

**POSSIBLE ALTERNATIVE SENTENCING OF PARENT OFFENDERS
AND THE IMPACT ON THE CRIMINAL JUSTICE OF UGANDA –
CASE STUDY OF KIGO PRISONS**

BY

**AKELLO PHIONA MONICA
LLB/11459/61/DU**

SUPERVISOR: FR KATAMBA

**A RESEARCH REPORT SUBMITTED TO THE FACULTY OF LAW
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE AWARD OF THE BACHELORS DEGREE OF LAWS
OF KAMPALA INTERNATIONAL UNIVERSITY**

JANUARY 2011



TABLE OF CONTENTS

TABLE OF CONTENTS	i
DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABSTRACT	v
ACRONYMS	vii
LEGISLATIONS	viii
LIST OF CONVENTIONS	ix
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.1 Introduction.....	1
1.2 Background of the Prison System in Uganda.....	1
1.3 Background of the Study.....	2
1.4 Statement of the Problem.....	7
1.5 Objectives of the Study.....	7
1.5.1 General Objective of the Study	7
1.5.2 Specific Objectives	7
1.6 Research Questions.....	7
1.7 Research Hypothesis.....	8
1.8 Definition of Key Terms.....	8
1.9 Justification of the Study.....	8
1.10 Scope of the Study.....	8
1.11 Significance of the Study	9
1.12 Literature Review	9
1.12.1 The Concept of Alternative Sentencing	9
1.12.2 The Impact of Parental Imprisonment on Children	10
1.12.3 How Alternative Sentencing Orders can be carried in Substitution to Imprisonment.....	12
1.12.4 The Impact of Alternative Sentencing on Criminal Justice in Uganda	17
1.12.5 Possible Recommendations to the improvement of the position of the child.	20
1.13 Methodology	23
Limitations of the Study	24
CHAPTER TWO	25
TYPES OF OFFENCES AND PENALTIES IN UGANDA	25
2.0 Introduction.....	25
2.1 Incarceration	25
2.2 Corporal Punishment	28
2.3 Fines	29
2.4 Capital Punishment	30
2.5 Probation	32

2.6 Other Penalties	32
CHAPTER THREE	33
IMPRISONMENT AND THE IMPACT ON THE RIGHTS OF CHILDREN	33
3.1 Introduction	33
3.2 The Right to Health	34
3.3 The Right to Education	35
3.4 Psychological Effect	36
3.5 The Right to Protection From Harm	38
3.6 Right to Care, Stability and Love.....	40
3.7 Children Incarcerated with their Mothers.....	42
3.8 Conclusion	43
CHAPTER FOUR	45
4.1 Introduction.....	45
4.2 The Need for Alternative Sentencing.....	46
4.3 Shortcomings of Alternative Sentencing	52
4.4 Conclusion	52
CHAPTER FIVE	54
RECOMMENDATIONS AND CONCLUSIONS	54
5.1 Introduction.....	54
5.1 Conclusions.....	54
5.2 Recommendations.....	55
5.2.1 Raise Awareness on Discretion in Sentencing of Parent Offenders.....	55
5.2.2 Policy Development into the Inquiry of Information of Prisoners.....	56
5.2.3 Introduce Community Service Throughout the Country	56
5.2.4 Promoting Research Mechanisms to Widen Statistical Base	56
5.2.5 Sensitize Community on Addressing Children's Needs	56
BIBLIOGRAPHY	57
APPENDICES.....	62
Interview Guide	62

DECLARATION

I, Akello Phiona Monica, declare that this research paper entitled “Possible Alternative Sentencing of Parent Offenders and the Impact on the Criminal Justice of Uganda” a case study of Kigo Prisons is entirely my own effort and has never been submitted to any other institution or university for any form of award whatsoever.

Student: Akello Phiona Monica
LLB/11459/61/DU

Signature:

Date:

APPROVAL

The undersigned approves that she has read and therefore recommends for acceptance by the Kampala International University a dissertation Possible Alternative Sentencing of Parent Offenders and the Impact on the Criminal Justice of Uganda in partial fulfillment of the requirement of the Degree of Bachelor of Law.

Signed

.....
Rev Fr Katamba (Supervisor)

Date..... 27/05/2011

ACKNOWLEDGEMENT

Firstly am greatly indebted to my supervisor, Fr Katamba who tirelessly perused through this work while guiding and correcting me. Thank you so much.

I would like to convey my sincere thanks to the organizations that participated in the interviews that enabled me to write this research paper. Thanks go to Kigo Prisons Staff and inmates for the services that they rendered to me while collecting the data.

Thirdly I would like to thank the staff Makerere University, Law Development Center, Kampala International University, Mukono University for their great library contribution in this work.

I am also indebted to my fellow students Carol, Maria and Faisal for their great support and encouragement, it was great studying with them all.

Lastly, thanks go to my parents Mr. and Mrs Onega and the entire family for their tremendous support.

ABSTRACT

The study is an exploratory design which sought to analyze the impact of parental imprisonment on children; finding out how alternative sentencing orders can be carried in substitution to the imprisonment of parents and the impact of alternative sentencing on criminal justice and suggesting possible recommendations for a new course of action that will draw attention to the improvement of the position of the children whose parents have been incarcerated.

The study was relied on qualitative methods of data collection and analysis and data was gathered from Kigo Prisons, from Wardens, and inmates, including parent offenders. The study also relied on secondary data upon which information related to the specific aims of the study was reviewed from prison records, and concerned organizations such as Human Rights Commission, Police among others as well as from libraries of the Law Development Center, Kampala International University, and Mukono Christianity University.

The research concluded that;

The criminal justice system has traditionally focused on the offender, his or her victims and the public safety of the community, ignoring the vast and growing number of other victims, the children. Children whose parents are imprisoned have been of less concern to the majority of the population, the criminal justice system and to policymakers in Uganda. Yet the children whose parents have been incarcerated are challenged by family instabilities, limited access to education, medical care, and other forms of protection. The children are vulnerable to a multiplex of negative dispositions that can lead to absent positive intervention, to school failure, delinquency and intergenerational incarceration. On the other hand, the personal and social costs are also high in other words the children are left helpless. There is need for implementation of a major public education campaign that makes the issue of children with incarcerated parents ‘everyone’s issue.’ In

conjunction with this, encouraging alternative sentences focused on policy and system reform opportunities. Community service programme in Uganda and other non-custodial measures like fine, probation and suspended sentences should be implemented. Otherwise, community service alone may not have the much-needed impact. A broader picture of a host of advantages presented such as reduction of prison overcrowding and savings on government expenditures should motivate the judiciary to apply the measures.

There is a framework of child caring institutions in Uganda. Efforts of organizations like Wells of Hope Ministries and Prison Fellowship Uganda should be lauded because their work is indicative of the fact that there is a wave of growing concern about children and families with imprisoned parents. This shows a need for further concern to develop programs that raise awareness and help in training stakeholders who interact with children and families with incarcerated parents, such as police, prisons, juvenile justice and child welfare to build public will to address issues affecting children with incarcerated parents. The judiciary while presented with an opportunity before arbitrarily sentencing offenders to imprisonment, to inquire about whether the person about to be incarcerated has a family totally dependant on him or not in order to allow for considerations of the best interest of the child.

It can be concluded that, community service is an alternative to imprisonment whose use should widely be encouraged for children to remain under the care of their parents and to reduce on the overcrowdedness of prisons. The study recommended that; need for raising awareness on discretion in sentencing of parent offenders; policy development into the inquiry of information of prisoners; introduce community service throughout the country; promoting research mechanisms to widen statistical base and sensitize community on addressing children's needs.

ACRONYMS

CSA:	Community Service Act
CSOrder:	Community Service Order
FCC:	Family and Children's Court
ICCPR:	The International Covenant on Civil and Political Rights
LICADHO:	Cambodian League for the Promotion and Defence of Human Rights
MCA:	Magistrates Court Act
NCC:	National Council for Children
NGOs:	Non Government Organisation
PF	Prison Fellowship
PWSO:	Probation and Social Welfare Officer
TIA:	Trial on Indictment Act
UHRC :	Uganda Human Rights Commission
UNCRC:	United Nations Convention on the Rights of the Child
UPE	Universal Primary Education

LEGISLATIONS

The 1995 Constitution of the Republic of Uganda

The Community Service Act Chapter 115

The Criminal Procedure Act Chapter 116

The Children's Act Chapter 16

The Judicature Act Chapter 13

The Magistrates Court Act Chapter 16

The Trial on Indictments Act Chapter 23

The Penal Code Act Chapter 120

The Probation Act Chapter 122

The Prisons Act 2006 Chapter 17

The Community Service Regulations 2001

LIST OF CONVENTIONS

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

Draft Guidelines: A Human Rights approach to poverty reduction strategies by OHCHR.

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966).

Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (19 August 2002),

The Beijing Rules adopted by the General Assembly of United Nations on the 29 November, 1985 as a set of guidelines for the administration of juvenile justice.

The Protocol to the African charter on Human and Peoples' Rights of Women in Africa (11 July, 2003)

The United Nations Standards of Minimum Rules for Non-Custodial Measures (The Tokyo Rules (Assembly Resolution 45/110 of December 4, 1990).

UN Convention on the Rights of the Child.

Universal Declaration on Human Rights

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The research topic considered the applicability of the law relating to custody of children in Uganda. In this chapter, the study looked at the background of the study, the statement of the problem, the purpose of the study, the objectives, research questions, scope of the study, methodology as well as the significance of the study. The study was carried out in Kampala district in Uganda.

1.2 Background of the Prison System in Uganda

Prisons, as a threat and reality, have for the last two centuries been used as a tool to remove offenders from society as a means of attempting to ensure societal norms are adhered to. In theory, prison regimes are intended to guarantee justice, promote rehabilitation and re-integration into society and safeguard individuals' rights and safety. However, prisons may also be used by state authorities to perpetrate high-handed and tyrannical practices like torture, arbitrary killings, and other forms of ill treatment. It must be emphasized that people are taken to prisons as a punishment and not to be punished. Subjecting them to abhorrent conditions and other forms of ill treatment are violations of their rights and freedoms far and above the denial of the right to liberty which is the only right that is lawfully taken away by imprisonment.

Suffice to say there were no formal prisons in Africa before the advent of colonialism. Following the 1894 declaration of Uganda as a British protectorate, the 1901 Order in Council was passed which incorporated all English laws, including laws on prisons, into Uganda's legal system. It was only in 1958 that the first comprehensive legislation on prisons came into existence with the passing of the Prisons Ordinance of 1958 which sought to consolidate and amend the laws relating to prisons. It also provided for their organization and the powers and duties of prison officers. It is important to note that most

of the provisions of this ordinance were adopted from the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMR).¹

By 1964, the Prison Service operated thirty prisons throughout the country, many of which were industrial or agricultural facilities intended to rehabilitate prisoners by means of subjecting them to physical labour. In the same year the first African Commissioner of Prisons was appointed which was a turning point for the Uganda Prisons Service. During the 1970s, prisoner abuse became increasingly commonplace as civilian and military prison conditions deteriorated beyond imagination. This persisted throughout the 1980s. In 1987, President Yoweri Museveni allowed the International Committee of the Red Cross (ICRC) to observe the conditions of prisoners in civil prisons. This undertaking initiated a process of slow but steady prison reform in Uganda.²

Since then there has been significant progress in relation to the reformation of the prison system to bring it into line with internationally accepted standards. A very important development has been the passing of the Prisons Act (17 of 2006). The Prisons Act emphasises prisoners' rights and is aligned to the 1995 Constitution of Uganda and the international and regional human rights instruments ratified by Uganda.³

1.3 Background of the Study

Globally, even though alternative sentencing procedures have a long history of application in Europe and North America, they are reported to have found limited application in Africa.⁴ It was not only in the early 1990's, that alternative sentencing options such as community service were actively promoted by Non Governmental Organisations (NGOs) in a number of African countries.⁵ In 2007, Penal Reform International⁶ criticized the global trend in the overuse of incarceration and the under-use

¹ Dissel A (1996) Prison conditions and human rights, Paper delivered at Pan-African Seminar, Kampala, Uganda, 19 -21 September 1996 , p 39.

² Katureebe B (1996) Prisons are for everybody. Address by Uganda's then Minister of Justice and Attorney General at the Pan African Seminar on Prisons Conditions in Africa, Kampala, Uganda 19

³ Uganda prison system"; Available at <http://www.country-data.com/cgi-bin/query/r-14175.html>

⁴ L Muntingh 'Alternative sentencing' in Jeremy Sarkin (ed) *Human Rights in African Prisons* (2008) 178.

⁵ Ibid

⁶ <www.prisonreform.org> (accessed on 6 August 2008).

of constructive alternative sanctions with a particular concern in the increase of women's imprisonment.⁷ It was noted that female prisoners are the sole caregivers in their families and their imprisonment has a devastating effect on the family, particularly the young population.⁸ The growth in incarceration rates has been greater for women and minorities since 1980. From 1980 to 1996, the incarceration rate among females rose nearly fivefold, from 11 female inmates per 100,000 to 51 per 100,000. "Despite this faster rate of growth, female inmates account for a small percentage of all inmates in the United States, only 6.1 percent at year-end in 1996, and 6.8 percent of the total in 2000, up from 3.9 percent in 1980. In addition, most of the offenses that incarcerated women have committed are nonviolent."⁹

In Uganda, various factors such as the need to decongest overcrowded prisons, restorative form of justice, and the need to comply with international law have been pursued to introduce community service as an alternative to incarceration. Community service has been considered as one way of giving offenders a chance to revise their behavior and their conduct without imprisonment.¹⁰ Just like any other African countries, the prison conditions in Uganda are terrible as observed by the Human Rights Watch.¹¹ The report notes that, some prison facilities accommodate up to three times as much, the number of prisoners they were built to accommodate and due to lack of space inmates go to the extent of sleeping in the corridors. This has devastating effects of poor sanitation, health and poor feeding facilities and thus it was hoped that Community Service would decongest prisons by diverting deserving offenders to do work that is of benefit to the community.¹²

Imposition of sentences such as imprisonment is a key ingredient of any criminal justice system and a safeguard of the judiciary. In this case, judicial officers have unrestricted

⁷ Penal Reform briefing paper No 3 (2007) 'Women in prison: incarcerated in a man's world' <<http://www.penalreform.org/resources/brf-03-2007-women-in-prison-en.pdf>>

⁸ Penal Reform briefing paper No 3 (2007) 'Women in prison: incarcerated in a man's world' <<http://www.penalreform.org/resources/brf-03-2007-women-in-prison-en.pdf>>

¹⁰ Kampfner, Christina J. "Post-traumatic stress reactions in children of imprisoned mothers" in Katherine Gabel and Denise Johnston, M.D. eds., *Children of Incarcerated Parents*, Lexington Books. 1995.

¹¹ Human Rights Watch Global Report on Prisons August 2008 <<http://www.hrw.org/prisons/africa>>

¹² US Department of State of State report for 2002 <<http://www.state.gov/g/drl/rls/hrrpt/2001/af/8409.htm>>

supremacy to impose various forms of sentencing as guided by the law such as imprisonment. However, consequence of the abovementioned has diverse implications on the family and yet available to the courts, are alternative authorizations to punish the parent offender without necessarily breaking ties with their families for instance through community services.

