

A CRITICAL ANALYSIS OF IMPRISONMENT AS A FORM OF PENAL  
PUNISHMENT IN UGANDA; A CASE STUDY OF LUZIRA PRISON

BY

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LLB/41019/91/DU

A RESEARCH DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN  
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF  
A BACHELORS DEGREE IN LAW OF KAMPALA  
INTERNATIONAL UNIVERSITY

AUGUST, 2018

## DECLARATION

I declare that this research proposal is my original work and has never been submitted for any other academic award. Where the works of others have been cited acknowledgment has been made.

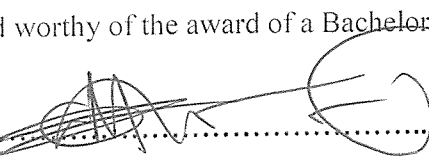
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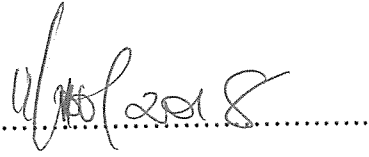
## APPROVAL

I certify that the work submitted by this candidate was under my supervision. His work is original and worthy of the award of a Bachelors degree Law.

Signature.....



Date .....



Emmanuel Muwonge

SUPERVISOR

## DEDICATION

I dedicate this work to my mother, Menani Miriam for her undying efforts to educate me of which it has been a challenge may the good Lord bless you abundantly. Words cannot express it all Bob Menani you have been a father to me may the good Lord shower upon you endless blessings. Then BrotherMutabazi Gideon and SisterKabatoroSlyvia you have always been there whenever I needed you God bless you for that undying love. Not forgetting my lovely Wife, Komuhangi Rose for being patient and the gift of tolerance while at the Law School. Lastly I would like to dedicate to my lovely daughters Amanyisa Miriam and AsinguraPrisillahmay the good lord help me to liberate my children when they are still young.

## ACKNOWLEDGEMENT

I acknowledge my parent and my supervisor for their support may the living God bless you all.

I also acknowledge my beloved family especially for their constant encouragement and making me to believe that where there is a will, there will always be a way. Thanks a lot for your advices, prayers and always being there for me during all my difficult times in my life at the university. Finally, I acknowledge this work to my Supervisor counsel Muwonge Emmanuel for the guidance during this research and all the lecturers at the school of Law for being there whenever I needed them. I pray that God reward you for all you have done.

## LIST OF ACRONYMS

A.C	-	Assistant Commissioner of Prisons
E.A	-	East Africa
EDF	-	European Development Fund
Edn	-	Edition
Hon.	-	Honorable
J.	-	Justice
JJA	-	Justices of Appeal
JJ.S.C	-	Justices of the Supreme Court
MAC	-	Mission After Custody
N.G.O(s)	-	Non-Governmental Organizations
No.	-	Number
O.C	-	Officer in Charge
P.W.R.	-	Principal Welfare and Rehabilitation Officer
P <sub>g</sub>	-	Page
R.E	-	Revised Edition
R.P.C	-	Regional Prisons Commander
S.S.P	-	Senior Superintendent of Prisons
T.L.R	-	Tanzania La Reports
UPS	-	Uganda Prisons Service
K PC	-	Mauritius Reports of Privy Council Decisions
TB	-	TUBERCOLOSIS

## **LIST OF STATUTE CONSTITUTION AND DOMESTIC LEGISLATIONS**

Constitution of Uganda 1995

(XXI). 21 U.N (3AOR Supp. (No. 16)52, U.N Doc A .16316 (1967), adopted by the United (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

### **Internal Institutions**

International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A  
Kampala Declaration on Prison Conditions in Africa, 1996.

Nations General Assembly on December 16. 1966, and came into force from March 23. 1976.

Prisoners (Earning Rates and Gratuity) Rule, 2000

### **Subsidiary Legislation**

The Penal Code (Amendment) Act 2007, Act No. 8 of 2007

The Penal Code of Uganda 1950, Chapter 120 of the Laws of Uganda

Trial on Indictments Act 1971, Chapter 23 of the Laws of Uganda

Uganda Prisons Act 2006, Act No. 17 of 2006

United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C

### **List of Statutes from Foreign Jurisdictions**

The Kenya Prisons Act 1963, Chapter 90 of the Laws of Kenya.

The South Africa Correction Services Act, Act Number 111 of 1998.

The Tanzania Prisons Act 1967, Chapter 58 of the Laws of Tanzania, RE 2002.

The Tanzanian a Parole Boards Act 1994, C chapter 400 of the Laws of Tanzania R.E 2002

## LIST OF CASES

Balidawav. Officer in Charge Kigo prison and 3ors [Misc cause No.022 of 2013]  
Bushoborozi v Uganda [10, July, 2015]  
French v Bencroft 259 A.2d 778 [1969]  
Malawi Africa association and Another V Mauritania African Commission on Human Rights [200  
Natuwemba and anor V Uganda [Criminal Appeal No.014]  
Nobert Mao v AG of Uganda [Constitutional Petition No.9 OF 2002]  
R v Amos karugakaratu [2006 High court case No.12]  
Simon Musoke V Republic [1958] EA 71  
Ssekitoleko v Uganda [1967] EA 531  
State v Makwayane and Mchunu [1995]  
State v. Shaw [1902] 64 S.C 551  
Uganda v Abella [Criminal Appeal No.066 OF 2010]  
Uganda v Atwine [Criminal Sessions case No.0155 OF 2015]  
Uganda v chadiga [Criminal sessions case No.0020 OF 2018]  
Uganda v Chandiga [Criminal Sessions case No.0020 OF 2018]  
Uganda v Moini [Criminal Sessions case No.007 OF 2018]  
Uganda v Nakiryowa [Criminal sessions case No.0172 OF 2015]  
Uganda v ndifunamoses [Criminal Sessions Case No. 004 OF 2009]  
Uganda v Ojandu [April 2017]  
Uganda v Oryema [Criminal Sessions case No.0097 OF 2016]  
Uganda v Solomon Odaba and Anor [1974]  
Uganda v Ssekamatte [Criminal sessions case No.170 2012]  
Uganda v. Kyeyune [HCT-03-CR-SC-137 OF 2006]



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## CHAPTER ONE

### INTRODUCTION AND HISTORICAL BACKGROUND OF IMPRISONMENT IN UGANDA

#### 1.0 Introduction

This research study intends to cover general and specific objectives of imprisonment. The constitution provides that no person shall be deprived of personal liberty except in any of the following; in execution of a sentence or order of court, whether established for Uganda or another country or an international court or tribunal in respect of a criminal offence of which that person has been convicted or of an order of court punishing the person of contempt of court. A person arrested, restricted or detained shall be kept in a place authorized by law. Where a person is arrested in respect of criminal offence, the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable. A person unlawfully arrested restricted or detained by any other person or authority whether it is the state or any agency of the state or other person or authority. No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.<sup>1</sup>

#### 1.1 Definitions

Imprisonment: This is coercion exercised upon a person to prevent the free exercise of his powers of location. Human rights are often guaranteed by law, in the forms of treaties, general principles and other sources of international law, which lay down obligations of governments to promote and protect human rights and fundamental freedoms of individuals or groups. However Habeas corpus proceedings are to ensure that a prisoner can be released from unlawful detention that is detention lacking sufficient cause or evidence or detention. The detention must therefore be forbidden by the law such an application as the instant one does not necessary protect other rights such as entitlement to a fair trial.<sup>2</sup>

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<sup>1</sup> The Constitution of the Republic Of Uganda [Article 23 and 24]

<sup>2</sup> *Balidawa v. officer in charge kigo prison and 3 or* (December 2013)

The failure of the conditions of ordinary imprisonment to change behavior generally and the demonstration of substantial coping deficits among prisoners in particular, are both justification for increased adoption of treatment programs aimed at behavior change. More specifically the data indicate that programs should begin at the start of a prison term rather than later, and they also eliminate some of the particular targets for change. These all justify the conclusion that the empirical study of the process of imprisonment and the behavioral precursor of criminal actions can help to maximize the effectiveness of treatment programs.<sup>3</sup>

Criminal sentence that run at the same time, as the opposite to where consecutive sentences would unduly as a judge may sentence a convicted criminal to sentences that run concurrent beginning the same time and credit is provided for each sentence. When separate criminal sentences run concurrent at the same time for example two five year sentence will run and the same time at the end of five years.<sup>4</sup>

The commissions finding on a violation of the positive obligations imposed are significant. Furthermore the commission found that acts would violate socio-economic rights (denial of food, health services) and constituted violation of civil and political rights are a clear illustration of the indivisibility and interdependence of such rights. Finally the commission emphasized that the responsibility of the state in relation to the right to health is 'frightened' incase where the individual is incarcerated.

It is not a necessary part of the definition that confinement should be in a place usually appropriated to that purpose. It may be in locality used only for the specific occasion or it may take place with the actual application of any physical agencies as restrained but by verbal compulsion and the display of available force. Formable detention of a man, or control over his movements, is itself imprisonment.<sup>5</sup>

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<sup>3</sup> *Edward Zamble and Frank Apporino) (1990)*

<sup>4</sup> *Malawi Africa association and another v. Mauritania*

<sup>5</sup> *Pike v. Hanson*

## **1.2 The brief historical perspective of the prison system in Uganda.**

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, with the Uganda legal system. It was only in 1958 that the first comprehensive legislation on prisons came with existence with the passing of the prison ordinance of 1958 which sought to consolidate and amend the laws relating to prisons. 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 labor.

During the 1970's prisoner abuse became increasingly as a common practice to civilians and military prison conditions deteriorated beyond imagination. This persisted throughout the 1980's. In 1987, National Resistance Movement allowed the international committee of Red Cross (ICRC) to observe the conditions of prisoner in civil prisons. This undertaking initiated a process of slow but steady prison reforms in Uganda and since then there has been significant process in relation to the reformation of the prison system to bring it in the line with internationally accepted standards. A very important development has been the passing of the Prisons Act Cap 17 of 2006. The Prisons Act emphasizes prisoner's rights and is aligned to the 1995 Constitution of the Republic of Uganda and the international and regional human rights instruments ratified by Uganda.<sup>6</sup>

## **1.3 Objectives of study**

The main objective of this study is to weigh the effects of imprisonment and observe whether it is consistent with the legitimate penal objectives of the correctional system. Thus viewing how it is reformative to the prisoners and how different its values are for prospective criminals.

