THE LAW AND ITS EFFECTIVENESS AS A DETERRENCE MECHANISM OF CRIME IN THE CRIMINAL JUSTICE SYSTEM OF UGANDA. A CASE STUDY OF KAMPALA UGANDA.

BY

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JUNE, 2018

DECLARATION.

I NAFULA MAXENSIA hereby declare that the contents of this research paper are my original work and has never been submitted in for a diploma or any other award in any institution or university and should not be reproduced without my consent.

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APPROVAL.

This is to certify that this work has been carried out under my guidance and supervision.

SIGNATURE..... **DATE**.....14/06/2018.....

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(SUPERVISOR)

DEDICATION.

I wholly dedicate this work to the family of MR NGESO MUKAGA and MRS NGESO BASEKE TEOPISTA.

ACKNOWLEDGEMENT.

I Honour the Holy Spirit for it has been him from day one.

My thanks go to my parents Mr. and Mrs. Ngeso for their financial support towards my studies. I extend my sincere thanks to Ms. Nakirijja Specioza, Mr. Mubiru Fred, my dear sisters and friends for their supportive struggle and encouragement towards my studies. I also pass my gratitude to Mrs. Nyapidi Brenda for her patience and availability to constructively supervise my work.

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CHAPTER ONE

1.0 Introduction

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements, capital punishment may be imposed in some jurisdictions for the most serious crimes, physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in Uganda. Individuals may be incarcerated in prisons or jail in a variety of conditions depending on the jurisdiction.

It is possible to describe law as the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions (precedents), and the like, that is used to govern a society and to control the behaviour of its members, so Law is a formal mechanism of social control. Legal systems are particular ways of establishing and maintaining social order.

English legal system and laws are predominant in Uganda as it was governed by English Common Law and African Customary Law. But customary law will be effective when it does not conflict with statutory law. So the statutory law are applicable in Ugandan legal system. All these laws are stipulated by their Judicature Act.

The constitution is the Superior Law over all laws in Uganda.[1] No other law will be taken in consideration which conflict the constitution. Since its independence, Uganda has adopted three constitutions known as 1962 Constitution, 1967 Constitution and 1995 Constitution. However, a revise of Constitution was done in 2005. The other written laws are available in the national Gazette.

In Uganda, the highest court is the Supreme Court of Uganda which is supported by high court and magistrate court. High Court deals with murder, treason, rape and other crimes punishable by death or life imprisonment whereas magistrate court deals with crimes punishable by fines, whipping or shorter terms of imprisonment. There is an appeal division to appeal against these decisions. Enforcement of these laws are been looked after by the police council in Uganda.

[1] All Answers Ltd, The Republic of Uganda (Law Teacher net, June 2018) https://www.lawteacher.net/free-law-essays/common-law.the-republic-of-uganda.php?vref=1>accessed 11th June, 2018.

Sources of law

The legal system of Uganda is based on law on how derived from different sources. The sources are as:-

Legislation: These are the acts made by parliament of Uganda. The parliament of Uganda consists of 305 elected members. Whenever legal proposal is accepted by the major share of the parliament member than it comes as statute and punished in the national Gazette.

Delegated legislation: Sometimes delegation of the power is given to subordinate bodies to make law. It is done at crisis or whenever it is required to save the time for parliament. Then laws are created through orders in council, statutory instruments, bye-laws, court rules, professional regulations.

English common law: Uganda was governed by United Kingdom for a long time. That time they practiced the English common law to maintain the legal system of their colony like Uganda. But though Uganda is independent now, they are still following the English Common law. Thus it has become a big source of law in Ugandan legal system.

Judicial precedents: These are the law made by the courts of Uganda or the judges of courts in Uganda Whenever a judge gives judgement to a case, later on it will be treated as the law next time for the similar cases. Thus their judgment becomes the source of law in Uganda.

Customs: People from different customs and ethnic origins living in Uganda. Most of them are from Baganda, Banyoro and Batoro ethnic groups who are from Bantus, Bushmen, Sudanese, Nile-Hamites, Asian and European minorities. The customs they are holding are taken into consideration in law making. Thus it has become a source of legal system in Uganda.

African customary law: Geographically Uganda has fallen in African continent. That's why they have to follow African customary law in their legislation system. Thus it has become a source of law in Uganda.

