

**AN EXAMINATION OF THE EFFECTIVENESS OF THE LAWS ON RIGHTS OF  
WOMEN PRISONERS IN UGANDA: A CASE STUDY OF LUZIRA PRISON**

**BY  
WALUSIMBI FREDRICH  
LLB/14184/122/DU**

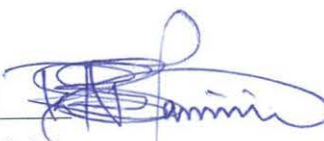
**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
FULFILLMENT FOR THE REQUIREMENT OF THE AWARD OF BACHELORS  
DEGREE OF  
LAWS OF KAMPALA INTERNATIONAL UNIVERSITY  
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**MAY 2017**

## DECLARATION

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

WALUSIMBI FREDRICH

WALUSIMBI FREDRICH   
Name and Signature of Candidate

07/09/2017  
Date

## DECLARATION B

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

MR. KAHAMA DICKSON

Name and Signature of Supervisor



7/9/2017

Date

## DEDICATION

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

I also dedicate it to my Pastor Peter Kasirivu of Ggaba Community Church for the impartial support he gives me in every area of my life.

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

## ACKNOWLEDGEMENT

I wish to sincerely thank and acknowledge the incredible guidance, encouragement and support of Mr. Kahama Dickson who dedicated his valuable time to supervise this project. Without you I would have had an impossible task to sail through this challenging endeavour alone. It's with your guidance and support that I have been able to accomplish this academic milestone.

I also wish to appreciate the support I have received from my friend Mrs Rose Kazibwe, for her invaluable support throughout my research work and moral support she gives to me as a mother and for encouraging me every single day, she has been a pillar of support in all spheres of life.

I appreciate my friend Counsel Sebugwawo Marvin Paul for always believing in me and encouraging me that I can make it and always giving me advice.

I also appreciate the support rendered spiritually by my church members at Ggaba Community Church.

I appreciate the commitment of all the lecturers whom I cannot single out individually, in guiding me through the entire course. Your efforts have not been in vain.

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## **LIST OF LEGAL INSTRUMENTS**

### **DOMESTIC**

Advocates Act laws of Uganda.

Advocates (Pro bono Services to Indigent Persons ) Regulations.

The Advocates (Legal Aid Services to Indigent Persons).

The constitution of Uganda 1995 (as amended).

The Magistrates Courts Act(cap 16).

The Poor Persons Defence Act (cap 20).

The Trial On Indictment Act (cap 23).

### **AFRICAN / INTERNATIONAL LEGISLATIONS**

African Charter on Human and Peoples ' Rights 1981.

African Charter on the Rights and Welfare of the Child 1990.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990.

Basic Principles for the Treatment of Prisoners 1990.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988.

Code of Conduct for Law Enforcement Officials 1979.

Convention Against Torture Cruel Inhuman and Degrading Treatment or  
Geneva Convention Relative to the Treatment of Prisoners of War 1949  
Punishment 1984.

International Covenant on Civil and Political Rights 1966.

International Covenant on Economic , Social and Cultural Rights 1966.

Convention on the Rights of the Child 1989.

International Convention on the Protection of the Rights of Migrant Workers  
1990.

Principles of Medical Ethics relevant to the Role of Health Personnel ,  
particularly Physicians in the Protection of Prisoners and Detainees against  
Torture and Other Cruel , Inhuman and Degrading Treatment of Punishment

1982.  
Rules for the Protection of Juveniles Deprived of their Liberty 1990.  
Standard Minimum Rules for the Treatment of Prisoners 1955.  
Universal Declaration on Human Rights 1948.

### **ACRONYMS**

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

## **ABSTRACT**

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

## CHAPTER ONE

### 1.0 INTRODUCTION

#### 1.1 Background of the study

Luzira women's prison is one of the prisons that houses women offenders in Uganda. The prison is located a few kilometers from Kampala City Centre, off Luzira Road and houses over 38% of the total prison female population in the country. Most of the detainees held here are either committed or charged with capital offences and will have to stay the better part of their lives in a prison system.

A large majority of prisoners in Ugandan have a child or children outside prison and they have a better social and emotional need for regular contact with them, many of them are care givers for their children and when they are imprisoned the future of their children is left to fate<sup>1</sup>.

The foundation for Human Rights Initiative (FHRI) together with Penal Reform International (PRI) embarked on research into characteristics of female offenders in Uganda. The study was inspired by the United National Rules for treatment of women prisoners and noncustodial measures for women offenders<sup>2</sup> which were adopted by the UN General Assembly in December 2010. The rules recognize that there is limited knowledge on the background of female offenders and how imprisonment affects them and their children.

The Bangkok rules encourage that women prisoners have regular contact with their families including children and their children's care takers.

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<sup>1</sup> Report of Diva Mukisa, Project Coordinator at Foundation for Human Rights Initiative (FHRI) 30th October 2014

<sup>2</sup> Bangkok Rules

Very little attention that has been given to women and their special needs in the past mainly because they are the minority. Even though results show that a large number of women offenders are first time offenders who acted out of passion under jealous and much as they should serve their sentence it is important that they are understood and supported to become better and more productive people to their families and society<sup>3</sup>.

### **Who are women prisoners? Survey result from Uganda**

This joint report with foundation for human rights initiative (FHRI) is based on a survey of 194 women in prison in Uganda' carried out by FHRI between august 2014 and February 2015. The report tend to respond to the needs of women in prison and to enable an identification of the key areas to be addressed as a matter of priority.

A snapshot of survey results

- 76 percent of women surveyed identified themselves as poor or very poor, 32 % have never been to school.
- Over a half of the women surveyed (57%) were convicted of murder, manslaughter or assault.
- 35 children were living with their mothers in prison
- 37 percent of women said they have experience domestic violence .

