

**THE ROLE OF THE LAW IN THE PROTECTION OF RIGHTS OF
PRISONERS**

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DECLARATION

I, **Nabigaba Albert**, do hereby declare that this research paper is my original work. It has never been submitted to any university, college or school for the award of any masters' degree, degree or diploma. However ideas and views that were not of my own have been cited.


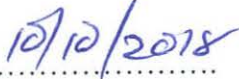
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APPROVAL

This is to certify that this Research Paper entitled "*The role of the Law in the protection of the rights of prisoners*" has been submitted to Kampala International University School of Law with my approval as the Supervisor.

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DEDICATION

I dedicate this research paper to my dear parents Mwesigwa and Jolly, Uncle Hon. Rukutana who supported me financially and morally to complete this research paper and not forgetting the efforts of Mama Halimah, Mr. Ambayo Francis, Bro Smith my friends and fiancée Tumwijukye Verina for sacrificing the little they had in my education.

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ABSTRACT

The study sought to analyze the role of law in the protection of the rights of prisoners.

The study objectives were; to analyze the various legal policy and institutional framework for the protection of prisoners' rights in Uganda, to discuss the international and national legal provisions in protecting rights of prisoners' and to suggest remedies to the protection of the rights of prisoners.

Although there is a lot of legislation, text books, scholarly papers and research articles about the protection of the rights of prisoners, the same remain on paper and there practical application remain shrouded with uncertainty. Human rights of prisoners are a contentious issue in both international and national human rights.

The law prohibits cruel, inhuman and degrading treatment against prisoners' protects freedom of worship, right to life etc.

The prisoners face the challenges of poor living conditions, overcrowding in prison cell, poor feeding etc.; the researcher recommends that the judiciary should ensure that community service and non-custodial sentences are followed to decrease congestion in prison, recommends that adequate education and sensitization be made for the prison staff and inmates, recommends that judiciary in its mandate should increase on its efficiency and even set a specific time period in which a case should be concluded, this could help in ensuring justice for the prisoners.

CHAPTER ONE

INTRODUCTION

Under the Prisons Act 2006, a prisoner means a person duly committed to custody under the writ, warrant or order of a court exercising criminal jurisdiction or by order of a court.

Human rights of prisoners are a contentious issue in international human rights law. There is always perception that prisoners do not have human rights once incarcerated and can therefore not claim protection or violation by the state or third actors. This notion has well been addressed over the period of development of human rights principles, into globally recognized norms and standards for the treatment of prisoners¹.

1.1 Background of the Study

The rights of civilian and military prisoners are governed by both national and international law². International conventions include the International Covenant on Civil and Political Rights; the United Nations' Minimum Rules for the Treatment of Prisoners, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities³

One of the founding tenets of the human rights charter under the constitution of Uganda is that each person is endowed with certain rights which can never be taken away from them. This extends even to people who have committed crimes serious enough to warrant a prison sentence

¹Howard Davis (2003), "Prisoners' rights", *Human rights and civil liberties*, Taylor & Francis, p. 157,

² Ibid at p156

³Handbook on prisoners with special needs, pp. 47-48 (published by the United Nations Office on Drugs and Crime)

(or temporary detention, such as a holding cell). Consequently, there are a number of legal protections available to prison inmates, even if those protections are not as strong as those for people who are not convicted felons⁴.

1.2 Statement of the Problem

The problem that arises is that despite various international law provisions that protect prisoner's rights, prisoners have often fallen victims of various human rights violations while under custody. The judicial system has been slow or reluctant to enforce prisoner's rights, leaving most of them without any access to justice or appropriate remedies for violations such as cruel inhuman and degrading treatment, access to food, and education amongst others.

1.3 Objective of the Study

The general objective of this study is to analyze the various legal policy and institutional framework for the protection of prisoners' rights in Uganda, as well as reasons and solutions to the violation of prisoners' rights.

1.3.1 Specific Objectives

Specifically therefore the study aims

1. To discuss the international and national legal provisions protecting rights of prisoners
2. To suggest remedies to the protection of rights of prisoners

⁴<https://civilrights.findlaw.com/other-constitutional-rights/prisoners-rights.html> (Accessed on 2nd June 2018)

1.4 Research Questions

This study intends to answer the following questions:

1. What is the legal framework governing prisoner right?
2. What are the rights that have been violated, and what reason?
3. What can be done to solve the situation in Uganda?