On the other hand it has been noted that prison conditions need to conform to the African Charter and International human rights norms and standards for the protection of prisoners. The International Covenant on Civil and Political Rights (ICCPR) states that:

‘all persons deprived of their liberty shall be treated with humanity and with all the respect for the inherent dignity of the human person.’¹³

Uganda has made several attempts to meet international standards in various fields being part of the international community. The African Union and United Nations respectively have developed standards in the field of human rights and treatment of offenders. One such instrument is the United Nations Standard Minimum Rules on Non-custodial Measures (The Tokyo Rules). Uganda is obliged to implement these rules. The rules state that: -

“In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice should provide a wide range of non-custodial measures.”¹⁴

These Rules are intended to promote greater community involvement in the management of criminal justice, and to promote a sense of responsibility towards society amongst offenders. The rules provide a list of non-custodial dispositions with consideration to community service. Community service on the other hand, represents a shift from traditional methods of dealing with offences and the offender towards a more restorative form of justice that takes into account the interest of both society and the victim. The introduction of this alternative sentencing option is a result of the realization that crime cannot be solved by incarceration alone. Community service therefore seeks to ensure

¹³ International Covenant on Civil and Political Rights Article 10(1).

¹⁴ Rules 2 & 3: The Tokyo Rules are binding to member countries including Uganda (adopted by UN General Assembly Resolution 45/110 of 1990)

that the offender maintains ties with his family and friends, retains his job and continues to fend for the family during free time whilst performing work that benefits the community and reconciles him to the victim.

The rights of children are being abused through incarceration of their parents and yet on the other hand, International human rights standards, specifically the United Nations Convention on the Rights of the Child (CRC) and the African Children's Charter emphasize the absolute necessity of respecting and protecting the child's best interests.¹⁵ The concept of protection of children means pursuing all activities aimed at ensuring respect and fulfillment of the children's rights as expressed in the CRC and other international human rights instruments. According to the African Charter on Human and People's Rights of Women in Africa¹⁶ of which Uganda is a signatory, states that;

'state parties shall recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the state and the private sector have secondary responsibility'

And also according to Optional Protocol to the UN Convention on Children Rights¹⁷ on the Sale of Children, Child Prostitution and Child Pornography was ratified by Uganda on 19 August 2002, this enshrines the right to life, protection from harm, survival and development, best interests of the child and non discrimination.

The Government of Uganda ratified and domesticated the CRC by enacting a law for children.¹⁸ The rights of the child are therefore comprehensively addressed under Uganda's legal framework and thus under **Section 2 of the Children Statute** a child is defined as a person below the age of 18 years.

Parents and caregivers hold the primary responsibility for ensuring protection, upbringing and development of children whereas government and other supportive authorities have a

¹⁵ CRC was adopted by General Assembly resolution 44/25 of 20 November 1989; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) entered into force on 29 Nov 1999; M Alejos, 'Babies and Small Children Residing in Prisons', Quaker United Nations Office, Geneva, 2005.

¹⁶ Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (11 July, 2003) article 13(1)' <<http://www.africaunion.org.innopac.up.za/root/au/index/index.htm>>

¹⁷ Optional Protocol to the CRC (2002),
<<http://www.africaunion.org.innopac.up.za/root/au/index/index.htm>>

¹⁸ UN Convention on the Rights of Children 1990 and Children Statute 1996 Cap 59 Sec 2

secondary and social responsibility to look after the children.¹⁹ Imprisonment of parents or primary caregivers creates conditions under which many of the rights of the child as laid out in the UN Convention of Rights of Children are undermined and this hinders the fulfillment of their needs. The children are deprived of the right to protection and this exposes them to the danger of having several of their other rights violated.

When parents are put under custody, their absence from the lives of their children affects the physical and emotional well being of the children when their lives are threatened and harmed in numerous ways. Although there are other ways through which parents have been witnessed to separate from their parents for instance through death and marital separation, the removal of a parent through imprisonment is followed by distinctive problems in a child's life, many of which may remain overlooked by society. Research has it that parental imprisonment has often times disrupted family structure, diminished available economic resources and decreased the quality of family life sending children into a disadvantaged position. According to prison report children whose parents have been incarcerated have been subjected to major uncertainties as well as psychological or mental instability, this is so because many of such parents live a cycle of endless imprisonment.²⁰

Children have specific needs due to their age the fulfillment of which is vital for the child to fully develop. The imprisonment of their parents or primary caregivers creates conditions under which many of their rights are undermined. For this reason, the needs of these children need to be given prior consideration especially in countries like Uganda where parents are incarcerated every other day and the prison population is seen to explode. It is therefore upon this background and setting that the researcher wished to undertake this study on the incarceration of parents and its impact on the justice system of Uganda particularly in Kigo Prisons, to demonstrate the need for alternative sentencing in the Uganda criminal justice system with a particular focus on the use of community service since approaching community service as a child protection strategy in sentencing

¹⁹ Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (2003)

²⁰ World Prison Population list, ' International Centre for Prison Studies,
<<http://www.visionofhumanity.org/gpi/results/uganda/2008/>>

parent offenders would be a positive step in addressing issues of child neglect and attendant problems.

1.4 Statement of the Problem

It is imperative to state that alternative prison sentencing, although applied has not justifiably served its purpose. Children depend on adults as their principal caregivers and when parents are imprisoned the children are the most confounded and their lives are in this way, perplexed. Thus imprisonment of parent offenders in a more practical effect can be said to be punishment of both parent and children. However, the needs of the children left behind during the imprisonment of the parent, is modestly talked about.

The researcher therefore intended to carry out this study with an intention of exploring how much prior consideration, the Uganda criminal justice system has given to the adverse challenges faced by children during the imprisonment of children with an intention of providing possible remedies that can be relied upon in the modification of law.

1.5 Objectives of the Study

1.5.1 General Objective of the Study

The study examined possible alternative sentencing of parent offenders and its impact on the criminal justice of Uganda.

1.5.2 Specific Objectives

- i. To analyze the impact of parental imprisonment on children.
- ii. To find out how alternative sentencing orders can be carried in substitution to the imprisonment in Uganda.
- iii. To find out of the impact of alternative sentencing on criminal justice in Uganda.
- iv. To suggest possible recommendations for a new course of action that will draw attention to the improvement of the position of the child.

1.6 Research Questions

- i. What are the circumstances that give rise to custody of children?
- ii. What are the legal measures taken in resolving issues of custody of children?

- iii. What are the effects of the law of custody of children and under what circumstances can this law be revised?
- iv. What are the possible ways to resolve issues of custody of children in Uganda?

1.7 Research Hypothesis

It was hypothesized that, the use of community service as an alternative sentence on parent offenders provides a better protective environment for children's development.

1.8 Definition of Key Terms

A **child** is a person below the age of 18.²¹

Alternative sentencing in this research is confined to mean 'non-custodial sentence' as applied in the community Service Act of Uganda.²²

1.9 Justification of the Study

This study was carried out to provide appropriate solutions to the problems encountered by children while their parents are under custody this is in view of how alternative sentencing if undertaken, affects the criminal justice system through providing answers to how justice can be meted on the child's primary caregiver while at the same time keeping to a minimum the adverse effects of a punishment such as imprisonment on the children? How can the application of alternative sentencing enforce the children's rights under the children's legal regime?

1.10 Scope of the Study

This research was restricted to the Uganda penal system with particular interest into the specific inquiries of community service as an alternative to imprisonment of parent offenders. It was limited to the implications of the penal procedures on the rights of children. It was carried out in Kigo prison

²¹ The Children Statute 1996 Cap 59 Sec 2

²² Community Service Act (CSA) Cap 115 Laws of Uganda.

1.11 Significance of the Study

The study will contribute a considerable awareness on the loopholes in the law of custody of children to concerned actors as well as government, in issues pertaining to children and their custodial parents.

The study is expected to contribute towards improvement on the law governing custody of children in order to provide a way forward to finding proper and appropriate immediate solutions to loopholes in custodial arrangements for the betterment of the children's interests and welfare.

The study is expected to provide a foundation for future research which will help to narrow down the existing gaps in the law and practices of custody of children.

1.12 Literature Review

It is crucial to note that there has not been much literature published on the use of alternative sentencing in Uganda but there is available literature in the African context in general and only a small number of studies have tried to measure the situation of children of incarcerated parents as pointed out in the Penal Reform Briefing.²³

1.12.1 The Concept of Alternative Sentencing

A prisoner according to Amos Wako is a criminal who is taken to prison or who is excommunicated from society and is actually beyond repair through social means or who has committed a major crime. Thus what is recorded in legal books as petty crimes by African standards were completely dealt with by the society itself. For example, if one stole a goat, the elders made sure another goat was paid and that was the end of the matter, the person who stole was so ashamed that he would never do it again,²⁴ thus reflecting the traditional and historical way of handling petty offenders.

²³ Penal Reform briefing paper No 3 (2007) 'Women in prison: incarcerated in a man's world' <<http://www.penalreform.org/resources/brf-03-2007-women-in-prison-en.pdf>>

²⁴ Amos Wako, (then Attorney General of Kenya) Address to conference in December 1995)

1.12.2 The Impact of Parental Imprisonment on Children

Every family and every circumstance is different. The impact of parental incarceration on the children and the family will vary with these differing circumstances. There are, however, some common themes and consistent realities that emerge in the stories of prisoners' children as below;

The small research literature on children of incarcerated parents suggests that parental incarceration is associated with increased aggressive behavior and withdrawal), criminal involvement, and depression.²⁵ Existing studies, however, have not been able to separately identify the causal effects of incarceration from the effects of pre-incarceration risk factors such as parental substance abuse, mental health problems, and abuse histories that may have already put the child at risk before the parent was imprisoned. Although previous research on children with an incarcerated parent has been methodologically weak in assessing causality, these studies consistently document significantly more behavior problems among these children, including aggressive behavior, depression, hyperactivity, withdrawal, running away, sleep and eating disorders, poor school grades and delinquency. Potential explanations for the association between parental incarceration and child behavior problems include the following: trauma of separation, parental role modeling effects that is poor parenting, substance abuse, domestic violence, potential beneficial effects from removing abusive parent from household, shared childhood socioeconomic deprivation prior to imprisonment, depleted parental resources following parental incarceration reduction in family income and reduced quality of care which may lead to disruptions in children's care arrangements accompanied by school and residential moves and genetic predisposition/inherited traits which may result in temperament, parental criminality. Although on the other hand, incarceration of an abusive or negligent parent may benefit children and contribute to a more nurturing environment. Alternatively, if inherited traits or genetic predispositions are driving

²⁵ Mwanje JBA, 'Background and Overview of Community Service in Uganda' (2000) Kampala.



factors, then the efficacy of interventions targeted directly at the children of incarcerated parents may be very limited absent significant nature-nurture interaction effects.

Research has it that, parental separation due to imprisonment has profound consequences for children.²⁶ The immediate effects include feelings of shame, social stigma, loss of financial support, weakened ties to the parent, poor school performance, increased delinquency, and increased risk of abuse or neglect among others.²⁷ Children whose parents are incarcerated therefore have trouble concentrating and struggle academically to keep up with their peers and are susceptible to behavioural problems in and outside of school.²⁸ The general effect on a child who is separated from an incarcerated parent, especially the primary caregiver, is that this circumstance interferes with the child's ability to successfully overcome the effects of such a separation. The incarceration of a parent can be especially scarring because of the humiliation that often surrounds it.

Some children may be sensitive to the stigma of their parent's crime and imprisonment and feel embarrassed or resentful around their peers and other adults. Their classmates may deride them, making them feel further alienated and hence culminate into poor performance at school.²⁹ Yet, quality education is one of the rights guaranteed by the CRC.³⁰ The Committee is specific about the 'relevance of curriculum to the child's life' and encourages State Parties to 'develop indicators for quality education and ensure that the quality of education is monitored and guaranteed'.³¹

When parents go to prison or jail, their children suffer. The loss of a parent to incarceration can precipitate trauma and disruption that few experience without serious consequences. This loss often compounds or exacerbates existing environmental stress such as poverty, poor schools and violent neighborhoods. Incarcerated parents were often

²⁶ CJ Mumola, 'Incarcerated Parents and Their Children' (Washington, DC: US Department of Justice, Bureau of Justice Statistics, NCJ 182335, (2000).

²⁷ J Travis, et al 'Families left behind: the hidden costs of incarceration and Reentry' (2005).

²⁸ Ibid

²⁹ CJ Mumola, 'Incarcerated Parents and Their Children' (Washington, DC: US Department of Justice, Bureau of Justice Statistics, NCJ 182335, (2000).

³⁰ Un Convention on Rights of Children Articles 28 and 29.

³¹ Implementing Handbook for the CRC.

<<http://www.adbi.org/3rdpartycdrom/2002/06/01/1510.convention.rights.child/>>

themselves raised by adults who were chemically dependant, abusive or both. Children of incarcerated parents are likely to have learned to cope and adapt to trauma and distress by lashing out at others and by self-medicating with drugs or alcohol. They can lack the ability to attach to others and may not have internalized adequate or healthy models of child rearing. For many prisoner parents, rage, depression and addiction is and has been a part of life followed by the criminal activity that addiction can require and rage often causes.³²

Children of prisoners have been referred to as the 'orphans of justice' and 'innocent victims of punishment'. The limited extant evidence on prisoner's children is drawn from small-scale, mostly qualitative research studies, and have rarely included longitudinal follow-up. The consequences for children of ever-increasing levels of incarceration are perhaps the least understood aspect of the potential positive or deleterious impacts of incarceration policy on families and communities.³³

1.12.3 How Alternative Sentencing Orders can be carried in Substitution to Imprisonment

It is a common understanding among criminologists and corrections professionals that offenders who commit property crimes do not usually need to be incarcerated, as they are not a violent threat to society. In fact, they are the candidates most likely to respond to rehabilitation efforts at residences of lesser security and considerably less cost per individual to society. Furthermore, sentenced offenders can learn far more about personal responsibility and accountability at lower-security rehabilitation programs than they will ever be exposed to in prison.³⁴

The Tokyo rules provide the international legal framework for promotion and use of alternative sentencing measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.³⁵ The Rules are intended to promote greater community

³² Children of Prisoners Library for Health Care Providers. www.fcnetwork.org

³³ Freeman, Richard. 1992. Crime and the Employment of Disadvantaged Youth, in *Urban Labor Markets and Job Opportunity*, Peterson, George and Wayne Vroman (eds.), Urban Institute: Washington, DC., 171-192.

³⁴ R. Parke and K.A. Clarke-Stewart, Effects of Parental Incarceration on Young Children, Working papers "From Prison to Home" Conference (January 30-31, 2002) 23

³⁵ Tokyo rules Rules 2 & 3: (adopted by UN General Assembly Resolution 45/110 of 1990).

involvement in the management of criminal justice, and to promote a sense of responsibility towards society amongst offenders. In Uganda, the concept of community service was directly influenced by the Pan Africa seminar on Prison Conditions in Africa held in Kampala in 1996.³⁶ The conference resulted in the 'Kampala Declaration on Prison Conditions in Africa' (the Kampala Declaration) which later became a United Nations document.³⁷ The Kampala Declaration recommended alternative sentences to imprisonment and delegates adopted community service as one of those alternative sentences.³⁸ Community service was intended to alleviate poor prison conditions by lessening overcrowding, high costs of running prisons, to combat recidivism, and lack of rehabilitative programmes for prisoners and to create an attitudinal change from the punitive to the rehabilitative.³⁹

Community Service as a sentencing option was introduced in Uganda by Community Service Act of 2000.⁴⁰ This was followed by the promulgation of the community service regulations⁴¹ which paved the way for certain gazetted courts in Uganda to apply community service orders. The programme was first launched as a pilot phase in four magisterial areas of Mpigi, Masaka, Masindi and Mukono from May 2001 to May 2003. The nationwide rollout took place in March 2004 and as a result, all courts of judicature in Uganda can now apply community service order as a court sentence.