As a result of their imprisonment, 43% of women have lost their jobs, 35% their homes and 31% had their children taken away.

### **1.2 Statement of the Problem**

In Uganda and in most of the countries of the world, police force and jail authorities remain in powerful position which tends them to abuse the rights of accused, arrestees,

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<sup>3</sup> Report of Diva Mukisa, Project Coordinator at Foundation for Human Rights Initiative (FHRI) 30<sup>th</sup> October 2014

<sup>4</sup> 10% of the Total Female Prison Population

under trial prisoners and convicts, or tends them to take bribes. The judiciary however has a duty to protect the rights of these prisoners by taking appropriate steps. This study therefore investigates the rights of the women prisoners and how they are protected in Luzira Prison.

### **1.3 Objective of the study**

The objective of the study is to assess the rights of the women prisoners in Uganda and how they are protected in Luzira.

#### **1.3.1 Specific objectives**

Specifically therefore the study aims

1. To find out whether Uganda's legal regime protects the rights of women prisoners.
2. To explore the legal rights of detained women prisoners under international legal regime.
3. For academic purposes, in order to finish my law degree
4. To suggest or make improvements to the treatment or handling of women prisoners' rights.

### **1.4 Research Questions**

This study intends to answer the following questions:

1. Whether Uganda's legal regime adequately protects the rights of women prisoners?
2. Whether the judiciary has a role in the protection of women prisoner' rights in Uganda?
3. Whether there are legal rights for detained women prisoners under international legal regime?

### **1.5 Scope of the Study**

This study analyses the rights of women prisoners in Luzira Prison since it is a prison where majority of women are detained (38% of the total population of women prisoners in the country).

## 1.6 Literature Review

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate.<sup>5</sup> As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in any civil suit.

*If the rule of law is to mean anything, it has to mean that the prison system is no less answerable to the courts than any other limb of the state, both how it serves and protects the public and for how it treats those in its custody.*<sup>6</sup>

It was stated by Lord Wilberforce in *Raymond v Honey*<sup>7</sup> that ,under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication and this remains the classic statement on prisoners' rights today. There is, however, a strong perception amongst commentators on prison law that the courts remain hesitant in their role as guardians of prisoners' rights.

The role of the courts is of particular importance to prisoners. Prisoners, by the fact of their imprisonment, cease to have control over their environment and regime and are instead almost wholly reliant on the prison authorities to regulate their daily lives. Indeed it was recognized in the Woolf Report that 'a prisoner, as a result of being in prison, is peculiarly vulnerable to arbitrary and unlawful action.'<sup>8</sup> As the courts are the

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<sup>5</sup> Government of Uganda, The Justice, Law, and Order Sector Program: Study on Gender and Access to Justice, THE REPUBLIC OF UGANDA MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS, JUSTICE, LAW AND ORDER SECTOR (2002), available at <[www.gsdr.org/docs/open/SSAJ85.pdf](http://www.gsdr.org/docs/open/SSAJ85.pdf)> asessed on 05<sup>th</sup> april 2017

<sup>6</sup>[1992] 1 AC 58.

<sup>7</sup>[1983] 1 AC 1 p10.

<sup>8</sup>Home Office (1991), para 14.293.

only independent body with the power to bind the Secretary of State, their role and the manner in which they fulfill their role are of critical importance.

Ensuring human rights for those behind bars sometimes seems nearly impossible because of the isolation from the society and the lack of interest of the outside world and mostly because of the sometimes conflicting goals that Correctional Law and Human Rights Law seem to have.<sup>9</sup> At present the situation in prisons and other places of detention in several States Parties is characterized by recurrent challenges such as high level of overcrowding, disease, malnutrition, torture and ill-treatment of inmates and long pre-trial detention periods<sup>10</sup>.

Schmallegger Frank<sup>11</sup> states that prisons help in the reduction of crime rate and recidivism by reforming and rehabilitating prisoners. This is through prison work, treatment and counseling of inmates with mental problems, providing recreational facilities to keep inmates occupied and reducing boredom. Prisoners should also be allowed a regulated interaction with family members to keep the family link. This can be useful if implemented by Uganda Prisons Service.

Adler Freda *et al*<sup>12</sup> discuss the importance of protection of human rights for prisoners towards rehabilitation and reformation of offenders. Effective rehabilitation and reformation of offenders in prison can only be achieved if the basic rights of prisoners are respected. It is hard to reform offenders if they are subjected to torture and other inhuman treatments. Prisoners should be given right to access their families, freedom

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<sup>9</sup> J. Sarkin, —an overview of human Rights in Prisons worldwide|| in J. Sarkin (ed.), Human rights In African Prisons,(2008),p.4. see also F.Vilion, A guide to jurisprudence,(2008) Jointly published in 2008 by the Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL).

<sup>10</sup>ACmHPR (48th and the 49th Ordinary Sessions of the African Commission 2011), 30th Annual Activity Report, <www.achpr. Org> assessed on 6<sup>th</sup> april 2017.

<sup>11</sup> Schmallegger Frank, **Criminal Justice Today: An Introductory Text for the Twenty-First Century**, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991.

<sup>12</sup> Adler Freda et al, **Criminal Justice: The Core**, Mc Graw Hill Companies Inc, Newyork, 1996.



from torture, inhuman and degrading punishment. This makes this work important to this study, because the problem of abuse of prisoners' rights is common in media reports in Uganda, though it discusses less the law on prisoners' rights.

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

Article 28(3)(e)<sup>13</sup> reads:

*Every person who is charged with a criminal offence shall be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; [...] (d) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State.<sup>14</sup>*

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

The Ugandan government, through the implementation of The Law Development Center Act<sup>15</sup>, established a Law Development Center that, in part, is responsible for "assisting in the provision of legal aid and advice to indigent litigants and accused persons" as an attempt to address some of the obstacles to justice.<sup>16</sup> Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford legal services nor benefit from government-provided legal assistance.