1.5 Justification of the Study

This study is justified on the ground that although there is a lot of legislation both domestic and international concerning the protection of the rights of prisoners, their ultimate application remains shrouded with uncertainty which this research seeks to address.

1.6 Literature Review

Although there is a lot of legislation, textbooks, scholarly papers and research articles about the protection of rights of prisoners, the same remains on paper and their practical application remains shrouded with uncertainty that this research seeks to address. However, many important aspects of this paper, relating to both form and substance, have been crafted with heavy reliance being placed on the existing literature.

J. Sarkins (2008)⁵, as the courts are the only independent body with the power to bind the 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.

⁵ 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).

HOME OFFICE (1991)⁶, 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.

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 periods⁷.

Schmallegger Frank (1991)⁸ opines that prisons help in the reduction of crime rate and recidivism by reforming and rehabilitating prisoners. This is through prison work, treatment and counseling of inmates with mental problems, providing recreational facilities to keep inmates occupied and reducing boredom. Prisoners should also be allowed a regulated interaction with family members to keep the family link.

Adler Freda et al (1996)⁹ discussed 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. This study agrees that it is hard to reform offenders if they are subjected to torture and other inhuman treatments. Prisoners should be given right to access their families, freedom from torture,

⁶ Home Office (1991) para 14

⁷ ACmHPR (48th and the 49th Ordinary Sessions of the African Commission 2011), 30th Annual Activity Report, <www.achpr.Org> assessed on 6th april 2017.

⁸ Schmallegger Frank, *Criminal Justice Today: An Introductory Text for the Twenty-First Century*, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991.

⁹ Adler Freda et al, *Criminal Justice: The Core*, McGraw Hill Companies Inc, Newyork, 1996.

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.

Senna Joseph, J., and Larry Siegel, J.,¹⁰ discussed 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. There are weak and uncoordinated laws to ensure implementation of rehabilitation programs also hinder reformation.

Livingston 2000, pp.309.321

The stigmatization of this already marginalized population is not without effect on the enforcement mechanism themselves. Traditionally, human rights bodies have been relevant towards into the contentious area of prisons condition and instead to allow states wide description in master that are essentially voiced as domestic poultry. Counting in 2000 on approach of the European human rights bodies to prisons continues up that time, professor Stephen Livingstone of queens university Bconelfos concluded, thus that the commission of decision given the impression that except in the most egregious cases such matters are seen as too detailed and threatening to the authority of prisons which this research seeks to address.

Crampton 2007, a hospital nurse who frequently treats prisoners notes that the "fear of violence faints all nurses /patients /prisons interaction " and that guards escorting the inmates can amplify the health professionals. Preexisting fears of judgment about their patients. This

¹⁰Senna Joseph, J., and. Siegel Larry, J., Introduction to Criminal Justice, 5thEdn, West Publishing Co., New York, 1990 .

exception that the prisons may be playing him to gain medication can lead them to error. Therefore this research seeks to address such lack of access to health in prisons.

De viggiani (2006) asserts that health care services are properly organized towards short term problem solution rather than more long term, sustainable, preventive and more development public health goals in prisons. This trend is particularly evident with the management of drugs misuses, suicide and self-harm where energy is directed at containment and treatment rather than prevention. This is tailored towards long term access of health care services to prisoners.

Poebers 1996. As described by one legal scholar who focuses on health rights , ‘the problem with the right to health is not so much a lack of codification but rather an absence with the implementation practice through reporting procedures and before judicial and quasi judicial bodies. Therefore this research seeks to suggest a practical implementation and enforcement of the rights of prisoners.

CHIRWA, 2002 Living conditions in a prison are among the main factors determining the prisoner’s sense of self-esteem self-worth and dignity. Where the inmates sleep, what he or she is allowed to wear and what how and whether he or she is allowed to wash and wish what frequency whether he or she access to a toilet or has to ask and can only use it for the following timetable put in place by the prison officer.

Therefore human living condition psychologically and socially stimulating treatment of the prisoners are also matters of health. Therefore this research seeks to suggest measures of strengthening access to such health facilities in the prisons.