Community Service is an alternative to imprisonment, whereby an offender convicted of a minor offence performs an activity for the public benefit.⁴² When serving a Community Service Order (CSOrder), the offender (convict) does the work personally; he or she cannot delegate the work to his servant nor can he hire someone else to serve the punishment on his or her behalf.⁴³

³⁶ Incorporated from UNESCO Resolution 1997/36 on International Cooperation for the improvement of Prison conditions' and cited in the mandate of the Special Rapporteur on Prison Conditions and Conditions of Detention of the African Commission. < www.un.org >

³⁷ Ibid

³⁸ Penal Reform International Workshop Report on Prison and Penal Reform in Africa (1996) <<http://www.penalreform.org>>

³⁹ A Dissel, 'Prison Conditions in Africa' (2001) <<http://www.csvr.or.org.za/papers/papdis10.htm>>

⁴⁰ CSA (n 94 above).

⁴¹ Statutory Instrument No 55 of 2001

⁴² Statutory Instrument No 55 of 2001.

⁴³ Sec 2(a) Community Service Act (CSA).

The legislative framework for alternative sentencing is such that, the CSA defines community service as a non-custodial punishment by which after conviction the court with the consent of the offender makes an order for the offender to serve the community rather than undergo imprisonment.⁴⁴ A community service order on the other hand is defined as an order imposed by the court requiring the convicted person to perform unpaid work within the community for a specified period of time.⁴⁵

Under the Act, community service shall be performed for a period of not more than six months and the offender shall not work for more than eight hours a day.⁴⁶ Thus, community service involves persons being sentenced to undertake work in the community, for example, cleaning public hospitals and schools, clearing feeder roads, digging pit latrines, cutting grass in public parks, helping in building schools and dams, etc. Community service is not meant to take away jobs in the communities but to supplement and /or fill gaps where communities lack resources to undertake the task.

All public and private institutions are considered as placement institutions as long as their operations directly benefit the public at large.⁴⁷ When serving CS Order, the quantum of work to be performed by the offender shall be computed in terms of work-hours but not volume of work; that is the offender performs the specified piece of work in terms of hours per-day of work, rather than the amount of work. On being sentenced to CS Order, the offender shall report to the supervising officer named in the order. It is the duty of the supervising officer or the placement institution to provide the working tools and materials for the offender to use while serving CS Order.

The supervisors of the scheme are prohibited from using the offender for personal gain; a fine is imposed in the event that a supervisor breaches this Act.⁴⁸ A placement institution should not be run for a commercial profit, it should have work available that would be within the capacity of prospective offenders on community service, and the institution's

⁴⁴ Sec 2 CSA.

⁴⁵ Sec 4(1) CSA.

⁴⁶ Sec 5 CSA.

⁴⁷ Sec 5 CSA.

⁴⁸ Sec 6(5) CSA.

management body should be in agreement with the aims and principles of community service, and be willing to accept and supervise offenders on community service.

Further, provision is made for an offender who while performing community service commits another offence and for the amendment of the order in case the offender changes a place of abode.⁴⁹ It is the duty of the supervising office to give a report to the supervising court on the performance and general conduct of the offender. A female offender shall be supervised by a female supervisor.⁵⁰ Where the offender commits an offence outside his/her usual area of residence, the CS Order shall be served in his/her usual area of residence. Where in the course of serving the CS Order, the offender changes residence to outside the jurisdiction of the court; the supervising court shall make appropriate amendments in the CS Order and inform the court having jurisdiction for the area where the offender intends to go. A copy of the amended CS Order is then served to the new supervising court. The period of community service may then be reduced depending on the offenders' good conduct.⁵¹

When the offender absconds or fails to comply with the requirements of the CS Order, the court shall, on report by the supervising officer issue a summons requiring the offender to appear before it. If it is proved to the satisfaction of the supervising court that the offender has failed to comply with any of the requirements of the CS Order, the court may either vary the order to suit the circumstances of the case. It may impose a fine not exceeding three currency points or cancel the order and sentence the offender to any punishment which could have been imposed in respect of the offence. Under section 10 (1) the minister shall from time to time notify the Chief Justice in writing in which places and in which areas arrangements exist for courts to make CS Orders. The national committee is a body corporate with perpetual success and with a common seal.⁵² Amongst its functions is, monitoring the operations of Community Service in all its aspects promote measures for effective operation of Community Service, receive and consider any complaints or views and make recommendations where possible.

⁴⁹ Sec 7 & 8 CSA.

⁵⁰ Sec 9(3) CSA.

⁵¹ Sec 9 CSA.

⁵² Sec 11 CSA.

the effect of the order and consequences for non-compliance. On default, the offender becomes liable to imprisonment as the court could have imposed in respect of the offence.⁵⁶ CS Order can only be issued by the court in respect to a minor offence i.e. an offence for which the court may pass a sentence of not more than two years imprisonment. The offender has to be one who is physically able and possesses the skill necessary to perform the type of work stipulated in the CS Order.

However, it can be noted that, imprisonment has always functioned as one of several punishment options available to courts and is usually reserved for the most serious cases except in cases where the death penalty was handed down. Options such as suspended sentences, fines, and corporal punishments are some of the more traditional court-imposed alternative sentences. However, courts often believe that these sentences do not constitute sufficient punishment for certain types of offenders, so a sentence of imprisonment is given instead. Community service as a sentencing option gives the offender a certain responsibility to fulfill an obligation to the community, victim, and to look at positive ways of addressing the offending behaviour. Above all, this alternative sentencing is served in the community and the offender remains at his home. The harmful effects of imprisonment are avoided, and the offender maintains contact with his or her family. Instead of losing any employment while in prison and denying the family support it would otherwise have, the offender is able to continue working to support himself or herself and any dependants.

1.12.4 The Impact of Alternative Sentencing on Criminal Justice in Uganda

According to Forooeddin and others, in their study conducted in Iran, explored the physical, social and psychological conditions of children affected by the incarceration of parents and described it in an international perspective the physical and social conditions with which children are confronted. The study comprised 33 children who had spent some time in prison with their mothers but were moved to welfare centres. The most prevalent ailments of these children were: infectious diseases, bruises, wounds on lips, and fractures of the hand. The Vineland Social Maturity Scale indicated that the children's locomotion and socialization skills were relatively low. Whereas this study

⁵⁶ Section 3 (3) CSA.

highlights the physical, social and physiological harm that children suffer.⁵⁷ This was limited to children of incarcerated mothers and the setting in Iran may not compare closely to the setting for the study in Uganda but may relatively reflect on some aspects.

On the other hand, Freeman in his re-assessments of earlier works on children rights.⁵⁸ He noted that many of today's critics of children's rights are passionate defenders of the rights of others, notably the rights of parents. In this case, he underscores the fact that it is not in a child's interests to be raised in an environment in which a parent's rights are being wrongly ignored. Support for a child necessarily involves supporting that child's caregiver, and vice versa. Emphasizing children does not necessarily mean that the interests of adults are neglected.

According to BB Woodhouse,⁵⁹ criticizes Freeman on grounds that Freeman notes that a truly child-centred perspective would expose the fallacy that children can thrive while their caregivers struggle, or that the care-givers' needs can be severed from the child, which can lead to the attitude that violence, hostility and neglect toward the care-giver are somehow irrelevant in the best interests of the child expectations. However, although the above study draws attention to the importance of children's rights, it does not specifically inquire into the rights of children whose parents are incarcerated. A more recent study in the psychomedical field by Forooeddin *et al*, analyses the physical and social circumstances of children affected by the incarceration of the mother.⁶⁰ Children of incarcerated parents are also noted to be a relatively invisible population.⁶¹ Yet, these young people are at a high risk along several dimensions and tend to live under conditions characterized by poverty, instability and diminished access to sources of support.⁶² However, the study provides a scenario of the problems that children of

⁵⁷ A Forooeddin, et al 'Physical and Social circumstances of children in Iran affected by the incarceration of the mother' *International Journal of social welfare* (2008). <<http://www.interscience.wiley.com/journal>>

⁵⁸ M Freeman 'Why it Remains Important to take Children's Rights Seriously' (2007) 15 *Inter. Journal of Children's Rights* 5-23.

⁵⁹ BB Woodhouse, 'Hatching The Egg: A Child-Centered Perspective on Parents' Rights' (1993) 14 *Cardozo Law Review*, 1747-1864.

⁶⁰ A Forooeddin, et al 'Physical and Social circumstances of children in Iran affected by the incarceration of the mother' *International Journal of social welfare* (2008). <<http://www.interscience.wiley.com/journal>>

⁶¹ Ibid

⁶² Ibid

incarcerated parents suffer but it limits its inquiry to children whose mothers are imprisoned. This can thus be stated that while there have been studies elsewhere that inquire into how imprisonment impacts on children no available literature has been found by the researcher on similar studies that have been carried out in Uganda. Questions about the social and economic experiences of these children thus remain unexplored.

It is believed that the children of incarcerated offenders are more likely to be involved in the criminal justice system than other children their age are. Wildman, in his paper demonstrates that parental imprisonment negatively affects the structure of children's families, the finances available to them, and the quality of their family lives.⁶³ After showing that parental imprisonment disadvantages children, he relies on data from vital statistics registries and the criminal justice system to estimate the risk of parental imprisonment for recent birth cohorts of American children. He notes:

...nearly one in five black children born in 1990 had a parent imprisoned by their ninth birthday, while about one in 40 white children born in 1990 experienced this event; the risk of parental imprisonment is growing rapidly for nearly all groups of children, although relative and absolute growth for black children and children whose parents have little education dwarfs the growth for more advantaged children; and about 40% of black children born in 1990 whose parents did not finish high school had a parent imprisoned before their ninth birthday.

Taken together, these estimates suggest that parental imprisonment is emerging as a salient form of childhood disadvantage.⁶⁴

According to, Wildman, while using national survey data, he analyzed an eleven year trend in parental incarceration. Results indicated that children with incarcerated parents have become an increasingly large share of the foster care population since the mid-1980s and a notable share of U.S. children living with grandparent caregivers. Findings

⁶³ C Wildman, 'Parental Imprisonment, the Prison Boom, and the Emergence of a Novel Form of Childhood Disadvantage' Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, (2007) <http://www.allacademic.com/meta/p175674_index.html>

⁶⁴ C Wildman, 'Parental Imprisonment, the Prison Boom, and the Emergence of a Novel Form of Childhood Disadvantage' Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, (2007) <http://www.allacademic.com/meta/p175674_index.html>

incarcerated parents suffer but it limits its inquiry to children whose mothers are imprisoned. This can thus be stated that while there have been studies elsewhere that inquire into how imprisonment impacts on children no available literature has been found by the researcher on similar studies that have been carried out in Uganda. Questions about the social and economic experiences of these children thus remain unexplored.

It is believed that the children of incarcerated offenders are more likely to be involved in the criminal justice system than other children their age are. Wildman, in his paper demonstrates that parental imprisonment negatively affects the structure of children's families, the finances available to them, and the quality of their family lives.⁶³ After showing that parental imprisonment disadvantages children, he relies on data from vital statistics registries and the criminal justice system to estimate the risk of parental imprisonment for recent birth cohorts of American children. He notes:

...nearly one in five black children born in 1990 had a parent imprisoned by their ninth birthday, while about one in 40 white children born in 1990 experienced this event; the risk of parental imprisonment is growing rapidly for nearly all groups of children, although relative and absolute growth for black children and children whose parents have little education dwarfs the growth for more advantaged children; and about 40% of black children born in 1990 whose parents did not finish high school had a parent imprisoned before their ninth birthday.

Taken together, these estimates suggest that parental imprisonment is emerging as a salient form of childhood disadvantage.⁶⁴

According to, Wildman, while using national survey data, he analyzed an eleven year trend in parental incarceration. Results indicated that children with incarcerated parents have become an increasingly large share of the foster care population since the mid-1980s and a notable share of U.S. children living with grandparent caregivers. Findings

⁶³ C Wildman, 'Parental Imprisonment, the Prison Boom, and the Emergence of a Novel Form of Childhood Disadvantage' Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, (2007) <http://www.allacademic.com/meta/p175674_index.html>

⁶⁴ C Wildman, 'Parental Imprisonment, the Prison Boom, and the Emergence of a Novel Form of Childhood Disadvantage' Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, (2007) <http://www.allacademic.com/meta/p175674_index.html>

underscored the need to develop and implement specific child welfare and criminal justice policies for serving these families.

1.12.5 Possible Recommendations to the improvement of the position of the child.

Community service procedures have become a substantial part of the criminal justice system world over and the thrust for alternatives has largely been in response due to increasing prison populations, the observation that community alternatives are not as costly as traditional incarceration, and that the problem of crime cannot be solved by incarceration alone. The introduction of non-custodial measures, including the community service programme in Uganda and other countries, was initiated at various stages to address and strengthen legalization regarding the protection of prisoners' rights and improvement of prison conditions.⁶⁵

The international conference on community service orders in Africa later held in Kadoma, Zimbabwe,⁶⁶ provided a discussion for key representatives from each National Committee on community service to meet and share information on progress made in their respective countries with an intention to discuss and find solutions to common problems encountered within their community service schemes; to develop approaches to alternative measures adaptable to other African countries; and to lay the groundwork for joint actions in providing resources and mutual assistance.

At the Conference it was noted that, while community service as an alternative sentencing option is not new to the Africa continent, the Zimbabwe model had successfully shown how to avoid some of the pitfalls and problems common to all jurisdictions and to manage the scheme in a way that is both highly effective in terms of cost to government and benefit to the community.⁶⁷

⁶⁵ The Beijing Rules adopted by the General Assembly of United Nations on the 29 November, 1985 on administration of juvenile justice.

⁶⁶ The Kadoma conference, 24 to 28 November 1997.

⁶⁷ Compendium of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, 'Alternatives to imprisonment and Restorative Justice', 128.

<http://www.unodc.org/pdf/compendium/compendium_2006_part_03_01.pdf>

The Conference also agreed on a common declaration, a plan of action and a code of conduct by which National Committees including that of Uganda were to be bound; Also the fact that so much had been accomplished in so short a time was a measure of the consensus shared by governments and NGOs; and that the time had come for a new approach to criminal justice in Africa.⁶⁸

The Conference does not stand in isolation but followed directly from the recommendations contained in the 'Kampala Declaration'.⁶⁹ The Kampala Declaration contained a section on Alternative Sentencing, which recommended, that community service and other non-custodial measures should if possible be the plan of action designed to assist the sentencing option, preferred to imprisonment; Also that there should be a feasibility study of adapting successful African models of non-custodial measures and applying them in countries where they are not being used. Thus, the plan of action, designed to assist government and civil society groups implement the Kampala Declaration suggested that: Research into alternative sentencing options including community service, should be undertaken and broadly disseminated to assist governments in determining and implementing penal policy. For this matter, it can therefore be said that, the Conference formed part of the process, namely, an African initiative to re-examine at the criminal justice systems in Africa.⁷⁰

According to Zvekic, expectations of alternative sentencing are high and claims are being made that this approach can achieve a number of objectives.⁷¹ Zvekic further argues that: The arguments for alternative sanctions are essentially the mirror image of the arguments against imprisonment. Firstly is that, they are considered more appropriate for certain types of offences and offenders. Secondly, because they avoid 'incarceration' they promote integration back into the community as well as rehabilitation, and are therefore more humane. Thirdly is that, they are less costly than sanctions involving imprisonment.