## **1.4 Statement of the problem.**

Imprisoning individuals who break the law has many goals. Imprisonment shows society's abhorrence for certain antisocial behaviors and incarceration resources individuals from the community for some time. Most offenders however are eventually released from prison. Thus,

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<sup>6</sup> [Prisons Act cap 17, UNSMR, and The Constitution of the Republic of Uganda]

imprisonment like any other form of punishment aims at the rehabilitation of the offender from engaging in further criminal behavior. Therefore, imprisonment has become a fairly common consequence of the law.

It is notable that, despite the positive goals of imprisonment mentioned above, it goes without mention that the conditions with which the prisoners are sometimes subjected are unconstitutional. For example subjecting prisoners to beating is common practice yet it is against the provisions of Article 24 of the 1995 constitution of the Republic of Uganda, detention of a suspect for over 48 hours before being produced to court for hearing is unconstitutional common practice and detention of a prisoner in a place rather than that authorized by the law to mention but a few are some of the evils which are still monopolist in our penal system. Thus the statement of the problem seeks to analyze the extent with which some of these evils serve to defeat the original penal objective of imprisonment and how far it has achieved its objective and find appropriate recommendations.

### **1.5 Scope of the study**

My study intends to focus within the confines of Kampala district and specifically to mention, Luzira prison is the major sample of the study area from which I intend to draw a conclusion which is a general reflection of all other studied prisons in Uganda.

### **1.6 General objective**

The main objective of the research is to investigate, gather and analyze information in regard to the impact of imprisonment on the health rights and well being of prisoners.

#### **1.6.1 Specific objectives**

- To find analyze how imprisonment in general affects the health rights and well being of convicts?
- To investigate on how general hygiene and sanitation in prison has impacted on inmate?
- To investigate and analyze how imprisonment is significant in the society to both inmates and the general society?

#### **1.6.2 Research questions**

- What are the major causes of imprisonment in Uganda?

- What are the limitations of imprisonment in general in Uganda?
- What are the significances of imprisonment in Uganda?

## 1.7 Methodology

This was mainly concerned on how the information was gathered and how effective was the data collection as stated below;

### 1.7.1 Research Design

The study will be qualitative in nature. Qualitative research is a method of inquiry employed in many different academic disciplines, including in the social sciences and natural sciences, but also in non-academic contexts including market research, business, and service demonstrations by non-profits.

Qualitative research method will be used because it gives emphasis on the value of looking on variables in their natural setting where they are commonly found. Qualitative data will be collected with the aid of an interview guide based on the objectives of the study.<sup>7</sup>

### 1.7.2 Study area

The study will be carried out in confines of Kampala district and specifically to mention Luzira Maximum prison is the major sample of the study area. The prison is composed of convicts and sentenced inmates, as well as suspects awaiting trial. It has men's section and women section. The most economic activity done in Luzira Maximum Prison is growing and harvesting Food its preparation and distribution within the prison. Luzira maximum Prison is neighboring Nakawa Division in southeastern Kampala. It is boarded by Butabika in the north, Mutungo and Kitintale to the northwest, Mpanga to the west, Port bell to the south and an inlet of lake Victoria to the east. The prison is approximately 10 Kilometers south east of the city's central business district.

## 1.8 literature review

International Human Rights Standards, expert recommendations and Legal Instruments are used as reference points that serve as a guide to translating what may be considered abstract theory

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<sup>7</sup> According to Mugenda and Mugenda



into practicing medicine in prison requires that clinical competence, which guarantees quality of care, to be linked with a sharp awareness of Health Care Codes and International Standards.

The right to personal liberty and security of a person is guaranteed under the provisions of Article 23 of the 1995 constitution of the republic of Uganda. Crucially this right has been forgotten. Further, there are additional guarantees against preventive and incommunicado detention under (Article 23 (5)), and the order of Habeas corpus is guaranteed as a right Article 23 (a) and 44 (d) which strengthens the remedy.<sup>8</sup>

Several other literatures have been received in the study and they attempt to show some scholars views of the concept of imprisonment as a means of rehabilitation. Thus Zamble and Porporino concluded from their research that “prisons do not produce permanent harm to the psychological well being of inmates “However as a matter of critique, my study has found that there are certain prison conditions where this may not be the case as where inmates are subjected to overcrowding and isolation.

The overall results of the studies have discovered that emotional disruption and adjustment were clearly problems for most inmates during the early stages of their sentences resulting from the dramatic disruptions to their life caused by the many restrictions, and restraints inherent in prison.<sup>9</sup>

The studies have found that during the time span of an inmate’s sentence psychological reactions to imprisonment will often follow a (U-shape) pattern, with the strongest emotional stress reactions occurring at the beginning of the sentence and at the end of their sentence and as the time to be released approaches. This is partly due to the anticipation and feelings of uncertainty about one’s ability to adjust and cope in the outside world again after having adjusted to the prison life. During the middle of the sentence, anxiety is usually quite low and some acceptance of prison life is generally gained. This points out to the fact that imprisonment is not a new concept to our society but stressed its origin way back from the biblical point of view when, it was used by the Pharisees to punish and get rid of Jesus who according to them was below their expectations and failed to relieve them from the Roman dominion.

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<sup>8</sup> The 1995 Constitution of Uganda

<sup>9</sup> Bartol and Bartol. 1994 page 366

A review of related literature on the topic of the Impact of Imprisonment on the Health and Well-being of Inmates was conducted to provide a framework of background information to this study. The primary purpose of this study is to gather, investigate and analyze inmates' perceptions of the impact of imprisonment on their health rights and well-being. Human rights are often guaranteed by law, in the forms of treaties, general principles and other sources of international law, which lay down obligations of governments to promote and protect human rights and fundamental freedoms of individuals or groups. United Nations Declaration on the right and responsibility of individuals, groups and organs of society are to promote rights and fundamental freedoms. It underlines the importance of human rights defenders and provides for the support and protection in their work.

International Conventions on Civil and Political Rights (ICCPR). The rights contained in the covenant include the right to life, the right to be free from arbitrary detention, the rights to fair trial and the freedom of expression and association, as well as to participate in decision making. Then Habeas corpus proceedings are means to ensure that a prisoner can be released from unlawful detention that is detention lacking sufficient cause or evidence. The detention must therefore be forbidden by the law such an application as the instant one does not necessary protect other rights such as entitlement to a fair trial.

The commission's findings on a violation of the positive obligations imposed by Article 16 is significant, furthermore the commission found that acts would violate socio-economic rights (denial of food, health services) and constituted nations of civil and political rights a clear illustration of the indivisibility and interdependence of such rights. Finally the commission emphasized that the responsibility of the state in relation to the right to health is highlighted" incase where the individual is incarcerated.<sup>10</sup>

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<sup>10</sup> Malawi African Association and Another v. Mouritania African Commission on Human Rights [2000]

## CHAPTER TWO

### ANALYSIS OF THE LAW GOVERNING IMPRISONMENT IN UGANDA

#### 2.0 Introduction

There are several statutes that govern prisons in Uganda which include *The Constitution of the Republic of Uganda 1995*, *The prison Act cap 304*, *The Police Act cap 303*, *The criminal Procedure code Act cap 116*, *The Public Order Management Act* and other subsidiary legislations, case law and international regulations on personal liberty as stated below;

#### 2.1 The law governing prisons in Uganda.

*The constitution of the Republic of Uganda 1995* provides for the Sovereignty of the people that all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution. All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.<sup>11</sup>

The Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.<sup>12</sup> Fundamental rights and freedoms of the individual are inherent and not granted by the State. The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons, and<sup>13</sup> All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.<sup>14</sup> It also provides for Protection of right to life that No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

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<sup>11</sup> Article 1

<sup>12</sup> Article 2

<sup>13</sup> Article 20

<sup>14</sup> Article 21

It also provides for the Protection of personal liberty. That no person shall be deprived of personal liberty except in any of the following cases. in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted, or of an order of a court punishing the person for contempt of court; for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda, for the purpose of preventing the spread of an infectious or contagious disease. in the case of a person who has not attained the age of eighteen years, for the purpose of the education or welfare of that person, in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community, for the purpose of preventing the unlawful entry of that person into Uganda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Uganda or for the purpose of restricting that person while being conveyed through Uganda in the course of the extradition or removal of that person as a convicted prisoner from one country to another or a person arrested, restricted or detained shall be kept in a place authorized by law. A person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice. A person arrested or detained for the purpose of bringing him or her before a court in execution of an order of a court; or upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

Where a person is restricted or detained the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention, the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and that person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment. Where a person is arrested in respect of a criminal offence the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable; in the case of an

offence which is triable by the High Court as well as by a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days; in the case of an offence triable only by the High Court, the person shall be released on bail on such conditions as the court considers reasonable, if the person has been remanded in custody, for three hundred and sixty days before the case is committed to the High Court. A person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority. Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment. The right to an order of habeas corpus shall be inviolable and shall not be suspended.<sup>15</sup>

It also provides for respect for human dignity and protection from inhuman treatment. No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.<sup>16</sup>

It also goes ahead to provide for the Protection from slavery, servitude and forced labour. No person shall be held in slavery or servitude. No person shall be required to perform forced labour. For the purposes of this article, “forced labour” does not include any labour required in consequence of the sentence or order of a court any labour required of any person while that person is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which the person is detained;<sup>17</sup>

The constitution explains the right to a fair hearing. In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. Every person who is

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<sup>15</sup> Article 23

<sup>16</sup> Article 24

<sup>17</sup> Article 25

charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty; be informed immediately, in a language that the person understands, of the nature of the offence; be given adequate time and facilities for the preparation of his or her defence; be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State; be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial; be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.

A person tried for any criminal offence, or any person authorized by him or her, shall, after the judgment in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law. No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence. No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.

