymond v Hone*⁸ that, under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication and this remains the classic statement on prisoners' rights today. There is, however, a strong perception amongst commentators on prison law that the courts remain hesitant in their role as guardians of prisoners' rights.

The role of the courts is of particular importance to prisoners. Prisoners, by the fact of their imprisonment, cease to have control over their environment and regime and are instead almost wholly reliant on the prison authorities to regulate their daily lives. Indeed it was recognized in the Woolf Report that 'a prisoner, as a result of being in prison, is peculiarly vulnerable to arbitrary and unlawful action.'⁹ As the courts are the only independent body with the power to bind the Secretary of State, their role and the manner in which they fulfill their role are of critical importance.

Ensuring human rights for those behind bars sometimes seems nearly impossible because of the isolation from the society and the lack of interest of the outside world and mostly because of the sometimes conflicting goals that Correctional Law and Human Rights Law seem to have.¹⁰ At present the situation in prisons and other places of detention in several States Parties is characterized by recurrent challenges such as high level of overcrowding, disease, malnutrition, torture and ill-treatment of

⁷[1992] 1 AC 58.

⁸[1983] 1 AC 1 p10.

⁹Home Office (1991), para 14.293.

¹⁰ J. Sarkin, —an overview of human Rights in Prisons worldwide in J. Sarkin (ed.), *Human rights In African Prisons*,(2008),p.4. see also F.Vilion, *A guide to jurisprudence*,(2008) Jointly published in 2008 by the Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL).

inmates and long pre-trial detention periods¹¹.

Schmallegger Frank¹² opines that prisons help in the reduction of crime rate and recidivism by reforming and rehabilitating prisoners. This is through prison work, treatment and counseling of inmates with mental problems, providing recreational facilities to keep inmates occupied and reducing boredom. Prisoners should also be allowed a regulated interaction with family members to keep the family link. This can be useful if implemented by Uganda Prisons Service.

Adler Freda *et al*¹³ discuss the importance of protection of human rights for prisoners towards rehabilitation and reformation of offenders. Effective rehabilitation and reformation of offenders in prison can only be achieved if the basic rights of prisoners are respected. It is hard to reform offenders if they are subjected to torture and other inhuman treatments. Prisoners should be given right to access their families, freedom from torture, inhuman and degrading punishment. This makes this work important to this study, because the problem of abuse of prisoners' rights is common in media reports in Uganda, though it discusses less the law on prisoners' rights.

The law concerning state government-provided legal aid is set out in the Constitution.

Article 28(3)(e)¹⁴ reads:

*Every person who is charged with a criminal offence shall be
Permitted to appear before the court in person or, at that
Person's own expense, by a lawyer of his or her choice; [...] (d) in
the case of any offence which carries a sentence of death or
imprisonment for life, be entitled to legal representation at the*

¹¹ACmHPR (48th and the 49th Ordinary Sessions of the African Commission 2011), 30th Annual Activity Report, <www.achpr.org>.

¹² Schmallegger Frank, **Criminal Justice Today: An Introductory Text for the Twenty-First Century**, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991.

¹³ Adler Freda et al, **Criminal Justice: The Core**, Mc Graw Hill Companies Inc, Newyork, 1996.

¹⁴ Constitution of Uganda 1995 (as amended).

expense of the State.¹⁵

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate. As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances.

The Ugandan government, through the implementation of The Law Development Center Act¹⁶, established a Law Development Center that, in part, is responsible for "assisting in the provision of legal aid and advice to indigent litigants and accused persons" as an attempt to address some of the obstacles to justice.¹⁷ Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford legal services nor benefit from government-provided legal assistance.

Senna Joseph, J., and Larry Siegel, J.,¹⁸ discuss some problems that hinder effective reformation of prisoners. Most prisons are overcrowded, have limited facilities like outdated buildings that are fit for human outcasts of society than for rehabilitation and treatment of offenders. Weak and uncoordinated laws to ensure implementation of rehabilitation programs also hinder reformation. These weaknesses also exist in Uganda, thus the relevance of this work to this research. This review will help the researcher to analyze the situation at hand and recommend ways of ensuring promotion and protection of rights of indigent prisoners.

¹⁵ ibid. [In limited situations involving alleged crimes before the High Court, a judge can require the government to provide free legal aid outside the confines of a capital offense if such provision is "in the interests of justice," THE POOR PERSONS DEFENCE ACT, Chap. 20 (1998)].

¹⁶ Chapter 132 Laws of Uganda.

¹⁷ THE LAW DEVELOPMENT CENTRE ACT, Ch. 132 (1970) <www.ulii.org/ug/legislation/consolidated-act/132> assessed on 8th August 2018.

¹⁸ Senna Joseph, J., and Siegel Larry, J., **Introduction to Criminal Justice**, 5th Edition, West Publishing Co., New York, 1990 .

1.7 Research Methodology

This study was basically qualitative and library-oriented. It is mainly desktop research and this included review of relevant literature such as statutes, text books and journal articles.

The researcher has accessed material and data from statutory bodies and specialized institutions such as The African Centre for Technology Studies and relevant government ministries. Registries of the Superior Courts of record will also be visited to obtain copies of unreported rulings and judgments.

1.8 Limitations of the study.

A number of factors affected the researcher while making the research and these include;

Inadequate resources as the research required a lot of comprehensive survey which included visiting the different prisons, and visiting the courts so as to make a more detailed and factual report and the researcher had limited provisions in terms of transportation thus affecting the researcher.

Lack of accessibility and interaction between the researcher and the high ranked prisons officers face to face due his busy schedule

1.9 Justification of the Study

To discover role played by judiciary in the promotion and protection of rights of indigent prisoners in Uganda and its role in the reduction of crime rate and recidivism by reforming and rehabilitating prisoners under incarceration and whether the existing laws are effective to enable the reformation and rehabilitation of prisoners..

To influence the amendment to the Uganda Prisons Act and other laws to bring them into conformity with the U.P.S policy of reformation and rehabilitation of prisoners.

To suggest and recommend ways in which the judiciary can better handle indigent prisoners' rights.

CHAPTER TWO

2.0 THE LEGAL SYSTEM IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF PRISONERS IN UGANDA;

2.1 Constitution of Uganda 1995 (as amended)

Ugandan Constitution of 1995 as amended creates the laws that protect the rights of prisoners and one of them is the Uganda Prisons Service¹⁹. The composition, functions and objectives are set out in the Uganda Prisons Act. The constitution also gives the President of Uganda powers to grant prisoners pardon in certain instances²⁰. This supplements the remission available to prisoners on good character under the Prisons Act. Further, the constitution contains the Bill of Rights in Chapter Four²¹. This is important because, as it has been argued, in order to have realistic reformation and rehabilitation of prisoners, their fundamental rights should be respected.