⁶⁸ Ayittey, Human Rights Watch Global Report on Prisons August 2008, 130 – 131
<<http://www.hrw.org/prisons/africa>>

⁶⁹ L Parker, 'Community Service in Uganda' (2002).
<http://www.restorativejustice.org/rj3/Features/April/Community_service_in_Uganda.htm -20k>

⁷⁰ L Parker, 'Community Service in Uganda' (2002).
<http://www.restorativejustice.org/rj3/Features/April/Community_service_in_Uganda.htm -20k>

⁷¹ Zvekic Davies 'Broken Bonds: understanding and addressing the needs of children with incarcerated parents' (2008)<www.urban.org>

Fourthly they ease overcrowding when prison population is decreased and thus facilitate administration of prisons and the proper correctional treatment of those who remain in prison. For this matter it is argued that, imprisonment may only be used as a penalty when absolutely necessary and only in proportion to the nature of the crime. Parents or primary care givers who have committed offences to which the alternative or non-custodial sentence is applicable should be given that alternative. Incarceration and its devastating effect on the family, particularly on young children needs to be considered before primary child caregivers are sent to prison.

The Kadoma Conference therefore represents a milestone in the penal reform movement. Ms Vivien Stein³¹ stated: For Europe and North America, it is a chance to learn from Africa: -to move away from a system based on retribution, suffering, inflicting pain, to one based on re-integration, compensation and reconciliation.

Mwanje suggests that such 'reforms and improvements of any country's criminal justice system like Uganda can be an instrument of equity, leading to constructive social change and social justice.'⁷² Therefore, such transformations within our justice system facilitate the process of protecting communities' basic values and their inalienable rights. Penal reforms such as, community service, are options for Uganda as they allow offenders, especially those who committed minor offences, to serve their sentences within their communities.⁷³

Golash also notes that; - Continual shifting of the moral grounding for punishment reflects a fundamental uneasiness with institution ... As the justification of punishment comes full circle back to the most ancient idea of all, that harming offenders is good, it is worth re examining our commitment to the institution.⁷⁴

⁷² JBA Mwanje, 'Background and overview of community service in Uganda' (2000) Paper presented at the planning workshop on Community Service at Sheraton Hotel, Kampala.

⁷³ Ibid

⁷⁴ D Golash, *Punishment: An Institution in search of a moral grounding*, New York: Peter Lang Publishing, (1996) 11.

Further, M Jackson states that the criminal justice system is not adequate to deal with the social repercussions and relationships that have evolved as a result of crime.⁷⁵ According to Jackson, it fails to rehabilitate the offender, often victimizing the victim yet again. It encourages retribution and adversarial relationships with little benefit to the overarching social structure within which it functions and an alternative is required which should involve the victim, offender and the community.

1.13 Methodology

In attainment of the objectives of this study, the researcher employed an exploratory research design under which both qualitative and quantitative aspects were experiential. The method was purposely employed because it focuses on perceptions, facts, and feelings where through interview, the designed research questions necessitated illustrative and analytical clarifications, through use of guided interviews containing short and clear statements which sought to generate information on the specific variables of the study which were; To analyze the impact of parental imprisonment on children; finding out how alternative sentencing orders can be carried in substitution to the imprisonment; finding out of the impact of alternative sentencing on criminal justice and suggesting possible recommendations for a new course of action that will draw attention to the improvement of the position of the child.

Thus primary data was obtained through use of self administered structured interviews by the researcher. Interviews were selected because of these would allow for a systematic flow of information and were directly carried out by the researcher who ensured that they were impressionistic and free from suspicion to eliminated possible biases.

The study was done through purposive sampling method, whereby consultation made for clarification from courts, local authorities, probation and social welfare officers as well as other institutions involved in childcare and implementation of sentences in Uganda were of significant importance because these dealt with issues related to sentencing, care and inmates' rights. However, sampling was carried out with particular focus on age, position, and sex of respondents.

⁷⁵ J Michael 'In search of Pathways to Justice' (1992) *British Colombia Law Review* 147 at 147

The research was also based secondary data through book review. This was library researched from information found in various textbooks, law journals newspapers, statutes and any other written relevant material to qualify the findings. The method involved perusal and excavation of literature on the subject from libraries of Kampala International University, Makerere University, Law Development Center, Christian University of Mukono, Kigo Prisons, Uganda Human Rights Commission as well as browsing the internet, which were all of help.

The researcher explained, described and presented the study findings guided by the specific objectives of the study, and research questions where data analysis was firstly done through sketchy and generalized summaries of the study findings such as observation and conclusions in the process of data collection. This data was later summarized and concluded and qualitative data was thereafter statistically presented in pie charts and bar graphs.

Limitations of the Study

While conducting this study, the researcher encountered the following problems;

Finding information from respondents that were supposed to be interviewed. Others were just forgetful, others busy due to urgency of issues raised at their tables. The researcher also encountered some financial problems.

1.3 Overview of the Chapters

This work is divided into five chapters. Chapter one outlined the background to the study, statement of the problem, problems that prompted the research and outlines the questions, significance, scope, literature review and methodology to be used. Chapter two laid a foundation of the study by discussing the types of offences and forms of penalties in the Uganda criminal justice system, contrasting the traditional forms of punishment against alternative sentencing. Chapter three explored the various child rights implicated through imprisonment of the caregivers. Chapter four analyzed the use and need for community service as a penal procedures whereas chapter five dealt conclusions drawn from the work and gives recommendations.

CHAPTER TWO

TYPES OF OFFENCES AND PENALTIES IN UGANDA

2.0 Introduction

In Uganda, four prime procedures of implementing the punitive policy have been used, but there have been no distinct evolution of anyone system from the others. These include removal from the group by death, exile, imprisonment and physical torture.⁷⁶ Social degradation and financial laws have also been used in several historical periods.⁷⁷ On the other hand, The Ugandan criminal justice is very punitive, based on fines, imprisonment and capital punishment,⁷⁸ yet few people can pay fines, so prison is the main response to most crimes, large or small.⁷⁹ This chapter analyzed the various forms of punishment in Uganda.

2.1 Incarceration

The 1995 Constitution provides for every person prima-facie, a right to personal liberty; but there are provisions restricting it under specific circumstances thus legalizing imprisonment.⁸⁰ By incarceration an offender is physically incapacitated and thus unable to commit new offences during the period. This penalty takes the form of life imprisonment which has been adjudged to twenty years,⁸¹ as witnessed in *Livingstone Kakooza v Uganda*⁸² or imprisonment for a shorter term where legislation specifies what period of imprisonment a particular offence attracts.⁸³ The use of imprisonment as a

⁷⁶ E Clive, 'Crime and Punishment, History of' Online Encyclopedia 2008 Microsoft Corporation
<<http://au.encyclopedia.msn.com>>

⁷⁷ Ibid

⁷⁸ M Liebmann, 'Restorative and Community Justice: Inspiring the future' Winchester International Conference release 28-31 March 2001.

⁷⁹ BR Ngabirano 'The penal system in Uganda' 'Community service as alternative to imprisonment: a case study of Mpigi district' (2003) A dissertation submitted to the faculty of law Makerere University (unpublished) 9-11.

⁸⁰ The Constitution of the Republic of Uganda 1995, Article 23 (1) (a) (b) (c).

⁸¹ Sec 49 (7) of the Prisons Act 2006

⁸² Criminal Appeal No 17/93, Supreme Court

⁸³ E Clive, 'Crime and Punishment, History of' Online Encyclopedia 2008 Microsoft Corporation
<<http://au.encyclopedia.msn.com>>

punitive measure in Uganda was inherited from Great Britain, a former colonial master.⁸⁴ There are two types of prisons; the local government's prisons and the central government's prisons.⁸⁵

The local government's prisons handle offenders who commit petty offences that can be settled within a short period of time, while the central government's prisons were built to cater for offenders who are on remand and convicts who commit serious offences like murder, rape, defilement and treason. Such as Luzira maximum prison in Kampala, Kigo prisons in Wakiso, Kabale, Soroti and Bushenyi government prisons. The conditions in these local and central prisons are deplorable and some do not even qualify to be in use penal institutions. They are characterized by overcrowding, lack of basic sanitary facilities like toilets, poor quality of food as well as being extremely dirty to the extent that most of them are infested with bedbugs and fleas.⁸⁶

According to a report of the Uganda Human Rights Commission (UHRC), by January 2006, the excess capacity of prisons in Uganda stood at 8,229 inmates. The Uganda Prisons Annual Report reports that the number of prisoners in December 2005 stood at 18,225.⁸⁴ The International Centre for Prison Studies puts the number of Ugandan jailed population at 1,418 per 100,000 people.⁸⁷ The imprisonment rate is considered to be one of the world's highest. The Uganda National Report for the implementation of the Programme of Action for the least Developed Countries for the Decade 2001- 2010 decries the country's prison congestion.⁸⁸ According to the 2008/9 ministerial statement on the Judiciary, 27,411 inmates have spent from one to several years on remand. These figures are less by those of 10 districts meaning the final figure is even higher. There are up to 82,285 cases pending in the courts, of which about 10,000 are of criminal nature.⁸⁹

⁸⁴ World Prison Population list, International Centre for Prison Studies, <<http://www.visionofhumanity.org/gpi/results/uganda/2008/>>

⁸⁵ UHRC Ninth Annual Report (2006) pg 41.

⁸⁶ A Dissel, 'Prison Conditions in Africa' (2001) <<http://www.csvr.or.org.za/papers/papdis10.htm>>

⁸⁷ 'World Prison Population List' International Centre for Prison Studies, King's College London, <<http://www.visionofhumanity.org/gpi/results/uganda/2008/>>

⁸⁸ The National Community Service Programme <<http://www.un.org/special-rep/ohrls/ldc/MTR/Uganda.pdf>>

⁸⁹ The Daily Monitor News Paper, '30,000 inmates languish in prisons as shortage of judges creates case backlog' The Monitor Publications, Uganda 16th August.

The Deputy Registrar of the Criminal Division at the Uganda High Court, Roy Byaruhanga warned that unless an ingenious solution is found, the problem could get worse. 'It may take us 300 years to clear the backlog. We are talking of about three to four generations of people! This calls for innovative measures in handling the situation'⁹⁰ The Commissioner General of Prisons, Johnson Byabashaija, says that even if the Director of Public Prosecutions stopped committing offenders to prison, it would take up to five years to unclog the current 4700 prisoners committed to the High Court awaiting trial.⁹¹ Mr Byabashaija told Daily Monitor that the total number of prisoners is 26,000, 58% (15,080) of whom are remand prisoners. But, the last available statistics as at January 2007 on overall backlog of criminal cases report of a colossal 33,524 cases from the High Court, the Chief Magistrates Courts and Grade I Magistrates Courts respectively. However, the 2007 UHRC notes some positive developments in the human rights situation of inmates such as hygiene, food and clothing.⁹² Areas of concern in prisons remain: detention of suspects for longer than 48 hours, restrictions in access to places of detention, inmate's access to food, medical care, water, clothing, beddings, and persistence of torture, congestion in cells, detention of suspects with convicts, of children with adults as well as the general welfare of both the inmates and prison staff.

According to Nsalasatta, most of these prison units were built in the early and mid 20th century to cater for a limited number of offenders.⁹³ For a long time, there has been neither renovation nor expansion to cater for the ever-increasing number of offenders, 'the majority of whom being those who committed minor offences'.⁹⁴ Kamuge Prison in Pallisa district which was constructed in 1948 is in a sorry state with dilapidated structures that are almost collapsing on inmates and warders.⁹⁵ The prison which was supposed to accommodate 150 inmates is now overflowing at double the capacity with suspects and convicted prisoners. This tendency to impose imprisonment as the principal

⁹⁰ R Byaruhanga 'Unclogging Prisons - The Way Forward' (2007) presented at an annual Judges Review conference in Jinja.

⁹¹ The Monitor, 300 years to clear case backlog – Judiciary' Monitor Publications Uganda, December 16, 2007.

⁹² UHRC Tenth Annual Report (2007) p 30.

⁹³ DS Nsalasatta, 'Information on the Uganda Prison Service' (2003)1 *Uganda Living Law Journal*, 128-13.

⁹⁴ C Birungi, 'Community service as an Alternative to imprisonment: A case study of Masaka and Mukono Districts' (2005). Mini-Thesis Presented to the Institute for Social Development Faculty of Arts, Univ. of Western Cape (Unpublished).

⁹⁵ The Monitor News Papers, 'Pallisa crime suspects walk 8 miles to court' The Monitor Publications December 16, 2007.

penal sanction rather than other punitive measures results in a high prison population, causing overcrowding. The Government of Uganda and the taxpayer therefore bear considerable expenses in order to maintain offenders. This also forces prisoners to break ties with their families and the most affected are the dependants, the majority of whom are children. These children therefore become hidden victims of crime as they are denied the help, support and guidance from their caregivers.

It should be noted that the traditional view that evil men deserve to be punished has been the ultimate justification for imposing sentences of imprisonment, but it is gradually giving way to a more modern approach which views punishment of criminals as having the main purposes of deterrence, rehabilitation, protection of society, and reformation.

Thus Professor Marshal Clinard states: -

Prisons are largely failures; recidivism runs between 60 to 80 percent ...in prisons men are trained in more sophisticated crimes, at the state expense. Homosexuality is rampant in these one-sex communities, the prison environment itself has a degrading effect on human beings, initiative is crushed, men become embittered and filled with a hatred of society and prison inmates are denied their civil rights. Most of all a prisoner becomes labeled as being an 'ex- con' which interferes with jobs, marriage and his own self respect.⁹⁶ The Government of Uganda, therefore, saw a need to introduce reforms in its criminal justice system, hence the introduction of community service. It also took into consideration international and national rules and other obligations regarding the treatment of all people including offenders for the enjoyment of their basic human and fundamental freedoms.

2.2 Corporal Punishment

According to Corporal punishment is infliction of physical pain and suffering upon a convicted person for the purpose of retribution, retaliation, deterrence and correction..⁹⁷

One of the ardent advocates of corporal punishment, Warden Elam Lynds is reported to have said: I consider the chastisement by the whip the most efficient and, at the same time, the most humane which exists; it never injures health and obliges the prisoners to

⁹⁶ MB Clinard, 'Sociology of deviant behaviour' (1971) 3.