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<sup>13</sup> Constitution of Uganda 1995 (as amended).

<sup>14</sup> *ibid.* [In limited situations involving alleged crimes before the High Court, a judge can require the government to provide free legal aid outside the confines of a capital offense if such provision is "in the interests of justice," THE POOR PERSONS DEFENCE ACT, Chap. 20 (1998)].

<sup>15</sup> Chapter 132 Laws of Uganda.

<sup>16</sup> THE LAW DEVELOPMENT CENTRE ACT, Ch. 132 (1970) <[www.ulii.org/ug/legislation/consolidated-act/132](http://www.ulii.org/ug/legislation/consolidated-act/132)> assessed on 6<sup>th</sup> april 2017.

Senna Joseph, J., and Larry Siegel, J.,<sup>17</sup> discuss some problems that hinder effective reformation of prisoners. Most prisons are overcrowded, have limited facilities like outdated buildings that are fit for human outcasts of society than for rehabilitation and treatment of offenders. Weak and uncoordinated laws to ensure implementation of rehabilitation programs also hinder reformation. These weaknesses also exist in Uganda, thus the relevance of this work to this research. This review will help the researcher to analyze the situation at hand and recommend ways of ensuring promotion and protection of rights of indigent prisoners.

### **1.7 Research Methodology**

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

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

### **1.8 Limitations of the study.**

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

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

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<sup>17</sup> Senna Joseph, J., and. Siegel Larry, J., **Introduction to Criminal Justice**, 5<sup>th</sup> Edn, West Publishing Co., New York, 1990 .

provides among others for the functions<sup>22</sup> and objectives<sup>23</sup> of the Uganda Prisons Service. The Act also establishes the Prisons Authority<sup>24</sup> and provides for its functions<sup>25</sup>. The Act contains provisions relating to reformatory and rehabilitative programs in prisons which are discussed in detail later in this chapter.

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

## **2.4 The Trial On Indictment Act**

The Trial on Indictment Act<sup>26</sup> provides that “a person accused of an offence before the High Court be defended by an advocate”. However majority of the cases tried in High Court are of a capital nature, and attract life imprisonment or the death penalty, the practice is that all accused persons appearing in the High Court must be defended by an advocate at the expense of the State or in addition to their own paid lawyer. It’s the role of the judiciary to ensure that these poor people get the justice they deserve regardless of their pockets.

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<sup>22</sup> Under Section 5 the functions of U.P.S include inter alia, to facilitate the social rehabilitation and reformation of prisoners through specific training and educational programs, to facilitate the re-integration of prisoners into their communities.

<sup>23</sup>Section 4.

<sup>24</sup>Section 9 (1).

<sup>25</sup> Section 10 (1) the functions include inter alia, to advise the Government on policy matters relating to the management, development and administration of the Service, to make programs for social rehabilitation and reintegration of offenders so as to enhance their ability to resettle in their communities and to develop and administer services and programs for the purpose of counseling persons subject to non-custodial sentences.

<sup>26</sup> Section 55 TID, Cap 23

## 2.5 The Poor Persons Defense Act

The Poor Persons Defense Act<sup>27</sup> provides that

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

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

## 2.6 The Magistrates Courts Act

The Magistrates Courts Act<sup>28</sup> provides for any person accused of an offence before a magistrate court to be defended by an advocate as of right. However, many persons appearing in these courts are poor and cannot afford legal counsel. The result is that the majority of persons end up defending themselves, except for those cases which attract life imprisonment, where the state provides an advocate at its cost.

## 2.7 The Advocates (Legal Aid Services to Indigent Persons)

The Advocates (Legal Aid Services to Indigent Persons) <sup>29</sup> formulated under the Advocates Act, Cap. 267 as amended by Act. No. 27 of 2002 specify rules governing the provision of legal aid including registration of legal aid service providers, eligibility for legal aid, maintenance of quality of services and client care and supervision by the Uganda Law Council.

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

Advocates (*Pro bono* Services to Indigent Persons) Regulations<sup>30</sup>, require all advocates in Uganda to provide *pro bono* services for at least 40 hours in a year or pay money in

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<sup>27</sup> Section 2 of Cap 20

<sup>28</sup> Section 158 MCA Cap 16.

<sup>29</sup> Regulations No. 12 of 2007.

<sup>30</sup> Regulations No. 39 of 2009.

lieu thereof. Additionally, the Advocates (Student Practice) Rules, 2004 allow post graduate Bar students, as part of their training, to provide legal aid by representing juvenile clients in magistrates courts under guidance of senior lawyers.

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

### **2.9.1 Categorization of Prisoners**

Prisoners should be categorized in order to avoid the contact of recidivists with first offenders. Categorization should be based on sex, health conditions of prisoners, age of prisoners, criminal background and type of offences committed, and the period of sentence among others. The Act only addresses the separation between males and female prisoners. This is under Section 29 of the Act<sup>31</sup>. It provides that except for the purpose of work or training and only under strict supervision, male and female prisoners shall be kept apart in separate prisons or separate parts of the same prison so as to prevent contact between them. However, there should be categorization based on the characteristics of prisoners stated above<sup>32</sup>.

### **2.9.2 Prison Education and Vocational Training**

Prisoners while in prison should not lose their right to education<sup>33</sup>. Their time in prison can be used to teach them how to read and write and train them in vocational skills<sup>34</sup>. Such training can make them able to live in a law-abiding manner after release<sup>35</sup>. Formal education makes it easy to join tertiary institutions upon their release and, vocational training enables them to create their own jobs and generate some income<sup>36</sup>.