2.3 Uganda Prisons Act

The Uganda Prisons Act 2006, hereinafter referred to as the Act, repeals and replaces the Prisons Act Chapter Number 304 of 1956. The aim of replacing the 1956 Prisons Act was to have a Prisons Act that is in line with modern penological principles on prisons and international standards especially the United Nations Standard Minimum Rules for the Treatment of Offenders in after called the Standard Minimum Rules²². The Act provides among others for the functions²³ and objectives²⁴ of the Uganda Prisons

¹⁹ Article 215 of the constitution of Uganda 1995 (as amended).

²⁰ ibid Article 121 (4)(d).

²¹ Article 20 (1) provides that fundamental rights and freedoms of an individual are inherent and not granted by the state and in Article 20(2), those rights and freedoms shall be respected, upheld and promoted by all organs and agencies of the government, which include Prisons.

²² See the long title to the Prisons Act 2006 and Section 4 (1).

²³ Under Section 5 the functions of U.P.S include inter alia, to facilitate the social rehabilitation and reformation of prisoners through specific training and educational programs, to facilitate the re-integration of prisoners into their communities.

Service. The Act also establishes the Prisons Authority²⁵ and provides for its functions²⁶. The Act contains provisions relating to reformatory and rehabilitative programs in prisons which are discussed in detail later in this chapter.

The relationship between the Uganda Prisons Authority and the Uganda Prisons Service is that the Uganda Prisons Authority is responsible for coming up with work programs for, among others, social rehabilitation and reintegration of offenders to their communities while the Uganda Prisons Service is meant to implement, facilitate and carry out the recommendations of the Uganda Prisons Authority concerning the management and control of Uganda prisons.

2.4 Trial On Indictment Act[TIA]

The Trial on Indictment Act²⁷ provides that "a person accused of an offence before the High Court be defended by an advocate". However majority of the cases tried in High Court are of a capital nature, and attract life imprisonment or the death penalty, the practice is that all accused persons appearing in the High Court must be defended by an advocate at the expense of the State or in addition to their own paid lawyer. It's the role of the judiciary to ensure that these poor people get the justice they deserve regardless of their pockets.

2.5 Poor Persons Defense Act.

The Poor Persons Defense Act²⁸ provides that

²⁴Section 4.

²⁵Section 9 (1).

²⁶ Section 10 (1) the functions include inter alia, to advise the Government on policy matters relating to the management, development and administration of the Service, to make programs for social rehabilitation and reintegration of offenders so as to enhance their ability to resettle in their communities and to develop and administer services and programs for the purpose of counseling persons subject to non-custodial sentences.

²⁷Section 55 TID, Cap 23

²⁸Section 2 of Cap 20

"Prisoners should have legal aid in the preparation and conduct of their defense and at trial if their means are insufficient to enable them to obtain such aid".

This implies that all people should access justice and this Act puts in place a legal provision for the poor people to be given free legal aid if their means are insufficient to enable them obtain the aid.

2.6 Magistrates Courts Act

The Magistrates Courts Act²⁹ provides for any person accused of an offence before a magistrate court to be defended by an advocate as of right. However, many persons appearing in these courts are poor and cannot afford legal counsel. The result is that the majority of persons end up defending themselves, except for those cases which attract life imprisonment, where the state provides an advocate at its cost.

2.7 Advocates (Legal Aid Services to Persons)

The Advocates (Legal Aid Services to Indigent Persons)³⁰ formulated under the Advocates Act, Cap. 267 as amended by Act. No. 27 of 2002 specify rules governing the provision of legal aid including registration of legal aid service providers, eligibility for legal aid, maintenance of quality of services and client care and supervision by the Uganda Law Council.

2.8 Advocates (*Pro bono* Services to Persons) Regulations

Advocates (*Pro bono* Services to Indigent Persons) Regulations³¹, require all advocates in Uganda to provide *pro bono* services for at least 40 hours in a year or pay money in lieu thereof. Additionally, the Advocates (Student Practice) Rules, 2004 allow

²⁹ Section 158 MCA Cap 16.

³⁰ Regulations No. 12 of 2007.

³¹ Regulations No. 39 of 2009.

postgraduate bar students, as part of their training, to provide legal aid by representing juvenile clients in magistrates' courts under guidance of senior lawyers.

2.9 The Reformatory and Rehabilitative Programs in Prisons under the Prisons Act, 2006.

2.9.1 Categorization of Prisoners

Prisoners should be categorized in order to avoid the contact of recidivists with first offenders. Categorization should be based on sex, health conditions of prisoners, age of prisoners, criminal background and type of offences committed, and the period of sentence among others. The Act only addresses the separation between males and female prisoners. This is under Section 29 of the Act³². It provides that except for the purpose of work or training and only under strict supervision, male and female prisoners shall be kept apart in separate prisons or separate parts of the same prison so as to prevent contact between them. However, there should be categorization based on the characteristics of prisoners stated above³³.

2.9.2 Prison Education and Vocational Training

Prisoners while in prison should not lose their right to education³⁴. Their time in prison can be used to teach them how to read and write and train them in vocational skills³⁵. Such training can make them able to live in a law-abiding manner after release³⁶. Formal education makes it easy to join tertiary institutions upon their release and, vocational training enables them to create their own jobs and generate some income³⁷. The desire

³² Prisons Act 2006 laws of Uganda.

³³ Rules 8, 67 and 68 Standard Minimum Rules For The Treatment of Prisoners 1955.

³⁴ Uganda Human Rights Commission, 12th Annual Human Rights Report, 2009, Presented to the Parliament of the Republic of Uganda pg 41.

³⁵ Garland, D., Punishment and Welfare: A history of penal strategies. Gower Publishing Company, Great Britain, 1985 pg 129.

³⁶ Nsalasatta, D.S., "Information on the Uganda Prison Service", The Uganda Living Law Journal, Volume1, Number 1, June 2003 pages 128..

³⁷ Pisciotta, W, Scientific Reform: The New Penology, Elmira, U.S.A, 1983 pg 109..

to effect transformation was among the original aims of incarceration and from the outset learning was presumed to have a role in the accomplishment of that aim and thus should form part of today's penological studies³⁸.

International instruments make it clear that prisoners have the right to pursue education if they so wish within the available resources³⁹. In order to prevent mental deterioration and retardation, and to improve their level of education and development, prisoners should have access to books and training in vocational activities⁴⁰. Vocational training is important in rehabilitating prisoners because it equips them with skills they can use to create their own jobs once released⁴¹.