Ecclesiastical law or religion: Muslims and Christians are living peacefully in Uganda for a long time. Both the religions are recognised by Uganda constitution. The Christian

community are the major group who left key effect in Ugandan legislation. On the other hand Ugandan constitution has recently made provision for Sharia Law in Article 129 to include Islamic courts. Thus Ecclesiastical Laws are keeping effect in Ugandan legislation.

Definition of Law - Max Weber (German Sociologist born 1954)
"Law...exist if it is externally guaranteed by the probability of coercion (physical or psychological) to bring about conformity or avenge violation, and is applied by a staff of people holding themselves especially ready for that purpose

1.1 Background of the study.

1. General and Specific deterrence

Deterrence comes in two forms: General and specific. 2. Both employ the same cost-benefit deterrence model, but the model operates differently in each. 3. With general deterrence, the source of deterrence is the ICC's (International Criminal Court) ever-present institutional threat of punishment. 4. Thus, general deterrence occurs ex ante, when a prospective criminal leader is considering committing crimes. 5. Here, the likelihood of punishment depends on the probability of the ICC investigating, indicating and arresting the leader.

Contrarily, specific deterrence occurs only after general deterrence has failed, when the leader has already committed crimes. Policies pursuing specific deterrence attempt to deter the leader from committing additional crimes by further increasing their costs. 6. One such policy aims at increasing the likelihood of punishment, such as by investigating the crimes or indicating the leader. Another policy aims at increasing the severity of punishment by threatening harsher punishment for further crimes.[2]

Manmade law still exists, even if Natural law holds it to be inferior

In 1534 Thomas More believed that he was bound be a higher law (God's law) to a greater extent than the man-made law and was executed. More refused to accept that Henry VIII and Parliament could usurp papal authority by declaring the king the head of the Church.

[2] ICCForum.com/forum/prevention

Natural law theory holds that, man-made law is a lower form of law

Before the Christian philosophers, the classical Greek philosophers considered man-made law to be inferior to the laws of nature.

Although the laws of nature decreed that people should live in communities, the rules people created to regulate those communities were man-made and subservient to the laws of nature. Cicero said,

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. ... We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times..."[3]

"De Republican"(***Quoted in "A Short History of Western Legal Theory" by Kelly (1992))***

Positivism emphasizes the separation of law and morality. According to legal positivists, law is man-made, or "posited," by the legislature. Where natural law theorists may say that if a law is not moral there is no obligation to obey it, by appealing to moral or religious principles, but positivists hold that until a duly enacted law is changed, it remains law, and should be obeyed.

Legal positivism regards law as a system of clearly defined rules, the law is defined by the social rules or practices that identify certain norms as laws. **Jeremy Bentham** (English philosopher and jurist born 1748) proposed the Utilitarian principle which means that the law should create "the greatest happiness of the greatest number". **Bentham** had little time for natural law The version of legal positivism of his pupil, **Austin** was based on the notion that the law is the command of the sovereign backed by the threat of punishment.

Hans Kelson (Austrian lawyer and philosopher born 1881) **Kelsen's** version of Legal Positivism was that there is no necessary connection between law and morals, and that law did not require moral validation to be legitimate.

[3] https://ugfacts.com/ugandapoliceact 8th June,2018

Legal realism is the view that that we should understand the law as it is practised in the courts, law offices, and police stations, rather than as it is set forth in statutes or learned treatises.

For legal realists such as **Oliver Wendell Holmes** who wrote "The Common Law" in 1923, if the law were merely a system of rules, we would not need lawyers conducting adversarial proceedings, because judges could just apply the rules. In fact, judges have discretion with which they can decide a case in a number of ways, and factors such as the judge's temperament, or social class, or political ideology, may determine the outcome.

There are various functions of law across the world, for instance law in development, law in maintaining social order and other function as expounded by different philosophers

John Stuart Mill (English philosopher born 1806 - [Godson of **Bentham**]), On Liberty (1859) held that liberalism, seeks to promote as much individual liberty as is compatible with everyone else having the same liberty, the state should not use the criminal law to prevent immoral conduct that does not cause harm or offence to others,

JS Mill's "Harm to Others" Principle

7Mill stated "The only time law can be used to prevent someone doing an act, is to prevent harm to others". The problem is he didn't say what harm is, and he didn't say who others were. One could ask, "Should you use law to prevent 'harm' in all cases?"