The European court of Human Rights (ECHR), this judicial body that considers alleged violation under the European convention of Human Rights has also used the right to life under Article 2 of the European convention as mechanism to engage the rights to health of prisoners including the right to medical treatment. According to the court, the right to life enjoins the state not only to refrain from the institutional and lawful taking of life, but also to take appropriate step to safeguard the lives of those within its jurisdiction. In *Edwards & Another V UK* (2002) 35 ECHR 417 Para 54, the failure of the state to provide medical care and health screening system in medical care and health screening system in prison was found to violate the rights of prisoners which this research seeks to address and thus the relevance of 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 research was accessed from 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.

There was also limited time for carrying out the research as the researcher was in his final semester thus he had to concentrate on his final projects and course works and therefore affecting his time to make a more comprehensive and detailed report.

1.9 Chapterisation

This section sets out and explains what that particular chapter will intend to cover. Traditionally a dissertation consists of five chapters;

Chapter 1– This is the introduction and proposal

Chapter 2 – International legal system on protection of indigent prisoner's rights

Chapter 3 – The legal regime and the protection of rights of indigent prisoners in Uganda..

Chapter 4 – Strategies to ensure the protection of the rights of the indigent prisoners in Uganda.

Chapter 5 - Conclusions and Recommendations.

CHAPTER TWO

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

2.1.1 Rights of the prisoners

In the much heralded case of *Gideon v Wainwright*¹¹, 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.

2. International legal System.

2.2.1 Universal Instruments

The principle international legal instruments that protect the rights of individuals including prisoners are the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).¹² 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'

¹¹U.S. Supreme Court.

¹² 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.

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’.¹³ 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.¹⁴ 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.¹⁵ Further, that the detained child shall be treated with humanity and with respect for their inherent human dignity.

The International Convention on the Protection of the Rights of Migrant Workers makes specific reference to the conditions of arrest and detention of migrant workers and their families.¹⁶ The Geneva Convention relative to the treatment of prisoners of war is also of direct relevance to

¹³General Comment 8 Human Rights Committee, Sixteenth session 1982 paras 2 and 3.

¹⁴General Comment 21 Human Rights Committee, Forty-fourth sessions, 1992 para3.

¹⁵Article 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.

¹⁶Articles 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.

prisoners though its application is confined to persons detained in connection with situations of armed conflict.¹⁷

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 defense, public safety, and serious disorder in custodial facilities against a visit to a certain place or at a certain time. After each visit a report is drawn up with any possible suggestions to the state in question.

¹⁷Adopted 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.

2.2.2 African Instruments

At the regional level, the African **Charter on the Rights and Welfare of the Child** seeks inter alia, to protect the child against torture and ill treatment. It is the only instrument that makes explicit reference to the rights of persons in detention. States are to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment and that the child is separated from adults in the place of detention.¹⁸ The right to a speedy trial is also enshrined in the treaty.¹⁹

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'.²⁰

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.²¹ All persons are guaranteed equality before the law and the right to fair trial including the right to be heard in

¹⁸Article 17 (2) (a) and (b) of the African Charter on the Rights and Welfare of the Child.

¹⁹Article 17(2) (c)(iv) of the African Charter on the Rights and Welfare of the Child.

²⁰Article 5 of the African Charter on Human and Peoples' Rights. Comparable provisions are to be found in other regional instruments such as the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Inter- American Convention to Prevent and Punish Torture, European Convention for the Protection of Human Rights and Fundamental Freedoms Art 3, and the American Convention on Human Rights Art 5 <www.cpt.coe.int/en/docsref.htm> accessed on 18 april 2017.

²¹Articles 4, 6 & 16 of the African Charter on Human and Peoples' Rights.

ones cause.²² 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.²³ This provision is particularly relevant for pre-trial detainees who may have spent a long time in prison without having their trials being conducted.

Kampala Declaration on Prison Conditions in Africa arose out of an international seminar on prison conditions in Africa held in September 1996 in Kampala.²⁴ 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.²⁵ 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

²²Articles 3 & 7 of the African Charter on Human and Peoples' Rights.

²³ Article 7 (1)(a) of the African Charter on Human and Peoples' Rights.

²⁴ Kampala Declaration on Prison Conditions in Africa accessed at www.un.org/documents/ecosoc/res/1997/eres1997-36.htm >accessed on 15th april 2017.

²⁵ International Cooperation for the Improvement of Prison Conditions United Nations Resolution 1997/36 adopted on 21 July 1997 at www.un.org/documents > accessed on 15th april 2017.