The Act is not elaborate on education apart from mentioning that prisoners have a right to education⁴². It is silent on the issues like the type of education, status of a prisoner released before sitting for final examinations, source and remuneration of prison teachers, whether education is compulsory for young prisoners and access by prisoners to books. This is derogation from international instruments on the treatment of prisoners especially the Standard Minimum Rules⁴³ and the Kampala Declaration on Prison Conditions in Africa⁴⁴ sub-paragraph 7 of the paragraph on prison conditions. In other jurisdictions like Tanzania, the question of prisoners' education has yielded

³⁸ Ray Jones, "A Coincidence of Interests: Prison Higher Education in Massachusetts", Journal of Prisoners on Prisons, Volume 4, Number 1 2006.

³⁹ Rule 77 of the United Nations Standard Minimum Rules for the Treatment of Offenders.

⁴⁰ Omoni Grace Ego and Ijeh Scholastica, U., "Qualitative Education for Prisoners: A Panacea to Effective Reformation and Reintegration into the Society", Edo Journal of Counseling, Volume 2 Number 1 of 2010.

⁴¹ Senior Welfare Officer at Luzira Prison Mr. Anatoli Biryomumaisho acclaimed the role of education in prison reforming offenders when he stated that; "education is key in transforming and rehabilitating inmates", in Charles Ariko "42 Luzira inmates Pass PLE", The Sunday Vision 24th January 2010.

⁴²Section 57 (d).

⁴³ Rule 77(1) provides that education for young and illiterate prisoners shall be compulsory.

⁴⁴ International Seminar on Prison Conditions in Africa, Held at Kampala, 19th to 21st September, 1996.

positive results with prisoners acquiring degrees in fields like Law⁴⁵. Uganda should copy the same idea and ensure that prisoners continue up to tertiary level.

2.9.3 Freedom of Religion and Worship in Prisons

Prisoners should also be given opportunity to accomplish their religious and spiritual needs⁴⁶. This helps prisoners to reflect and remorse past criminal deeds which is good for reformation and rehabilitation⁴⁷. In Uganda, this is provided for under Section 113 of the prisons Act⁴⁸. The Minister of Internal Affairs is empowered to appoint ministers or religious priests of any religious faith to be prison ministers⁴⁹. The religious minister is supposed to; visit prisoners in prison for which he or she is appointed to conduct religious services for the benefit of prisoners⁵⁰ and hold religious and moral fellowships and interactions and counseling for the benefit of the prisoners⁵¹. Access by a qualified representative of any religion cannot be refused to any prison except when a prisoner objects to a visit of any representative, his or her opinion has to be respected⁵². Every prisoner is allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his or her possession the books of religious observance and instruction of his or her denomination⁵³. This is in accord with the

⁴⁵ Rose Athuman, "Prison Bars Could Not Stop Them" Daily News, 3rd December 2009; Haruna Gombela an inmate from Ukonga prison in 2007 graduated with a degree in Law and Semayonga Michael Ernest in 2009 also was awarded a Law degree, all from Open University of Tanzania. The Minister of Home Affairs for Tanzania, Hon. Lawrence Masha acclaimed the role of education in keeping prisoners out of criminality after release.

⁴⁶ Executive Director of Prison Fellowship Uganda, Mwesigye David, "Religious Education can Reduce Prison Congestion", published in The New Vision, Monday, 29th September, 2008.

⁴⁷ Garland, D., Punishment and Welfare: A history of Penal Strategies, Gower Publishing Company, Great Britain, 1985 pg 223.

⁴⁸ Prisons Act 2006.

⁴⁹ Section 113 (1).

⁵⁰ Section 113 (3) (a).

⁵¹ Section 113 (3) (b).

⁵² Section 113 (4).

⁵³ Section 113 (4).

United Nations Standard Minimum for the Treatment of Offenders⁵⁴. This has been implemented in Luzira and Kirinya prisons, where prisoners are allowed to worship according to their faiths. This has had a great impact on the reformation and rehabilitation of prisoners as will be explained later in chapter four on the presentation of findings.

2.9.4 Prison Work

Prison work is important because it keeps the prisoners busy and active thus avoiding boredom⁵⁵. Samaha Joel⁵⁶ suggests that if prisoners have no work and become accustomed to idleness, they may lose their sense of responsibility for themselves and their families making it difficult for them to live law-abiding lives after release.

Prisoners should be paid a fair wage for their work. Prisoners should be allowed to spend part of their wages in prison, send part of it to their families or save a part of it for their release. Work in prison should be subject to the same laws on health, safety, industrial injury and occupational diseases as is work among the general public and should not be afflictive in nature⁵⁷.

The Act is silent about the prisoners' work. However, the Minister of Internal Affairs is empowered to make Rules and Regulations governing the kind of work of prisoners⁵⁸ and the payment of prisoners for work done while in prison⁵⁹. In 2000 the then Minister of Internal Affairs⁶⁰ made the Prisoners (Earning Rates and Gratuity) Rules,

⁵⁴ See Rule 41 on the conditions of worship, receiving of pastoral visits by prisoners among others.

⁵⁵ Ryan Marion, S., "Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts", William & Mary Bill of Rights Journal, Volume 18 Issue 1, 2009 available at <<http://scholarship.law.wm.edu/wmboj/vol18/iss1/10>> (accessed on 10th April 2017).

⁵⁶ Samaha Joel, criminal justice , (second edition, West publishing co.Los Angeles , 1991)

⁵⁷ Rule 71(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

⁵⁸Section 124 (2) (e).

⁵⁹Section 124 (2) (h).

⁶⁰Brigadier Moses Ali.

2000⁶¹ which, despite the repeal of the Uganda Prisons Act 1956 in 2006, are saved by Section 125 (3) (a) of the Act⁶².

2.9.5 Prison Exercise and Recreational Activities

Exercises keep prisoners in good physical health and kill boredom⁶³. Therefore, in any prison, there ought to be recreational facilities for the prisoners to have regular exercises⁶⁴. This is supported by international instruments on treatment of prisoners⁶⁵. Exercises and recreational activities also facilitate social reintegration of prisoners with their communities through organizing competitions between inmates and community members⁶⁶.

Exercise for prisoners is provided for under Section 70 of the Act⁶⁷ which states thus; every prisoner not employed in outdoor work shall have at least one hour of suitable exercise in the open air. It is assumed that those prisoners engaged in outdoor employment, that is part of the daily exercise. This is contrary to Rule 78 of the Standard Minimum Rules that provides for recreation to all prisoners. This limitation under the Act is therefore unnecessary.

⁶¹ Made under Section 76 (h) of the Prisons Act 1956 and came into force on 21st November 2000.