A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence. Where a person is not being tried for a criminal offence, that person nor shall the spouse of that person be compelled to give evidence against that person. Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.<sup>18</sup>

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<sup>18</sup> Article 28

*The prisons Act Cap 304* constitutes a fundamental restriction on the previous prison legislation as it seeks to promote the letter and the spirit of *The 1995 constitution of Uganda* as well as a host of International and Regional Human Rights Instruments, including the United Nations Standard Minimum Rules for Treatment of prisoners (UNSMR). Uganda guarantees the right to liberty and sets out the limited circumstances under which the person's right to liberty can be ascertained, for example detention at a lawful detention centre and being produced in court of law or being released on police bond within 48 hours for all suspects.<sup>19</sup>

This Act shall apply to all prisons administered by the Government, all prisoners lawfully held in those prisons and to all members of the Uganda Prisons Service. Nothing in this Act shall be deemed to render unlawful the detention of prisoners in prisons or lockups maintained by the administration of a district or a police force if the prisoners are lawfully detained in those prisons or lockups in a lawful manner. The Minister may by statutory order apply all or any of the provisions of this Act or any statutory instruments made under this Act to any prison or lockup administered by the administration of a district or by the police or to any prisoner or class of prisoner detained in any such prison or lockup or to any person employed in the control or administration of any such prison. The Minister may by statutory order revoke or vary any order made under subsection (3). The Minister in any order made by a subsequent order may provide that in the application of any provision of this Act or any statutory instruments made under it to any prison or lockup or to any prisoner or class of prisoner or shall be to any person employed in the control or administration of any prison that the provision subject to such adaptations and modifications as he or she may see<sup>20</sup>

The administration of the service and the control and supervision of all prisoners shall be vested in the commissioner subject to the directions of the Minister. The commissioner may, subject to this Act, from time to time make standing orders and give administrative directions for the observance of all prison officers carrying out their duties under the provisions of this Act.<sup>21</sup>

Every prison officer shall exercise such powers and perform such duties as are by law conferred or imposed on prison officers of his or her class and shall obey all lawful directions in respect of

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<sup>19</sup> The Constitution of the Republic of Uganda [Article 23]

<sup>20</sup> Section 1

<sup>21</sup> Section 4

the execution of his or her office which he or she may from time to time receive from his or her senior officers.<sup>22</sup>

In addition, the Prisons Act entrenches the fundamental rights of prisoners into Uganda's Domestic Law and gives effect to the core obligation of fostering human rights as required by the United Nations Standard Minimum Rules for Treatment of prisoners (UNSMR). The Act also clarifies the prison system by abolishing local administration prisons, thus set up and different structures such as the prisons authority (a body responsible for administration decisions concerning senior prison officers) the prison council (which is responsible for making administrative decisions concerning the junior prison officers).

Any prison officer who assaults, threatens or insults any officer senior to him or her in the service, when the senior officer is on duty or when the assault, threat or insult relates to or is consequent upon the discharge of duty by the officer so assaulted, threatened or insulted, commits an offence and is liable on conviction by a magistrate to imprisonment for a period not exceeding six months or to a fine not exceeding one thousand shillings or to both.<sup>23</sup>

The Act also provides for the removal of prisoners of unsound mind. Whenever a medical officer or officer in charge is of the opinion that any prisoner is of unsound mind, he or she shall take all necessary action to procure his or her judgment under the Mental Treatment Act. If a magistrate adjudges the prisoner to be a person of unsound mind, the prisoner shall be removed so soon as convenient from the prison and confined in a mental hospital. Whenever any prisoner removed to a mental hospital is entitled to be discharged in accordance with the Mental Treatment Act, the medical superintendent in charge of the mental hospital shall notify the officer in charge of the prison from which the prisoner was removed and the prisoner shall be delivered into his or her custody if still liable to be confined in prison, and if not so liable, be released. The period during which the prisoner has been detained in the mental hospital shall be reckoned as part of his or her term of imprisonment.<sup>24</sup>

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<sup>22</sup> Section 6

<sup>23</sup> Section 16

<sup>24</sup> Section 39



The Act provides for Employment of prisoners and abolition of hard labour. Every sentence of imprisonment, whether the sentence was one of imprisonment with hard labour or simple imprisonment, passed upon any criminal prisoner shall subject the prisoner during the term of the sentence to be imprisoned and to work at such labour as may be directed by the officer in charge with the general approval of the commissioner, and so far as practicable the labour shall take place in association or outside cells. Notwithstanding any other Act, no person shall be sentenced by a court to imprisonment with hard labour; and every law conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring a power to pass a sentence of imprisonment for a term not exceeding a term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before the commencement of this Act; and so far as any law provides that a person sentenced to imprisonment or committed to prison is or may be directed to be treated to any special form of imprisonment, it shall cease to have effect.<sup>25</sup>

Habitual criminals to be released on license only. Any habitual criminal sentenced to imprisonment whether by one sentence or consecutive sentences for three years or more who is released under section 47 shall be released on licence. Every licence granted under this section shall be in the prescribed form and shall be granted subject to the prescribed conditions; except that the commissioner may waive any conditions in the case of any particular prisoner. If a prisoner released on a licence granted under this section is convicted of any offence or fails to comply with any of the conditions of his or her licence by any act or omission that is not of itself an offence, he or she shall be liable on conviction before a magistrate to imprisonment for a period not exceeding three months and to have his or her licence forfeited by order of the magistrate. Where any licence under this section is forfeited or revoked, the prisoner whose licence is forfeited or revoked shall, after undergoing any other punishment to which he or she has been sentenced undergo a further term of imprisonment equal to the portion of his or her imprisonment as remained unexpired at the date of his or her release on licence, calculated without any remission previously earned or granted. Whenever a licence is revoked by the commissioner, any magistrate shall, on the production to him or her of a certificate of such revocation signed by the commissioner, issue a warrant for the apprehension of the person to

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<sup>25</sup> Section 44

whom the licence was granted; and that person on being apprehended shall be brought before the magistrate or some other magistrate exercising jurisdiction in the same area who shall make out his or her warrant for the recommitment of that person to prison to undergo the residue of his or her sentence as remained unexpired at the date of his or her release under licence calculated without remission previously earned or granted. For the purpose of this section, “habitual criminal” means a person who has been sentenced on four separate occasions to imprisonment for any offence contained in Chapters XXV to XXXVIII inclusive of the Penal Code Act or for any offence of a similar nature under customary law or for any attempt or conspiracy to commit any such offence.<sup>26</sup>

The act provides for Prison offences. The Minister may prescribe by rules what acts or omissions by prisoners shall be deemed to be prison offences and shall prescribe which of the offences shall be minor prison offences and which shall be aggravated prison offences. Rules made under this section shall prescribe the manner in which the offences shall be tried.<sup>27</sup>

The Act provides for Medical examination before punishment. No prisoner shall be subjected to a punishment diet or corporal punishment until certified as medically fit to undergo it by a medical officer or other person appointed for such purpose by the medical officer.<sup>28</sup>

Where corporal punishment is awarded the number of strokes shall not exceed such amount as may be prescribed and shall be inflicted with such type of cane as may be prescribed. Every sentence of corporal punishment imposed upon a prisoner by an officer in charge shall be subject to confirmation by the commissioner who may increase or reduce the number of strokes ordered to be inflicted or may substitute any other punishment or punishments as he or she is authorized by this Act to award. No sentence of corporal punishment shall be carried out until twenty-four hours have elapsed from the time of the order of the sentence nor until a medical officer has certified that the offender is physically fit to undergo the punishment. A medical officer may give such orders for the prevention of injury to the health of the offender ordered to receive

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<sup>26</sup> Section 48

<sup>27</sup> Section 51

<sup>28</sup> Section 56

corporal punishment as he or she may deem necessary. The orders given under shall be carried out before the punishment is inflicted; and if, during the course of the infliction of the punishment, the medical officer shall order it to be discontinued, it shall be discontinued accordingly. Corporal punishment shall not be inflicted upon any female prisoner, or upon male prisoners under sentence of death or over the age of forty-five years, or upon any civil prisoner or on any prisoner imprisoned as a vagrant.<sup>29</sup>

*Then The Police Act 303* provides for Functions of the police authority. Subject to the Constitution, the functions of the police authority are to advise the Government on policy matters relating to the management, development and administration of the force<sup>30</sup> Then arrest as preventive action. A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person from causing physical injury to himself or herself or to any other person from suffering physical injury, from causing loss or damage to property; from committing an offence against public decency in a public place; from causing unlawful obstruction on a highway; from inflicting harm or undue suffering to a child or other vulnerable person, may arrest and detain that person. A person detained under shall be released once the peril, risk of loss, damage or injury or obstruction has been sufficiently removed; on the execution of a bond with or without surety where provision is made for him or her to appear at regular intervals before a senior police officer, if so required; or upon any other reasonable terms and conditions specified by the Inspector general in writing. Any person so arrested or any other person on his or her behalf Who has reason to believe that any person is being unlawfully detained may apply to a magistrate to have such person released with or without security.<sup>31</sup>

A police officer may institute criminal proceedings before a magistrate, apply for summons, warrants, search warrants or undertake any other legal process as may be necessary against a person charged with an offence. A police officer may, without a court order and without a warrant, arrest a person if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence.<sup>32</sup>

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<sup>29</sup> Section 57

<sup>30</sup> Section 9

<sup>31</sup> Section 24

<sup>32</sup> Section 23

*Criminal procedure Code Act cap 116* provides that In making an arrest the police officer or other person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. If a person forcibly resists the Endeavour to arrest him or her, or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest. Nothing in this section shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.<sup>33</sup>