Take for example adultery and suicide, both would cause 'harm' to others. However, the law will say nothing about such behaviour.

Bentham argued that a utilitarian view of the law is that the law should produce the best consequences. The utilitarian approach is most often seen the relation between law and economics where the law supports the creation of wealth.

Positivists such as **Bentham** and **Austin** see law as a system of commands backed by sanctions. Others such as **Professor Hart** stress rules and their pedigree as the essential elements of a legal system. **Ronald Dworkin** (American philosopher born 1931) disagrees, and said law involves principles as well as rules.

Sovereign commands

How does the positivist distinguish commands that count as law from commands that do not, without appealing to morality? **Austin** argues that law is distinguished from other commands by being the command of the sovereign; he wrote in "Lectures on Jurisprudence" (1869)) that the gunman's command lacks this pedigree.

Who then is sovereign? Not someone who has a right to rule, or who rules legitimately, for this would interject morality into the law. Rather, it is someone who is sovereign, who is in fact obeyed.[4]

Professor Hart answers this by saying that it makes the legal system nothing more than "a gunman writ large".

Hart adapted **Kelsen's** illustration of a gunman demanding money from a bank:- The gunman commands the clerk to hand over the money. The gunman backs up this command with the threat that if he does not do so he will be shot. The clerk feels obliged to hand over the money.

It follows therefore that law cannot simply be made up of commands.

For **Hart** we distinguish laws from other commands by viewing law as a union of primary and secondary rules. Laws consist largely of primary rules.

All societies develop rules

Hart concluded that there are some essential primary rules.

In "The Concept of Law" **Hart** says the reason for primary rules is our knowledge of certain self-evident truths.[5]

Primary Rules

Such truths, says **Hart,** are the minimum necessary that any society will recognise.

We know we are all vulnerable to attack from others. Human beings are vulnerable to bodily attack and need protection. No man alone can dominate others for more than a short period - he must stop to sleep, and then he in his turn needs to be protected.

[4] https://prezi.com>law-iscommand
[5] https://onlinelibrary.wileg.com>full>raju

We all have limited concern for others and limited will power. Men are neither devils nor angels; they act largely from self-interest but generally care for the interests of others close to them.

Finally, we know that we live in a world of limited resources. The basic needs of life - food, clothes, shelter etc - are scarce and require some effort to obtain: this requires rules to protect rights of ownership and to allow ownership to be transferred.

Hart appears not to include rules that limit sexual impulses or rules imposing duties on parents to care for their children, and on younger people to care for the elderly.

Just because society is governed by rules, does not mean that it has a legal system.

Some small-scale primitive societies have rules based only on informal custom.

The customs will be well known by everyone, when disputes do occur they will be resolved by group discussion and conciliation.

Changing the rules occurs as the pace of change demands.

More developed societies will require more complex rules to deal with the economic, social and political complexities that inevitably follow. The simple societies have a cohesion bonded by the simple rules this is lost as societies become more complex.

Hart describes these three types of rule as:

Recognition. To avoid uncertainty, the complex societies develop rules of conduct, which are recognised, particularly by the officials.

Change. These rules will lay down who can change the rules.

Adjudication. Rules of adjudication, defining the procedures to resolve dispute will be developed. This may lead to a court system

He calls these Secondary rules to distinguish them from the primary rules.

He says that this 'union of primary and secondary rules is at the centre of a legal system.'

Some jurists believe the real test of whether a legal system exists is simply the institution of a court.

Rules and principles

Another theory, called purposive adjudication, defended by **Dworkin** ("Law's Empire", 1986), holds that law is not, as **Hart** says, merely a set of rules, but of rules as well as underlying principles, and judges should appeal to these principles - to the spirit or purpose of the law - not just narrowly to the letter of the law. This is different from appealing to a natural moral order, which is entirely subjective, principles are often objective.[6]

Dworkin uses as an example the legal rule that the last will and testament of the deceased should be respected is modified by the principle that no one should profit from his or her own wrong.

Dworkin proposes a scenario of a son who murders his father, he will not benefit from his father's will because of the legal principle that he should not profit from his own wrong, despite the legal rule that he should inherit in line with the terms of his father's will ("Taking Rights Seriously", 1977).