⁶² Section 125 (3) (a) makes any Rules issued under the 1956 Act to continue in force unless replaced by other Rules made under the Uganda Prisons Act 2006.

⁶³ Nuwagaba Edwin, "Theatre Factory takes Easter to Luzira Prison", Daily Monitor, Tuesday, 6th April 2010. The author of the article commended the importance of giving prisoners entertainment in a bid to reform them. It keeps them active and restores their hope to once return to society once they are released. This furthers the process of social reintegration of prisoners into their communities.

⁶⁴ Schmalleger Frank, Criminal Justice Today: An Introductory Text for the Twenty-First Century, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991pg 235.

⁶⁵ Rule 78 of United Nations Standard Minimum Rules for the Treatment of Offenders.

⁶⁶ Westminster Advisors White Paper, Prisoner Rehabilitation and Offender Management, April 2010 available at <www.westminsteradvisers.co.uk/assets/resources/criminal-justice-system-wa-white-paper>

⁶⁷ Prisons Act 2006:

2.9.6 Contact With Outside World

A prisoner should be allowed to keep in touch with the family members, friends and relatives. This maintains the social link between the prisoner and the outside world to which he is to return after incarceration. It also makes the possibility of social reintegration easy. Section 78 of the Act provides that communication between prisoners and their relatives and friends is allowed subject to such restrictions as the Officer in Charge may think are necessary for the maintenance of discipline and order in the prison, and the prevention of crime⁶⁸. Further, on admission, a prisoner is allowed to write a reception letter and to receive a visit, even on transfer, a prisoner is allowed to write to a relative a transfer letter⁶⁹.

2.9.7 Treatment in Prison

The responsibilities of prisons extend far beyond the “warehousing” of offenders⁷⁰. Prisons are mandated and ethically bound to provide adequate health care treatment and facilities. Every prison should have a psychiatrist to examine the mental state of all prisoners admitted to prison⁷¹. In some jurisdictions, prison authorities can be held responsible for any death or injury resulting from failure to treat a prisoner or negligence in providing health services. For instance, in the Indian case of *Ranchod V State of Madhya Pradesh*⁷² the state was held responsible for the negligent services of a prison doctor which resulted into death of a prisoner. It was held that prisons are mandated to give medication to prisoners because right to health is everyone’s right

⁶⁸Section 78 (1) Prison Act 2006.

⁶⁹ Section 78 (2) Prisons Act 2006.

⁷⁰ Dvoskin Joel, A., and Spiers Erin M; “The Role of Correctional Officers In Prison Mental Health”, Psychiatric Quarterly Journal, Volume 75, Spring 2004.

⁷¹ Lovell David et al, “Evaluating the Effectiveness of Residential Treatment for Prisoners with Mental Illness”, Criminal Justice and Criminal Behavior, An International Journal, Vol. 28, No.1 February 2001.

⁷²[1986] 16 M.P. Reports 147.

which even imprisonment cannot take away. This is also in accord with the Standard Minimum Rules⁷³. In Uganda treatment is based on mental sickness and other illnesses.

2.9.8 Remission of Prison Sentence and the Reformation of Prisoners

Remission works in a way that if a prisoner behaves well during incarceration and shows that he has been remorseful and reformed, there is a reduction of a given part of his sentence by the prison authority to get an earlier release⁷⁴. This encourages prisoners to reform so as not to lose the remission. This enhances the process of reformation and rehabilitation.

In the case of *Onyango v Attorney General*⁷⁵ it was held that the Commissioner of Prisons before depriving a prisoner of remission must sufficiently inform him of the reason and give him opportunity to be heard otherwise the order will be declared null because remission is a right of all prisoners. Therefore, in Kenya, remission of prison sentence is a right whose denial attracts judicial review against the Commissioner of Prisons.

In Uganda, the Act provides that a convicted prisoner sentenced to imprisonment for a period exceeding one month may, by industry and good conduct, earn a remission of one third of his or her sentence or sentences⁷⁶. Each prisoner on admission is supposed to be credited with the full a remission to which he or she would be entitled at the end of his or her sentence or sentences if she or he does not lose or forfeit it⁷⁷.

The President of Uganda is given powers by the Act to grant further remission. The Commissioner General may recommend to the Minister responsible for justice to advise

⁷³ Rules 22 to 25.

⁷⁴ Appleton, C., and Grøver, B., "The Pros and Cons of Life without Parole", Volume 47, British Journal of Criminology, 2007, at pg 597

⁷⁵ Application 152 of 1986, Court of Appeal at Nairobi (Platt and Gachuhi JJA), Thursday 07th May 1987 (Unreported), (accessed on 10th April 2010).

⁷⁶ Section 84 (1) Prisons Act 2006.

⁷⁷ Section 84 (2) Prisons Act 2006.

the President under Article 121 (4) (d) of the Constitution to grant a further remission on special grounds⁷⁸. However, the Act does not define what these special grounds are so discretion is left to the President to determine who to grant this further remission depending on reasons he considers appropriate.

2.10 Conclusion

The effective rehabilitation and reformation of indigent prisoners can only be achieved if the policy of Uganda Prisons Service is made operational by a clear legislative framework on the reformation and rehabilitation of indigent prisoners. All criminal justice institutions in Uganda should aim at reformation and rehabilitation of indigent prisoners. This can make it easy for the implementation of reformatory programs. The Uganda Prisons Act 2006 and all the Regulations made under it are not elaborate enough on all issues to do with reformation and rehabilitation of prisoners.

⁷⁸ Section 86 (1) Prisons Act 2006.

CHAPTER THREE

3.0 INTERNATIONAL LEGAL SYSTEM ON PROTECTION AND PROMOTION OF RIGHTS OF PRISONERS.

3.1.1 Rights of the prisoners

In the much heralded case of *Gideon v Wainwright*⁷⁹, the U.S. Supreme Court held that the United States Constitution entitles every person accused of a serious crime to a lawyer. If the defendant can't afford his or her own counsel, the state must appoint an attorney to assist that defendant. Indigent, criminally accused persons typically are represented by public defenders burdened with crushing caseloads and lack essential resources for investigation and expert assistance.

3. International legal System.

3.2.1 Universal Instruments

The principle international legal instruments that protect the rights of individuals including prisoners are the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).⁸⁰ The conventions that contain explicit reference to detained persons include the ICCPR which in Article 9 guarantees *inter alia* the right to liberty and security of person, and that arrested or detained persons on a criminal charge shall be arraigned promptly and tried within a reasonable time or released with or without conditions. The Human Rights Committee considers 'promptly' to mean that 'delays must not exceed a few days' and 'within reasonable time or release' to mean that 'pre-trial detention should be an exception and as short as possible'.⁸¹ This article is particularly important in view of the large numbers of pre-trial detainees held in prisons. Article 10 states that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. The Human Rights

⁷⁹U.S. Supreme Court.