*of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility...*²⁶

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

The second Pan African Conference on Prison and Penal Reform held in Burkina Faso in 2002 produced the Ouagadougou Declaration.²⁷ 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.

²⁶ Kampala Declaration (n97 above) at Prison Conditions paras 1-2 & 4-5.

²⁷The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, September 2002. <www.peanlreform.org/english/pana_declaration.htm> accessed on 15 april 2017.

2.3 Access to the Courts

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

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

2.4 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 THREE

3.0 THE LEGAL SYSTEM IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF PRISONERS IN UGANDA

3.1 Constitution of Uganda 1995 (as amended)

Ugandan Constitution of 1995 as amended creates the provisions for the protection of the rights of prisoners and one of them is the Uganda Prisons Service²⁸. The composition, functions and objectives are set out in the Uganda Prisons Act. The constitution also gives the president of Uganda powers to grant prisoners pardon in certain instances²⁹. This supplements the remission available to prisoners on good character under the Prisons Act. Further, the constitution contains the Bill of Rights in Chapter Four³⁰. This is important because, as it has been argued, in order to have realistic reformation and rehabilitation of prisoners, their fundamental rights should be respected.

3.2 Uganda Prisons Act 2006

The Uganda Prisons Act 2006, hereinafter referred to as the Act, repeals and replaces the Prisons Act Chapter Number 304 of 1956. The aim of replacing the 1956 Prisons Act was to have a Prisons Act that is in line with modern enological principles on prisons and international standards especially the United Nations Standard Minimum Rules for the Treatment of Offenders in after called the Standard Minimum Rules³¹. The Act provides among others for the

²⁸Article 215 of the constitution of Uganda 1995 (as amended).

²⁹ ibid Article 121 (4)(d).

³⁰ Article 20 (1) provides that fundamental rights and freedoms of an individual are inherent and not granted by the state and in Article 20(2), those rights and freedoms shall be respected, upheld and promoted by all organs and agencies of the government, which include Prisons.

³¹ See the long title to the Prisons Act 2006 and Section 4 (1).

functions³² and objectives³³ of the Uganda Prisons Service. The Act also establishes the Prisons Authority³⁴ and provides for its functions³⁵. 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.

3.3 Poor Persons Defense Act Cap 20

The Poor Persons Defense Act³⁶ 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”.

³² 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 reintegration of prisoners into their communities.

³³Section 4.

³⁴Section 9 (1).

³⁵ 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.

³⁶ Section 2 of Cap 20

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.

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

3.4.1 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 Act³⁷. 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 above³⁸.

3.4.2 Right to Education

Prisoners while in prison should not lose their right to education³⁹. Their time in prison can be used to teach them how to read and write and train them in vocational skills⁴⁰. Such training can make them able to live in a law-abiding manner after release⁴¹. Formal education makes it easy

³⁷ Prisons Act 2006 laws of Uganda.

³⁸ Rules 8, 67 and 68 Standard Minimum Rules For The Treatment of Prisoners 1955.

³⁹ Uganda Human Rights Commission, 12th Annual Human Rights Report, 2009, Presented to the Parliament of the Republic of Uganda pg 41.

⁴⁰ Garland, D., Punishment and Welfare: A history of penal strategies. Gower Publishing Company. Great Britain, 1985 pg 129.

⁴¹ Nsalasatta, D.S., "Information on the Uganda Prison Service", The Uganda Living Law Journal, Volume1, Number 1, June 2003 pages 128..

to join tertiary institutions upon their release and, vocational training enables them to create their own jobs and generate some income⁴². 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 studies⁴³.

International instruments make it clear that prisoners have the right to pursue education if they so wish within the available resources⁴⁴. 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 activities⁴⁵. Vocational training is important in rehabilitating prisoners because it equips them with skills they can use to create their own jobs once released⁴⁶.

The Act is not elaborate on education apart from mentioning that prisoners have a right to education⁴⁷. 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 Rules⁴⁸ and the Kampala Declaration on Prison Conditions in Africa⁴⁹ sub-paragraph 7 of the

⁴² Pisciotta, W., *Scientific Reform: The New Penology*, Elmira, U.S.A, 1983 pg 109..

⁴³ Ray Jones, "A Coincidence of Interests: Prison Higher Education in Massachusetts", *Journal of Prisoners on Prisons*, Volume 4, Number 1 2006.