The act provides for arrest without warrant. Any police officer may, without an order from a magistrate and without a warrant, arrest any person whom he or she suspects upon reasonable grounds of having committed a cognizable offence, an offence under any of the provisions of Chapter XVI of the Penal Code Act or any offence for which under any law provision is made for arrest without warrant; any person who commits a breach of the peace in his or her presence; any person who obstructs a police officer while in the execution of his or her duty, or who has escaped or attempts to escape from lawful custody; any person whom he or she finds in any highway, yard or other place during the night and whom he or she suspects upon reasonable grounds of having committed or being about to commit a felony; any person whom he or she suspects upon reasonable grounds of having been concerned in any act committed at any place out of Uganda which, if committed in Uganda, would have been punishable as an offence, and for which he or she is, under the provisions of any written law, liable to be apprehended and detained in Uganda;<sup>34</sup>The act provides for detention of persons arrested without warrant. When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought may in any case and shall, if it does not appear practicable to bring the person before an appropriate magistrate's court within twenty-four hours after he or she was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his or her executing a bond, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the bond; but where any person is retained in custody, he or she shall be brought before a magistrate's court as soon as

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<sup>33</sup> Section 2

<sup>34</sup> Section 10

practicable. An officer in charge of a police station may discharge a person arrested on suspicion on any charge when, after due police inquiry, insufficient evidence is, in his or her opinion, disclosed on which to proceed with a charge and a police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.<sup>35</sup>

The Act provides for Appellant in prison. If the appellant is in prison he or she may present any document relating to his or her appeal to the officer in charge of the prison who shall then forward the document to the registrar, and for the purpose of section 28 on the date of the presentation, any such document shall be deemed to have been lodged with the registrar.<sup>36</sup>

The appellate court on any appeal against conviction shall allow the appeal if it thinks that the judgment should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that it should be set aside on the ground of a wrong decision on any question of law if the decision has in fact caused a miscarriage of justice, or on any other ground if the court is satisfied that there has been a miscarriage of justice, and in any other case shall dismiss the appeal; except that the court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred. The appellate court on any appeal may—reverse the finding and sentence, and acquit or discharge the appellant, or order him or her to be tried or retried by a court of competent jurisdiction; alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence by imposing any sentence provided by law for the offence; or with or without any reduction or increase and with or without altering the finding, alter the nature of the sentence. Where the appellate court maintains or imposes a sentence of imprisonment not exceeding three years in the exercise of its powers and if the appellant satisfies the court that there are special reasons, having regard to the nature of the offence for which he or she was convicted, his or her age or antecedents that the sentence should be suspended, the court may order that it be suspended and shall record its reasons for making the order. An order

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<sup>35</sup> Section 17

<sup>36</sup> Section 30

suspending a sentence is referred to in this Code as a “suspension order” and the period during which any of the sentences remains suspended as the “suspension period”. Where a suspension order is made, the sentence to which the order relates shall not continue to have effect unless the appellant commits another offence punishable by a substantive sentence or imprisonment without the alternative of a fine within the period of two years next following the date upon which the sentence would have expired, calculated without remission and if it appears to a court that a person in respect of whom a suspension order has been made has been convicted of an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period, the court shall—issue a summons requiring the person to appear at the time and place specified in the summons; issue a warrant for his or her arrest; or if he or she is in custody, issue a warrant requiring his or her production before the court, as the circumstances shall require. Where a person appears before the court in obedience to summons or warrant issued and it is proved to the satisfaction of the court that the person— is an offender in respect of whom a suspension order was made and has been convicted on an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period, the court shall by warrant under its hand, order that the offender be committed to prison to serve the sentence to which the suspension order relates, and any such sentence shall be deemed to commence from the date on which the commitment warrant was issued; except that if the offender is already serving a sentence of imprisonment, the warrant of commitment shall direct that the sentence shall be executed after the expiration of the total period of imprisonment to which the offender is already subject; and if the offender had served any period of a sentence before the suspension order was made, in addition to any remission she shall be granted stances (including the trivial nature of the offence committed during the suspension period), that it would be inexpedient to make an order committing the offender to prison, it may direct that the offender be discharged; and if the suspension period has not expired the suspension order shall continue to have effect for the remainder of that period. in the case of a suspension order made on an appeal to a court presided over by a chief magistrate, by the chief magistrate having jurisdiction over the area within which the offender happens to be.

*Public Order Management Act*, provides for the duties and responsibilities of police, organizers and participants that the police shall be responsible for preserving law and order before, during

and after public meeting and therefore the police shall provide security for both participants and other members of the public, ensure fairness and equal treatment of all the parties by giving consistent responses, carry out assessment to all factors and indentify appropriate traffic plans.<sup>37</sup>

*Then the penal code cap 120* provides for aiding prisoners to escape. Any person who aids a prisoner in escaping or attempting to escape from lawful custody; or conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner, commits a felony and is liable to imprisonment for seven years.<sup>38</sup>Then states that any person who unlawfully compels any person to labour against the will of that person commits a misdemeanour.<sup>39</sup>

*The Community service Act Cap115* provides that Where a person is convicted of a minor offence, the court may, instead of sentencing that person to prison, make a community service order. Before passing a community service order, the court shall consider the circumstances, character and antecedents of the offender and ask him or her whether he or she consents to the order. Before passing a community service order, the court shall explain to the offender in the language he or she understands, the effect of the order and that if he or she fails in any respect to comply with it, he or she may be liable to be sentenced to such term of imprisonment as the court could have imposed in respect of the offence.<sup>40</sup>

*The Habitual criminals [preventive Detention Act Cap 118* Imprisonment in certain cases may be commuted to preventive detention. When a person has been sentenced to imprisonment for a term of three years or upwards and he or she appears to the President to have been a habitual criminal, the President may, at any time after two years of the term of imprisonment have expired, commute the whole or any part of the residue of the sentence to a sentence of preventive detention, so, however, that the total term of the sentence when so commuted shall not exceed the term of imprisonment originally awarded.

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<sup>37</sup> Section 9

<sup>38</sup> Section 110

<sup>39</sup> Section 252

<sup>40</sup> Section 3

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*The extradition act cap 117* provides committal or discharge of prisoner. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of the criminal is duly authenticated, and such evidence is produced as, subject to this Act, would according to the law of Uganda justify the committal for trial of the prisoner if the crime of which he or she is accused was committed in Uganda, the magistrate shall commit him or her to prison. In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as, subject to this Act, would according to the law of Uganda prove that the prisoner was convicted of the crime, the magistrate shall commit him or her to prison.

The order of the magistrate shall be to commit the fugitive criminal to prison to await the warrant of the Minister for his or her surrender; and the magistrate shall forthwith send to the Minister a certificate of the committal and such report on the case as he or she may think fit. When the fugitive criminal is committed to prison to await his or her surrender, the committing magistrate, if of the opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him or her to prison, may order him or her to be held in custody at the place in which he or she for the time being is or any other place named in the order to which the magistrate thinks he or she can be moved without danger to his or her life or prejudice to his or her health. A fugitive criminal held in custody under the provisions of shall be deemed to be in legal custody, and this Act shall apply to him or her as if he or she were in the prison to which he or she was committed. Where the magistrate is not satisfied with the evidence mentioned in he or she shall order the prisoner to be discharged.<sup>41</sup>

## **2.2 International law on imprisonment.**

The Detainees are entitled to the rights and standards enshrined in international law. United Nations Convention on the rights of the child. United Nations body of principles for the protection of all persons under any form of detention or imprisonment. In these conventions the concept of life imprisonment destroys human dignity, reducing a prisoner to a number of years behind the walls waiting only for death to set him free. The fact that he may be released on parole is no answer.

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<sup>41</sup> Section 11



### 2.3 Types of criminal sentences

However when looking at the significances, limitations of imprisonment of imprisonment it is paramount to look at how imprisonment sentences are administered as provided for below;

**Definite sentence:** This is a sentence clearly set forth by law for a period of time that is not modifiable or subject to the discretion of the judge. The matter lies in the hands of the judge and is clear and definite.

**Indefinite sentence:** This is a sentence that ranges length which may allow for a judge or other court official to have discretion in setting the length of the sentence. The accused is charged with one account of aggravated defilement 129(3) (4) (a) penal code act. The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weakness in full defense.<sup>42</sup>

**Suspended sentence:** This is a sentence which is not imposed at the time when judgment is rendered. Usually alternative sentencing is given a probationary period whereupon successful completion will result in a dismissal of the charges. When a criminal sentence is not imposed and is delayed indefinitely, subject to the dependants' meeting the qualifications for the favorable treatment for example making true restrictions to a victim, avoiding another criminal conviction for a period of time. The constitution Sentencing guidelines for courts of judicature practice Directions 2013 provides that "the court may not sentence an offender to a custodial sentence where the offender is of advanced age". Advanced age for purposes of the guidelines is 75 years. It is a principle in penology that a court must not impose a sentence that is more severe than is necessary to achieve the purpose of sentencing.<sup>43</sup>

**Indeterminate sentence:** this is a sentence which is later determined as to the ultimate length of the sentence itself. For example 15-20 years subject to a state parole board hearings after 15

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<sup>42</sup> Uganda v. Chandiga [Criminal Session case no.0020 01 2018]

<sup>43</sup> Uganda v. Oryema [Criminal case no 0097 07 2016[2017]][19, april, 2017]

years to determine eligibility for early release. Although the manner in the offence is committed did not create a life threatening situation in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence.<sup>44</sup>

**Determinable sentence:** this is a sentence where the duration is not adjustable which is subject to the review of a parole board for example a three months sentence is determinate. A sentence of 15 years of life has a minimum term but the overall length is indeterminate.

**Concurrent sentence:** Criminal sentence that are to run at the same time, consecutive sentences would unduly have a judge may sentence a convicted criminal defendant to such sentences. However, sentences that run concurrent beginning the same time and credit for time served is provided for each sentence. When separate criminal sentences run concurrent at the same time for example two five year sentence will run and the same time at the end of five years.<sup>45</sup>

**Mandatory sentence:** It is a sentence prescribed by statute for a specific criminal offence that provides for no judicial discretion upon ascertaining from the facts that, the facts were correct. He was convicted on his plea of guilty for the offence of aggravated defilement 129 (3) (4) Penal code Act.<sup>46</sup>

**Determinate sentence:** In these sentences Courts are indicated to impose life imprisonment where a deadly weapon is used in committing the offence. In cases where there is no evidence that such a weapon was used. Therefore the sentence of life imprisonment is quashed<sup>47</sup>.