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<sup>31</sup> Prisons Act 2006 laws of Uganda.

<sup>32</sup> Rules 8, 67 and 68 Standard Minimum Rules For The Treatment of Prisoners 1955.

<sup>33</sup> Uganda Human Rights Commission, 12th Annual Human Rights Report, 2009, Presented to the Parliament of the Republic of Uganda pg 41.

<sup>34</sup> Garland, D., Punishment and Welfare: A history of penal strategies. Gower Publishing Company. Great Britain, 1985 pg 129.

<sup>35</sup> Nsalasatta, D.S., "Information on the Uganda Prison Service", The Uganda Living Law Journal, Volume 1, Number 1, June 2003 pages 128..

<sup>36</sup> Pisciotta, W., Scientific Reform: The New Penology, Elmira, U.S.A, 1983 pg 109..

The desire to effect transformation was among the original aims of incarceration and from the outset learning was presumed to have a role in the accomplishment of that aim and thus should form part of today's penological studies<sup>37</sup>.

International instruments make it clear that prisoners have the right to pursue education if they so wish within the available resources<sup>38</sup>. In order to prevent mental deterioration and retardation, and to improve their level of education and development, prisoners should have access to books and training in vocational activities<sup>39</sup>. Vocational training is important in rehabilitating prisoners because it equips them with skills they can use to create their own jobs once released<sup>40</sup>.

The Act is not elaborate on education apart from mentioning that prisoners have a right to education<sup>41</sup>. It is silent on the issues like the type of education, status of a prisoner released before sitting for final examinations, source and remuneration of prison teachers, whether education is compulsory for young prisoners and access by prisoners to books. This is derogation from international instruments on the treatment of prisoners especially the Standard Minimum Rules<sup>42</sup> and the Kampala Declaration on Prison Conditions in Africa<sup>43</sup> sub-paragraph 7 of the paragraph on prison conditions. In other jurisdictions like Tanzania, the question of prisoners' education has yielded

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<sup>37</sup> Ray Jones, "A Coincidence of Interests: Prison Higher Education in Massachusetts", *Journal of Prisoners on Prisons*, Volume 4, Number 1 2006.

<sup>38</sup> Rule 77 of the United Nations Standard Minimum Rules for the Treatment of Offenders.

<sup>39</sup> Omoni Grace Ego and Ijeh Scholastica, U., "Qualitative Education For Prisoners: A Panacea to Effective Reformation and Reintegration into the Society", *Edo Journal of Counseling*, Volume 2 Number 1 of 2010.

<sup>40</sup> Senior Welfare Officer at Luzira Prison Mr. Anatoli Biryomumaisho acclaimed the role of education in prison reforming offenders when he stated that; "education is key in transforming and rehabilitating inmates", in Charles Ariko "42 Luzira inmates Pass PLE", *The Sunday Vision* 24th January 2010.

<sup>41</sup> Section 57 (d).

<sup>42</sup> Rule 77(1) provides that education for young and illiterate prisoners shall be compulsory.

<sup>43</sup> International Seminar on Prison Conditions in Africa, Held at Kampala, 19th to 21st September, 1996.

positive results with prisoners acquiring degrees in fields like Law<sup>44</sup>. Uganda should copy the same idea and ensure that prisoners continue up to tertiary level.

### **2.9.3 Freedom of Religion and Worship in Prisons**

Prisoners should also be given opportunity to accomplish their religious and spiritual needs<sup>45</sup>. This helps prisoners to reflect and remorse past criminal deeds which is good for reformation and rehabilitation<sup>46</sup>. In Uganda, this is provided for under Section 113 of the Act<sup>47</sup>. The Minister of Internal Affairs is empowered to appoint ministers or religious priests of any religious faith to be prison ministers<sup>48</sup>. The religious minister is supposed to; visit prisoners in prison for which he or she is appointed to conduct religious services for the benefit of prisoners<sup>49</sup> and hold religious and moral fellowships and interactions and counseling for the benefit of the prisoners<sup>50</sup>. Access by a qualified representative of any religion cannot be refused to any prison except when a prisoner objects to a visit of any representative, his or her opinion has to be respected<sup>51</sup>. Every prisoner is allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his or her possession the books of religious observance and instruction of his or her denomination<sup>52</sup>. This is in accord with the United Nations

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<sup>44</sup> ose Athuman, "Prison Bars Could Not Stop Them" Daily News, 3rd December 2009; Haruna Gombela an inmate from Ukonga prison in 2007 graduated with a degree in Law and Semayonga Michael Earnest in 2009 also was awarded a Law degree, all from Open University of Tanzania. The Minister of Home Affairs for Tanzania, Hon. Lawrence Masha acclaimed the role of education in keeping prisoners out of criminality after release.

<sup>45</sup> Executive Director of Prison Fellowship Uganda, Mwesigye David, "Religious Education can Reduce Prison Congestion", published in The New Vision, Monday, 29th September, 2008.

<sup>46</sup> Garland, D., Punishment and Welfare: A history of Penal Strategies, Gower Publishing Company, Great Britain, 1985 pg 223.

<sup>47</sup> Prisons Act 2006.

<sup>48</sup> Section 113 (1).

<sup>49</sup> Section 113 (3) (a).

<sup>50</sup> Section 113 (3) (b).

<sup>51</sup> Section 113 (4).

<sup>52</sup> Section 113 (4).

Standard Minimum for the Treatment of Offenders<sup>53</sup>. This has been implemented in Luzira and Kirinya prisons, where prisoners are allowed to worship according to their faiths. This has had a great impact on the reformation and rehabilitation of prisoners as will be explained later in chapter four on the presentation of findings.