⁹⁷ Free Encyclopedia <http://en.wikipedia.org/wiki/Corporal_punishment>

lead a life essentially healthy. Solitary confinement, on the contrary, is often insufficient and always dangerous. I have seen many prisoners in my life, whom it is impossible to subdue in this manner and who only left the solitary cell to go to hospital. I consider it impossible to govern a large prison without a whip: Those who know human nature from books only may say the contrary⁹⁸ Corporal punishment is prescribed as a form of punishment in Uganda. Certain offences such as rape, indecent assaults on women or girls, indecent assaults on boys under eighteen and attempted defilement, are expressed as punishable with or without corporal punishment.⁹⁹ Under these provisions, the power to impose corporal punishment is discretionary. There are, however, offences where this form of punishment is mandatory. Under Section 288 of the Penal Code Act, when a person is convicted of the offence of robbery or assault with intent to rob he must in addition to imprisonment be awarded corporal punishment.¹⁰⁰ In the case of child offenders, however, a punishment of caning cannot be imposed by the Family and Children's Court (FCC).¹⁰¹ Over the years, however, corporal punishment has come under attack as being a violation of the right from cruel, inhuman and degrading punishment.¹⁰² In the case of *Simon Kyamanywa v Uganda*¹⁰³ the Constitutional Court declared corporal punishment to be a violation of the freedom from cruel, inhuman and degrading punishment, and, therefore deemed **Section 74 of the Magistrates Court Act (MCA)** to be unconstitutional. Despite this constitutional court ruling, the punishment remains on the Ugandan statute book.

2.3 Fines

Where a fine is a sum of money paid by the offender to the state and reaction to criminality is by general confiscation of property, or by imposition of a fine, has always existed in most civilized societies.¹⁰⁴ In Uganda there are statutory provisions empowering a court to impose a fine instead of a sentence of imprisonment.¹⁰⁵ This gives

⁹⁸ EH Johnson, *Journal of Crime, correction and society* (1968) p 429.

⁹⁹ PCA Sections 125, 128, 129 (2), 147 respectively

¹⁰⁰ A person sentenced to imprisonment under section 286 or 287 shall, in addition, be sentenced to corporal punishment.

¹⁰¹ Sec 94(9) Children Act

¹⁰² Article 24 of the 1995 Constitution of Uganda

¹⁰³ Constitutional Court ref No 10 of 2000 (Unreported).

¹⁰⁴ T Mwene-Mushanga, *Crime and Deviance: An Introduction to Criminology*, (1988) 34.

¹⁰⁵ Sec 180 of the Magistrates Court Act (MCA) Cap 16 and sec 110(b) of the Trial on Indictments Act (TIA) Cap 23

the courts discretion to impose fines where the punishment for an offence is not fixed by law. Many offences are expressed as punishable either by fine or imprisonment or both. Where the court has discretion to impose a fine or imprisonment, the accused should first be given an opportunity to pay the fine. It has been noted that it would be inappropriate in principle to impose a fine clearly beyond a person's means, and which would inevitably result in a default sentence of imprisonment.¹⁰⁶ Child offenders too can be ordered to repay or make up for the wrong. However, the court will first look into the ability of the child to pay. Where an order of a fine has been made and the child fails to pay, the child shall not be detained. However, due to poverty levels even where a small fine is imposed, the offenders end up in prison because often they cannot afford to pay fines. Most of these prisoners are often primary or sole caregivers and their incarceration has a devastating effect on their family, particularly on young children.

2.4 Capital Punishment

Capital punishment more often referred to as death sentence, is the maximum punishment imposed by courts in Uganda and is permitted under **Article 22**¹⁰⁷ for grave offences, such as, murder, treason, defilement, aggravated robbery, and rape which are otherwise referred to as capital offences.¹⁰⁸ Death in this way is a mandatory punishment for six of the treasonous offences and a discretionary sentence for the remaining felonies. In capital offences, it is unlikely that the court passes a sentence other than a sentence of imprisonment or the death sentence.

However, the courts may make an order of restitution or compensation, in conjunction with a sentence of imprisonment or the death sentence. The element of non-arbitrariness underpins the penalty, under article 22, 'no person shall be deprived of life intentionally except in execution of a sentence passed by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda, and the conviction and sentence have to be

¹⁰⁶ Sec 94 (e) Children Act

¹⁰⁷ The Constitution of the Republic of Uganda, 1995, Article 22

¹⁰⁸ Uganda's Penal Code Act (PCA) 'treason' and offences against the state (ch VI), rape, defilement (ch XIV), murder (ch XVIII), aggravated robbery and aggravated kidnapping (ch. XXVII). Death is a mandatory punishment for six of the treasonous offences and a discretionary sentence for the remaining felonies.

confirmed by the highest appellate court.’ Therefore it is under the following circumstances that the death penalty can be carried out:-

- d) the death penalty must be provided under the law, i.e. penal law
- e) the penalty must be pronounced as an order of an impartial court of competent jurisdiction.¹⁰⁹
- f) the sentence must arise from a fair trial as provided under **Article 28**¹¹⁰ which provides for a right to a fair hearing..
- g) the death penalty must be confirmed by the highest appellate court.¹¹¹

In *Susan Kigula and 416 others v Attorney General*,¹¹² convicts on death row filed a petition before the country’s second highest court contending that the death penalty carried out by hanging in Uganda amounts to cruel and degrading treatment which is prohibited by the Constitution. All five justices, however, rejected the inmates’ argument that the death penalty was unconstitutional ‘because it is given by the laws as punishment after due process. There have been men and women of goodwill who have condemned the death penalty for whatever crime, arguing that it is no punishment at all, has no deterrent effect, brutalises society, and is contrary to the highest concepts of Judaic Christian ethics.’¹¹³

Those who advocate for the retention of the penalty argue that the death penalty is deterrent, those sentenced are usually beyond hope of rehabilitation, and that, if abolished, peace and law enforcement personnel would be exposed to greater risks from criminals and society would avert to lynching them. Others use the Holy Scriptures to support the retention, referring to Genesis 9:6: Whoever sheds mans blood, by men shall his blood be shed, for in the image of God, made the man that Christ has told us to love our neighbours and that murderers cannot be tolerated. The death penalty has raised much

¹⁰⁹ Article 128 (1) of the 1995 Ugandan Constitution as amended.

¹¹⁰ The Constitution of the Republic of Uganda 1995, Article 28

¹¹¹ Article 12 of Constitution, the Supreme Court shall be the final court of appeal.

¹¹² Constitutional Court Constitutional Petition, No 6 of 2003 (unreported).

¹¹³ Murder Victims’ Families for Human Rights (MVFHR) an international, non-governmental organisation of family members of victims of criminal murder, terrorist killings, state executions, extrajudicial assassinations, and ‘disappearances’ working to oppose the death penalty from a human rights perspective and death penalty links

<<http://www.willsworld.com/~mvfhr/images/links.htm#Religious%20Statements>>

controversy and misery. Family members of the executed have been made orphans, widows, and childless. Family members of the victims have been re-victimized over and over by mandatory appeals and overwhelming media attention on the offender.¹¹⁴ It nonetheless, remains a constitutional punishment in Uganda.

2.5 Probation

Probation is the subjection of an offender to supervision of a probation officer instead of imprisoning or fining him. A probation order shall contain such requirements as the court considers necessary for securing the supervision of the offender, and such additional requirements as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences; but without prejudice to the power of the court to make an order under section 197 of the MCA or section 126(1) of the TIA, the payment of any sum by way of compensation shall not be included among the requirements of a probation order.¹¹⁵ The main objective of which is to re-integrate an offender into the community, while at the same time protecting society from the evils of anti-social behaviour, with the main purpose of rehabilitating the offender. In the FCC, a probation order may be made on the advice of a Probation and Social Welfare Officer (PWSO)¹¹⁶ and may include a condition not to change residence without informing the PWSO, or to report to probation office at intervals.

2.6 Other Penalties

There are several other sentences available to the courts which for the sake of completeness, are listed below: compensation,¹¹⁷ restitution which involves the returning of stolen items to their rightful owner¹¹⁸ caution,¹¹⁹ unconditional discharge,¹²⁰

¹¹⁴ Ibid

¹¹⁵ Probation Act Cap 122; Probation order (section 3).

¹¹⁶ Probation Act Cap 122; Probation order (section 3).

¹¹⁷ Sec 126 of the TIA Cap 23

¹¹⁸ Sec 201(1) of the MCA Cap 16 and sec 130(1) of the TIA Cap 23.

¹¹⁹ Sec 119(1) (b) of the TIA Cap 23 and section 190(1) (b) of the MCA Cap 16.

¹²⁰ Sec 119(1) & (2) of TIA Cap 23 and section 190(1) (a) of the MCA Cap 16.

conditional discharge,¹²¹ police supervision,¹²² suspended sentence,¹²³ binding over¹²⁴ and community service.¹²⁵

CHAPTER THREE

IMPRISONMENT AND THE IMPACT ON THE RIGHTS OF CHILDREN

3.1 Introduction

Children of prisoners have a daunting array of needs. While anecdotal evidence abounds, to date there have been no statistical studies to help assess the magnitude of the problem. This chapter analyses the sketchy evidence to show that children need a safe place to live and people to care for them in their parents' absence, as well as need everything else a parent might be expected to provide like food, clothing, and medical care. However, beyond material requirements as mentioned above, children, it has been stated, have emotional needs.¹²⁶ They need to be told the truth about their parents' situation, to be listened to and be informed of their parents' status. These requirements go not just unmet but unacknowledged. This chapter also discusses the ways in which the rights of children are impacted, how the 'best interest' principle is used, or ignored, especially when courts sentence the primary caregivers of the children.

When parents are sent off to serve jail terms, little is known or mentioned about what becomes of their young ones. There is no requirement that the various institutions charged with dealing with offenders such as the police, courts, prisons, probation and social welfare departments, inquire about children's existence or concern themselves with children's care. Conversely, there is no obligation on front-line systems serving vulnerable children reception centres, schools, family and child protection unit,¹²⁷

¹²¹ Sec 120 of the TIA Cap 23 and section 191 of the MCA Cap 16.

¹²² Secs 194(1) & (2) MCA only applies to offences with a maximum sentence less than life imprisonment.

¹²³ Sec 34 of the Criminal Procedure Code Cap 116.

¹²⁴ Sec 94(1) (d) of the Children's Act Cap 16.

¹²⁵ Community Service Act (CSA) Cap 115 Laws of Uganda 2001.

¹²⁶ NG Vigne, et al 'Broken bonds Understanding and addressing needs of incarcerated parents' (2008). Urban Institute, JusticePolicy Centre, Washington. <<http://www.aecf.org/~media/Pubs/Topics/Child>>

¹²⁷ Following the ratification of the CRC, Police stations in Uganda designated special units known as the 'Family and ChildProtection Unit'. These are found at almost all Police stations and posts and handle issues relating to the family, children and child abuses. This unit is to ensure that vulnerable children get redress with minimum delay.

FCC,¹²⁸ probation and social welfare office Probation and Welfare Officers (PSWOs), who are designated officers to oversee that the best interest of the child is maintained at all times and in all actions and their mandate is to ensure children's rights are adhered to. Local council,¹²⁹ which provides for the support of children by local authorities and for every Local Council, there is an adult representative for children known as the Secretary for Children's Affairs or the national council for children (NCC),¹³⁰ to inquire about or account for parental imprisonment.

3.2 The Right to Health

Development theorists such as Freud, Adler, Erikson, Horney, Piaget, and Vygotsky have written extensively about parental nurturance and its influence upon healthy child growth and development.¹³¹ Further, research in this area indicates that parental incarceration, and the process that precedes it, produces a chain of events that can seriously impugn developmental growth.¹³² Parent-child separation, enduring traumatic stress, and inadequate quality of care have major distorting influence upon these children and their development.¹³³

Although the government of Uganda has international obligations to respect, protect and fulfill the right to health which forms the basis for the enjoyment of the right to life of all persons,¹³⁴ the Parliament of Uganda has not yet enacted legislation giving effect to the right to health and other economic, social and cultural rights, which are laid out in the national objectives. The 1995 Constitution explicitly provides for the promotion and

¹²⁸ FCC created by Cap 59 are specialised courts to handle children matters such as children in conflict with the law and are located close the communities, e.g. at counties. Children's cases are to be heard in a friendly and a child sensitive manner

¹²⁹ The Children Act Section 10

¹³⁰ The NCC as established in 1992 to oversee implementation of Uganda National Plan of action for Children (UNPAC).

¹³¹ L Berk, *Infants and Children: Prenatal Through Middle Childhood* (2005) 58.

¹³² B Bloom, 'Imprisoned Mothers' in K Gabel and Denise Johnston (eds) *Children of Incarcerated Parents*, (1995) 21.

¹³³ C Jose-Kampfner, 'Post-Traumatic Stress Reactions in Children of Imprisoned Mothers' in K Gabel & D Johnston (eds) *Children of Incarcerated Parents* (1995) 34.

¹³⁴ The right to health was first reflected in the WHO Constitution (1946) and reiterated in the 1948 Universal Declaration of Human Rights leading to the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). It has also been reaffirmed in the Declaration of Alma Ata (1978) and the World Health Declaration adopted by the World Health Assembly in 1998. It has further been expounded by the General Comment on the right to health (2000) and the Special Rapporteur on the Right to health (2002).

protection of fundamental human rights and freedoms which are regarded as inherent and not provided by the State and have to be respected, upheld and promoted by all organs and agencies of Government and by all persons.¹³⁵

Children are entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity which is referred to as the right to health. The right to health contains both freedoms and entitlements. The entitlements include the right to a system of health protection which provides equality of opportunity to enjoy the highest attainable level of health. Although no specific mention is made of children with incarcerated parents; it is argued that the harsh environment, neglect and lack of proper care that this category of children are exposed to are contributory factors to poor health of children in Uganda. In its process of tracing children of prisoners, Wells Ministries found in one family of 2 children that a boy had died and a girl 3½ years of age was seriously malnourished and taken to an orphanage.¹³⁶ The inmate's spouse had remarried. In another instance, a 6-year-old was found to be HIV positive and was enrolled in Mildmay for Anti Retro-Viral therapy by Wells but diet remains poor. Wells sometimes found the children had been taken away by relatives; or had simply hit the street; or gone to work as house-helpers. Sometimes the house to which the charity was referred to, was non-existent.

3.3 The Right to Education

Education is vital to the promotion of human rights. It is both a human right and a way forward to realization of other human rights. The exercise of the right to education is instrumental for the enjoyment of many other human rights, such as the rights to work, health and political participation thus fighting against poverty.¹³⁷ This can be traced from the right to receive a higher education on basis of capacity, and the right to choose work can only be exercised in a meaningful way after a minimum level of education is reached. Similarly, in the ambit of civil and political rights, the freedom of information, the right to vote and the right to equal access to public service depend on a minimum level of education.

¹³⁵ Article 20.

¹³⁶ Wells

¹³⁷ Draft Guidelines: A Human Rights approach to poverty reduction strategies by OHCHR, at 26.

The International laws providing for the right to education create general obligations for State parties.¹³⁸ Thus the normative content of the right to education ought to be viewed in terms of availability, accessibility, acceptability and adaptability.¹³⁹ Uganda has also harmonized national laws and policies with international standards by providing for equality and non-discrimination and the right of all persons to education.¹⁴⁰ The right to education is expressly provided for in **Article 30** of the Constitution of Uganda.¹⁴¹

The Government of Uganda launched the Universal Primary Education (UPE) in 1997 and the programme has been under implementation since then. The main objectives are to address inequality in the country and improve on the quality of life of its major beneficiaries the children. However, this right to education of children cannot be realised if they are not protected from the disruptions in their lives such as imprisonment of their parents.

3.4 Psychological Effect

Losing a parent to prison can be especially traumatic.¹⁴² A mother who had been sent to prison for drug offences told Human Rights Watch that she believed her children had been punished for her crime as much as she was.¹⁴³ In addition to the feelings of abandonment, grief, fear, guilt, and anger that they share with children of divorced or deceased parents, children of incarcerated parents also may experience intense anxiety, shame, and unique fears about the conditions under which their parents live. Some of those children carry emotional injuries that will take a long time to heal. Repairing frayed family ties is a challenge and one that sometimes proves insurmountable.