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<sup>44</sup> Uganda v. Moini [criminal sessions case no 0007 feb 2018]

<sup>45</sup> Natuwemba and Anor v. Uganda [criminal appeal number 014\2017] [July 2014]

<sup>46</sup> Uganda v. Atwine [criminal sessions case no. 0155 of 2015] [6, February, 2018]

<sup>47</sup> Uganda v. Abella [criminal sessions case no 0204 of 2015] August 2017

## CHAPTER THREE

### CAUSES OF IMPRISONMENT IN UGANDA

#### 3.0 Introduction

A number of factors are highly developed for leading to imprisonment in Uganda and some of these factors are explained below:

**Breach of the law:** In any country where the rule of law prevails, people who breach the provisions of the law are liable to punishment. Thus, it is upon the court to revisit the penalty such that a breach calls for an accurate sentence. If it is imprisonment then a convict faces his fate at the law as a consequence of his actions. The high court states that power to determine the case timely to frame issue and refer them for trial, to take additional dividend or to require such evidence to be taken. The high court has the same powers and neatly the same duties as are conferred on courts of original jurisdictions in respect of suits instituted in it<sup>48</sup>

**Ignorance of the law:** The common law doctrine is that the ignorance of the law is no defense. However, some people find themselves in prison for reasons they cannot explain but their wrongful acts are rather explainable in the letters and the spirit of the law due to their ignorance of the existence of these laws.

**Moral degeneration:** In Uganda, just like in many parts of the world, human morals have greatly degenerated to the extent that some hardened criminals no longer care whether they are imprisoned that what they do is morally upright or not. For example, thefts, corruption, bribery, are some of the offenses that call for long time imprisonment but they are committed each day on a large scale.

**The wide gap between the rich and the poor:** The song of the wide gap between the rich and the poor is a common one to all the developing countries, Uganda in particular as a case in point. In such situation the poor always fight their way to make a living from those who have in plenty

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<sup>48</sup> Civil Procedure Act [section 80[2]

whether through working for them or stealing from them, an evil that gives birth to criminality which calls for among others the imprisonment of such offenders.

**The need for society to get rid of certain dangerous individuals:** There are some individuals who are so dangerous to the security of the society at large for example the hardened criminals such: as murderer, rapists, robbers, to mention but a few who are a threat to the society. Thus, such individuals are better confined as a means of societal justice. It is also sometime in the interest of protecting such criminals that they ought to be confined since if left at large.

**Illiteracy:** This is one phenomenon that leads to the breaking of the law in which a punishment such as imprisonment accords. Some people in Uganda are still unable to read and write and as a result they fall prey to the wrong side of the law. A good example is where a sign is put reading 'don't throw rubbish here or else you will pay a fine of 100,000 or serve a term of imprisonment in default'.

**Poverty:** The wide spread poverty is one of the major causes of imprisonment in our world today. For example, a poor person may have no option but to steal from somebody in order to eat for that day yet imprisonment is a penalty that follows theft in case one is apprehended and brought to book. High crime in the city is outstanding because of poverty. The cases of phone theft are very easily in thousands. The high rate of crime is strongly linked to the high poverty levels in Uganda.<sup>49</sup>

**Cultural degeneration:** It is notable that the western culture has dominated the African culture not only the good cultures. For example, it may not be an offence for a white man to marry a relative yet this is an abomination to some cultures in Uganda and in the statute books.

**Existence of obnoxious provisions in the law books:** There are some provisions in the law books which are so ambiguous to be understood and interpreted by an ordinary man, most especially those laws that exist to restrain the political opponents. In these instances, prisons may be used by state authorities to perpetrate dominant the tyrannical practices like torture, arbitrary killings and other forms of ill treatment

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<sup>49</sup> [www.monitor.co.uganda](http://www.monitor.co.uganda)[4,May,2017]

**Permissiveness of our societies:** At the present date, no one in the society seems to care about the other but each man for himself and God for all. A good example can be linked to the wide spread corruption which has been given a rest at every place. For example, the Local Councils are also so corrupted that they prefer to take bribes from the criminals and go on to protect them instead of standing in for the right things.

**Mental disorder:** Some persons commit crimes which lead to their imprisonment due to a mental confusion. It should however be noted that a very large blanket is often thrown to cover criminals who fall into such category not because they are believed to be mentally ill at the time of commission of the crime, but they are usually rushed to the mental hospital for examination just as a delay tactics to protect the offender from the angry masses.<sup>50</sup>

### 3.3 Significance of imprisonment

Imprisonment as a means of treatment to criminals has a number of momentous impact on criminal behaviors, public security, and law enforcement policy and these significance can be exhausted as below: Mitigating and aggravating circumstances must be identified by the court bearing in mind that the ones is on the state to prove beyond reasonable doubt the existence or aggravating factors and to negative beyond reasonable doubt the presence of any mitigating factors relished upon by the accused. Due regard must be paid to the personal circumstances and subjective factors that might have influenced the accused person conduct, and these factors must then be weighted with the main objectives of punishment. That is deterrence, prevention, reformation and retribution.<sup>51</sup>

**Deterrence:** This is a strategy intended to dissuade an adversary from taking an action not yet started or to prevent them from doing something that another state desires.

It is provided that in a case depending upon circumstantial evidence, the court must before deciding upon a conviction find that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of

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<sup>50</sup>Bushoborozi v. Uganda[10,July,2015]

<sup>51</sup> Uganda v.Ssekamatte [criminal case no. 170, 2012,September,2012]

guilty. In the present case, the circumstantial evidence was so overwhelming that it irresistibly pointed to the accused as the culprit.<sup>52</sup>

**Crime prevention and state responsibility:** Crime is as old as mankind and given the fact that there is hardly no crime free society on earth, many law enforcement agencies in more developed countries have opted for term “crime reduction” as opposed to “crime prevention” in recognition of the fact that it is quite difficult or impossible to prevent prevalence of crime in society.<sup>53</sup>

**Situations of emergency:** Submitting in aggravation sentence, the learned state Attorney has stated that although she has no previous criminal record of the accused and she has been on remand for about three years, it is her negligence that led to loss of life of the victim who was still a baby. The convict was in the position of mother. She could have cared for the baby she was one who requested for the baby but turned negligent. The maximum punishment 7 years imprisonment but the convict deserves a deterrent sentence to prevent others from committing the same crime.<sup>54</sup>

**Law enforcement policy:** The time is near for the judiciary to rise to the occasion and reclaim its blanket by carefully applying the law that seeks to secure, enhance and protect the fundamental rights and freedoms of an accused person. Prosecution mounted in breach of the law is a violation of the rights of the accused and is therefore a nullity. It matters not the nature of the violation and evidence available.<sup>55</sup>

**Mob justice:** Most justice cases are expected to boost if there is no imprisonment. a report by the foundation for human rights initiative has indicated. The report launched on Wednesday at Hotel African in Kampala, showed that from January to June this year, 1999 cases of mob justice had been reported. Quoting the police crime statistics, the report says mob justice cases increased to 368 in 2018 from 187 in 2017 which is a 100% rise.<sup>56</sup>

**Retribution:** This is the act of taking revenge chasing someone in retaliation for something harmful that they have done especially in the next life. Vengeance is mine, faith the

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<sup>52</sup> Simon Musoke v. Republic [1958] EA 715

<sup>53</sup> [www.newvision.co.uganda](http://www.newvision.co.uganda) [29, April, 2015]

<sup>54</sup> Uganda v. Nakiryowa [criminal sessions case no. 0172 of 2015]

<sup>55</sup> R v. Amos Karuga Karatu [2006] High court case no. 12

<sup>56</sup> [www.newvision.co.uganda](http://www.newvision.co.uganda) [20, July, 2018]

Lord.<sup>57</sup>Retribution is the act of retaliating counteraction, counterattack, counterblow, reciprocation, reprisal, requital, retaliation, revenge, tit for tat, vengeance. In such circumstances imprisonment is significant.

**Reconciliation:** Reconciliation is the net of reconciling as when former enemies agree to an amiable force. It is the state of being reconciled as when someone becomes resigned to something not desired so imprisonment is important. In criminal cases a magistrate court may promote reconciliation and encourage and facilitate the settlement in an reliable way of proceedings for assault or for any other offence of a personal private nature not amounting felony and not aggravated in degree and approved by the court and may thereupon order the proceedings to be stayed<sup>58</sup>

### 3.4 Limitations of Imprisonment

**Overcrowding:** Uganda has second most overcrowded jails in Africa. According to a report released by the world prison brief, Uganda's prisons are 93. 2% occupied revealing a severe congestion that needs to be quickly fixed to avoid a disaster.

As of October 2017, there were 52,059 people in Uganda's prisons, implying there are 129 prisoners for every 100,000 Ugandans.<sup>59</sup>

**Torture:** most inmates are expressed to torture for example an inmate lost a leg over torture. Despite the hospital granting access to inmate, the prison officer guarding the entrance to the trauma ward blocked journalists after consulting his bosses. Mr. Zakaria Sekyaze, the father of the inmate, told daily monitor that his son was tortured by the officer in charge of the prison, Mr. Ferdinand Baker.<sup>60</sup>

**Deterioration:** Uganda prisons are grappling with the challenge of managing inmate serving long jail sentences. Prison authorities claim that inmates serving long jail terms tend to be

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<sup>57</sup> king James Bible version [Romans 12;19]

<sup>58</sup> Uganda v. Ndifuna Moses [criminal case no.004 of 2009][15, November,2009]

<sup>59</sup> [www.newvision.co.uganda](http://www.newvision.co.uganda)[2,February,2018]

<sup>60</sup> [www.monitor.co.uganda](http://www.monitor.co.uganda)[11,May,2018]

withdrawn affect their health. Frank Baine Spokesman Uganda prison says that most of the inmates especially those above 50 years of age who are sentenced to over 20 years in jail become withdrawn leading to deterioration of their health.<sup>61</sup>

**Inadequate food supply:** A prisoner shall be provided with food of nutritious value adequate for health and strength by the prison administration, at the usual hours and the food shall be of nutritious quality, well prepared and served. Drinking water shall be available to every prisoner whenever he or she needs it.<sup>62</sup> However, most of the places of detention visited by civil society organizations fell below this standard in many regards. The food provided to inmates is not only insufficient in quality but also of low nutritional value. Consequently some prisoners, especially those in the rural areas appear malnourished. Food for prisoners is usually produced by prisoners on prison farms

**Denial of access to medical care:** The right to health care is a fundamental right for all human beings and prisoners are no exception to this. For all prisoners adequate health care begins at the time of admission into custody and prisoners have to be examined within 24 hours of admission to establish their health status. The rights of prisoners include the right to have access to health services available in the country without discrimination due to their legal situation.