#### **2.9.4 Prison Work**

Prison work is important because it keeps the prisoners busy and active thus avoiding boredom<sup>54</sup>. Samaha Joel<sup>55</sup> suggests that if prisoners have no work and become accustomed to idleness, they may lose their sense of responsibility for themselves and their families making it difficult for them to live law-abiding lives after release.

Prisoners should be paid a fair wage for their work. Prisoners should be allowed to spend part of their wages in prison, send part of it to their families or save a part of it for their release. Work in prison should be subject to the same laws on health, safety, industrial injury and occupational diseases as is work among the general public and should not be afflictive in nature<sup>56</sup>.

The Act is silent about the prisoners' work. However, the Minister of Internal Affairs is empowered to make Rules and Regulations governing the kind of work of prisoners<sup>57</sup> and the payment of prisoners for work done while in prison<sup>58</sup>. In 2000 the then Minister of Internal Affairs<sup>59</sup> made the Prisoners (Earning Rates and Gratuity) Rules, 2000<sup>60</sup>

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<sup>53</sup> See Rule 41 on the conditions of worship, receiving of pastoral visits by prisoners among others.

<sup>54</sup> Ryan Marion, S., "Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts", William & Mary Bill of Rights Journal, Volume 18 Issue 1, 2009 available at <<http://scholarship.law.wm.edu/wmborj/vol18/iss1/10>> (accessed on 10<sup>th</sup> April 2017).

<sup>55</sup> Samaha Joel, criminal justice , (second edition, West publishing co.Los Angeles , 1991)

<sup>56</sup>Rule 71(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

<sup>57</sup>Section 124 (2) (e).

<sup>58</sup>Section 124 (2) (h).

<sup>59</sup>Brigadier Moses Ali.

<sup>60</sup> Made under Section 76 (h) of the Prisons Act 1956 and came into force on 21st November 2000.



which, despite the repeal of the Uganda Prisons Act 1956 in 2006, are saved by Section 125 (3) (a) of the Act<sup>61</sup>.

### **2.9.5 Prison Exercise and Recreational Activities**

Exercises keep prisoners in good physical health and kill boredom<sup>62</sup>. Therefore, in any prison, there ought to be recreational facilities for the prisoners to have regular exercises<sup>63</sup>. This is supported by international instruments on treatment of prisoners<sup>64</sup>. Exercises and recreational activities also facilitate social reintegration of prisoners with their communities through organizing competitions between inmates and community members<sup>65</sup>.

Exercise for prisoners is provided for under Section 70 of the Act<sup>66</sup> which states thus; every prisoner not employed in outdoor work shall have at least one hour of suitable exercise in the open air. It is assumed that those prisoners engaged in outdoor employment, that is part of the daily exercise. This is contrary to Rule 78 of the Standard Minimum Rules that provides for recreation to all prisoners. This limitation under the Act is therefore unnecessary.

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<sup>61</sup> Section 125 (3) (a) makes any Rules issued under the 1956 Act to continue in force unless replaced by other Rules made under the Uganda Prisons Act 2006.

<sup>62</sup> Nuwagaba Edwin, "Theatre Factory takes Easter to Luzira Prison", Daily Monitor, Tuesday, 6th April 2010. The author of the article commended the importance of giving prisoners entertainment in a bid to reform them. It keeps them active and restores their hope to once return to society once they are released. This furthers the process of social reintegration of prisoners into their communities.

<sup>63</sup> Schmallegger Frank, Criminal Justice Today: An Introductory Text for the Twenty-First Century, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991 pg 235.

<sup>64</sup> Rule 78 of United Nations Standard Minimum Rules for the Treatment of Offenders.

<sup>65</sup> Westminster Advisors White Paper, Prisoner Rehabilitation and Offender Management, April 2010 available at <[www.westminsteradvisers.co.uk/assets/resources/criminal-justice-system-wa-white-paper](http://www.westminsteradvisers.co.uk/assets/resources/criminal-justice-system-wa-white-paper)> assessed on 6th april 2017.

<sup>66</sup> Prisons Act 2006.

### 2.9.6 Contact With Outside World

A prisoner should be allowed to keep in touch with the family members, friends and relatives. This maintains the social link between the prisoner and the outside world to which he is to return after incarceration. It also makes the possibility of social reintegration easy. Section 78 of the Act provides that communication between prisoners and their relatives and friends is allowed subject to such restrictions as the Officer in Charge may think are necessary for the maintenance of discipline and order in the prison, and the prevention of crime<sup>67</sup>. Further, on admission, a prisoner is allowed to write a reception letter and to receive a visit, even on transfer, a prisoner is allowed to write to relative a transfer letter<sup>68</sup>.

### 2.9.7 Treatment in Prison

The responsibilities of prisons extend far beyond the “warehousing” of offenders<sup>69</sup>. Prisons are mandated and ethically bound to provide adequate health care treatment and facilities. Every prison should have a psychiatrist to examine the mental state of all prisoners admitted to prison<sup>70</sup>. In some jurisdictions, prison authorities can be held responsible for any death or injury resulting from failure to treat a prisoner or negligence in providing health services. For instance, in the Indian case of *Ranchod V State of Madhya Pradesh*<sup>71</sup> the state was held responsible for the negligent services of a prison doctor which resulted into death of a prisoner. It was held that prisons are mandated to give medication to prisoners because right to health is everyone’s right

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<sup>67</sup>Section 78 (1) Prison Act 2006.

<sup>68</sup> Section 78 (2) Prisons Act 2006.

<sup>69</sup> Dvoskin Joel, A., and Spiers Erin M; “The Role of Correctional Officers in Prison Mental Health”, Psychiatric Quarterly Journal, Volume 75, Spring 2004.