Before 1930, Uganda used the Indian penal code as its principle source of legislation in criminal law. The Ugandan penal code Act was enacted by the Legislative Assembly by 1930 and it commenced on 15th June, 1950. The Ugandan Penal Code qualified the Principles of English Criminal law.[7]

From this point on wards this reception of English law in Uganda came with many other laws, for example the Criminal procedure code Act, civil procedure Act , civil Procedure Rules and many others.

Deterrence is one of the Rationales of Criminal Law.

1.2 Problem statement.

Deterrence involves the threat of punishment via some form of sanction. Deterrence is a way of achieving control through fear. If motorists do not refrain from offending out of fear of consequences they are, by definition, not deterred.

[6] LegaltheoryandJurisprudence.blogspot.com

[7] S.1 of the Penal Code Act, Cap 120.

Deterrence, in general, is the control of behaviour that is affected because the potential offender does not consider the behaviour worth risking for fear of its consequences. **(Barry Elliott1 (Presenter) 1Consultant Psychologist deterrence revisited)**

The principle of legality stipulated in Article 28[8] and other international conventions which Uganda has ratified, observe this Rationale of criminal Law, that the General public is threaten to commit such forbidden acts by the state and this can be quantified by the prescribed punishments for the case of Uganda we have the Penal Code Act cap 120 which defines the offence and prescribe the penalty for such crimes.[9]

But during the litigation of the criminal cases some serious cases are not adjudicated to the required level and these dispose of criminal from police posts after arrests and the disappearance of case files from the court chambers this create a problem which need to be addressed and some recommendations put forwarding order to see that the Rationale goal is attained.

1.3 Objectives.

This introduces what the research intends to evaluate in this research paper.

1.3.1 General objectives.

The Researcher establish the law and its effectiveness as a deterrence mechanism in the criminal justice in Uganda, violation of the law and circumstance which weaken the rationale, determination of loopholes in legislation and considering options or strategies and recommendations that can be applied to cover loopholes.

1.3 2 Specific Objectives.

(i) To find out the objectives of Criminal Law.

(ii) To find out the legal framework on the rationale of deterrence mechanism in Uganda's criminal justice system.

(iii) To find out the effectiveness of imprisonment in Uganda.

(iv) To point out the different solutions of the negative aspects of imprisonment in Uganda.

[8] The 1995 Constitution of the Republic of Uganda,
[9] https://www.sentencingproject.org>deterrance

1.4 Research Questions.

(i) What is effective implementation of the mechanism in the Uganda's criminal justice?

(ii) How has the mechanism been implemented in the criminal justice in Uganda?

(iii) What is the effectiveness of the deterrence mechanism in Uganda criminal justice?

(iv) How has the Rationale been violated in the criminal adjudication?

1.5 Scope of the study.

This study covered the Geographical area of Kampala - Uganda, in evaluation of the law and its effectiveness as a deterrence mechanism in the criminal justice system. In attempt to answer the previous questions of the study the researcher considered, the 1995 constitution of the Republic of Uganda, Police Act cap 303, Criminal Procedure code Act, The Uganda Penal Code Cap 120 and other relevant statutes and Articles from different Authors.

1.6 Methodology of the study.

In the answering the research questions the Research adopted the qualitative mode of research and used the non-random sampling method employing the accidental/ convenient sampling in interviewing some respondents from different places and supplemented the finding with Desk Research which included text books, statutes, case law, journals, Newspapers, and other related legal articles. The researcher adopted this mode of Research because it was appropriate for the Topic; it was easy to use and cheap compared to other modes of research and some of the questions used include;

1. What are the objectives of the Law?
2. What are the conditions of life of prisoners in Kampala?
3. What are the negative aspects of imprisonment as a deterrence?
4. What are the positive aspects of imprisonment as a deterrence?
5. What are the different sentencing options apart from imprisonment?

1.7 Justification of the study.

Considering the punishment prescription by the Uganda Penal code Act cap 120, and other Acts like the Terrorism Act, Anti-pornography Act, Treason Act, and other acts and Laws the Mechanism has a profound function in threatening the commission of subsequent crimes if its full implemented, but corruption, disappearance of the case file from chambers and swift releasing of criminals from police stations threaten the effectiveness of the rationale.

This study is therefore relevant to judicial system, government Law Enforcement Agencies and every department therein, in that it seeks to highlight the intersection between the Law and practice to attain the required standard.