There is however, a persistent shortage of the required drugs as well as qualified medical personnel at most prisons. Consequently, the sick prisoners are taken to the nearby health centers for all ailments ranging from common cold and flu to diarrhea and malaria.

**Poor accommodation facilities;** All accommodation provided for the use of prisoners and in particular all sleeping accommodation must meet all requirements of good health. This includes due regard to climatic conditions, cubic content of air, minimum floor space, lightening, heating and ventilations. Even though the prisons Act makes no direct provision for standards in respect of clothing, bedding and accommodation, these are indirectly referred to in the provision for the development of regulations.

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<sup>61</sup> Ugandaradionetwork.com[19,December,2011]

<sup>62</sup> Section 69 Prison Act cap 17 2006



## CHAPTER FOUR

### PRESENTATION OF FINDINGS OF THE STUDY AND DATA ANALYSIS

#### 4.0 Introduction

This is the most crucial part of research it summaries collected data. It involves the interpretation of data gathered through the use of analytical and logical reasoning to determine patterns, relationships or trends. The respondents contacted in this research include the inmates, ex-prisoners, officers in charge prison, then a questionnaire of non-government organization.

#### 4.1 General objective

Prison food is nutritionally lacking leaving inmates vulnerable for additional food. Water is often unclean and unavailable. Proper hygiene is difficult with limited government provided soap and lice and scabies are rampant. Mosquitoes and malaria are constant intimidation.

Then Compulsory labor is also often combined with extreme forms of punishment such as beating to punish slowness and handcuffing, stoning or burning prisoners who refuse to work.

The prevention and treatment to disease pose major problems in Uganda's prisons. TB spreads quickly in the prison's dank over-crowded and poorly ventilated wards. HIV prevalence in Luzira Prison is estimated to be appropriately 11 percent.

The judiciary should conduct all bail hearings in open court and the rules committee should issue a practice direction setting conditions for bail hearing and guidelines on appropriate amounts in line with income levels in Uganda. Uganda has an obligation to ensure that its criminal justice and penal colony standards comply with international and regional human rights standards to ensure that the detainees are treated with appropriate dignity and full respect of their human rights, and to prevent all forms of cruel, inhuman treatment, inadequate healthcare facilities for prisoners at a standards at least equivalent to that available to the general population, on commitment acknowledged by the Ugandan prisoner service.

#### 4.2 Prison conditions

**Overcrowding:** Prisoners complained about suffering each night in this limited sleeping space and being “Squeezed like iron sheets”. The tightly packed wards allow for little ventilation in contravention of international standards. In mates repeatedly complained of the heat in the bones. Prisoners are forced to stay in their overcrowded cells day and night.

**Food and nutrition:** Deprivation of food in prison constitutes an inhuman condition of detention in violation of the international covenant on civil and political Rights. International standards require that prisoners be supplied with “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. At every prison visited, prisoners reported being given posho, (maize meal) and beans once or twice daily, sometimes accompanied by a small portion of porridge for breakfast. Despite a recommended dietary scale including nuts, meats, vegetables, and sugar, prisoners receive only maize meat, beans and salt.

**Water, sanitation and hygiene:** There is no permanent water. The kind of water used is from the ponds. we dig, “when you are thirst you “kneel down, and drink”. Sometimes we spend a day without drinking water. Officers in charge confirmed difficulties in supplying their prisons with sufficient quality of water. Under international standards prisoners must be provided with adequate bathing installations for general hygiene yet bathing facilities fall short of this standard.

#### 4.3 Physical abuse

**Hard labor:** Thousands of prisoners are forced to engage in hard labor. They cultivate crops, clear fields or fetch firewood and water. Prisoners convicted or remanded, work often in oppressive conditions, in heat or rain and sometimes intentionally denied food, water or bathroom breaks. They are beaten, handcuffed, stoned, or burned if they refuse to work.

**Abuse in the fields by wardens and other inmates:** Prisoner said that, they were beaten by both prison officials and other prisoners with disciplinary authority, mostly with sticks and canes. Beatings occurred for a range of reasons. Some were beaten together in groups as large as 30, each with legs and hands tied behind his back with a rope. Wardens and other prisoners beat them with sticks, batons or slathers, metal rods with a blade used typically for cutting grass.

**The economic incentives behind prison labor:** Testimonies of forced hard labor and abuses were most frequent at farm prisons Justus Aloyi a former inmate said “the money they are receiving for us where do they put it?” Prison OC told the researcher that they need the income produced by prison labor to meet the operating costs of the prisons. Four OCs said that they received only 150,000 Uganda shillings or less per month in addition to in kind supplies from the prison administration leading to a short fall which they met by contacting out prison labor.

**Punishment:** Prisoners may lose the possibility of early release, be given additional clearing or field work, or denied visitors for serious in lawful offences committed with an additional sentence. Yet, approximately every prison the researcher visited, prisoners overwhelmingly reported beatings and the use of isolation cells flooded with water while the prisoner was forced to be naked, beaten, and given limited food as the primary punishments.

**Beatings:** Severe beatings in the fields as described above but also in the prisons themselves conducted as punishment either by the wardens or by inmates with disciplinary authority. Corporal punishment is forbidden in Uganda prisons and international law forbids cruel inhuman or degrading treatment and torture. Prison officers told the researcher that they knew corporal punishment was banned and frequently contended that it had been abolished in practice. Yet prison medical staff acknowledged that they had observed injuries inflicted by prison wardens.

**Isolation cells:** Under Ugandan law, an OC may order a prisoner confined to a separate cell for a period not exceeding 14 days on disciplinary grounds. The law explicitly states that stripping a prisoner naked, pouring water in a cell of a prisoner, depriving him or her of food and administering corporal punishment is prohibited. Despite the explicit legal prohibition, in Luzira prison, prisoners held in isolation cell would likely also face a combination of hand cuffing, reduced food, water poured on the ground to ankle depth, being stripped naked and beatings.

#### **4.4 Prevention and treatment of diseases**

All people have a right to the highest attainable standard of health, and under international law, provide an obligation to ensure medical care for prisoners at least equivalent to that available to

the general population. Under Uganda law, prisoners are also entitled to have access to the health services available in the country without discrimination. The Uganda Prison Service acknowledges its legal responsibility to ensure healthcare services equivalent to those available in the general population

**Tuberculosis:** The rate is almost two, three; five times the rate in general community. When prisoners enter, it becomes worse and makes those who have not entered come in with diseases. The conditions in Uganda prisons combining overcrowding, frequent housing together of the sick and the healthy, poor ventilation and lack of natural light facilitate the transmission of TB. If one prisoner has TB in a room filled with 50 inmates, at the end of a day everyone will be infected the commissioner general of prisons said TB prevalence, already high in Uganda's general population is significantly higher in the prison population.

Prisoners and prison officers at some prisons reported that there were no medications for TB available at the prisons or at the nearby health centers for prisoners with TB. Seth Kabandize at Luzira prison noted: the nurses tell us there is no medicine, both there quite a number of them who do cough. I worry about it because those who are suffering from TB, they are here.

**HIV/AIDS:** Sexual activity occurs in Ugandan prisons, male prisoners at Luzira upper prison with longer term inmates repeatedly told me that they had heard of, witnessed or participated in sexual relations and same-sex relationships between inmates, particularly involving prisoners in authoritative positions. Prison wardens and officials confirmed that sexual activity takes place. Most frequently, prisoners reported that lack of food and their basic necessities led inmates to trade sex for those items.

**Water and insect borne diseases:** Malaria together with HIV & TB, Malaria is one of the leading causes of morbidity and mortality in the Uganda's general population. While National health guidelines call for malaria prevention through use of methods including insecticide treated nets and indoor residue spraying such measures were being used until 2014. In the prisons bed

nets are not allowed for male inmates because prison authorities fear they would be used as ropes or nooses and even among female inmates interviewed 29% said they had slept under a mosquito net in the proceeding nights.

**Hygiene and sanitation related illness:** Poor water and sanitation also lead to the spread of diseases. Prisoners reported and statistics confirmed that they had seen cholera outbreaks and frequent diarrhea. The UPS has determined that “diarrhea diseases are a major cause of mortality among prisoners” as a result of the continued use of the bucket system at the majority of prisons. Skin diseases are also common, though the prisons proper hygiene with limited government provided soap is difficult and lice and scabies are rampant. I observed prisoners with significant skin problems, scratching throughout the interview.

**Mental health:** Uganda criminal law exempts anyone with “any diseases affecting him / her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission” from criminal liability. Courts may order accused people to undergo psychiatric assessments to ascertain competence to stand trial, but there is a backlog of prisoners awaiting these determinations. I found that inmates who would not answer back questions about their charges, length of incarceration, or age were undergoing criminal trial with no legal representation.

#### **4.5 Addressing the causes of poor health conditions in Uganda prisons Criminal justice failures**

**Prolonged pretrial detention:** The heavy backlog in the criminal justice systems results in overcrowding in prisons, and prolonged time period of time on remand have adverse effects on prisons health. Despite international legal requirements that pretrial detention is an exception and should be as short as possible, the Ugandan constitution provides for a right to bail, few defendants have the opportunity to request for bail, increasing the burden the prison of system. In non-capital cases, suspects can represent themselves and orally request bail at magistrate’s court.

**Lack of legal representation:** This contributes to prison congestion for serious offences punishable by death or life imprisonment, the state must provide legal representation in courts

referred to as state “brief” lawyers. However Ugandan law does not specifically stipulate when in the process the rights adheres, and in practice suspects rarely meet with their lawyers until the commencement of the trial.