<sup>70</sup> Lovell David et al, “Evaluating the Effectiveness of Residential Treatment for Prisoners with Mental Illness”, Criminal Justice and Criminal Behavior, An International Journal, Vol. 28, No.1 February 2001.

<sup>71</sup>[1986] 16 M.P. Reports 147.

which even imprisonment cannot take away. This is also in accord with the Standard Minimum Rules<sup>72</sup>. In Uganda treatment is based on mental sickness and other illnesses.

### **2.9.8 Remission of Prison Sentence and the Reformation of Prisoners**

Remission works in a way that if a prisoner behaves well during incarceration and shows that he has been remorseful and reformed, there is a reduction of a given part of his sentence by the prison authority to get an earlier release<sup>73</sup>. This encourages prisoners to reform so as not to lose the remission. This enhances the process of reformation and rehabilitation.

In the case of *Onyango v Attorney General*<sup>74</sup> it was held that the Commissioner of Prisons before depriving a prisoner of remission must sufficiently inform him of the reason and give him opportunity to be heard otherwise the order will be declared null because remission is a right of all prisoners. Therefore, in Kenya, remission of prison sentence is a right whose denial attracts judicial review against the Commissioner of Prisons.

In Uganda, the Act provides that a convicted prisoner sentenced to imprisonment for a period exceeding one month may, by industry and good conduct, earn a remission of one third of his or her sentence or sentences<sup>75</sup>. Each prisoner on admission is supposed to be credited with the full a remission to which he or she would be entitled at the end of his or her sentence or sentences if she or he does not lose or forfeit it<sup>76</sup>.

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

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<sup>72</sup> Rules 22 to 25.

<sup>73</sup> Appleton, C., and Grover, B., "The Pros and Cons of Life without Parole", Volume 47, British Journal of Criminology, 2007, at pg 597

<sup>74</sup> Application 152 of 1986, Court of Appeal at Nairobi (Platt and Gachuhi JJA), Thursday 07th May 1987 (Unreported), (accessed on 10th April 2010).

<sup>75</sup> Section 84 (1) Prisons Act 2006.

<sup>76</sup> Section 84 (2) Prisons Act 2006.

the president under Article 121 (4) (d) of the Constitution to grant a further remission on special grounds<sup>77</sup>. However, the Act does not define what these special grounds are so discretion is left to the president to determine who to grant this further remission depending on reasons he considers appropriate.

## **2.10 Conclusion**

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

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<sup>77</sup> Section 86 (1) Prisons Act 2006.

## CHAPTER THREE

### 3.0 INTERNATIONAL LEGAL REGIME ON PROTECTION OF INDIGENT PRISONERS RIGHTS

#### 3.1 Introduction

This chapter examines the international legal regime from the African continent and some work from the United States of America and makes a comparison with the Uganda legal regime. Subjecting women prisoners to cruel, inhuman, and degrading treatment<sup>78</sup> is against the Geneva Conventions and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the case filed by the Center for Constitutional Rights, the lower federal courts ruled that Guantanamo prisoners have no right to a writ of *habeas corpus*. The prisoners of Guantanamo, Iraq and Afghanistan and rendition prisoners are entitled to be treated in accordance with the law – either criminal law or the Geneva Conventions which apply to prisoners of war<sup>79</sup>.

##### 3.1.1 Rights of the women prisoners

Years ago, in the much heralded case of *Gideon v Wainwright*<sup>80</sup>, the U.S. Supreme Court held that the United States Constitution entitles every person accused of a serious crime to a lawyer. If the defendant can't afford his or her own counsel, the state must appoint an attorney to assist that defendant. Indigent, criminally accused persons typically are represented by public defenders burdened with crushing caseloads and lack essential resources for investigation and expert assistance.

#### 3.2 The International legal regime

##### 3.2.1 Universal Instruments

The principle international legal instruments that protect the rights of individuals including women prisoners are the International Covenant on Civil and Political Rights

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<sup>78</sup> Geneva Conventions and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>79</sup> Karen J. Greenberg and Joshua L. Dratel (Eds.) *The Torture Papers: The Road to Abu Ghraib*, Cambridge: Cambridge University Press, 2005, 38.

<sup>80</sup> U.S. Supreme Court.

(ICCPR) the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).<sup>81</sup> The conventions that contain explicit reference to detained persons include the ICCPR which in Article 9 guarantees inter alia the right to liberty and security of person, and that arrested or detained persons on a criminal charge shall be arraigned promptly and tried within a reasonable time or released with or without conditions. The Human Rights Committee considers 'promptly' to mean that 'delays must not exceed a few days' and 'within reasonable time or release' to mean that 'pre-trial detention should be an exception and as short as possible'.<sup>82</sup> This article is particularly important in view of the large numbers of pre-trial detainees held in prisons. Article 10 states that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. The Human Rights Committee in its General Comment No. 21 has interpreted this provision in the light of detained persons to mean that they may not be subjected to hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be regarded under the same conditions as that for free persons.<sup>83</sup> The only restrictions that should be imposed are those unavoidable in a closed environment.

The Convention on the Rights of the Child prohibits cruel, inhuman and degrading treatment against children and provides that children should not be detained unless it is a measure of last resort and for the shortest period necessary.<sup>84</sup> Further, that the detained child shall be treated with humanity and with respect for their inherent human dignity.

The International Convention on the Protection of the Rights of Migrant Workers makes specific reference to the conditions of arrest and detention of migrant workers and their

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<sup>81</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. See Annexure A for selected provisions of universal instruments.

<sup>82</sup> General Comment 8 Human Rights Committee, Sixteenth session 1982 paras 2 and 3.

<sup>83</sup> General Comment 21 Human Rights Committee, Forty-fourth sessions, 1992 para3.