1.8 Literature Review.

Deterrence is an old idea and has been discussed in academic writing at least as far back as 18th century treatises by Adam Smith (1776), Jeremy Bentham (1796) and Cesare Beccaria (1798). There are three core concepts embedded in theories of deterrence that individuals respond to changes in the certainty, severity, and celerity (or immediacy) of punishment. Interestingly, in the criminological tradition, deterrence is often characterized as being either general or specific with general deterrence referring to the idea that individuals respond to the threat of punishment and specific deterrence referring to the idea that individuals are responsive to the experience of punishment. Economics prefers different terminology, reserving the term deterrence for what the criminologist calls general deterrence and describing specific deterrence as a change in information or, perhaps more exotically, a change in preferences themselves. In this section, we briefly characterize the way in which economists have formalized these concepts. In general, economic theories of deterrence have focused more heavily on certainty and severity. However, recent writing has increasingly characterized deterrence as part of a dynamic framework in which offender behaviour is sensitive to their time preferences[10].

Imprisonment as a deterrence of crimes must be considered as any sensitive issues since it may include loss of life of prisoners and sustenance of injuries due to harsh treatment and how prisoners' rights are violated. **Prof. CLINARD** in his book stated that prisons are largely a failure[11] In prisons men are trained be more sophiscated at the states expense and this indicates that imprisonment in is not a good punished for wrong doers.

In the case of **Uganda v Kaweesa and another [1984] HCB p13,** it was held that the Magistrates Court is empowered to pass any sentence ranging from caution to imprisonment of term specified by law.

The Magistrates Court Act Cap 16[12] provides that a magistrate has a discretion to pass any sentence in which imprisonment is inclusive.

[10]Polansky and Shovel 1999; Lee and McCrary 2009

[11]Sociology of Deviant behavior revised edition p.624

[12]Section162

The 1995 Constitution of Uganda[13] provides that a person should be punished for an offence whose penalty is prescribed by the law and imprisonment is inclusive.

According to the Penal Code Act 120 most of the offences are punished by imprisonment like threatening violence, theft and manslaughter [14] to mention but a few.
From the above imprisonment is a lawful way of punishing people with deviant behaviour.

[13]Article 25[12]
[14]Section 81, 254, 187 of the penal code

CHAPTER TWO

2.1 Objectives of Criminal Law

2.1.1 Deterrence

Individual deterrence is aimed towards the specific offenders. The aim is to impose a specific penalty to discourage the offender from criminal behaviour. General deterrence aims at society at large, by imposing a penalty on those who commit offences, other individuals are discouraged from those offences. For example, I spoke to Mr Kawuma our neighbour who had come out of prison, he said prison is the worst place to live, he even said that prison is hell, this really shows that imprisonment is a true deterrence to the society and it could even be more perfect if everyone had the chance of seeing clearly how life goes on under such arms of the law.[15]

2.1.2 Retribution

Criminals ought to be punished in some way. This is to most widely seen goal, criminals have taken improper advantage upon others and consequently, criminal justice will put criminals at some unpleasant disadvantage to **balance the scale**. People submit to the law to receive the rights granted to them by law. People who commit crimes should also be punished for their crimes although not necessarily in the same way inflicted on the victim.[16]

2.1.3 Incapacitation

This is designed simply to keep criminals away from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose. For example, during my research I happened to meet an old woman at court who mistook me as one of the clerks there, she told me that she wanted court to sentence his son to prison for a long period time yet she was caring a big parcel of food for his son who had been in prison two weeks back. I became inquisitive and asked the old woman why she wished her son hell; she said her son was convicted for stealing her cattle contrary to section 254 of the penal code cap 120. She said young girl, you have not delivered a child! This boy is my own blood and I can't let him suffer but I only want him kept here so that I can have some sleep during his stay here. I

[15] S Wu Deterrence Theory-1.pdf
[16] https://www.cliffsnotes.com>study-guides

therefore concluded from the old woman's testimony that the idea of putting wrong doers in jail is not bad because when they are in jail peace prevails in the society.[17]

2.1.4 Rehabilitation.

This aims at transforming an offender into a valuable member of society. Its primarily goal is to prevent further offences by convincing the offender that their conduct was wrong. Here they are taught skills that will render them useful in the general society. I came to know that prisoners and prison warders have different perception of each other to an extent that in an attempt to do anything the feels is of help to the other, especially the warders to prisoners they may just look at it as part of the punishment they are in for, hence no other interest of learning can be developed. They will just do it for the sake of obeying orders probably if some voluntary organization could come up where by their main objective is to focus towards teaching prisoners countrywide by organising seminars for them, such an undertaking can score a market success reforming these outlawed fellows.