In Britain, an alliance of prison charities consisting of Action for Prisoners' Families and Prison Advice and Care Trust and the Prison Reform Trust notes that prisoners' children

¹³⁸ Art 26 of the UDHR, arts 13-14 of the CESC, article 10 of the CEDAW, articles 28-29 of the CRC and article 17 of the African Charter on Human and People's Rights.

¹³⁹ Prof. N Rembe (Rapporteur), Meeting on Priorities for Research to advance Economic, social and cultural rights in Africa, Addis Ababa, 9-11 March 2005

¹⁴⁰ The Constitution of the Republic of Uganda Article 24 and 30 and the Education Act, Cap 127.

¹⁴¹ Principle XVIII of the National Objectives and Directive Principles of State Policy.

¹⁴² Human Rights Watch: *Collateral Casualties: Children of incarcerated drug offenders in New York*, Vol.14, No.3 (2002) p6.

¹⁴³ Ibid

are the innocent hidden victims of crime, and are far more vulnerable than other children are to becoming involved in crime in later life.¹⁴⁴ The campaign to improve access to prisoners is based on the premise that when the state locks up a child's parent, it has a duty of care to the child. King Donna raises concerns on the effects of imprisonment on offenders, their families and the broader community.¹⁴⁵ As a former prisoner, who served multiple prison terms during the 1990's, he states that it has become clear to him that the impact of imprisonment extends well beyond the walls of any prison. More often than not, families and children of prisoners are forgotten in discussions about the social and economic cost of imprisonment.

He thus asserted that;

In Victoria, Australia, a new multi-program prison has recently been opened with the aim of giving prisoners 'the goods' to live a crime free life after release. But what are 'the goods' and how have they been determined? Can these 'goods' overcome entrenched poverty, inadequate housing and educational opportunities, unemployment and discrimination and all of the other factors that often have contributed to a person's offending and imprisonment, and will still exist after their release? And what 'goods', if any, are the families and children who have also borne the impact of imprisonment going to receive? Can any goods' actually overcome the cost of imprisonment to them? My questions are based upon this simple acknowledgement: I may no longer be in prison, but I still bear the cost of it, as does my child.

Wells recently held a camp for 100 children of incarcerated parents, the first of its kind, designed to help them cope with emotional trauma of not being with their parents. Mr. Ssuubi the charity's coordinator has stated that, they offer children psycho-social support to include counselling and sensitization on issues related to HIV and AIDS, sexuality, education and hygiene'.¹⁴⁶

¹⁴⁴ BBC News UK, Family visits 'key for prisoners' 5 December 2007
<http://news.bbc.co.uk/2/hi/uk_news/7126762.stm>

¹⁴⁵ K Donna, 'One In, All In: The Imprisonment of Offenders, Families and Children' Paper presented at the annual meeting of the American Society of Criminology, Los Angeles Convention Centre, CA, (Nov 01, 2006)
<http://www.allacademic.com/meta/p126757_index.html>

¹⁴⁶ 24 August 2008- Daily Monitor News <www.monitor.co.ug>

3.5 The Right to Protection From Harm

All children indiscriminately, have the right to have their basic needs met, not only for survival and for protection but also to be able to develop to their full potential, to participate as members of society and grow up to be caring and responsible citizens. Children of prisoners have committed no crime but the penalty they are required to pay is steep. They forfeit, in too many cases, virtually everything that matters to them: their safety, their public status and private self-image, as well as their source of comfort and affection.¹⁴⁷ Their lives and prospects are profoundly affected by the numerous institutions that lay claim to their parents such as police, courts, jails and prisons but they have no rights, explicit or implicit, within any of these jurisdictions which need not be the case. Uganda is a signatory to various international conventions and has several measures in place designed to prevent abuses as well as protect children affected with rights abuses and other rights violations. The 'best interest' of the child is one of the pillars in **Article 3** of Convention of Rights Children and **Article 4** of the African Children's Charter. In all actions concerning children undertaken by any person or authority, the best interest of the child shall be a primary consideration.

The CRC does not offer any definite statement of what is in the 'best interest' of an individual child in a given situation. However, the CRC as a whole provides a frame of reference and how to balance the interests of the child with wider societal interests. The Convention specifically spells out the rights of the child and sets the minimum standards that society should aspire to achieve. Uganda ratified the CRC in 1991 and is therefore obliged to translate these rights into reality through legislative and policy measures. To this end, the rights of children are provided for in **Article 34** of the 1995 Constitution of Uganda and the Children Act. **Article 45** of the Constitution states that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned shall not be regarded as excluding others not specifically mentioned. The Constitution in principle has laid a foundation for review and reform of other laws to cater for protection of children against situations that are hazardous to their wellbeing. The CSA, which has been the focus of our discussion,

¹⁴⁷ NG Vigne, et al 'Broken bonds Understanding and addressing needs of incarcerated parents' (2008). Urban Institute, Justice Policy Centre, Washington. <<http://www.aecf.org/~media/Pubs/Topics/Child>>

already vests judicial officers with discretionary powers to pass a sentence that takes into consideration the best interests of the children.

Under the CSA, the final decision to pass a CS Order lies with the magistrates or judges to use their discretion and judgment after considering all the circumstances, in every given case.¹⁴⁸ Guidance is contained in the regulations on the types of offenders who deserve CS Orders, conditions for the order, placement areas, arrangement of work hours, how to match an offender to an institution and so on.¹⁴⁹ A grid of hours on Community Service is provided which suggests the number of community service hours, which may be considered appropriate alternatives for prison sentences up to 2 years. Where employment includes the basic grid is founded on the following facts-(a) 8 hours work per day for 5 days a week totaling to 40 hours of work per week. (b) 40 hours per week by 4 weeks per month totals to 160 hours per month (c) 8 hours equals 1/3 of 24 hours a day in prison(d) 40 hours equals 1/4 of 168 hours a week in prison (e) 160 hours equals 1/4 of 720 hours a month in prison(f) 160 hours equals 1-month community service 4 months in prison(g) 320 hours equals 2 months community service 8 months in prison(h) 480 hours equals 3 months community service 12 months in prisons(i) 640 hours equals 4 months community service 16 months in prisons (j) 8000 hours equals 5 months community service 20 months in prisons(k) 960 hours equals 6 months community service 24 months in prisons. The regulations make it clear that the magistrate has discretion to depart from the number hours indicated in the grid if there are individual circumstances in case that would justify him her to do so.

It is contended that an offender who is a primary caregiver for children should be liable to a CS Order since children rely on the exclusive protection of adults for the realization of their rights. This argument is buttressed by the fact that statistics from the Director of Public Prosecutions reveal, for example, that out of 7,474 convicts in a year, more than

¹⁴⁸ CSA Sec 94(1) (d) of the Children's Act Cap 16, and Schedule A, CS Regulations (Prison Conditions in Africa' (2001) on conviction, the offender is offered the opportunity of community service instead of a sentence of imprisonment, which might otherwise have been passed upon the offender

¹⁴⁹ Ibid

4000 were convicted of assaults, thefts, and malicious damage and traffic offences.¹⁵⁰ These are offences to which CS Order can be applied. Moreover, it is a common understanding among criminologists and corrections professionals that offenders who commit property crimes for an example do not usually need to be incarcerated, as they are not a violent threat to society.¹⁵¹ In fact, they are the candidates most likely to respond to rehabilitation efforts at residences of lesser security and considerably less cost per individual to society. Furthermore, sentenced offenders can learn far more about personal responsibility and accountability in lower-security rehabilitation programs than they would ever be exposed to in prison.¹⁵² Indeed, some offenders' crimes are so serious that imprisonment is warranted regardless of the implications for their families. But, for many low-level offences, alternatives to incarceration including community service and fines are sanctions that are more proportionate.

3.6 Right to Care, Stability and Love

The expression of the human rights for children take into account children needs- the needs that must be met for the children to have a happy and fulfilled childhood. They need all the things that will help them grow and develop. They need friends and family, love and laughter. The loss of a parent to prison can compound the risks the children already confront, by depriving them of a critical source of care, stability, and love. In many cases, families may already be in disarray prior to parental incarceration and some if not all of a parent's children were already living apart from a parent before he or she was sent to prison. The impact of parental incarceration is greatest when the parent had been actively present in the children's life and is then removed.¹⁵³

Under article 31(4) of the Uganda Constitution, parents have a right and a duty to care for and bring up their children. Under the Children Act, any decision that affects the child must take cognisance of the child's best interest and welfare. The legal protection of

¹⁵⁰ J Crawford, 'Alternative sentencing necessary for female inmates with children' (2003) 65(3) *Corrections Today*, 8 to 10 <<http://www.allbusiness.com/public-administration/justice-public-order/983194-1.html>>

¹⁵¹ RJ Cypser, 'The payback in reducing recidivism, and thereby reducing crime and cost.' New York Chapter of CitizensUnited for the Rehabilitation of Errants. <www.bestweb.net/~cureny>.

¹⁵² Ibid

¹⁵³

rights infers that they are comprehensive and sufficient enough to ensure the survival and development of the child. Prison Fellowship (PF) Uganda, a global Anglican charity notes that many prisoners' children are at a greater risk of having their rights violated.¹⁵⁴ The affected children are in two categories: those serving a prison sentence with their incarcerated parents, mainly women, and those left without parents in the communities. These children grow up feeling abandoned, isolated, and unloved.'¹⁵⁵ According to the Executive Director PF Uganda, the charity tries to link up parents with their children. The charity mobilises church volunteers to buy gifts, which are given to the children with personal cards from their imprisoned parents. He notes, 'a strong bond between parent and child is essential for the emotional health of a child. That fragile bond can be easily shattered when a parent becomes incarcerated.'¹⁵⁶

Frequently, the children are left without a care giving arrangement or an arrangement that is adequate, and this causes further long-term damage to the development of the character and personality of the child. The quality of alternative care arrangements for the children may be worse, which only enhances the trauma of separation.¹⁵⁷ According to Hagan and Dinovitzer, children of incarcerated parents may be six times more likely than their counterparts to become incarcerated themselves because of these deprivations and traumas.¹⁵⁸ This unwanted and unanticipated effect is part of the emotional and physical damage not only to the child, but also to the society as a whole because of the intergenerational transmission of risks of imprisonment. Wells of Hope Ministries notes that one of its challenges is locating most of the children that they support and evaluating their performance. Some of the children cannot be located since they run away from home due to maltreatment from their relatives.¹⁵⁹

As noted above, the Uganda Constitution outlines the duties and obligations of the state to act through its institutions to protect and prevent children from abuses. While the Constitution has laid down the duties of the institutions in protecting children's rights, the

¹⁵⁴ C M Mwanguhya, 'Prisoners kids are potential criminals' <www.monitor.co.ug>

¹⁵⁵ C M Mwanguhya, 'Prisoners kids are potential criminals' <www.monitor.co.ug>

¹⁵⁶ J Hagan & R Dinovitzer, *Collateral consequences of imprisonment for children, communities & prisoners*. (1999)

26.

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Wells <<http://www.wellsofhope.org/newsletter.php>>

enforcement and implementation is left to the state organs of which the judiciary is a part. Legislators have vested in judicial officers the discretion to tailor sanctions appropriate to the seriousness of the offence and the culpability of the individual offender.¹⁶⁰ Birungi in his thesis notes that much as the community service programme was rated as being very beneficial by many stakeholders, magistrates still impose imprisonment as preferred sanction.¹⁶¹ This should unnecessarily be the case since as community service is acceptable to the offenders, victims and community at large. There is need to send fewer people to prison and as a result, fewer children would be among the collateral casualties of imprisonment.

3.7 Children Incarcerated with their Mothers

It is common in Uganda for babies and young children to be taken into prison with their mothers. Therefore, as the lifelines to these children serve their sentences or await their trials, so too do their little ones, enduring the life of the accused. This raises complex issues about the facilities available for such children to ensure their own appropriate physical, mental and emotional development.¹⁶²

In Malukhu Prison in Mbale municipality of Uganda in late April 2008 it was noted that eight children were found living with the 35 female inmates at the detention facility.¹⁶³ This scenario is not only in Mbale but also in all prisons across the country. Asked whether children are supposed to be in prison, Margaret Obonyo, the officer in charge of the female wing at Malukhu Prison said, that the law permits it to an extent. 'Our law of prisons says once a child reaches one year and eight months, it should be taken back home. But some are not able to go home,' Ms Obonyo told members of the Rotary Club of Mbale who visited inmates on April 28, 2008.¹⁷³ This is because the children are deemed too young to be separated from their mothers, especially when they are still breast-feeding at the time of their mother's arrest. The above scenario brings into

¹⁶⁰ CSA & Regulations (n 94 & 100 above).

¹⁶¹ 'Prisoners for no crime' Monitor News Paper, Uganda <www.monitor.ug/archives.co.ug>

¹⁶² Ibid

¹⁶³ Ibid

perspective findings of a Cambodian study of children in prisons that the children face nutritional deficiencies.¹⁶⁴

In the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) study it was found that though children share the allotted prison food with their mothers, extra food is not distributed to prisoners with dependents. The food provided typically lacks ample nutrients for adults, let alone for growing children. When split among two, three, or even more people, the nutritional value is depleted even further.¹⁶⁵ Most of the children who were staying with female inmates were below the age of five, according to the LICADHO study: living in prisons also presents a threat to children's safety. The study notes that 'the potential for maltreatment at the hands of other prisoners or prison staff is ever-present, particularly in facilities where sex offenders may be held.'¹⁶⁶ All these issues highlight the desirability of giving non-custodial sentences to mothers wherever possible. The plight of children incarcerated with their mothers in Uganda has been raised at international level and commitments have been made by the government, promising to improve the situation but this has not happened. The UN Committee on the Rights of the Child on 15 September 2005 reviewed the second periodic report of Uganda on how the country is implementing the provisions of the CRC.¹⁶⁷ One of the questions put to the Ugandan delegation led by then Gender, Labour and Social Development Minister Zoe Bakoko Bakoru was on the figures of children living with their mothers in detention, and what measures were being taken to redress the plight of the children. While responding to experts' questions, Ms Bakoko did not respond to the question on children living with their mothers in prison.¹⁶⁸ Perhaps this explains why the situation has remained unchanged.

3.8 Conclusion

In regard what has been discussed, international human rights standards, specifically the CRC emphasize the absolute necessity of respecting the child's best interests but these

¹⁶⁴ R Taylor 'Women in prison and children of imprisoned mothers'(2004).

¹⁶⁵ Prison conditions in Cambodia 2007: The story of mother and child' < <http://www.licadho.org>> (accessed 20 September 2008).

¹⁶⁶ Ibid

¹⁶⁷ OUNHCR <<http://www2.ohchr.org/english/bodies/crc/crcs49.htm>>

¹⁶⁸ Ibid

are not always easily established and therefore not respected.¹⁶⁹ The Convention covers all the rights that aim at the wellbeing of the child. It is worth noting that while parents are mainly accountable for their children's well-being, article 18(1) CRC reinforces the states' duty to ensure adequate care and protection of children in unusual circumstances. Prison sentences for offenders who are child carer givers, lead to unusual circumstances as they needlessly inflict pain and hardship on children. The Uganda criminal justice system should take as its constituency not just offending individuals when sentencing offenders, but also their families (and particularly children). The most valuable intervention on behalf of children could take place before a parent ever sees jail through the use of alternative sentencing. Other rehabilitation-focused alternatives to incarceration such as fines, probation and suspended sentences could make a tremendous difference to offenders' children.