<sup>84</sup> Article 37 of the Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

families.<sup>85</sup> The Geneva Convention relative to the treatment of prisoners of war is also of direct relevance to prisoners though its application is confined to persons detained in connection with situations of armed conflict.<sup>86</sup>

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

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force on 1 March 2002. The Convention establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the Committee). The Committee is permitted to visit all places of detention, defined by the convention as "any place within its jurisdiction where persons are deprived of their liberty by a public authority." Once a state government is notified of the intention of the Committee to carry out a visit it is required to allow access to the territory with the right to free travel without restriction, full information of the facility in question, unlimited access to the facility and free movement within it, the right to interview any person being held within the facility, communicate freely with any person whom it believes can supply relevant information and access to any other information which the Committee feels is necessary to carry out its task. All information gathered is confidential. In exceptional circumstances a state may make representations based on grounds of national defence, public safety, serious disorder in custodial facilities against a visit to a certain place or at a certain time. After each visit a report is drawn up with any possible suggestions to the state in question.

### **3.2.3 African Instruments**

At the regional level, the African **Charter on the Rights and Welfare of the Child** seeks inter alia, to protect the child against torture and ill treatment. It is the only

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<sup>85</sup>Articles 16 & 17 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990.

<sup>86</sup>Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949.

instrument that makes explicit reference to the rights of persons in detention. States are to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment and that the child is separated from adults in the place of detention.<sup>87</sup> The right to a speedy trial is also enshrined in the treaty.<sup>88</sup>

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

*'every individual shall have the right to the respect of their human dignity and all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.*<sup>89</sup>

The Charter also protects the right to life and integrity of person, the right to liberty and security of person whereby deprivation of liberty should be according to previously laid down laws; and the right to enjoy the best attainable state of physical and mental health.<sup>90</sup> All persons are guaranteed equality before the law and the right to fair trial including the right to be heard in one's cause.<sup>91</sup> It is said to comprise inter alia the right to an appeal to competent national organs against acts of violating fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.<sup>92</sup> This provision is particularly relevant for pre-trial detainees who may have spent a long time in prison without having their trials being conducted.

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<sup>87</sup>Article 17 (2) (a) and (b) of the African Charter on the Rights and Welfare of the Child.

<sup>88</sup>Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child.

<sup>89</sup>Article 5 of the African Charter on Human and Peoples' Rights. Comparable provisions are to be found in other regional instruments such as the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Inter- American Convention to Prevent and Punish Torture, European Convention for the Protection of Human Rights and Fundamental Freedoms Art 5, and the American Convention on Human Rights Art 5 <[www.cpt.coe.int/en/docsref.htm](http://www.cpt.coe.int/en/docsref.htm)> accessed on 18 april 2017.

<sup>90</sup>Articles 4, 6 & 16 of the African Charter on Human and Peoples' Rights.

<sup>91</sup>Articles 3 & 7 of the African Charter on Human and Peoples' Rights.

<sup>92</sup>Article 7 (1)(a) of the African Charter on Human and Peoples' Rights.



**The Kampala Declaration on Prison Conditions in Africa** arose out of an international seminar on prison conditions in Africa held in September 1996 in Kampala.<sup>93</sup> The seminar was attended by members of the African Commission on Human and Peoples' Rights, Ministers of State, prison commissioners, judges, international, regional and national NGOs and Inter-Governmental Organizations (IGOs). The Declaration was subsequently annexed to a resolution by the United Nations Economic and Social Council, which called for the cooperation of states, the United Nations and intergovernmental organizations in the improvement of prison conditions in Africa.<sup>94</sup> By doing so, the UN recognized and lent its weight to the efforts to improve penal conditions in Africa. The Kampala Declaration recommends action be taken by states and nongovernmental organizations on four fronts, prison conditions, remand prisoners, prison staff and alternative sentencing. The Declaration recommends:

*That the human rights of prisoners should be safeguarded at all times...; that prisoners should retain all rights which are not expressly taken away by the fact of their detention; that conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty; that the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility...*<sup>95</sup>

Remand prisoners are recognized as a category with a great proportion of inmates in African prisons. The police, prosecuting authorities and judiciary are encouraged to recognize their contribution to conditions such as overcrowding in prisons and therefore work in concert with prison officials to alleviate these problems. Prison staff are key to any action intended to be taken in prisons. Their working conditions are an important area of consideration. Imprisonment is recognized as a less than effective method of

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<sup>93</sup> Kampala Declaration on Prison Conditions in Africa accessed at <[www.un.org/documents/06030res/1997/res/1997\\_36.html](http://www.un.org/documents/06030res/1997/res/1997_36.html)> accessed on 15<sup>th</sup> april 2017.

<sup>94</sup> International Cooperation for the Improvement of Prison Conditions United Nations Resolution 1997/36 adopted on 21 July 1997 at <[www.un.org/documents](http://www.un.org/documents)> accessed on 15<sup>th</sup> april 2017.

<sup>95</sup> Kampala Declaration (n97 above) at Prison Conditions paras 1-2 & 4-5.

rehabilitating offenders particularly those sentenced to short terms. States are encouraged to adopt other sentencing policies, particularly non-custodial sentences like community service.

The second Pan African Conference on Prison and Penal Reform held in Burkina Faso in 2002 produced the Ouagadougou Declaration.<sup>96</sup> This Declaration recognized that progress had been made on the recommendations of the Kampala Declaration and reiterated the need to reduce prison populations. The conference encouraged prisons to be self-sufficient without absolving the state from its responsibility to ensure that minimum standards are maintained. Further, that the rule of law should prevail within the prison administration and efforts should be made to implement the best practices in penal reform. The Conference proposed the drafting of an African charter on prisoners' rights as well as a United Nations charter on the basic rights of prisoners as an important step towards improving the respect for prisoners' rights.