⁸⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. See Annexure A for selected provisions of universal instruments.

⁸¹General Comment 8 Human Rights Committee, Sixteenth session 1982 paras 2 and 3.

Committee in its General Comment No. 21 has interpreted this provision in the light of detained persons to mean that they may not be subjected to hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be regarded under the same conditions as that for free persons.⁸² The only restrictions that should be imposed are those unavoidable in a closed environment.

The Convention on the Rights of the Child prohibits cruel, inhuman and degrading treatment against children and provides that children should not be detained unless it is a measure of last resort and for the shortest period necessary.⁸³ Further, that the detained child shall be treated with humanity and with respect for their inherent human dignity.

The International Convention on the Protection of the Rights of Migrant Workers makes specific reference to the conditions of arrest and detention of migrant workers and their families.⁸⁴ The Geneva Convention relative to the treatment of prisoners of war is also of direct relevance to prisoners though its application is confined to persons detained in connection with situations of armed conflict.⁸⁵

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force on 1 March 2002. The Convention establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the Committee). The Committee is permitted to visit all places of detention, defined by the convention as "any place within its jurisdiction where persons are deprived of their liberty by a public authority." Once a

⁸²General Comment 21 Human Rights Committee, Forty-fourth sessions, 1992 para3.

⁸³Article 37 of the Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

⁸⁴Articles 16 & 17 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990.

⁸⁵Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949.

state government is notified of the intention of the Committee to carry out a visit it is required to allow access to the territory with the right to free travel without restriction, full information of the facility in question, unlimited access to the facility and free movement within it, the right to interview any person being held within the facility, communicate freely with any person whom it believes can supply relevant information and access to any other information which the Committee feels is necessary to carry out its task. All information gathered is confidential. In exceptional circumstances a state may make representations based on grounds of national defense, public safety, and serious disorder in custodial facilities against a visit to a certain place or at a certain time. After each visit a report is drawn up with any possible suggestions to the state in question.

3.2.3 African Instruments

At the regional level, the African **Charter on the Rights and Welfare of the Child** seeks *inter alia*, to protect the child against torture and ill treatment. It is the only instrument that makes explicit reference to the rights of persons in detention. States are to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment and that the child is separated from adults in the place of detention.⁸⁶ The right to a speedy trial is also enshrined in the treaty.⁸⁷

The 1981 African Charter on Human and Peoples' Rights (The Charter) like the universal instruments sets out fundamental rights and freedoms that apply to individuals in general regardless of their status. The Charter declares that

'every individual shall have the right to the respect of their human dignity and all forms of exploitation and degradation of man particularly slavery, slave trade,

⁸⁶Article 17 (2) (a) and (b) of the African Charter on the Rights and Welfare of the Child.

⁸⁷ Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child.

torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.⁸⁸

The Charter also protects the right to life and integrity of person, the right to liberty and security of person whereby deprivation of liberty should be according to previously laid down laws; and the right to enjoy the best attainable state of physical and mental health.⁸⁹ All persons are guaranteed equality before the law and the right to fair trial including the right to be heard in ones cause.⁹⁰ It is said to comprise *inter alia* the right to an appeal to competent national organs against acts of violating fundamental rights as recognized and guaranteed by conventions, laws regulations and customs in force.⁹¹ This provision is particularly relevant for pre-trial detainees who may have spent a long time in prison without having their trials being conducted.

Kampala Declaration on Prison Conditions in Africa arose out of an international seminar on prison conditions in Africa held in September 1996 in Kampala.⁹² The seminar was attended by members of the African Commission on Human and Peoples' Rights, Ministers of State, prison commissioners, judges, international, regional and national NGOs and Inter-Governmental Organizations (IGOs). The Declaration was subsequently annexed to a resolution by the United Nations Economic and Social Council, which called for the cooperation of states, the United Nations and intergovernmental organizations in the improvement of prison conditions in Africa.⁹³ By doing so, the UN recognized and lent its weight to the efforts to improve penal conditions in Africa. The Kampala Declaration recommends action be taken by states

⁸⁸Article 5 of the African Charter on Human and Peoples' Rights. Comparable provisions are to be found in other regional instruments such as the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Inter-American Convention to Prevent and Punish Torture, European Convention for the Protection of Human Rights and Fundamental Freedoms Art 3, and the American Convention on Human Rights Art 5 <www.cpt.coe.int/en/docsref.htm> accessed on 18 april 2017.

⁸⁹Articles 4, 6 & 16 of the African Charter on Human and Peoples' Rights.

⁹⁰Articles 3 & 7 of the African Charter on Human and Peoples' Rights.

⁹¹ Article 7 (1)(a) of the African Charter on Human and Peoples' Rights.

⁹² Kampala Declaration on Prison Conditions in Africa accessed at <www.un.org/documents/ecosoc/res/1997/eres1997-36.htm> accessed on 15thapril 2017.

⁹³ International Cooperation for the Improvement of Prison Conditions United Nations Resolution 1997/36 adopted on 21 July 1997 at <www.un.org/documents> accessed on 15thapril 2017.

and nongovernmental organizations on four fronts, prison conditions, remand prisoners, prison staff and alternative sentencing. The Declaration recommends:

That the human rights of prisoners should be safeguarded at all times...; that prisoners should retain all rights which are not expressly taken away by the fact of their detention; that conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty; that the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility...⁸⁴

Remand prisoners are recognized as a category with a great proportion of inmates in African prisons. The police, prosecuting authorities and judiciary are encouraged to recognize their contribution to conditions such as overcrowding in prisons and therefore work in concert with prison officials to alleviate these problems. Prison staff are key to any action intended to be taken in prisons. Their working conditions are an important area of consideration. Imprisonment is recognized as a less than effective method of rehabilitating offenders particularly those sentenced to short terms. States are encouraged to adopt other sentencing policies, particularly non-custodial sentences like community service.

The second Pan African Conference on Prison and Penal Reform held in Burkina Faso in 2002 produced the Ouagadougou Declaration.⁹⁵ This Declaration recognized that progress had been made on the recommendations of the Kampala Declaration and reiterated the need to reduce prison populations. The conference encouraged prisons to be self-sufficient without absolving the state from its responsibility to ensure that minimum standards are maintained. Further, that the rule of law should prevail within the prison administration and efforts should be made to implement the best practices in penal reform. The Conference proposed the drafting of an African charter on prisoners'

⁸⁴ Kampala Declaration (n97 above) at Prison Conditions paras 1-2 & 4-5.