¹⁶⁹ M Alejos, 'Babies and small children residing in prisons', Quaker United Nations Office, Geneva, 2005.

CHAPTER FOUR

ALTERNATIVE SENTENCING FOR PARENTS AND UGANDAN CRIMINAL JUSTICE SYSTEM

4.1 Introduction

This chapter explains suggestions that exclusively relate to the need for community service with specific reference to parent offenders in the Uganda criminal justice system. It will invite stakeholders in the Uganda criminal justice system to go beyond what they are presently doing because of the advantages it presents. These assumptions were got through book reviews and dialogue with wardens, inmates and probation officers as well as people from the different support organizations in Uganda.

It is relevant to reconsider the alternative sentencing procedures for parent offenders by Ugandan courts and other stakeholders in the criminal justice process. There are various options available to courts and offenders as viable alternatives to incarceration and a host of advantages as opposed to traditional sentencing procedures. In courts across the country, stakeholders in the criminal justice system have to balance the need for offender punishment, deterrence, rehabilitation, and public safety with the reality of overcrowded prisons, costs for running prisons, while ensuring that the punishment fits the crime. This balance means that traditional sentences are not appropriate for some offenders and traditional sentences may even be detrimental to the offender and society. Prevalent crimes: malicious damage to property,¹⁷⁰ thefts,¹⁷¹ affray,¹⁷² assaults,¹⁷³ criminal trespassing,¹⁷⁴ removing boundary marks,¹⁷⁵ traffic offences,¹⁷⁶ and idle and disorderly,¹⁷⁷ to mention, deserve to be punished with non-custodial sentences such as community service.

¹⁷⁰ Sec 335 PCA.

¹⁷¹ Sec 253-255 PCA.

¹⁷² Sec 79 PCA.

¹⁷³ Sec 235-239 PCA.

¹⁷⁴ Sec 302 PCA.

¹⁷⁵ Sec 338 PCA.

¹⁷⁶ Traffic and Road Safety Acts 1970 and 1998 (Caps 360 & 361) respectively

¹⁷⁷ Sec 167 PCA.

4.2 The Need for Alternative Sentencing

Allan Mugumya, a social worker with 'Wells of Hope' (Wells)¹⁷⁸ states that although UPE, local council structures, churches, relatives and other NGO's exist, no particular agency takes responsibility for the children of incarcerated parents. Wells therefore organises scarce resources to pay children's school fees, buy scholastic materials, uniform and other essential items. As of September 2008, 120 children (twenty-eight of them under the age of six years and about half of them teenagers) are in the care of Wells.¹⁷⁹

Until the implementation of the CSA, imprisonment was and still is the major form of punishment in Uganda even for minor offences.¹⁸⁰ Research findings in the previous chapters have demonstrated insufficient application of the penalty that would go a long way in alleviating the suffering of not only the offenders but their families as well. Community service is applicable to offences punishable by a maximum of up to two years imprisonment in Uganda, and indeed the majority of offenders who go to prison serve a period of less than two years. These are the people who are expected to benefit from community service, but somehow, most of judicial officers still increasingly use imprisonment as the most popular form of punishment. Other jurisdictions such as South Africa have held that imprisonment should be imposed as a last resort. A noteworthy example is a case regarding community service as a sentence *S v Abrahams*.¹⁸¹ Conradie J held that community service is not a sanction that can only be applied as a sentence for less serious offences. Whilst this type of sentence is not suitable for all offenders, there are some offenders who have committed serious offences but who would nevertheless be suitable for community service. The Judge was of the view that the courts should use imprisonment as a means of punishment only if the offence is so serious that non-custodial punishment would discredit the criminal justice system with the community.¹⁸²

¹⁷⁸ Wells of Hope Ministries a Children Welfare Mission in Namugongo Uganda, is one of the NGOs assisting children whose parents are in jail. <www.wellofhope.org>

¹⁷⁹ E-mail communication from Kenneth Barungi to the writer on 23 September 2008.

¹⁸⁰ Census of Prisoners in Central Government Prisons, 18 August 2003.

¹⁸¹ 1990 (1) SACR 172 .

¹⁸² 1990 (1) SACR 172 .

In *S v Miners*¹⁸³ or an example, the court declined the use of community service on the grounds that the offender was aggressive and uncooperative.

In Uganda, the CSA and regulations made there under provide for a reasonably coherent statutory framework for the non-custodial sentence. The guidelines contained in the regulations provide for a range of factors that a judicial officer should take into consideration while sentencing. Some of the factors include: - whether the family of the offender remains entirely dependant on the offender for upkeep during the period of community service; whether the offender is employed and likely to lose employment if placed under community service orders.¹⁸⁴ If the sentencing officer finds an unusual, mitigating or aggravating circumstance not reflected in the guidelines, he has the latitude to depart from the prescribed sentencing range for valid reasons stated in open court and such decision is subject to review or appeal. The best interest of the child should be a guiding principle in sentencing.

In *M v The State*¹⁸⁵ the applicant, was a 35-year-old single mother of three boys aged 16, 12 and 8. She was convicted for a second time, while out on bail, on multiple counts of credit card fraud, the total amount of which involved R29 000, and sentenced to four years' direct imprisonment in the Regional Court. She successfully appealed against the conviction on one of the count to the High Court, which converted her sentence to one of imprisonment from which she could be released under correctional supervision after serving eight months of imprisonment. After unsuccessfully petitioning the Supreme Court of Appeal for leave to appeal against the order of imprisonment, she applied the Constitutional Court for leave to appeal. Sachs J, with 6 other Judges concurring, held that focused and informed attention needed to be given to the interests of children at appropriate moments in the sentencing process. The objective was to ensure that the sentencing court was in a position adequately to balance all the varied interests involved, including those of the children placed at risk. This should become a standard preoccupation of all sentencing courts. In paragraph 17 of judgement, the Judge stated that regard accordingly has to be paid to the import of the principles of the CRC as they

¹⁸³ 1992 (2) SACR 359.

¹⁸⁴ Sec 9 CSA.

¹⁸⁵ Constitutional Court Of South Africa 53/06.

inform the provisions of section 28 of South African Constitution in relation to the sentencing of a primary caregiver. To the extent that the current practice of sentencing courts fell short in this respect, proper regard for constitutional requirements necessitated a degree of change in judicial mindset.

It has also been argued that community service would go a long way in maintaining family relationships and redressing the adverse impact occasioned on the children whose parents are incarcerated. Today, there are evidently growing numbers of prisoners and there is also a group of individuals whose lives have been grossly interfered with that few people stop to think about – the children. The damage done to the children when a parent is imprisoned is probably more serious than that done to an adult. Once the children are deprived of the care, protection and support that they should receive from their parents, a number of their rights are violated. Rights implicated have been discussed in chapter three above and include the right to education, health, care and deprivation of provisions from their caregivers. A number of children display emotional trauma, depression, feelings of anger and guilt, flashbacks about their parent's crimes or arrests.¹⁸⁶ Hagan and Dinovitzer go on to say that, the disturbances that these children experience due to separation from their primary caregiver and the difficult life that follows impact their physical and mental health.¹⁸⁷

Female offenders demonstrate need for special consideration while sentencing because of the role they play in nurturing and tending the children. The Protocol on the Rights of Women in Africa takes cognizance of this in Article 24. State parties are obliged to protect women who are heads of families and also ensure that pregnant and nursing women in detention are provided with an environment suitable for their condition and the right to be treated with dignity. In the case of *Hugo v President of the Republic of South Africa and Another*,¹⁸⁸ special remission of sentences was granted to certain categories of prisoners. Amongst the category qualified were all mothers in prison on 10 May 1994,

¹⁸⁶ Hagan and Dinovitzer

¹⁸⁷ Ibid

¹⁸⁸ (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708, pursuant to his powers under section 82(1)(k) of the interim Constitution, Act 200 of 1993, the President of South Africa signed a Presidential Act No. 17 which provides for special remission of sentences

with minor children under the age of twelve (12) years. The respondent would have qualified for remission, but for the fact that he was the father (and not the mother) of his son who was under the age of twelve years at the relevant date. He challenged the presidential prerogative of releasing mothers of small children but not fathers, as being discriminatory on the grounds of sex.

Goldstone J in his lead judgement noted: The reason given by the President for the special remission of sentence of mothers with small children is that it will serve the interests of children. To support this, he relies upon the evidence of Ms Starke (National Director of the South African National Council for Child and Family Welfare) that mothers are, generally speaking, primarily responsible for the care of small children in society. Although no statistical or survey evidence was produced to establish this fact, I see no reason to doubt the assertion that mothers, as a matter of fact, bear more responsibilities for child-rearing in our society than do fathers. This statement, of course, is a generalisation. There will doubtless, be particular instances where fathers bear more responsibilities than mothers for the care of children. In addition, there will also be many cases where a natural mother is not the primary care giver, but some other woman fulfils that role, whether she be the grandmother, stepmother, sister, or aunt of the child concerned. However, although it may generally be true that mothers bear an unequal share of the burden of child rearing in our society as compared to the burden borne by fathers, it cannot be said that it will ordinarily be fair to discriminate between women and men on that basis.¹⁸⁹

The above case highlights that parenting has tremendous burdens and responsibilities it bears on for child upbringing. Although there were dissenting views on some issues, all judges of the Constitutional Court of South Africa acknowledged that the President released mothers of young children because he was concerned for the welfare of children and mothers play a 'special role . . . in the care and nurturing of young children'.¹⁹⁰ This position resonates not only in South Africa but also across Uganda in particular and Africa in general. There are, of course, some fathers who share fully in the

¹⁸⁹ Paragraph 37 judgement.

¹⁹⁰ judgement of Goldstone, O'regan, Kriegler (JJs) paras 39, 109 & 111



responsibilities of child rearing and in most cases are the sole breadwinners in the family. It is for this reason, that the current practice in the Uganda criminal justice system that is geared to sending more people to be locked up indiscriminately and at an exponential rate, needs to be reconsidered.

Furthermore, the situation of women giving birth in prison, women prisoners accompanied by small children or children separated from their mothers because of imprisonment is one of the most difficult questions regarding imprisonment. Some countries make special provisions for prisoners who are mothers: in the Russian Federation, for example, a custodial sentence may be postponed and subsequently cancelled or reduced for a pregnant woman or a woman with children under the age of fourteen unless her sentence is for more than five years.¹⁹¹ It is ironic that in Uganda, the answer to decreasing the problem of the growing incarceration of offenders is humane, more effective and less costly. The solution is to put as many minor and first time offenders to do community service. This keeps offenders in the community closer to their children, giving them a much better chance of not reentering that revolving door.

Advocates of alternative sentencing argue that incarceration is not more effective in preventing reoffending¹⁹² and that rehabilitation programs have been shown to be more effective when delivered in a community setting.¹⁹³ Effectiveness can be measured, among other issues, in terms of avoiding exposure to undesirable effects and promoting the successful re-integration of offenders into the community.¹⁹⁴ The proven ineffectiveness of incarceration at reducing recidivism and the perceived effectiveness of community corrections should lead the Uganda justice system to commit to employing the prescribed community alternative.

As a restorative form of justice, Community Service also presents opportunities that are more responsive to the needs of offenders, victims and communities. Offenders in the

¹⁹¹ Female Prisoners and their Social Reintegration' United Nations New York, (2007) UNODC Project: AFG/S47-Developing Post-Release Opportunities for Women and Girl Prisoners

¹⁹² Y Vyas, 'Alternatives to imprisonment in Kenya' (1995) 6(1), *Criminal Law Forum*, 73-102.

¹⁹³ P Gendreau & D Andrews 'Tertiary prevention: What the meta-analyses of the offender treatment literature tell us about "what works."' (1990) 32(1) *Canadian Journal of Criminology*, 173- 184.

¹⁹⁴ Ibid

program are held accountable in their own communities and are assisted in taking responsibility for their actions. The offender is provided an opportunity to reconcile with the victims and re-integrate into society; he is also able to pursue and/or maintain employment opportunities. Furthermore, family ties are better maintained when an offender is serving his sentence yet residing at his or her home rather than in prison.

Research has shown that sustained family ties help to improve inmate behaviour.¹⁹⁵ In New South Wales Australia, the Department of Correctional Services acknowledges that: '... people who maintain contact with their families are less likely to re-offend than people who do not. And we recognize that the types of relationships that people have with their families are very, very important, particularly relationships with children. People when they come into custody, are dislocated from their families and from their social support network. One of the challenges for people when they return to the community after they have been in custody is to get those relationships operating again and, therefore, the visits process is a very, very important part of that.'¹⁹⁶

All said, Community Service is an obvious improvement over imprisonment for humanitarian reasons. The program is considered to be humanitarian because it avoids many of the negative effects of incarceration, including stigmatization, damage to physical and/or mental health and constant exposure to criminal peers.¹⁹⁷ The punishment provides less serious offenders with alternatives that let them continue with various aspects of their lives, remain in their homes and continue with their jobs, while at the same time carrying out the work beneficial to the community. Traditional sentencing does not accomplish the above stated goals; it simply means prison terms for offenders, for a minor or major offence. While this practice may be seen to provide 'adequate justice', often offenders and society are better served through alternative sentences. Prisons at times do more harm than good. Alternative sentencing does not only offer magistrates the opportunity to use discretion when sentencing offenders; it offers them a chance to employ a programme that helps offenders to become useful members of society

¹⁹⁵Taylor (n 172 above).

¹⁹⁶ L Grant, Assistant Director of the Department of Corrections, New South Wales, Australia to the General Purposes Committee No 3 on 17 November 2006.

¹⁹⁷ Vyas, (n 196 above).

while at the same time sparing their families the adverse effects that imprisonment occasions on them.

4.3 Shortcomings of Alternative Sentencing

Adversaries to the Community Service program may argue that it is a time consuming process and may end up costing more than traditional incarceration. Birungi notes that it has some weaknesses that render it to be criticised as an intervention programme.¹⁹⁸ For instance, the sentencing procedure followed from the start of making the social inquiry report regarding the status of the offender up to the time the case is brought to courts and an order is passed is long. This partly explains why judicial officers prefer imprisonment as a penal sanction.

Another potential barrier to the use of alternatives to imprisonment is judicial reluctance to impose community service. In Kenya, for example, despite a wide variety of sentencing options available, the courts overwhelmingly impose terms of imprisonment.¹⁹⁹ Judges are often reluctant to impose community correction alternatives due to negative community sentiment towards them. The public tends to disregard community corrections as real sentences; to much of the public, the very word 'sentence' implies incarceration.

Furthermore, though community service has been referred to as an alternative to imprisonment; it has often failed to reduce prison populations. Indeed, alternatives to imprisonment may have minimal impact on the prison population if failures on community based sanctions are automatically given prison terms.

4.4 Conclusion

Although community service may be criticized that it only caters for certain categories of offenders especially those who commit minor offences, it may be restated that most of the prisons are filled with offenders who have committed minor offences. First time and minor offenders should automatically qualify for community service because it is easy for

¹⁹⁸Birungi (n 71 above).

¹⁹⁹ Ibid

them to realize their mistakes and reform. There is no specific bar to imposition of the sentence especially for non-violent crimes. The continued indiscriminate use of imprisonment defeats the objectives of introducing this reform in the criminal justice system.