### **3.3 Access to the Courts**

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

Prisoners have a fundamental right to legal counsel that requires special consideration. Prison officials must allow reasonable times and places for prisoners to communicate confidentially with their attorneys. Prisoners must be provided with writing materials and law books. Additionally, prisoners must be able to have their legal papers notarized.

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<sup>96</sup>The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, September 2002. <[www.peanlreform.org/english/pana\\_declaration.htm](http://www.peanlreform.org/english/pana_declaration.htm)> accessed on 15 april 2017.

The judiciary should ensure that inherent prisoners can have access to courts so as their fate can be determined in time as justice delayed is justice denied.

### **3.4 Conclusion**

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

## CHAPTER FOUR

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

#### 4.1 Introduction

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

##### 4.1.1 *Pro Bono* Opportunities

As members of a profession, lawyers are bound by their ethical rules to charge reasonable rates for their services and to serve the public interest by providing free legal service to indigent persons or to religious, charitable, or other non-profit groups. A lawyer's free legal service to these types of clients is designated as *pro bono* service<sup>97</sup>.

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

The need for active *pro bono* support and services in Uganda has also been recognized by the Uganda Law Society and the Law Council. Acting together in 2009, they passed Regulations SI No. 39 under the Advocates Act, which made it mandatory for every attorney to provide forty (40) hours of *pro bono* legal services per year<sup>98</sup>:

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

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<sup>97</sup>Coulter, Dolores M. 2001. "The Pro Bono Priority." Michigan Bar Journal 80 (September).

<sup>98</sup>Advocates Act Regulations SI No. 39.

That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act<sup>99</sup>.

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

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

#### **4.1.2 Uganda law society**

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

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

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<sup>99</sup> *ibid.*

such, legal aid enables all persons, particularly the poor and vulnerable, to access their right to justice as well as other human rights.

The need for legal aid is created by the inability of persons to have all the required legal knowledge and to know all the procedures and to represent themselves. Factors such as poverty, ignorance of the law, armed conflict, disability or other vulnerability or marginalization should not be a barrier to people progressively realizing their rights which are protected by the Constitution of Uganda<sup>101</sup>. Furthermore, the inability to afford legal representation should never diminish a person's right to access justice.

The Poor Persons Defense Act<sup>102</sup> provides that

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

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

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

The court may also impose other sentencing options namely; fine, community service, probation, a caution and discharge without punishment as provided under section 10<sup>103</sup>.

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<sup>101</sup> The 1995 Constitution of Uganda, Chapter 4

<sup>102</sup> Section 2 of Cap 20

<sup>103</sup> THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF

#### 4.4 Conclusion

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

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Conclusion

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

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

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

The Ugandan government, through the implementation of The Law Development Center Act, established a Law Development Center<sup>104</sup> that, in part, is responsible for “assisting in the provision of legal aid and advice to indigent litigants and accused persons” as an attempt to address some of the obstacles to justice. Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford legal services nor benefit from government-provided legal assistance. This is basically

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<sup>104</sup> Law Development Centre Act chapter 132.



due the fact that these programs are not strictly applied and implemented by the bodies responsible. Therefore I would seek the judiciary to be at the forefront of ensuring that such programs reach its intended beneficiaries who are the indigent prisoners.

### **Inadequacy of Funding**

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

### **The Role of NGOs and Outside Entities**

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

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

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

### **The Role of Paralegals**

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

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

### **Improved prison conditions**

Despite the substantially increasing populations and crime rates in recent decades, the capacity of prison systems in Africa has barely changed. Whilst governments claim reform and rehabilitation as the aim of criminal justice, in practice, prison systems fail to deliver as expected and recent reports have shown that prison systems in most African countries are in crisis, burdened with overcrowding and an inability to satisfy basic human rights standards, despite states’ ratification of regional and international protocols and conventions. Addressing this crisis demands action not only in better resourcing and support of prison systems but in challenging practices throughout the

justice system - such as inappropriate sentencing policies - that are responsible for high rates of imprisonment. Therefore I would cry out to the judiciary to lobby for more funding from the government to help in financing the building and renovation of detention centers and also increase financing for all the programs mentioned above like for the Para legals and the legal aid clinic.

## **5.2 Recommendations**

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

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

Furthermore, most prison and law enforcement authorities are still ignorant about the provisions of human rights instruments on the treatment of people deprived of their liberty and the material and financial resources available to them are in most cases inadequate. Therefore its recommended that adequate education and sensitization be made for the prison staff and in-mates. The indigent prisoners should be educated about their rights and how they can protect them.

As per Section 3<sup>105</sup> on the exercise of general supervision and control over the provisions of legal aid and advice to inherent prisoners, the judiciary needs to do more tight making of the law firms and the advocates to ensure that this is done well and to the best of their abilities which would help in minimizing the rate and number of prisoners on remand and help shed a light on some of the rights of these prisoners . The advocates can also help in ensuring that justice is extended to inherent prisoners.

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

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

Case backlog; There are delays in trials and delivery of judgments and this results in case backlog. There are high backlogs of cases in the courts which lead to poor recording of proceedings. The judiciary in its mandate should increase on its efficiency

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<sup>105</sup> Advocates laws of Uganda .

stakeholders and also continuously collecting, monitoring and analyzing admission and length of stay information and sharing the results with the judiciary and officials in leadership positions in government.

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

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

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

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

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

The scope of rights sought to be protected and promoted by NHRIs should be as wide as possible. With regard to accessibility, mechanisms should be designed to ensure that prisoners are able to express their grievances and make their complaints to the national institutions without hindrance. Therefore the judiciary and the government at large should mandate national human rights groups to frequently visit prisons and make comprehensive reports on the abuse of rights of inherent prisoners , how they can be promoted and should also follow up their reports to ensure they are worked on

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