⁹⁵ The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, September 2002. www.peanlreform.org/english/pana_declaration.htm

rights as well as a United Nations charter on the basic rights of prisoners as an important step towards improving the respect for prisoners' rights.

3.3 Access to the Courts

States cannot interfere with the right of a prisoner to petition a court for relief. Neither a state nor a prison official can refuse, for any reason, to review a prisoner's applications and submit them to federal court. In addition, a state is not permitted to prohibit prisoners from having law books or legal papers in their cells on the basis that such materials tempt other prisoners to steal or create a fire hazard. If a prisoner is indigent, the state cannot require him to pay even a small fee to file legal papers with the court. However, a prisoner association cannot have filing fees waived. The right to proceed as an indigent party is allowed only for individual prisoners.

Prisoners have a fundamental right to legal counsel that requires special consideration. Prison officials must allow reasonable times and places for prisoners to communicate confidentially with their attorneys. Prisoners must be provided with writing materials and law books. Additionally, prisoners must be able to have their legal papers notarized. The judiciary should ensure that prisoners can have access to courts so as to have their fate can be determined in time as justice delayed is justice denied.

3.4 Conclusion

All practicing attorneys can subscribe to the Uganda Law Society, which is the main legal professional organization throughout Uganda. The Law Council has tasked the Uganda Law Society with carrying out *pro bono* in Uganda. With this, prisoners can have a chance for their pleas to be heard at no cost therefore the judiciary should make it a priority to follow up the advocates so that they carry out *pro bono* services in good faith and with due diligence .

CHAPTER FOUR

4.0 STRATEGIES TO ENSURE THE PROTECTION OF RIGHTS OF INDIGENT PRISONERS IN UGANDA

4.1 Introduction

This chapter discusses *pro bono* services and the other methods on how the rights of indigent prisoners can be promoted in Uganda. *Pro bono* is the designation given to the free legal work done by an attorney for indigent clients, religious, charitable organizations and other nonprofit entities and also the role played by court in ensuring that these strategies are adhered to.

4.1.1 *Pro Bono* Opportunities

As members of a profession, lawyers are bound by their ethical rules to charge reasonable rates for their services and to serve the public interest by providing free legal service to indigent persons or to religious, charitable, or other non-profit groups. A lawyer's free legal service to these types of clients is designated as *pro bono* service⁹⁶.

There is a relatively large network of *pro bono* services available across Uganda. *Pro bono* centers are mainly concentrated in the major cities and *pro bono* services are primarily provided by Justice, Law and Order Sector institutions and civil society organizations that are instrumental in providing *pro bono* services to the poor and marginalized groups.

The need for active *pro bono* support and services in Uganda has also been recognized by the Uganda Law Society and the Law Council. Acting together in 2009, they passed

⁹⁶Coulter, Dolores M. 2001. "The Pro Bono Priority." Michigan Bar Journal 80 (September).

Regulations SI No. 39 under the Advocates Act, which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year⁹⁷:

Every Advocate shall provide services when required by the Law Council or pay a fee prescribed by the Law Council in lieu of such services; and

That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act⁹⁸.

The Advocates Act imposes an ethical and social responsibility on all attorneys (including in-house attorneys) to provide pro bono services. If an Advocate does not annually perform 40 hours of pro bono work or pay the fee in lieu, he or she will not remain certified to practice law.

As a result of this legislation, law firms that actively provide *pro bono* services have become attractive places to work for newly qualified attorneys because they often provide support for attorneys seeking to comply with this new requirement, and oftentimes are given “credit” for pro bono hours in meeting billable hour thresholds.

4.1.2 Uganda law society

All practicing attorneys can subscribe to the Uganda Law Society, which is the main legal professional organization throughout Uganda. The Law Council has tasked the Uganda Law Society with carrying out *pro bono* in Uganda. The Uganda Law Society established the *Pro Bono* Project in 2008 .

A regional *pro bono* day was initiated by the Uganda Law Society to increase access to justice through the provision of free legal services by Advocates to the poor, indigent and marginalized in Uganda. At this event, Advocates provide legal aid services to walk – in clients in all the regions where the Uganda Law Society Legal Aid Offices operate: Kampala, Jinja, Soroti, Arua, Gulu,

⁹⁷ Advocates Act Regulations SI No. 39.

⁹⁸ ibid.

Masindi, Kabarole, Kabale and Mbarara.

4.2 Barriers to *pro bono* work

4.2.1 Insufficient Funding

Many NGOs and organizational groups providing free legal services receive funding from foreign groups. Since the availability of funds may fluctuate due to conditions outside the organizations' control, their provision of free legal services is unpredictable.

For example, the LAP is funded by the Norwegian Agency for Development Cooperation through the Norwegian Bar Association. Its activities and administrative budget are therefore dependent on the continued backing of the Norwegian Bar Association.

4.2.2 Infrastructure Problems

The Advocates Regulations, which made it mandatory for every attorney to provide forty (40) hours of *pro bono* legal services per year, are not yet operational. While attorneys who do not provide 40 hours of pro bono services a year must pay a fine, the Law Council has not yet created a *pro bono* account to receive such funds. As a result, few attorneys provide voluntary pro bono services to members of the public.

Recently, a draft Legal Aid Policy attempting to establish a cohesive and enlarged public legal aid scheme has been circulated to the Ugandan Cabinet for approval. The proposed reforms include recommendations to broaden the class of people who qualify for public legal aid, establish an independent legal aid body to administer funds, and create a public-private partnership to more effectively and efficiently deploy legal aid.

4.2.3 Opt-Out Right

As noted above, the Advocates Act made it mandatory for all attorneys to provide *pro bono* legal services, unless they pay a fee for an exemption. Situations could arise that too many attorneys decide to pay the opt-out fee, leaving few, more economically-disadvantaged, attorneys to provide *pro bono* work.

4.2.4 Logistical Realities

Most of the legal apparatus and aid providers are located in large cities, namely Kampala, while 87% of Ugandan citizens live in rural areas. Although NGOs perform a crucial role in providing access to justice, many only have the resources and funding available to operate in major cities, leaving many rural citizens with no legal recourse.

4.2.5 *Pro Bono* Resources

The Uganda Law Society: engages in legal aid and *pro bono* which are its flagship projects with the aim of extending access to justice to the poor, indigent and most vulnerable across Uganda. The LDC Legal Aid Clinic: was established for the main purpose of improving the level of training of Bar Course students and to promote the lawyer's role of service to the community and legal representation of needy persons. The Public Defender Association of Uganda: offers legal aid to indigent persons, particularly to persons charged with criminal offences. The Legal Aid Project of the Uganda Law Society: was established by the Uganda Law Society to provide legal assistance to indigent and vulnerable persons in Uganda. The Refugee Law Project: engages in the provision of free legal assistance to the refugee population and asylum seekers in Uganda. International Justice Mission: is a Christian Non Governmental Organization led by Human Rights professionals, which helps people suffering from injustices and oppression, who have not been able to obtain justice through local authorities. IJM investigates and documents cases of abuse and provides pro bono legal representation to vulnerable individuals. These and many more are the available resources that extend *pro bono* services to indigent prisoners in Uganda .