However, to a limited extent some inmates have been seen coming out of jail when saved and completely different, they live a saved life.[18]

2.1.5 Restoration.

This is a victim oriented theory of punishment. The goal is to repair through state authority, any injury inflicted upon the victim by the offenders. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law for example returning the victim to his or her original position before the injury.

[17] www.ulrc.go.ug>system>filesforce
[18] www.webcrawler.com 13/06/2018

CHAPTER THREE

3.1 The Legal Framework on the Deterrence System.

The 1995 constitution of the republic of Uganda chapter four which is commonly known as the bill of Rights ensures that the citizens enjoy their human rights and freedoms. The right to life is granted under the constitution in Article 22[1] which provides that no person shall be deprived of life intentionally except in execution of a sentence passed in affair trail by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda. The right to property is granted by the constitution of Uganda and it provides that one cannot be compulsorily be deprived of their property except where certain conditions are satisfied.

The state gave powers to courts to try cases of anyone who violates the law and punish them according to the law. According to Article 132[2] of the 1995 constitution, the supreme court has the power to hear appellant cases from the court of appeal, court of appeal has the power to hear regarding any questions as to the interpretation of the constitution, Article 134[2], under the Trials and indictment act,[19] the high court may pass any lawful sentence combining any sentence which is authorised by law to pass. The chief magistrate may try any offence other than an offence whose maximum penalty is death as stipulated in Section 161[1] of magistrates court act, Section 162[1] a] gives the chief magistrate power to pass any sentence which means it can pass a maximum penalty of life imprisonment and affine of any amount. The magistrate grade one may try any offence except an offence whose penalty is death or life imprisonment, Section 161[1]b], under Section 162[1]b] it says that a magistrate grade one may pass a sentence of imprisonment for a period not exceeding ten years and affine not exceeding four million, eight hundred thousand shillings. Magistrate grade two is limited to try offences who maximum penalty exceeds three years and a fine exceeding a half a million shillings.

In Uganda imprisonment is the most common punishment given to offenders, Imprisonment may be defined as the detention of a person, controlling and restricting his movements for a certain period of time for a bleach of the law or for deviance from acceptable norms of that area[20] imprisonment is pronounced by courts upon a person convicted of a crime. There are

[19] Section 2
[20] Charsebirungi, Op citpg 46

also other methods of punishing offenders like fines, and corporal punishments but those are not fully effective in Uganda as for example, corporal punishments are limited to some groups of people like women, males above 46 years and males sentenced to death, in the common case of **Uganda vs Joel Oluka**[21]. The accused being of apparent age 46years was sentenced corporal punishment and imprisoned by the Magistrates courts. On appeal to the High court it was held among others that the accused being of apparent age 46 no corporal punishment should be imposed as provided under section 179[4] b of the M.C.A.

3.2 The effectiveness of imprisonment

3.1.2 As a deterrence

Deterrence is the use of imprisonment to prevent the offender and other community members from committing crimes[22]. Cesare Beccaria argued that human behaviour can be influenced by variation in punishment, imprisonment, first, deters the individual offender who, because of having been to prison, will reflect on his criminal background and will refrain from committing further crimes[23] secondly the prisoner serves as an example to others who harbour criminal intentions to abandon them. For these reasons imprisonment is a punishment which can achieve the aims of any other punishment and thus any additional punishment accompanying them is adjudged inhuman treatment.

I managed to talk to one man by names of Mulinwa who had come out of prison three months back, he said prison made him realise that he is a no body without God, it is hard to sleep because they are woken up at 6;30am, despite the chilling coldness at that hour, he said that he prays to God to always protect him so that he does not go back to prison,

It would therefore not be a great error to say that people who become a tempted into being criminals are those that have not had the chance of seeing where one ends and thereafter what kind of life he will be forced to live. Therefore imprisonment as a mechanism of deterring other participants in crime is somehow effective, through a lot has to be done in the society to create awareness among citizens as to how ones freedom is interfered with once behind the bars.