**Corruption in the criminal justice system:** Particularly bribery and extraction of free for free services, reportedly wide spread numerous prisoners told stories of rampant corruption through the justice system, starting from time of arrest through trial, eroding their trust in the system to process their cases with good faith or any measure of speed.

Unnecessary and extended pretrial detention imposes significant financial costs on the government, and savings could be generated by increasing the option of bail instead of pretrial detention, fleeing up money for crucial social services.

**Detention and following conviction:** For defendants who have been convicted of some lesser crimes, community service as a non- custodial option exists. However, the commissioner of community services stated that the success of this program depended heavily on the personality of the magistrate and his or her willing to use it as a sentencing option. Two prisoners told me the researcher that they were advised by the member of the community service program to plead guilty and ask for the option, only to be later sentenced to prison time instead, when the prosecution and the magistrate failed to agree.

**Detention of children:** Sometimes, children are also detained with adults in Ugandan prisons. The researcher found 6 people who said they were children amenity being detained with adults in addition to 4 young adults who said they had been detained in adult prisons since they were under 18 years. Detention of children with adult is prohibited under Ugandan law and international law and carries severe risks for children, including the potential for violence and sexual abuse. Because of the logistical difficulties in handling children, police often inflate their ages only one of the children interviewed by the researcher was ever given the opportunity to represent evidence of her age.

#### 4.6 Prison service failures of management and health service

**The role of prison officers in denying and delaying care:** Prison wardens and officers in charge play a direct role in denying or delaying prisoner access to appropriate medical care. Wardens denied or delayed access to community medical facilities because of suspicion that prisoners were using ill health as an excuse not to engage in forced labor as pretext for escape or for more malicious motivations.

Delay sometime lasts up to a month before Wardens will accompany the prisoner to care or access to outside facilities. Prisoners said that there are not sometimes allowed to receive medicines purchased by family and friends on the outside even when the prison was unable to provide them with appropriate medications. However the medical authority claims that prisoners are allowed to bring in drugs if the health workers are in contact with the relatives.

Failures in the delivery of prison health services to its credits, the UPS has made a marked effort to improve prison medical care in recent years, particularly at the large facilities in regional centers. Yet major gaps remain at usual, former local administration prisons, often no medical care is available. Adequate staffing is a major challenge. At all facility levels though significant improvement have been made, human resources for health fall far short of the prisons services' stated needs. UPS employs only 6 physicians prisoners complain that health staff frequently donors see laws who come and then for treatment.

**Donor funding to Uganda health and prison:** Uganda is a recipient of significant international donor aid particular for health. According to the records available in 2009 Uganda received over U.S.D 1.7 billion in bilateral and multilateral donor aid health related and particular HIV related, donor funding to Uganda has been led by US Presidents' Emergency plan for AIDS relief (PEPTAR). The United States contributes approximately 70 percent of all funding for HIV/AIDS activities in Uganda. However, little funding has been donated to prisons. Total donor funding between financial year 2015-2016 and 2017-2018 for UPS fell from approximately 875000 to 300,000. While some donor initiatives have been executed or manned for health in Ugandan prisons, their scope is minimal compared to overall health funding to Uganda and given the high rates of HIV and TB infection among the prison population.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSION

#### 5.1 Recommendations

There are many things we can do without resources like improving health in Ugandan prisons which will require significant changes on the part of the Uganda Prisons Service, and will also require improved coordinated efforts of the Ugandan government, civil society, and international agencies and donors. Some reforms are resource-neutral; those that are not are crucial to the realization of the rights of prisoners and are the responsibility of both the national government and international donors.<sup>63</sup>

#### **To the Uganda Prisons Service and Ministry of Internal Affairs**

Immediately:

- Issue direct orders to stop the use of compulsory prison labor for private landowners and prison authorities
- Investigate and demand accountability for funds raised through prison labor
- bring into line prison labor practices with Uganda's international legal obligations by:
  - Halting the use of remand prisoners for labor
  - Preventing labor for any private entities, whether by convicts or remands, unless with their consent and with fair remuneration
  - Providing male convicts between 18 and 45 engaging in prison labor with terms similar to those free laborers receive in terms of hours worked, conditions of work, and remuneration

Reform prisoner disciplinary systems by:

- Declaring a zero tolerance policy on the beating of prisoners effective immediately and warning that officers and inmates judged to have inflicted corporal punishment will be prosecuted and punished
- Discontinuing the practice of stripping inmates naked, handcuffing, beating, or holding them in water while in isolation confinement and punish officers found to have engaged in such practices

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<sup>63</sup>Prison Medical Authority, Uganda Prisons Service, March 11, 2011



- Ensuring detainees are able to send confidential complaints to the Uganda Human Rights Commission and other organizations and that all prison officials are aware of this right and do not interfere with it
- Investigating all complaints of abuse against inmates suspected of or charged with same-sex sexual conduct and taking appropriate action against those found responsible for such abuse
- Carry out regular monitoring visits led by headquarters and medical staff, with better defined indicators and targets for prison inspectorate monitors, to ensure the health and well-being of prisoners throughout the country and a halt to corrupt labor practices
- Ensure that conditions of confinement meet international standards, including by taking immediate action to improve basic prison conditions by:
  - Providing food of improved nutritional content, including rations for children, and additional rations for pregnant prisoners; prisoners with HIV, tuberculosis, and other health conditions requiring nutritional supplements; and inmates engaging in hard labor
  - Providing prisoners with basic necessities including adequate uniforms, blankets and mattresses, soap, and toothbrushes
  - Providing prisons insecticide to spray regularly for mosquitoes
  - Ensuring separation of convicted and unconvicted detainees
- Address prison health by:
  - Instructing all OCs to accept primary responsibility for inmate health, including facilitating inmates' access to community or prison referral health facilities, with disciplinary penalties for failure to do so
  - Creating guidelines to ensure that inmates receive health screenings prior to transfer to rural prisons and that ill inmates are not transferred to prisons lacking adequate healthcare facilities
  - Scaling up TB screening to all inmates entering prison, and all existing inmates, through targeted surveys, sputum analysis, and, if needed, chest x-ray evaluation
  - Offering voluntary HIV counseling and testing to all inmates entering prison and all existing inmates
  - Ensuring prompt initiation of treatment at either community- or prison-based facilities for those with confirmed HIV or TB

Establishing guidelines for referral of all prisoners with confirmed HIV or TB to regional units and ensuring patients on treatment are not transferred away from prisons with treatment capacity

- Establishing clear guidelines for moving patients into and out of TB isolation, with regular checks to ensure that isolation is appropriate
- Ensuring prisoner inclusion in testing and treatment programs for drug-resistant TB
- Providing condoms to all prisoners and prison officers
- Providing HIV prevention, treatment, and care education, including information and sensitization on harm reduction and safer-sex practices in the context of same-sex sexual conduct at each prison to increase condom acceptance
- Creating guidelines on mental health evaluation and care for the prison system, and the transfer of inmates in need of mental health evaluation or treatment to prisons with such capacity
- Making mental health services available on the basis of free and informed consent
- Seek and allocate funding for the prison budget to ensure conditions consistent with international standards, without reliance on income from private landowners
- As more resources become available:
- Address prison health by:
  - Establishing the presence of a trained health worker at each prison, with a minimum consistent supply of essential medications and the capacity to conduct TB and HIV testing and who can evaluate prisoner health complaints, including women's, and facilitate access to prison referral or community hospital facilities
  - Conducting health screening of all prisoners upon entry and at regular intervals
  - Establishing TB and HIV treatment capacity and accreditation at a minimum at each regional referral unit
  - Implementing HIV voluntary counseling and testing for pregnant inmates as part of a comprehensive system of prenatal care, offering prevention of mother-to-child transmission of HIV where appropriate
  - Improving prenatal and postnatal care and addressing pregnant women's nutritional needs
  - Developing mental health services for upcountry prisons and expanding those at regional prisons to include psychosocial treatment
  - Improving transport from prisons without health units to public health facilities and regional health units
  - Developing a comprehensive health information management system with timely and complete reporting by all prisons nationwide

- Improve prison conditions by:
  - Renovating prison facilities to provide every detainee with a bed and mattress of his or her own, and adequate space, light, and ventilation
  - Ensuring an adequate supply of clean water, and that prisoners are provided with wood or charcoal to boil water free of charge
  - Constructing a sufficient number of sanitary toilet and bathing facilities for the current number of inmates
- Increase the UPS' focus on rehabilitation and reintegration through:
  - Increasing the availability of education programs
  - Facilitating consensual paid work of a rehabilitative nature
  - Improving community reentry programs

**To the President of Uganda:** Direct orders should be issued to the UPS to stop the use of compulsory prison labor by private landowners or, prison authorities and to halt the use of abusive punishments.

**To the Ugandan Parliament and Ministry of Finance:** Amendments of the Penal Code Act to decriminalize consensual sexual conduct among adults, allocate sufficient funding for the budget for Ugandan prisons to ensure conditions consistent with international standards without reliance on the income generated by the forced labor of unconvicted or physically unfit inmates.

**To the Ugandan Judiciary and Ministry of Justice:** Judges should be instructed that, the constitution guarantees bail after 60 days for non-capital offences and 180 days for capital offences and that there is no minimum amount of time required for prisoners to remain on remand before they are eligible for bail.

Sensitize judges to the benefits of community service options and assure prisoners through agreement with prosecutors and magistrates that their decision to plead guilty on consideration of a promise of community service will actually result in community service sentences.

**To the Uganda Ministry of Health:** Ensure a consistent supply of essential medications at health clinics countrywide and ensure prisons receive a reliable supply of medications from the national drug stores.

**To the Uganda Police Force:** Observe the constitutional requirement that all suspects be taken to court and charged within 48 hours of arrest. For suspects who claim to be under 18, request and accept evidence of age and do not order detention with adults. Stop police sweeps to arrest people on spurious charges of “rogue and vagabond”. Stop police brutality against suspects by promptly investigating, charging, and prosecuting instances of unlawful force against suspects. Issue guidelines on police bond and track the implementation of these guidelines.