4.3 Legal Aid project.

Legal aid is the provision of free or subsidized legal services to mainly poor and vulnerable people who cannot afford the services of paid lawyers.¹ Legal aid is provided

as a means to enhance people's access to justice⁹⁹. Access to justice is the mechanism through which individuals, groups and communities realize their human rights. Human rights are meaningless without access to and availability of the justice system because it is through access that these rights are guaranteed and protected under the law. As such, legal aid enables all persons, particularly the poor and vulnerable, to access their right to justice as well as other human rights.

The need for legal aid is created by the inability of persons to have all the required legal knowledge and to know all the procedures and to represent themselves. Factors such as poverty, ignorance of the law, armed conflict, disability or other vulnerability or marginalization should not be a barrier to people progressively realizing their rights which are protected by the Constitution of Uganda¹⁰⁰. Furthermore, the inability to afford legal representation should never diminish a person's right to access justice.

The Poor Persons Defense Act¹⁰¹ provides that

"Prisoners should have legal aid in the preparation and conduct of their defense and at trial if their means are insufficient to enable them to obtain such aid".

4.3 Role played by court in ensuring these services reach inherent prisoners.

The courts must ensure that these services reach the intended beneficiaries by first , training the judges and the magistrates on the use of non-custodial measures . Newly-appointed magistrates and judges and relevant courts and tribunals need to receive training on alternative sentences. There is also a need for continuous training which involves magistrates visiting community service sites and sharing experiences and best practices. Training and sensitization on community service needs to be integrated in the training curriculum for key

⁹⁹Comparative report by the Danish Institute of Human Rights -Access to Justice and Legal Aid in East Africa page 7

¹⁰⁰ The 1995 Constitution of Uganda, Chapter 4

¹⁰¹Section 2 of Cap 20

stakeholder departments and all the other stakeholders are encouraged to integrate it in their programs.

The court may also impose other sentencing options namely; fine , community service , probation , a caution and discharge without punishment as provided under section 10¹⁰².

4.4 Conclusion

Despite the substantial efforts of *pro bono* service providers in the country, access to justice for many citizens remains elusive. Most legal aid organizations are based in Kampala or other urban areas due to easy access to utilities as well as the availability of security and other necessities such as banking and communication services and courts. As a result, the vast majority of the population, which lives in rural areas, remains unable to access legal services. While the Advocates Act is a significant development in the provision of legal services to Uganda's vulnerable citizens, there is currently little government policy to provide effective and efficient legal aid services to indigent citizens in Uganda. Therefore the judiciary should ensure that such policies are strictly applied to ensure justice reaches the far ends of the nation and also should put more effort on ensuring that advocates participate by increasing the prices for the opt out option.

¹⁰²THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 2013

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The judiciary has undertaken considerable reforms in the administration of justice to improve performance. However, the delivery of judicial services has not fully met the expectations of the public and stakeholders.

There is need for the judiciary to review its strategy to ensure that quality justice is dispensed to Ugandans. This will ensure that the judiciary plays its rightful role in rights that accrue to all human beings. However because of the nature of prisons and the functions they serve inmates are often denied even these basic rights that accrue to all. Implementation of these standards as with all other human rights standards is the key to enjoyment of these rights. Implementation is most significant at the domestic level where the impact of violations is felt on a day to day basis.

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate. As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in any civil suit.

The Ugandan government, through the implementation of The Law Development Center Act, established a Law Development Center¹⁰³ that, in part, is responsible for "assisting in the provision of legal aid and advice to indigent litigants and accused persons" as an attempt to address some of the obstacles to justice. Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford

¹⁰³ Law Development Centre Act chapter 132.

legal services nor benefit from government-provided legal assistance. This is basically due the fact that these programs are not strictly applied and implemented by the bodies responsible. Therefore I would seek the judiciary to be at the forefront of ensuring that such programs reach their intended beneficiaries who are the indigent prisoners.

Inadequacy of Funding

Due to the high demand, legal aid service provision requires substantial funding. However, the Government of Uganda as a key duty bearer has not committed any meaningful amount offunds to implement legal aid. As such, legal aid schemes such as the state brief system, Justice Centers Uganda and the LDC legal aid clinic operate at minimal levels. The consequences of limited funding include lack of supervision of advocates resulting in low quality of services rendered, poor pay, limited capacity to conduct monitoring and evaluation (M&E), donor dependency, limited geographical outreach with no strategy for taking the services beyond the existing areas of operation and little focus on public interest litigation which though useful for legal reform, is expensive. Also, because of the scramble for funding and survival, CSOs give undue focus to handling individual cases as they come in and only limited attention to advocacy for policy reform and seeking lasting solutions.

The Role of NGOs and Outside Entities

The biggest restriction to government-provided legal services in Uganda is inadequate funding due to the costly nature of conducting civil and criminal proceedings. NGOs play an integral part in offering legal aid to people that would otherwise not have access to legal services. NGOs such as the Ford Foundation (which has started a clinical law program in Uganda) have committed resources to Uganda directed toward providing Ugandans with access to legal aid. All NGOs and other providers of legal aid must register as a legal aid provider before engaging in the business of assisting indigent persons.

The LAP helps thousands of indigent men, women and children to gain access to justice and to defend their legal and human rights. Their work includes the provision of legal information, dispute resolution and court representation.

Other governments, such as the United States through its USAID program, also contribute to Ugandan legal aid. However it's still hard to extend these services to prisoners who actually need it.

The Role of Paralegals

A significant part of the role that NGOs play is training paralegals and equipping them to provide legal aid. Paralegals conduct "Paralegal Aid Clinics" on a regular basis in the main prisons across the country. These clinics are aimed primarily at prisoners awaiting trial and aim to empower prisoners to apply the law in their own cases.

Paralegals assist with various tasks including case work, community education, mobilization, advocacy, conflict resolution, police work, court work and prison work. Though paralegals cannot represent accused suspects in court, they work closely with inmates and accused persons to inform them of their constitutional rights, teach them how to represent themselves, and obtain bail for minor offenses. The program empowers pre-trial detainees to seek justice by furnishing them with information on their rights and on the procedures and workings of the justice system. This initiation of the program in Uganda has coincided with a decrease in the percentage of detainees awaiting trial in Uganda, with the percentage of detainees awaiting trial falling from 64% in 2005 to 55% in 2015.