⁴⁴ Rule 77 of the United Nations Standard Minimum Rules for the Treatment of Offenders.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ Section 57 (d).

⁴⁸ Rule 77(1) provides that education for young and illiterate prisoners shall be compulsory.

paragraph on prison conditions. In other jurisdictions like Tanzania, the question of prisoners' education has yielded positive results with prisoners acquiring degrees in fields like Law⁵⁰. Uganda should copy the same idea and ensure that prisoners continue up to tertiary level.

3.4.3 Freedom of Religion and Worship in Prisons

Prisoners should also be given opportunity to accomplish their religious and spiritual needs⁵¹. This helps prisoners to reflect and remorse past criminal deeds which is good for reformation and rehabilitation⁵². In Uganda, this is provided for under Section 113 of the Act⁵³. The Minister of Internal Affairs is empowered to appoint ministers or religious priests of any religious faith to be prison ministers⁵⁴. 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 prisoners⁵⁵ and hold religious and moral fellowships and interactions and counseling for the benefit of the prisoners⁵⁶. 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 respected⁵⁷. Every prisoner is

⁴⁹ International Seminar on Prison Conditions in Africa, Held at Kampala, 19th to 21st September, 1996.

⁵⁰ 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.

⁵¹ Executive Director of Prison Fellowship Uganda, Mwesigye David, "Religious Education can Reduce Prison Congestion", published in The New Vision, Monday, 29th September, 2008.

⁵² Garland, D., Punishment and Welfare: A history of Penal Strategies, Gower Publishing Company, Great Britain, 1985 pg 223.

⁵³ Prisons Act 2006.

⁵⁴ Section 113 (1).

⁵⁵ Section 113 (3) (a).

⁵⁶ Section 113 (3) (b).

⁵⁷ Section 113 (4).

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 denomination⁵⁸. This is in accord with the United Nations Standard Minimum for the Treatment of Offenders⁵⁹. 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.

3.4.4 Right to work

Prison work is important because it keeps the prisoners busy and active thus avoiding boredom⁶⁰. Samaha Joel⁶¹ 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 nature⁶².

⁵⁸Section 113 (4).

⁵⁹ See Rule 41 on the conditions of worship, receiving of pastoral visits by prisoners among others.

⁶⁰ 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 10th April 2017).

⁶¹ Samaha Joel, criminal justice , (second edition, West publishing co.Los Angeles , 1991)

⁶²Rule 71(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

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 prisoners⁶³ and the payment of prisoners for work done while in prison⁶⁴. In 2000 the then Minister of Internal Affairs⁶⁵ made the Prisoners (Earning Rates and Gratuity) Rules, 2000⁶⁶ which, despite the repeal of the Uganda Prisons Act 1956 in 2006, are saved by Section 125 (3) (a) of the Act⁶⁷.

3.4.5 Right to access to his or her family

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

⁶³Section 124 (2) (e).

⁶⁴Section 124 (2) (h).

⁶⁵Brigadier Moses Ali.

⁶⁶ Made under Section 76 (h) of the Prisons Act 1956 and came into force on 21st November 2000.

⁶⁷ 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.

⁶⁸Section 78 (1) Prison Act 2006.

⁶⁹ Section 78 (2) Prisons Act 2006.

3.4.6 Right to Health

Exercises keep prisoners in good physical health and kill boredom⁷⁰. Therefore, in any prison, there ought to be recreational facilities for the prisoners to have regular exercises⁷¹. This is supported by international instruments on treatment of prisoners⁷². Exercises and recreational activities also facilitate social reintegration of prisoners with their communities through organizing competitions between inmates and community members⁷³.

Exercise for prisoners is provided for under Section 70 of the Act⁷⁴ 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.

⁷⁰ 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.

⁷¹ Schmalleger Frank, Criminal Justice Today: An Introductory Text for the Twenty-First Century, Prentice Hall Inc, Engle Wood Cliffs, New Jersey, 1991 pg 235.

⁷²Rule 78 of United Nations Standard Minimum Rules for the Treatment of Offenders.

⁷³ 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> assessed on 6th april 2017.

⁷⁴Prisons Act 2006.

The responsibilities of prisons extend far beyond the “warehousing” of offenders⁷⁵. 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 prison⁷⁶. 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*⁷⁷ 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 which even imprisonment cannot take away. This is also in accord with the Standard Minimum Rules⁷⁸. In Uganda treatment is based on mental sickness and other illnesses.