Finally, if the Judiciary focuses attention on children and families at the centre of criminal justice system, others will listen. If there is a way to interject issues affecting children of incarcerated parents in the sentencing process, this could lead to more substantial and positive changes both in the eyes of the public and other stakeholders in the criminal justice system.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSIONS

5.1 Introduction

The chapter presents the summary conclusions and recommendations of the study carried out on alternative sentencing of parent offenders and its impact on the criminal justice.

5.1 Conclusions

The criminal justice system has traditionally focused on the offender, his or her victims and the public safety of the community, ignoring the vast and growing number of other victims, the children. Children whose parents are imprisoned have been of less concern to the majority of the population, the criminal justice system and to policymakers in Uganda. Yet the children whose parents have been incarcerated are challenged by family instabilities, limited access to education, medical care, and other forms of protection. The children are vulnerable to a multiplex of negative dispositions that can lead to absent positive intervention, to school failure, delinquency and intergenerational incarceration. On the other hand, the personal and social costs are also high in other words the children are left helpless. There is need for implementation of a major public education campaign that makes the issue of children with incarcerated parents 'everyone's issue.' In conjunction with this, encouraging alternative sentences focused on policy and system reform opportunities. Community service programme in Uganda and other non-custodial measures like fine, probation and suspended sentences should be implemented. Otherwise, community service alone may not have the much-needed impact. A broader picture of a host of advantages presented such as reduction of prison overcrowding and savings on government expenditures should motivate the judiciary to apply the measures.

There is a framework of child caring institutions in Uganda. Efforts of organizations like Wells of Hope Ministries and Prison Fellowship Uganda should be lauded because their work is indicative of the fact that there is a wave of growing concern about children and families with imprisoned parents. This shows a need for further concern to develop programs that raise awareness and help in training stakeholders who interact with children and families with incarcerated parents, such as police, prisons, juvenile justice

and child welfare to build public will to address issues affecting children with incarcerated parents. The judiciary while presented with an opportunity before arbitrarily sentencing offenders to imprisonment, to inquire about whether the person about to be incarcerated has a family totally dependant on him or not in order to allow for considerations of the best interest of the child.

It can be concluded that, community service is an alternative to imprisonment whose use should widely be encouraged in the criminal justice system of Uganda as a reform measure for the good of the community. This is because children are innocent and have no upper hand when their parents are imprisoned. Alternative sentencing offers offenders an opportunity to remain with their families and gives them a chance to continue performing their own activities except for that time when they are required to go and serve their sentences. With alternative sentencing at work, parent offenders can be able to take care of their children while ensuring that justice is done. This calls for embracing of the Community Service Act which has a provision for alternative sentencing.

By creating a new array of sanctioning programs, sentencing will become more just and effective for offenders, enhance public safety, increase local corrections capacity, restrain growth in prison and jail populations, and reduce costs.

2 Recommendations

In order to reduce the custodial related problems, usually reflected in form of sexual abuse and exploitation in Uganda, the following should be done;

2.1 Raise Awareness on Discretion in Sentencing of Parent Offenders

There is need to raise awareness by the Judicial Institute in due course of its refresher courses to consider children as they make sentencing decisions. Besides, encouraging them to use what discretion they already have would go a long way towards protecting children from 'doing time' for a parent's crime.

5.2.2 Policy Development into the Inquiry of Information of Prisoners

There is need for the law enforcement officers to intervene in children's lives when their parents are arrested and incarcerated to provide a clear official policy about how officials should respond. There is need to develop a policy in the justice systems to inquire, request or collect information about prisoners' families and only then can judicial officers be guided to make an appropriate decision well aware of all circumstances of a case.

5.2.3 Introduce Community Service Throughout the Country

There is need for the judiciary needs to revitalise the implementation of community service throughout the country. True, the programme relies on well-overstretched officers and this contributes to the laxity of the implementation of the programme, however with concerted effort a lot more can be achieved in strengthening the performance of the programme.

5.2.4 Promoting Research Mechanisms to Widen Statistical Base

There is need for more research to be undertaken on parent offenders to examine the impact of parental incarceration on different types of children and family situations, looking at factors such as age and gender; the sex of the incarcerated parent; and the relationship with that parent prior to incarceration. The availability of information on criminal justice reform and, more specifically, on alternative sentencing in Uganda, is problematic. The analysis of children of incarcerated parents was primarily based on reports and not on any empirical evidence, studies, or surveys of prisoners in Uganda. This limited the scope and discussion of this research.

2.5 Sensitize Community on Addressing Children's Needs

Training stakeholders in the criminal justice system such as police officers to understand and address children needs when their parent is arrested is an important first step. At a minimum, police could be trained to inquire about minor children, and to rely in the absence of evidence on the arrested parent as a first source of information about potential caretakers. This would minimize both the possibility of children being left alone, and exposed to risks that may befall them.

BIBLIOGRAPHY

Textbooks

Kampfner, Christina J. "Post-traumatic stress reactions in children of imprisoned mothers" in Katherine Gabel and Denise Johnston, M.D. eds., *Children of Incarcerated Parents*, Lexington Books. 1995.

D Golash, *Punishment: An Institution in search of a moral grounding*, New York: Peter Lang Publishing, (1996) 11.

Journal Articles

L Muntingh 'Alternative sentencing' in Jeremy Sarkin (ed) *Human Rights in African Prisons* (2008) 178.

Mwanje JBA, 'Background and Overview of Community Service in Uganda' (2000) Kampala.

P Gendreau & D Andrews 'Tertiary prevention: What the meta-analyses of the offender treatment literature tell us about "what works."' (1990)32(1) *Canadian Journal of Criminology*, 173- 184

Human Rights Watch: *Collateral Casualties: Children of incarcerated drug offenders in New York*, Vol.14, No.3 (2002) p6.

CJ Mumola, 'Incarcerated Parents and Their Children' (Washington, DC: US Department of Justice, Bureau of Justice Statistics, NCJ 182335, (2000).

J Travis, et al 'Families left behind: the hidden costs of incarceration and Reentry' (2005).

CJ Mumola, 'Incarcerated Parents and Their Children' (Washington, DC: US Department of Justice, Bureau of Justice Statistics, NCJ 182335, (2000).

Freeman, Richard. 1992. Crime and the Employment of Disadvantaged Youth, in *Urban Labor Markets and Job Opportunity*, Peterson, George and Wayne Vroman (eds.), Urban Institute: Washington, DC., 171-192

M Freeman 'Why it Remains Important to take Children's Rights Seriously' (2007) 15 *Inter. Journal of Children's Rights* 5-23.

BB Woodhouse, 'Hatching The Egg: A Child-Centered Perspective on Parents' Rights' (1993) 14 *Cardozo Law Review*, 1747-1864.

MB Clinard, 'Sociology of deviant behaviour' (1971) 3.

Conference Papers

Katureebe B (1996) Prisons are for everybody, Address by Uganda's then Minister of Justice and Attorney General at the Pan African Seminar on Prisons Conditions in Africa, Kampala, Uganda 19.

M Liebmann, 'Restorative and Community Justice: Inspiring the future' Winchester International Conference release 28-31 March 2001.

Amos Wako, (then Attorney General of Kenya) Address to conference in December 1995).

JBA Mwanje, 'Background and overview of community service in Uganda' (2000) Paper presented at the planning workshop on Community Service at Sheraton Hotel, Kampala.

Dissertations

Dissel A (1996) Prison conditions and human rights, Paper delivered at Pan-African Seminar, Kampala, Uganda, 19 -21 September 1996 , p 39.

BR Ngabirano 'The penal system in Uganda' 'Community service as alternative to imprisonment: a case study of Mpigi district' (2003) A dissertation submitted to the faculty of law Makerere University (unpublished) 9-11.

Newspapers

The Daily Monitor News Paper, '30,000 inmates languish in prisons as shortage of judges creates case backlog' The Monitor Publications, Uganda 16th August.

The Monitor, 300 years to clear case backlog – Judiciary' Monitor Publications Uganda, December 16, 2007.

The Monitor News Papers, Pallisa crime suspects walk 8 miles to court' The Monitor Publications December 16, 2007.

Websites

RJ Cypser, 'The payback in reducing recidivism, and thereby reducing crime and cost.' New York Chapter of CitizensUnited for the Rehabilitation of Errants. <www.bestweb.net/-currency>.

C M Mwanguhya, 'Prisoners kids are potential criminals' www.monitor.co.ug

J Hagan & R Dinovitzer, *Collateral consequences of imprisonment for children, communities & prisoners.* (1999) 26.

Prisoners for no crime' Monitor News Paper, Uganda www.monitor/achives.co.ug

R Taylor 'Women in prison and children of imprisoned mothers'(2004).

Prison conditions in Cambodia 2007: The story of mother and child' <<http://www.licadho.org>> (accessed 20 September 2008).

OUNHCR <http://www2.ohchr.org/english/bodies/crc/crcs49.htm>

M Alejos, 'Babies and small children residing in prisons', Quaker United Nations Office, Geneva, 2005.

Female Prisoners and their Social Reintegration' United Nations New York, (2007)
UNODC Project: AFG/S47-Developing Post-Release Opportunities for Women and Girl Prisoners

Y Vyas, 'Alternatives to imprisonment in Kenya' (1995) 6(1), *Criminal Law Forum*, 73-102.

E Clive, 'Crime and Punishment, History of' Online Encyclopedia 2008 Microsoft Corporation <http://au.encyarta.msn.com>

E Clive, 'Crime and Punishment, History of' Online Encyclopedia 2008 Microsoft Corporation <http://au.encyarta.msn.com>

A Dissel, 'Prison Conditions in Africa' (2001) <http://www.csvr.or.org.za/papers/papdis10.htm>

World Prison Population List' International Centre for Prison Studies, King's College London, <http://www.visionofhumanity.org/gpi/results/uganda/2008/>

The National Community Service Programme <http://www.un.org/special-rep/ohrlls/ldc/MTR/Uganda.pdf>

Uganda prison system"; Available at <http://www.country-data.com/cgi-bin/query/r-14175.html>

<www.prisonreform.org> (accessed on 6 August 2008).

Penal Reform briefing paper No 3 (2007) 'Women in prison: incarcerated in a man's world' <http://www.penalreform.org/resources/brf-03-2007-women-in-prison-en.pdf>

Human Rights Watch Global Report on Prisons August 2008
<<http://www.hrw.org/prisons/africa>>

US Department of State report for 2002
<http://www.state.gov/g/drl/rls/hrrpt/2001/af/8409.htm>

World Prison Population list,' International Centre for Prison Studies,
<http://www.visionofhumanity.org/gpi/results/uganda/2008/>

Penal Reform briefing paper No 3 (2007) 'Women in prison: incarcerated in a man's world' <http://www.penalreform.org/resources/brf-03-2007-women-in-prison-en.pdf>

Children of Prisoners Library for Health Care Providers. www.fcnetwork.org

A Dissel, 'Prison Conditions in Africa' (2001)
<http://www.csvr.or.org.za/papers/papdis10.htm>

A Forooeddin, et al 'Physical and Social circumstances of children in Iran affected by the incarceration of the mother' *International Journal of social welfare* (2008).
<http://www.interscience.wiley.com/journal>

C Wildman, 'Parental Imprisonment, the Prison Boom, and the Emergence of a Novel Form of Childhood Disadvantage' Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, (2007)
http://www.allacademic.com/meta/p175674_index.html

The Kadoma conference, 24 to 28 November 1997.

Compendium of the United Nations Standards and Norms in Crime Prevention and Criminal Justice, 'Alternatives to imprisonment and Restorative Justice', 128.
http://www.unodc.org/pdf/compendium/compendium_2006_part_03_01.pdf

Ayittey, Human Rights Watch Global Report on Prisons August 2008, 130 – 131
<http://www.hrw.org/prisons/africa>

L Parker, 'Community Service in Uganda' (2002).
http://www.restorativejustice.org/rj3/Features/April/Community_service_in_Uganda.htm-20k

Zvekic Davies 'Broken Bonds: understanding and addressing the needs of children with incarcerated parents' (2008) www.urban.org

R Byaruhanga 'Unclogging Prisons - The Way Forward' (2007) presented at an annual Judges Review conference in Jinja.

UHRC Tenth Annual Report (2007) p 30.

DS Nsalasatta, 'Information on the Uganda Prison Service' (2003) 1 *Uganda Living Law Journal*, 128-13.

C Birungi, 'Community service as an Alternative to imprisonment: A case study of Masaka and Mukono Districts' (2005). Mini-Thesis Presented to the Institute for Social Development Faculty of Arts, Univ. of Western Cape (Unpublished).

Free Encyclopedia http://en.wikipedia.org/wiki/Corporal_punishment
EH Johnson, *Journal of Crime, correction and society* (1968) p 429.

T Mwene-Mushanga, *Crime and Deviance: An Introduction to Criminology*, (1988) 34.

Murder Victims' Families for Human Rights (MVFHR) an international, non-governmental organisation of family members of victims of criminal murder, terrorist killings, state executions, extrajudicial assassinations, and 'disappearances' working to oppose the death penalty from a human rights perspective and death penalty links

NG Vigne, et al 'Broken bonds Understanding and addressing needs of incarcerated parents' (2008). Urban Institute, JusticePolicy Centre, Washington.
<http://www.aecf.org/~media/Pubs/Topics/Child>

The NCC as established in 1992 to oversee implementation of Uganda National Plan of action for Children (UNPAC).

L Berk, *Infants and Children: Prenatal Through Middle Childhood* (2005) 58.

B Bloom, 'Imprisoned Mothers' in K Gabel and Denise Johnston (eds) *Children of Incarcerated Parents*, (1995) 21.

C Jose-Kampfner, 'Post-Traumatic Stress Reactions in Children of Imprisoned Mothers' in K Gabel & D Johnston (eds) *Children of Incarcerated Parents* (1995) 34.

BBC News UK, Family visits 'key for prisoners' 5 December 2007
http://news.bbc.co.uk/2/hi/uk_news/7126762.stm

K Donna, 'One In, All In: The Imprisonment of Offenders, Families and Children' Paper presented at the annual meeting of the American Society of Criminology, Los Angeles Convention Centre, CA, (Nov 01, 2006)
http://www.allacademic.com/meta/p126757_index.html

24 August 2008- Daily Monitor News www.monitor.co.ug

NG Vigne, et al 'Broken bonds Understanding and addressing needs of incarcerated parents' (2008). Urban Institute, Justice Policy Centre, Washington.
<http://www.aecf.org/~media/Pubs/Topics/Child>

J Crawford, 'Alternative sentencing necessary for female inmates with children' (2003) 65(3) *Corrections Today*, 8 to 10
<http://www.allbusiness.com/public-administration/justice-public-order/983194-1.html>

APPENDICES

Interview Guide

IDENTIFYING INFORMATION

- A) Interviewing Date:.....
- B) Name, Sex, Age, Occupation
- C) Interview number 1-5
- D) Survey Interview

Guiding areas

- i) What do you understand by the term alternative sentencing?
- ii) Why is there need for alternative sentencing of parent offenders?
- iii) What is the impact of parental imprisonment on children?
- iv) How best can alternative sentencing be carried in substitution to the imprisonment?
- v) How can alternative sentencing impact on the criminal justice system?
- vi) What possible remedies would you suggest for overcome challenges in alternative sentencing?