Improved prison conditions

Despite the substantially increasing populations and crime rates in recent decades, the capacity of prison systems in Africa has barely changed. Whilst governments claim reform and rehabilitation as the aim of criminal justice, in practice, prison systems fail to deliver as expected and recent reports have shown that prison systems in most African countries are in crisis, burdened with overcrowding and an inability to satisfy

basic human rights standards, despite states' ratification of regional and international protocols and conventions. Addressing this crisis demands action not only in better resourcing and support of prison systems but in challenging practices throughout the justice system - such as inappropriate sentencing policies - that are responsible for high rates of imprisonment. Therefore I would advocate the judiciary to lobby for more funding from the government to help in financing the building and renovation of detention centers and also increase financing for all the programs mentioned above like for the Paralegals and the legal aid clinic.

5.2 Recommendations

There should be a deliberate attempt to establish a prison regime in which the living conditions of prisoners are consistent with human rights standards and international best practices. There should be an effort to reduce prison congestion by encouraging courts to utilize non-custodial sentences and community service, as well as extending parole. I recommend that the judiciary should ensure that community service and non custodial sentences are followed so as to decrease congestion in prisons and also for small claims to be handled quickly so that offenders do not end up in prison always.

There continues to be gaps in the law and inadequate capacities of many of the institutions of the criminal justice system, including prisons themselves. Prison congestion, combined with inadequate resources, has led to poor sanitation and inadequate nutrition of prisoners. The number of high court sessions are still low and this has led to a high number of committals, who pose a security risk because of the uncertainty they live with, in the prisons. The judiciary can help in changing some of the laws and help in increasing on the number of high court sessions and also increase on the staffing. This can help reduce on the case backlog.

Furthermore, most prison and law enforcement authorities are still ignorant about the provisions of human rights instruments on the treatment of people deprived of their liberty and the material and financial resources available to them are in most cases inadequate. Therefore its recommended that adequate education and sensitization be

made for the prison staff and in-mates. The indigent prisoners should be educated about their rights and how they can protect them.

As per Section 3¹⁰⁴ on the exercise of general supervision and control over the provisions of legal aid and advice to indigent prisoners, the judiciary needs to do more tight marking of the law firms and the advocates to ensure that this is done well and to the best of their abilities which would help in minimizing the rate and number of prisoners on remand and help shed a light on some of the rights of these prisoners. The advocates can also help in ensuring that justice is extended to prisoners.

Another recommendation is for the Judiciary to make visits to the prisons so that they get firsthand experience of what indigent prisoners go through and listen to them. Prison visits provide transparency within prisons and brings some degree of accountability to the prison management. It also has a mode of community involvement in the penal system. The judiciary, like any other government department in Uganda has not gone without being accused of unethical practices. Delayed judgments are blamed on rampant corruption leading to denial of a fair and impartial trial. I would recommend that the law council which has the mandate to discipline the advocates and their clerks so as to encourage better delivery of their services and to also suspend them on the slightest complaint of corruption which has led to increase in injustices in Uganda .

Weak compliance with codes of conduct like late coming and absenteeism are common in the judiciary and so the judicial process is comprised of frequent adjournments. This has led to increased case backlog and also prisoners spending a lot of time on remand which is against their basic rights to liberty, therefore I would recommend that the judiciary check on these behaviors to ensure that justice is delivered in time and also help in decreasing the number of pretrial detainees and prisoners in the detention centers.

¹⁰⁴ Advocates laws of Uganda .

Case backlog; there are delays in trials and delivery of judgments and this results in case backlog. There are high backlogs of cases in the courts which lead to poor recording of proceedings. The judiciary in its mandate should increase on its efficiency and even set a specific time period in which a case should be concluded. This could help in ensuring justice for the indigent prisoners.

Inadequate staffing; There are not enough judicial officers to handle the increasing case loads properly. This has led to increased number of prisoners and also justice being delayed. I recommend that the judiciary increase on its staff and also the government should appoint more judges and court officials so that there can be increased efficiency in dealing with the cases.

Poor record keeping and poor recording of proceedings disappearance of files. I would recommend that the judiciary embraces the vast advantages of technological improvements in record keeping which would minimize disappearance of case files and also create an online database account to help minimize corruption where court officials are bribed to hide and destroy case files and most times even remove important documents and pieces of evidence from the case files.

I would also recommend alternatives to imprisonments for example; most basically community service for those people especially with minor offences , first time offenders and those which no previous police record and most especially to juveniles. This would help in their rehabilitation and also ensuring that the detention centers are not overwhelmed with numbers.

I also recommend that pretrial detention centers should be used as last resort to ensure that the basic rights of these people are respected.

The communication is sometimes poor. Production warrants may be sent late to the prisons and the time is not sufficient to prepare the prisoners to be produced before court at the time ordered. On the other hand, prisoners are transferred from one prison to another without informing the courts. I recommend that there should be good

communication between all the stakeholders in order to ensure justice is extended to all prisoners as well as indigent prisoners. The judiciary should set a minimal standard that should be followed to ensure that good communication is achieved among all stakeholders and also continuously collecting, monitoring and analyzing admission and length of stay information and sharing the results with the judiciary and officials in leadership positions in government.

There should be public awareness of courts and court procedures including sensitization on non-custodial measures.

Constant liaison with courts and particularly, involvement in sentence planning that will pave a way for non-custodial measures. Cross-institutional consultation in scheduling of cases and timely submission of data.

Increased use of plea bargaining in order to decongest prisons and to help reduce case backlog.

Standards of performance need to be set, monitored and enforced. Absenteeism of judicial officers should be dealt with through disciplinary measures.

National human rights institutions should be expressly bestowed with the responsibility to inspect prisons and other places of detention with a view to making binding recommendations to enhance the respect of prisoners' rights. Appropriate powers should be granted in this respect including the right to free access at any time, unannounced at such prisons and detention facilities. For example with the deteriorating conditions in Nalufenya prison where the human rights group were given opportunity to go and inspect the detention center though after a long period of argument should be encouraged all the time and this would help to check and make recommendations to arms of government.

The scope of rights sought to be protected and promoted by NHRIs should be as wide as possible. With regard to accessibility, mechanisms should be designed to ensure that prisoners are able to express their grievances and make their complaints to the national

institutions without hindrance. Therefore the judiciary and the government at large should mandate national human rights groups to frequently visit prisons and make comprehensive reports on the abuse of rights of prisoners, how they can be promoted and should also follow up their reports to ensure they are worked on

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