3.4.7 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.

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

⁷⁶ 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.

⁷⁷[1986] 16 M.P. Reports 147.

⁷⁸ Rules 22 to 25.

CHAPTER FOUR

4.0 STRATEGIES TO ENSURE THE PROTECTION OF RIGHTS OF 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 strategies are adhered to.

4.1.1 Pro Bono Opportunities

As members of a profession, lawyers are bound by their ethical rules to charge reasonable rates for their services and to serve the public interest by providing free legal service to indigent persons or to religious, charitable, or other non-profit groups. A lawyer's free legal service to these types of clients is designated as *pro bono* service⁷⁹.

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

⁷⁹Coulter, Dolores M. 2001."The Pro Bono Priority."Michigan Bar Journal 80 (September).

No. 39 under the Advocates Act, which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year⁸⁰:

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

That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act⁸¹.

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

⁸⁰Advocates Act Regulations SI No. 39.

⁸¹ *ibid.*

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.

4.2 Barriers to *pro bono* work

4.2.1 Insufficient Funding

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

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

4.2.2 Infrastructure Problems

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

Recently, a draft Legal Aid Policy attempting to establish a cohesive and enlarged public legal aid scheme has been circulated to the Ugandan Cabinet for approval. The proposed reforms include recommendations to broaden the class of people who qualify for public legal aid,

establish an independent legal aid body to administer funds, and create a public-private partnership to more effectively and efficiently deploy legal aid.

4.2.3 Opt-Out Right

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

4.2.4 Logistical Realities

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

4.2.5 Pro Bono Resources

The Uganda Law Society: engages in legal aid and *pro bono* which are its flagship projects with the aim of extending access to justice to the poor, indigent and most vulnerable across Uganda. The LDC Legal Aid Clinic: was established for the main purpose of improving the level of training of Bar Course students and to promote the lawyer's role of service to the community and legal representation of needy persons.

The Public Defender Association of Uganda: offers legal aid to indigent persons, particularly to persons charged with criminal offences. The Legal Aid Project of the Uganda Law Society: was established by the Uganda Law Society to provide legal assistance to indigent and vulnerable persons in Uganda. The Refugee Law Project: engages in the provision of free legal assistance to

the refugee population and asylum seekers in Uganda. International Justice Mission: is a Christian Non-Governmental Organization led by Human Rights professionals, which helps people suffering from injustices and oppression, who have not been able to obtain justice through local authorities. IJM investigates and documents cases of abuse and provides pro bono legal representation to vulnerable individuals. These and many more are the available resources that extend *pro bono* services to indigent prisoners in Uganda .

4.3 Legal Aid Project

Legal aid is the provision of free or subsidized legal services to mainly poor and vulnerable people who cannot afford the services of paid lawyers.¹ Legal aid is provided as a means to enhance people's access to justice⁸². Access to justice is the mechanism through which individuals, groups and communities realize their human rights. Human rights are meaningless without access to and availability of the justice system because it is through access that these rights are guaranteed and protected under the law. As such, legal aid enables all persons, particularly the poor and vulnerable, to access their right to justice as well as other human rights.

The need for legal aid is created by the inability of persons to have all the required legal

Knowledge and to know all the procedures and to represent themselves. Factors such as poverty, ignorance of the law, armed conflict, disability or other vulnerability or marginalization should not be a barrier to people progressively realizing their rights which are protected by the

⁸² Comparative report by the Danish Institute of Human Rights -Access to Justice and Legal Aid in East Africa page 7

Constitution of Uganda⁸³ . Furthermore, the inability to afford legal representation should never diminish a person's right to access justice.

The Poor Persons Defense Act⁸⁴ 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".

4.4 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 10⁸⁵.

⁸³ The 1995 Constitution of Uganda, Chapter 4

⁸⁴ Section 2 of Cap 20

⁸⁵ THE CONSTITUTION (SENTENCING GUIDELINES FOR COURTS OF JUDICATURE) (PRACTICE) DIRECTIONS, 2013

4.5 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

CONCLUSIONS 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 Center⁸⁶ 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

⁸⁶ Law Development Centre Act Chapter 132.

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 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 it's 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. The researcher 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 numbers 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 it's recommended that adequate education and sensitization be made for the prison staff and inmates. The indigent prisoners should be educated about their rights and how they can protect them.