**To International Agencies, Donors, and Nongovernmental Organizations:** Continue funding efforts to reduce the case backlog, with emphasis placed on appropriate legal assistance, more judges, and more sessions.

In the short term, ensure the direct delivery of health service provision in prisons including TB and HIV testing and treatment programs; women’s health; and mental healthcare programs on the basis of free and informed consent.

## 5.2 Conclusions

Imprisonment, if well utilized can be an effective punishment in the reformation and rehabilitation of prisoners, thus reducing on the level of recidivism. This gives the recommendations that should be considered in order to obliterate some of the problems that are inhibiting the effective reformation and rehabilitation of prisoners. It also gives a general conclusion to this study.

The Uganda Prisons Act should be amended to incorporate some of the aspects covered by international instruments especially the Standard Minimum Rules. This is especially on: prison work, education and training for prisoners, religious freedom, categorization, follow up programs, qualifications for prison officers and their training and punishments for prisoners. Other laws like the trial on Indictment Act should also be amended to remove contradictions with the U.P.S policy of reformation and rehabilitation of offenders. The Commissioner for

Prisons should also exercise his powers u of the Act by making regulations or amending the existing ones to make them march with the international instruments dealing with prisoners.<sup>64</sup>

**Respect of Prisoners' Basic Rights:** Protection of prisoner's basic rights is reformation and rehabilitation of prisoners' associated rights. The work in prison should not be used as a scapegoat to expose prisoners to forced labor and exploitation. The punishments for breach of prison rules and discipline should not be inhuman and degrading, thus corporal punishment should not be administered to prisoners for has no penal logical justification in the modern era and "prisoners are sent to prison as a punishment for punishment".

**Adequate training for Prison staff:** For effective reformation and rehabilitation of prisoners, there is need to professionalize the Uganda Prisons Service staff. The Prison staff needs to be informed of the modern role of prisons. The nature of the training itself needs to be reviewed and categorized according to the duties an officer will be expected to perform

**Effective follow up of Prisoners after Release:** There should be elaborate follow up program or ex-prisoners to assess how they adapt to life after prison. This calls for more finance support from the government to the NGOs that deal with settlement of ex-prisoners in society. Ex-prisoners should also be organized in groups and given grants to start up their own projects so as to put the skills they acquired from the prison training into practice.

**Sensitization of the General Public:** The public needs to be informed of the modern role of prisons in the reformation and rehabilitation of prisoners. This is because there is a misunderstanding among the population of the Operation of some of the prison program like reduction of sentence. Sensitization will help to reduce the stigma to aids ex-prisoner by the public. This will make it easy for the process of re-integration of ex-prisoner into the community thus making the rehabilitation cycle complete.

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<sup>64</sup> Prison Act [section[124][4][2]

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## APPENDICES

### A. Questionnaire to Local Inmates OR detainees

I ..... of Reg. No.....Am pursuing a bachelor degree of Law currently in my final year. I am carrying out a research on **the critical analysis of imprisonment as a form of penal punishment in Uganda.[ A case study of Luzira prison]**

Precisely, your response will be treated with confidentiality and the information obtained will be strictly for educational purpose.

Tick one or write the relevant information in the space provided.

#### SECTION A: DEMOGRAPHIC

1. Age

(a) Below 21 years ☐

(b) 22-35 years ☐

(c) 35 and above ☐

2. Sex

(a) Male ☐ (b) Female ☐

3. Level of education level

(a) 0-Level ☐ (b) A-Level ☐

(c) Degree holder ☐ (d) others (specify). .....

4. What is your marital status?

A.) single ☐ b) Married ☐ c) Not sure ☐

7. How has imprisonment affected the general health rights and welfare of inmates?

a. good ☐ b. poor ☐ c. absolutely poor ☐

8. What are the major causes of imprisonment in society today?

.....  
.....  
.....

9. How has the general hygiene and sanitation in prison impacted on your health?

.....  
.....



10. How do you find the conditions with in prison and how do they affect your health situation?

.....  
.....

11. How helpful has been the facility in the prevention of diseases for example TB and HIV,water and insect borne diseases and the general hygiene and sanitation?

.....  
.....  
.....

11. Do you think justice and fair treatment has been accorded to prisoners or they have been denied their rights and personal liberty?

.....  
.....

12. What are the challenges you have faced under serving your sentence?

.....  
.....  
.....

13. Do you think imprisonment is better for inmates as a form of rehabilitation?

.....  
.....  
.....

14. How did you find the food and the general nutrition in prison.

a) Good ☐      b) Poor ☐      c) Moderately good ☐      d) Extremely poor ☐

12. For how long have you been on remand or served the sentence?

.....  
.....  
.....

13. What is the nature of punishment considering imprisonment as a form of punishment?

.....  
.....

14. What is your say about 'recidivism' as a problem among prisoners?

.....  
.....  
.....

15. Are you aware of programs in prison aim at reformation and rehabilitation of inmates?

a) If your answer is yes, list some of the programs below and state how they have helped you or others?

.....  
.....  
.....

b) If no why have these programs failed to rehabilitate and reform offenders?

.....  
.....  
.....

## APPENDIX B: Questionnaire for Prison Officers

### KAMPALA INTERNATIONAL UNIVERSITY SCHOOL OF LAW

My name is Katureebe Moses a student at the Kampala International University. I am carrying out research on the topic: **The Critical Analysis Of Imprisonment as a form of punishment In Uganda.**[A case study of Luzira prison] I humbly request that you fill out this questionnaire by honestly answering the questions below. Write the correct answer where options are provided. All the information received is strictly for academic purposes only and our anonymity is guaranteed. Feel free to leave blank a question that you are not in position to answer or not comfortable with. Thank you in advance.

What is your name? .....

What is your position? .....

What are your duties? .....

.....  
.....

For how long have you worked with the Uganda Prisons Service?

.....

What was the nature of your training and what aspects did it cover?

.....  
.....  
.....

What are the challenges you have faced in our duties?

.....  
.....  
.....

Do you think your training has helped you to cope with the above challenges?

(a) Yes ☐ (b) No ☐

If your answer above was No, what do you think should be done in order to solve the challenges that you face?

.....  
.....  
.....

Are there refresher courses in the Uganda Prisons Service? .....

.....

0. What is your observation towards prisoners? ☐

a) As offenders who have come to prison to serve a punishment. ☐

B) As community outcasts who deserve strict confinement and punitive punishment to save the community from more crimes. ☐

c) As offenders who need to be reformed and rehabilitated so that they return community as law abiding citizens. ☐

1. Do you think recidivism is a problem among ex-prisoners in Uganda?

.....

2. If your answer in 11 above was yes, how would you rate the level of recidivism in Uganda among ex-prisoners?

(a) Very high (50% and above) ☐ (b) Moderate (40%-49%) ☐ (c) Low (39% and above) ☐

3. Are you aware of programs in the prison aim at the reformation and rehabilitation offenders?

(a) Yes ☐ (b) No ☐

4. If your answer in 13 above is Yes, list some of these programs below.

.....  
.....  
.....

5. In your opinion, do you think these programs have helped prisoners get reformed?  
(a) Yes ☐ (b) Not effectively ☐ (c) Not at all. ☐

6. If your answer in 15 above was (b) or (c) why do you think these programs have failed to rehabilitate and reform offenders?

.....  
.....  
.....

7. What do you think should be done to improve on the effectiveness of these reformatory programs. if your answer in 15 above was (b) or (C)?

.....  
.....  
.....

## APPENDIX C: Questionnaire for NGOS

### KAMPALA INTERNATIONAL UNIVERSITY SCHOOL OF LAW

#### Questionnaire (For Prison (Non-Governmental Organizations))

My name is ..... a Bachelor of Laws student at the kampala International University . I am carrying out research on the topic; **“The critical analysis of imprisonment as form of penal punishment in Uganda: a case study of luziraprison** I humbly request that you fill out this questionnaire by honestly answering the questions below. Fill in the blank spaces or circle/tick the appropriate answer where applicable. All the information received is strictly for academic purposes only and your anonymity is guaranteed. Feel free to leave blank a question that you are not in position to answer or not comfortable with.

1. What is your name? .....
2. Name of the Organization? .....
3. What is your position in this Organization? .....  
.....
4. For how long have you worked with this Organization?  
.....
5. What are your duties and responsibilities in this Organization?  
.....  
.....  
.....
6. What are the major activities of this organization?  
.....  
.....  
.....

7. At what stage does your organization help the prisoners?

(a) While in Prison ☐ (b) After release ☐ (c) All stages ☐

8. What do you think are the problems faced by prisoners and ex-prisoners in prison and after release respectively?

(a) Prisoners .....  
.....  
.....

b) Ex-prisoner.....  
.....  
.....

9. What programs, if any are in place within your organization to help prisoners and ex-prisoners cope with life in and after prison respectively?

(a) Prisoners .....  
.....  
.....

(b)Ex-prisoner.....  
.....  
.....

10. What challenges do you face in the implementation of the above program?

.....  
.....  
.....

11. How have you managed to cope up with the above problems?

.....  
.....

.....

12. In your opinion, how would you rate the impact of imprisonment on the reformation and rehabilitation of offenders committed to prison?
- (a)Reformatory and rehabilitative ☐ (b) Moderate ☐
- (c) Makes inmates worse offenders than the even before imprisonment. ☐

13. Do you know of the existence of any programs in the prison aimed at the reformation and rehabilitation of offenders?
- (a) Yes ☐ (b) No ☐

14. If your answer in 13 above is Yes, list some of these programs below.
- .....
- .....
- .....

15. In your opinion, do you think these programs have helped prisoners yet reformed?
- (a) Yes ☐ (b) Not effectively ☐ (c) Not at all. ☐

16. If your answer in 15 above was (b) or (c) how do you think these programs have failed to rehabilitate and reform offenders?
- .....
- .....
- .....

17. What do you think should be done to improve on the effectiveness of these reformatory programs. if your answer in 15 above was (b) or c)?
- .....
- .....
- .....