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[21]1991]HCB3

[22]Caldwell, R Criminology Ronald press company New York 1965 pg 281

[23]Bruce Jacobs, A deterrence and Detterability, a criminology journal, volume 48 pg 417

3.3 Negative aspects of imprisonment.

Imprisonment should be an institution for correcting deviant behaviour and is aimed at encouraging rehabilitation and social reintegration of prisoners of law as abiding citizens to ensure this establishment and deliverance of useful programs for offenders in order to assist them to become law abiding persons especially through exposure to activities like carpentry, painting, art and craft should be effected.

Increased imprisonment and long prison sentences do not deter crime but contributes senses to it placing non-violent offenders in jail as often been counterproductive. Frequently prisoners are subjected to unfavourable treatment; others take bad lessons from the habitual criminals.[24]

Subjection to whole homosexual, rape, brutal treatment, contamination, threat of violence and notorious routines which kill the human spirit. On the whole, most people come out of prisons with worst mental systems, physical and moral conditions than when they went in.

Another negative consequence of imprisonment that while the offender is deprived of usual basic social relations that are crucial to one's rehabilitation, the affected families also end up breaking down during imprisonment. When a husband /wife is imprisoned, sources of funds or management of assets fail.

If it is a wife/mother imprisoned, children are sure of becoming delicate which results into an increasing number of street children in our towns.
Not to be appreciated is the problem of overcrowding in the most of the prisons in Uganda. With overcrowding comes the host of the other problems including increased illness, violence, and sanitary problems.[25]

Through the inmates are treated in the name and sake of deterrence, reformation, protection and punishment or not, imprisonment as a punitive action against offenders has to a greater extent suffered a setback.

[24] https://www.ulii.org>legislation>act
[25] https://www.prison-insider.com>prison

In an environment where most of our prisons are overcrowded under staffed and financed, there is a real possibility of abuse of human rights. This may not be deliberate but may simply be that those whose who run the system put administrative convenience before the rights of the individual.

CHAPTER FOUR.

4.1 The Way forward And Solutions.

A combination of the question of the question prompted the researcher to advocate and elaborate upon alternative non-custodial sanctions. These alternatives constitute just punishment.

4.2 Restitution

As was the practice in many pre-colonial Africans Societies, this should be aimed not at punishing the offender for violating customary law, but at wiping out the consequences of the offence on the victim. However, the sanctions should be compensatory other than punitive. They should be intended to restore victims to the position they would have been in, had they not been wronged. They should also be meant to reconcile the offender with the victim and the society and not to excommunicate him.[26]

4.3 Fines.

This is a pecuniary criminal punishment payable to public treasury. Fines in some cases are alternatives to short term prison sentences. Fines are said to be deterrent especially if the offender is to pay a heavy fine. In fines the convicted person is deprived of what he had earned in payment of the offence he has committed. However, the present fines have been reduced in value rendering them to be useless as punishment. This is reflected in the penal code cap 120.

4.4 House Arrest.

This alternative punishment is best suited for convicted prisoners whose probation reports indicates that they are unlikely to be involved in further criminal activities.

It requires the offender to report either to approbation officer or a police station for a number of times a week. This helps the offender to remain on job and keep the family from disintegrating as opposed to when he is in prison.

This alternative does not only save the tax payer from incurring heavy costs on keeping such an offender in prison, but enhances the chance of rehabilitation on part of the offender.[27]

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[26] https://wwwnewvision.co.ug>news> 13/06/2018

[27] www.uls.or.ug

4.5 Employment Assistance.

These are some unfortunate citizens because of who get involved in criminal activities because of lack of good job skills to earn a living. They may not have these skills because they were not able to attend school, possibly due to lack of funds which is more common in developing countries like Uganda.

Naturally lack of job skills, leads to lack of employment which results into poverty considered could be given to those who might not return to crime if they could develop job skills.[28]

This responsibility should be shared between the government and the community. As said above the quite often crimes in which such categories are involved is reflected in both personal and social failure [society failing to assist] yet many times only the offender is punished while the underlying conditions and attitudes remain unchanged. So many parties could benefit from the alternative i.e. tax payers, government, communities in which the offender lives and offenders themselves.

[28] https://www.Africa-Uganda-business-travelguide

4.6 Conclusion.

According to the increased corruption, disappearance of the case files from chambers and swift releasing of criminals from police stations threaten the effectiveness of the mechanism. The government law enforcement agencies and judicial system need to high light the intersection between the law and practice to attain the required standards.

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