As per Section 3⁸⁷ 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

⁸⁷ Advocates laws of Uganda

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 and the research shows 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 am of the view that the judiciary checks 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 and even set a specific time period in which a case should be concluded. This could help in ensuring justice for the indigent prisoners.

Inadequate staffing; There are not enough judicial officers to handle the increasing caseloads properly. This has led to increased number of prisoners and also justice being delayed and the research shows that the judiciary should increase on its staff and also the government should

appoint more judges and court officials so that there can be increased efficiency in dealing with the cases.

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

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

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

The communication is sometimes poor. Production warrants may be sent late to the prisons and the time is not sufficient to prepare the prisoners to be produced before court at the time ordered. On the other hand, prisoners are transferred from one prison to another without informing the courts. I recommend that there should be good communication between all the stakeholders in order to ensure justice is extended to all prisoners as well as indigent prisoners. The judiciary should set a minimal standard that should be followed to ensure that good communication is achieved among all stakeholders and also continuously collecting, monitoring and analyzing

admission and length of stay information and sharing the results with the judiciary and officials in leadership positions in government.

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

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

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

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

National human rights institutions should be expressly 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 groups 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

BIBLIOGRAPHY

Books

1. Adler Freda et al, *Criminal Justice: The Core* (Mc Graw Hill Companies Inc, New York, 1996).
2. Ayume Francis, J., *Criminal Procedure and Law in Uganda*, (Longman Kenya Ltd, Nairobi, 1986)
3. Bottoms, A., "The Aims of Imprisonment", in Garland, D., (Editor), *Justice, Guilt and Forgiveness in the Penal System*, (Edinburgh, University of Edinburgh, 1990)
4. Brown Douglas, *Criminal Procedure in Uganda and Kenya*, (East Africa Publishing House 1965)
5. Caldwell, R., *Criminology*, (Ronald Press Company, New York, 1965)
6. Cole George, F., *The American System of Criminal Justice*, (5th Edition, Brooks/ Cole Publishing Company, California, 1989)
7. Duguit Stephen, *Can Prisons Work? The Prisoner as Object and Subject in Modern Correction*, (University of Toronto Press, Toronto, 2000)
8. Fuller John, *Criminal Justice: Mainstream and Cross-Currents*, (Prentice Hall, New Jersey, 2005).
9. Garland, D., *Punishment and Welfare: A history of penal strategies*, (Gower Publishing Company, Great Britain, 1985)
10. Harr Scott, J., and Hess Kalen, M., *Constitutional Law and the Criminal Justice System*, (3rdEdn, Thomson Wadsworth, United States of America, 2005)
11. Samaha Joel, *Criminal Justice*, (Second Edition, West Publishing Co. Los Angeles,

1991)

12. Senna Joseph, J., and Siegel Larry, J., *Introduction to Criminal Justice*, (5th Edn, West Publishing Co., New York, 1990)
13. Siegel Larry, J., *Criminology*, (8th Edition, Thomson Wadworth, University of Massachusetts, 2003)
14. Slattery Brian, *A Handbook on Sentencing in Tanzania*, (East Africa Literature Bureau, 1972) Ten C.L., *Crime Guilt and Punishment: A Philosophical Introduction*, (Oxford University Press New York, 1987)
15. United Nations, *Human Rights and Prisons: Manual on Human Rights Training for Prison Officers: Professional Training Services*, (Number 11, New York and Geneva, 2005)
16. Wroblewski Henry, M., and Hess Kalen, M., *Introduction to Law Enforcement and Criminal Justice*, (3rd Edn, West Publishing House, New York 1990)

Journal Articles

1. Ddamulira Jamal Mujuzi, “*The Evolution of the Meaning(s) of Penal Servitude for Life (Life Imprisonment) in Mauritius: The Human Rights and Jurisprudential Challenges Confronted So Far and Those Ahead*”, **Journal of African Law**, Volume 53 Number 2, 2009, Pages 222 to 248
2. Ddamulira Mujuzi Jamal, “*The Constitutionality of Different Types of Life Imprisonment Suggested in the Criminal Procedure Act 2004*” **Namibia Law Journal**, Volume 2 Issue 2 July 2010, Pages 111 to 120.
3. Ddamulira Mujuzi Jamal, “*Why the Supreme Court of Uganda Should Reject the*

- Constitutional Court's Understanding of Imprisonment for Life?* **"African Human Rights Journal**, Volume 8 Issue 163 2008, Pages 180 to 185.
4. Dvoskin Joel, A., and Erin Spiers, M., *"The Role of Correctional Officers in Prison Mental Health"*, **Psychiatric Quarterly Journal**, Volume 75, Spring 2004
 5. Green Donald, P., and Daniel Winik, *"Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders"* **Criminology Journal**, Volume 48 Number 2 2010 (Pages 357 to 387)
 6. Ray Jones, *"A Coincidence of Interests: Prison Higher Education in Massachusetts"*, **Journal of Prisoners on Prisons**, Volume 4, Number 1 February 2006, Pages 62 to 82.
 7. Reidy Thomas, J., et al, *"From Death to Life: Prison Behavior of Former Death Row Inmates in Indiana"*, **Criminal Justice and Criminal Behavior, An International Journal**, Vol. 28, No.1
 8. Rubin, E L., *'The Inevitability of Rehabilitation'* **Law and Inequality Journal** Volume 19 Issue Number 345 of 2001 Pages (56-96) P.61
 9. Tanimu Bashir, *"Nigeria Convicts and Prison Rehabilitation Ideals"* **Journal of Sustainable Development in Africa**, Volume 12 Number 3, 2010
 10. Wormith Stephen and Mark Oliver, E., *"Offender Treatment Attrition and its Relationship with Risk, Responsibility and Recidivism"*, **Criminal Justice and Criminal Behavior, An International Journal**, Vol.29 No.4, August 2002.

Dissertation Publications.

1. Birungi Charles, “*Community Service in Uganda as an Alternative to Imprisonment A Case Study of Masaka and Mukono Districts*”, **Thesis Presented to the Institute for Social Development Faculty of Arts, University of Western Cape, in partial fulfillment of the requirement for the MA Degree in Development Studies , MAY 2005**
2. **Commission Reports** Justice, Law and Order Sector (JLOS), **Strategic Investment Plan II 2006/7-2010/11, Consolidating Gains and Enhancing Impact**, Final Draft August 2006.
3. Ddamulira Jamil Mujuzi, “*Life Imprisonment in International Criminal Tribunals and Selected African Jurisdictions-Mauritius, South Africa and Uganda*”, **A Thesis Submitted in Fulfillment of the Requirements for the Award of the Degree of Doctor of Laws**, Faculty of Law of the University of the Western Cape, South Africa, 13th May 2009
4. Law Justice and Order Sector, **Census of Prisoners in 48 Central Government Prisons**, 30th September, 2007.
5. Republic of Uganda, Ministry of Internal Affairs, **Ministerial Policy Statement Report for the Financial Year 2009/2010**, Read in Parliament by A.M Kirunda Kivejinja, 3rd Deputy Prime Minister and Minister of Internal Affairs Uganda available at <www.mia.go.ug >accessed on 10th april 2017
6. Uganda Human Rights Commission, **11th Annual Human Rights Report**, Presented to the Parliament of the Republic of Uganda, 2008
7. Uganda Human Rights Commission, **12th Annual Human Rights Report**, Presented to

the Parliament of the Republic of Uganda, 2009.

8. Uganda Prisons Service, **Project on Rehabilitation of Prisoners in Uganda Report**, 2006
Uganda Prisons Service, **Prisoners' Reintegration Project Report**, 2007

Internet Sources

Reports. www.uhrc.org Uganda Human Rights

<www.prisonstudies.org> International Centre for Prison

Studies assessed on 6th april 2017

Commission. www.ups.co.ug Uganda Prisons

Service. www.namibialawjournal.org Namibia Law

Journal.

<www.ulii.org> assessed on 15th april 2017 Ugandan Laws

and Unreported Cases.

www.kenyalaw.org Kenya Law

Call, Jack E. 1995. "The Supreme Court and Prisoner's Rights." *Federal Probation* 59 (March).

Mushlin, Michael B. 2002. *Rights of Prisoners*. 3d ed. St. Paul, Minn.: Thomson/West.

Palmer, John W. 1997. *Constitutional Rights of Prisoners*. 5th ed. Cincinnati: Anderson.

Robbins, Ira P. 1993. "The Prisoners' Mail Box and the Evolution of Federal Inmate Rights."

Federal Rules Decisions 144 (January).